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OVERSIGHT HEARING: LAW ENFORCEMENT AND TERRORISM

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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OVERSIGHT HEARING: LAW ENFORCEMENT AND TERRORISM

WEDNESDAY, JULY 23, 2003

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 11:45 a.m., in room SH–216, Hart Senate Office Building, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Grassley, Kyl, DeWine, Sessions, Craig, Leahy, and Feingold.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Chairman HATCH. I apologize to the two witnesses who are appearing before us that we have had to delay their testimony this long, and I understand, Mr. Director, you have to be through by 1:30.

Director MUELLER. Yes.

Chairman HATCH. So will do our best to try and move this along. We do have a couple of votes at 12 o'clock, so we will move along up through then, and we are going to try to keep going. Senator Grassley is going to run over and vote, and I will stay here as long as I can, and then he will come back to keep the Committee going so that we will not waste any time.

We are trying to examine the recent efforts by the Federal Bureau of Investigation and the Department of Homeland Security to combat the increasing threat of terrorism. As I have stated before, I am committed to conducting the meaningful oversight of the FBI and the Department of Homeland Security to ensure that as we fight the war against terrorism, we achieve maximum security without compromising the freedoms and liberties we cherish in this great country.

As we focus on the FBI's and the Department of Homeland Security's recent efforts to prevent and deter future terrorist attacks against our country, it is important that we hear from these two distinguished witnesses who are here before us today. It is indeed an honor to have before the Committee Robert Mueller, the FBI Director, and Asa Hutchinson, Under Secretary for Border and Transportation Security at the Department of Homeland Security. I look forward and we all look forward to hearing from both of you on your continuing efforts and commitment to winning the war against terrorism.

Now, the challenges that we face in this war continue to be unprecedented. We fight a fanatical enemy, dedicated to the destruction—at all costs—of America. When Director Mueller took over the FBI days after the 9/11 attacks, he faced extraordinary challenges. He assumed responsibility for a law enforcement agency that had suffered from antiquated information technology and inadequate intelligence systems. Following, September 11, Director Mueller acted quickly to refocus the FBI, to reallocate its resources, to improve its internal information systems, and to transform its central mission from reactive crime-fighting to proactive terrorist protection and prevention. Congress recognized the enormity of this task and provided in the PATRIOT Act a set of new tools that has enabled the FBI to complete this transformation.

It is apparent from news reports and recent independent reviews, such as those conducted by the General Accounting Office and the National Academy of Public Administration's Academy Panel on FBI Reorganization, that the FBI has made great progress in its role as the lead terrorist prevention agency. By using many of the new tools provided in the PATRIOT Act, and by increasing information sharing, the FBI, with the assistance of other Federal, State, and local law enforcement and intelligence agencies, as well as our international partners, has demonstrated a number of successes in capturing and prosecuting terrorists. Under Director Mueller's able leadership, the FBI has significantly upgraded its information technology systems, has revised its FISA application and review procedures, and implemented a new infrastructure that will maximize the gathering, analysis, and dissemination of critical intelligence information among law enforcement and intelligence agencies. While must has been accomplished, even more remains to be done.

Equally impressive has been the creation and operation of the new Department of Homeland Security, which required the consolidation of over 21 separate agencies and the merging of nearly 180,000 employees into a single, unified agency. The Homeland Security Act placed with Secretary Hutchinson's jurisdiction the primary responsibility for securing our Nation's borders from terrorists who seek to enter and attack our country. In short order, Secretary Hutchinson dedicated himself to implementing new systems and policies designed to prevent the entry of terrorists and the instruments of terrorism, without disrupting the efficient flow of lawful traffic and commerce at our borders. Now, I look forward to working with you, Secretary Hutchinson, as you implement programs to accomplish these goals, such as the new US–VISIT program.

Now, I want to mention one other issue that I expect we will address today in follow-up to the Committee's June 25th hearing on the Department of Justice's Inspector General's report on the treatment of the 9/11 detainees. The June 25th hearing was a fair and objective hearing. It is clear that the Government faced unprecedented challenges in responding to the 9/11 attacks. Dedicated public servants worked around the clock to investigate the attacks, identify and locate terrorist cells within our country, and secure our borders from further attacks. But having said that, it is also

apparent from the IG's report that there are valuable lessons to be learned from our response to the 9/11 attacks.

I look forward to hearing from each of you today about the reforms you are implementing and your efforts to protect our country from future terrorist attacks.

We will reserve the time for Senator Leahy, should he attend and come, so that he can interrupt at any time and make his statement.

We will turn to you first, Director Mueller, and then to Secretary Hutchinson.

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

Director MUELLER. Thank you, and good morning, Mr. Chairman and other members of the Committee. I am pleased to be here to update you on the issues we discussed during my most recent appearance on March 4th, and also to assure you that the FBI has been working hard to protect the American people from another terrorist attack.

We have continued to make significant progress in our reorganization and in our ongoing efforts to improve our collection and use of intelligence, as well as to our commitment to demonstrating our respect for constitutional liberties in all our investigations and our programs. I want to thank you for your continued commitment and interest in ensuring the success of the FBI. The men and the women of the FBI appreciate that support and demonstrate daily their determination to fulfill the great responsibility that you and the public have entrusted to them.

Even in the relatively short period of time since I last appeared before this Committee in March, we have continued to progress in improving and reorganizing the FBI so that we function more efficiently and are able to respond more rapidly to world events and changes in technology, both the technology available to us as well as the technology that is also available to criminals who threaten our economic interests and our infrastructure.

Now, among the most significant challenges has been our commitment to use the authorities provided by the PATRIOT Act to protect the American people while at the same time continuing our commitment to honoring constitutional protections, including First Amendment freedoms of speech, religion, and assembly.

Let me just start at the outset and make a few comments, if I could, about the PATRIOT Act. Our efforts to combat terrorism have been greatly aided by the provisions of that statute, and our success in preventing another catastrophic attack on the United States homeland would certainly have been much more difficult, if not impossible, without several of the provisions of that Act. It has already proved extraordinarily beneficial in the war on terrorism, and our opportunity to use it will only increase.

First and foremost, the PATRIOT Act has produced greater collection and sharing of information within the law enforcement and intelligence communities.

As you know, prior to the Act, the Foreign Intelligence Surveillance Act—commonly known as FISA—was interpreted as requir-

ing that FISA surveillance was permitted only when the primary purpose of that surveillance was to obtain foreign intelligence information. But in order to ensure that the primary purpose of that surveillance did not shift during the investigation, criminal investigators were essentially walled off from intelligence investigations. What is called a metaphorical wall was erected between intelligence and law enforcement out of concern that sharing of information between intelligence and criminal investigators would become involved in developing evidence for a criminal case.

Section 218 of the PATRIOT Act displaced the primary purpose standard, permitting the use of FISA when a significant purpose of the surveillance was to obtain foreign intelligence information. In addition, Section 504(a) clarified that coordination between intelligence and criminal personnel was not grounds for denial of a FISA application. These changes, when combined with the 2002 opinion from the FISA Court interpreting the new language, effectively dismantled the wall between law enforcement and intelligence. The resulting free flow of information and coordination between law enforcement and intelligence has expanded our ability to utilize all appropriate—and I say appropriate—resources to prevent terrorism.

As a result, although the legal standard for obtaining a FISA warrant is still probable cause to believe that the target is a foreign power or an agent of a foreign power, we now have more opportunities to employ FISA as well as the opportunity for greater dissemination of the information that flows from that form of surveillance.

I should add that information is flowing more freely in both directions. Section 203 of the PATRIOT Act modified the rules governing the handling of information obtained through the grand jury or from Title III surveillance, so that we may now disclose without delay any foreign intelligence information obtained from these criminal investigative tools to the Director of Central Intelligence and to our friends at Homeland Security. In fact, the statute mandates these disclosures.

In addition, the PATRIOT Act gave Federal judges the authority to issue search warrants that are valid nationwide in terrorism investigations. In the past, a court could only issue a search warrant for premises within the same judicial district. But our investigations of terrorist networks often span a number of districts, and this change, which is limited to terrorism cases, has eliminated unnecessary delays and burdens associated with having to present warrants to different judges around the country.

Title III of the Act, known as the International Money Laundering Anti–Terrorist Financing Act of 2001, has armed us with a number of new weapons in our efforts to identify and track the financial structures supporting terrorist groups. Past terrorist financing methods have included the use of informal systems for transferring funds in a manner that is difficult to detect and trace. The effectiveness of such methods was significantly undercut and eroded by the provisions of the PATRIOT Act.

Finally, there are other provisions of the Act that have considerably aided our efforts to address the terrorist threat including: strengthening the existing ban on providing material support to

terrorists and terrorist organizations; the authority to seize terrorist assets; and the power to seize money subject to forfeiture in a foreign bank account by authorizing the seizure of a foreign bank's funds held in a United States correspondent account.

Mr. Chairman, it is important for the Committee and the American people to know that the FBI is using the PATRIOT Act authorities in a responsible manner, and we are making every effort to effectively balance our obligation to protect Americans from terrorism with our obligation to protect their civil liberties.

I want to spend just a moment on what we have done to address not only intelligence collection but analysis within the Bureau.

The PATRIOT Act created new opportunities for us to strengthen and expand our longstanding intelligence capability and to allow the sharing of that intelligence broadly within the FBI, but also within our intelligence and law enforcement community partners. While intelligence has always been a core competency of the FBI and has been organic to the FBI's investigative mission, the intelligence cycle of requirements, collection, analysis, dissemination, and feedback has not always been carried across the FBI. The PATRIOT Act has allowed us to ensure that the aggregate intelligence gleaned from our cases and our investigations is analyzed for trends and connections that might not be visible to us from a review of individual cases. And this threat-based look at FBI intelligence has allowed us to uncover terrorist networks and connections within the United States that otherwise might not have been found.

Similarly, the PATRIOT Act has allowed the FBI and our intelligence and law enforcement community partners to exchange information that previously was not shared. The wide availability of threat information from all sources has been a key to our success in using intelligence to drive our investigations toward prevention as well as and in addition to prosecution.

To properly manage this expanded intelligence capability, in January of this year we elevated intelligence to a program status at the FBI, and to that end, I have proposed to Congress the creation of an Executive Assistant Director for Intelligence position and have selected that individual and have undertaken a program to develop and implement concepts of operations for key intelligence functions.

Finally, let me spend a moment talking to you, Mr. Chairman, and the Committee on our progress in upgrading our information technology capabilities.

Since the 9/11 tragedy, the FBI has had a number of information technology successes. The most significant of those has been the upgrade of our data communications infrastructure. As part of our Trilogy program, we put in worldwide high-speed data communications networks which became operational on March 28, 2003. This network is a significant increase in our capability to share all kinds of data, to include video and images, among all of our FBI offices throughout the world. This network will be the backbone for the implementation of most of our information technology systems for years to come.

As part of our Trilogy upgrade, Bureau personnel throughout the world are having their desktop computers upgraded to state of the

art. This upgrade is complete for all field locations and is currently ongoing at headquarters. Additional upgrades, primarily in software, are targeted for completion in November and December of this year, and all these upgrades are necessary to implement what we call the Virtual Case File, which is scheduled to come online in December 2003. This Virtual Case File is the result of a re-engineering of workflow processes and combines several existing databases into one. Previous automation efforts in the FBI basically automated paper process, retaining all of the steps in these processes. The Virtual Case File development team took a hard look at these processes and, with the involvement of agents and support personnel from the field, has re-engineered them to obtain significant efficiencies from our systems.

In closing, Mr. Chairman, I would like to thank this Committee for its continued leadership and support. The FBI's capabilities are improving daily, in large part due to that support, and we will continue on this positive path with the benefit of your continued interest and leadership.

I am happy to answer any questions you might have.

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

Chairman HATCH. Well, thank you, Mr. Director.

We will turn to Secretary Hutchinson now.

STATEMENT OF ASA HUTCHINSON, UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY, DEPARTMENT OF HOMELAND SECURITY, WASHINGTON, D.C.

Secretary HUTCHINSON. Thank you, Chairman Hatch, Senator Leahy, distinguished members of the Committee. Thank you for inviting me to testify before you today. It is my privilege to be here and also to appear with my friend and colleague, Bob Mueller, who is doing an outstanding job in bringing innovation and leadership to the FBI.

I wanted to respond to two particular areas today in my oral testimony and, of course, will submit my written testimony.

First, I wanted to outline and summarize some of the various initiatives that we have implemented at the Department of Homeland Security to enhance security at our border ports of entry and through our transportation system.

Secondly, I wanted to make some comments on the IG report that is part of the subject of this hearing today.

If you look at what we have done since the Department was created, we have been able to expand the Container Security Initiative into phase two, which broadens the information that we get in advance of cargo coming to the United States through our sea carriers. We have deployed over 300 new Border Patrol agents to the Northern border. We have expanded the presence of Homeland Security officials in trouble spots on the Southwest border. We have worked to increase security through the implementation and development of the US–VISIT system that will allow us to fulfill the Congressional mandate for knowing visitors that come and go from the United States and who overstays their visas. We have implemented Operation Liberty Shield during the Iraq confrontation. We have implemented Operation Cornerstone that enhances our capa-

bility in financial investigations and coordination with the FBI and their role. We have developed Operation Predator, which really combines the resources of legacy Customs agents and immigration agents to enhance their capability.

We have increased our communications with the Department of State in partnership with them in developing the protocols at our consular offices, increasing the interviews with them, which enhances our security. Through Customs and Border Protection, we have developed rules in advanced cargo information in different modes of transportation that enhances our capability to assure cargo that comes into the United States is free of danger. Finally, we have increased the deployment of non-intrusive inspection technology at our ports of entry.

I believe that all of these are consistent with Congressional mandates to the Department and particularly in my arena of border and transportation security.

As we increase security, we must also keep clearly in mind that we must implement these security measures in ways that respect and enhance our civil rights and civil liberties. And through communication with the American people and those communities impacted by the September 11 detentions, we will strive to protect America by taking the steps that will be effective in diminishing the security threats that we face without sacrificing core American principles.

That leads me to comment on the Inspector General's report. I would note that the Department of Homeland Security took responsibility for 21 agencies in March of this year, and we did not exist in September of 2001. But, nevertheless, the Department of Justice IG report is important to our work, and we take the findings and the recommendations very seriously.

As Under Secretary for Border and Transportation Security, I have responsibility for the operations of several agencies, including two most applicable to the IG's report: one, the Bureau of Customs and Border Protection, the other the Bureau of Immigration and Customs Enforcement, or ICE. Within ICE, the focus is on our criminal investigations and enforcement at our Nation's borders and immigration, customs laws. Customs and Border Protection secures our borders and facilitates the legitimate movement of cargo. These two organizations perform many of the functions of the former INS.

It is our intention through this streamlining of communications between the agencies and the senior leadership to address one of the Inspector General's main recommendations. I am pleased to report that the integration of the former customs and immigration personnel is progressing rapidly, and the increased capability makes our Nation safer.

The IG report examines the immediate actions of the FBI and INS and the arrest and detention of 762 individuals. Let me comment specifically on some of the recommendations.

The IG recommends that new steps be taken to ensure that, if another emergency such as September 11 happens again, a clear and effective process be in a place to guide Homeland Security and the Department of Justice through the crisis. We completely concur with this recommendation. We agree, for example, that there

should be clear post-arrest communication between the FBI and Homeland Security regarding aliens that have a likely association with terrorism, regarding whether an alien detainee be labeled as a person of interest to an investigation, and regarding when an alien can be removed from the list of those that are of interest. We will establish with the Justice Department an effective crisis management process.

I want to assure this Committee and the country that, should we ever find ourselves in another national emergency involving terrorism, we will have mechanisms in place to work cooperatively with the FBI and to ensure that individuals detained pursuant to our laws are treated fairly. Although we will work cooperatively, it is imperative that the Department of Homeland Security independently review the underlying facts and make assessments to both the necessity for detention and the appropriate detention facility in every case. This will also ensure that the Department of Homeland Security can make the proper recommendations to the court on bond, detention, and removal. This independent assessment is essential because it is DHS lawyers who are officers of the court and must have confidence in the representations made to the court.

The IG asserts in its report that many detainees were held for a lengthy period of time without having charges filed against them. We agree that we need to put in place comprehensive instructions to clarify and streamline the process for serving charges—what are called "notices to appear" in the immigration context—on alien detainees.

The IG concluded that the conditions some alien detainees faced were unsatisfactory. In response to that, we have implemented specific guidelines to our detention facilities. I am pleased to report that last week ICE issued a new detention standard that addresses the issue of ICE visitation of aliens in detention at Homeland Security-controlled facilities as well as facilities controlled by other entities. Finally, the standards include specific time frames during which officers must respond to certain enumerated detainees' requests. We have included an operational order emphasizing the need for our employees to follow all applicable policies, procedures, and regulations governing detention.

I also want to assure the Committee that ICE's Detention and Removal Office has in place a set of standards that set a high standard with regard to immigration detention facilities. For the past 2 years, we have trained over 350 agents to serve as reviewers of immigration detention facilities. I am going to revisit that program to ensure that it is sufficiently strong to meet our objectives.

The IG concluded that the Department needs to ensure that immigration officials in the field consistently conduct post-order custody reviews for all detainees who remain in custody after the typical 90-day removal period. We are making sure that we can complete those post-order custody reviews in a timely fashion.

Although we have taken some steps to address the concerns identified by the Inspector General, we clearly need to accomplish much more. With Director Mueller, we will establish mechanisms to appropriately process aliens who may have a connection to terrorism in the event of another national emergency that involves alien detainees. I would be pleased to present further testimony on this

issue to the Committee as the Committee directs, and I am looking forward to the questions that you might pose and answering any questions that the Committee deems would be helpful in your oversight work.

Thank you very much.

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

Chairman HATCH. Well, thank you so much.

We do have two votes going on right now, and I am going to try and utilize as much time as we can. Senator Grassley is going to come back, but I don't know that he will come back between the two votes.

Does anybody know how much time we have left on the first one?

Okay. Well, let's ask a few questions, and then we will probably have to recess until we can get back after the second vote.

Oh, excuse me. The distinguished Ranking Member has an opening statement I would love him to give.

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

Senator LEAHY. We have been rapidly changing the rules around here. I didn't know whether I would get a chance. But I do welcome you both here. All of the employees of the FBI and the Department of Homeland Security work very hard to keep us safe, and I want to say through you to them that you have certainly my deep gratitude and support, as both of you do. Sometimes we can be contentious, but I believe that is something that we can be unified on.

I am sorry that the way the discussion has been, you are going to have very little time to answer questions because when we submit them for the record, it is not always easy to get answers. These are the some of the answers that have been received by the Department in the last week. On those rare occasions that you actually do get a chance to come up here and testify before us, people look back and find all the questions that have been asked before. These were from a year ago. Actually, some of these are from a year or so ago, and so we ask you questions, and a year later we get the answers.

I don't think that helps with oversight. At our last Committee hearing back on March 4th, the Chairman said he would ask you to testify regarding the FBI's use of its authorities under the Foreign Intelligence Surveillance Act, FISA. Five months later, we have yet to have that hearing. I would hope that we might have a chance to have a real hearing on FISA, a time when not just the Director of the FBI, but the Attorney General, should have to come and answer questions. Former Republican leader Dick Armey and I put in specific sunset provisions in the PATRIOT Act so that we would encourage the oversight process and the answering of questions. We have not had a very good opportunity to do oversight. I hope that those who want to see the sunset provisions go away would encourage answers to our questions. I would say, however, that, Director Mueller, you have always been available when I have called you on something, and certainly, Secretary Hutchinson, you have been here many times before committees, and I applaud that.

I am going to put a statement and some material from Senator Kennedy in the record and also my full statement in the record. I am concerned, and you have touched on this, about the reports that Muslim and Arab immigrants being held in civil violations of our immigration laws have been subjected to abuse. Director, I look forward to coming down—and you and I have discussed this before—I want to come down and see the new electronic abilities you have. As you know, I expressed this to you. Just a few days after you became Director, you had September 11th, and I think both you and I, and I know the President, were appalled at how very little ability there was for the Bureau to use electronic communications and computers.

I recall saying during that time to one of the very top people in the Bureau about doing a Google search on some of the people under suspicion before September 11. The response was: "What is a Google search?" A question that their 8-year-old neighbor could have answered. And I know you have made information technology one of your priorities, so I will come down personally to see the new system. I wonder if perhaps the computer problems had been addressed prior to your arrival at the FBI, whether things might have been different on September 11th.

We passed some FBI reform provisions in the Department of Justice authorization act. Some parts were blocked. This was the Leahy–Grassley FBI Reform Act of 2001. Senator Grassley and I have now reintroduced it, and I would hope that the administration would support it.

I will put my full statement, Mr. Chairman, in the record, and I will come back to ask questions, and I will go and vote. Senator Grassley has never been shy about asking questions of the Department. I come along in the wake of the super tanker over here. But you can assume that some of his questions are similar to mine.

[The prepared statement of Senator Leahy appears as a submission for the record.]

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY [presiding]. Senator Hatch and I have arranged that I have already voted and he is going to stay over there and vote on this one and vote on the second vote, and then he will come back and I will go vote on the second vote. In the meantime, then, I can ask questions.

I have a short statement. First of all, I am very glad to have an opportunity that the Chairman would make for us to have exchange in oversight with each of you. And I really feel good about the meeting that we had. It was kind of a private meeting last week, Director Mueller. I felt it was very productive, and I hope that the tone was right. I felt that the tone was right, at least on your part. And if you remember, at that meeting I brought up a number of examples of cultural problems within the FBI. These cultural problems are important because I think that they have some demoralizing impact upon agents, and the extent to which that is true, they diminish some trust that the public has always had in the FBI.

Ultimately, these problems, I think, have some impact, negative, upon the FBI's effort to carry out the new and horrendous responsibilities that you have on the war on terror and the prevention of things. It is quite a bit different from what the FBI has traditionally done. FBI agents are some of the country's most honorable and hard-working Federal law enforcement people. These great men and women deserve every measure of protection when they try to improve the FBI by pointing out problems.

I appreciate that you address retaliation head-on by referring allegations to the Inspector General. However, the FBI would be better served if retaliation were stopped in the first place. And I don't mean to imply that you wouldn't do that. You might not know of every instance. And I think that you have to prevent this activity, not just react to it, just like the FBI has to prevent terror attacks and not just investigate afterwards.

You have taken some good steps to reform the FBI internally, and I have some questions that I will want to ask you that probably would not be unfamiliar to you.

Let me make one comment before I do that. It is a follow-on of the statement I just made. And I know the FBI is a very, very big organization, and I know that you are one person in it. And I know, as I indicated, that you probably can't be on top of everything, and you are going to have somebody that is not doing exactly what you would like to have done. But I hope that some way you can take steps to get people around you that really have your attitude filtered down to everybody so that you don't have these instances where people are out of step.

So I would like to give you three examples of cultural problems and ask you to address each one and do it after I finish. Overall, I also want to have you explain what you might be doing along the lines of what I just said about preventing instances like these happening.

Several FBI agents testified to this Committee before your confirmation—now, this is before you came here, so this is 2 years ago. Agents Roberts, Perry, and Kiernan told us about problems with retaliation, FBI misconduct, coverups, and the double standard in discipline. Agent Roberts has had a retaliation complaint pending with the Inspector General since before your tenure, and Agents Perry and Kiernan recently were forced to join him in alleged retaliation with the Inspector General.

I believe that these are patriotic agents who just want to do their job, and I am troubled that your high standards didn't sink in with some officials in the FBI who wanted to target these individuals. Also, John Roberts' wife, Brenda, has alleged that she suffered further harassment. Direct retaliation is one thing, but going after someone's family is a very low act.

The second point that I would make would be the FBI's highest-ranking Arab agent, Arab-American agent, has filed a discrimination lawsuit. This is Agent Basam Yousef. He was our first legal attache in Saudi Arabia. He was instrumental in the Khobar Towers bombing case, and, unfortunately, this agent feels that he has been subject to discrimination and that the FBI has missed out on his valuable skills. You have been aware of this case personally for some time, so why could you not act to fix this situation earlier?

Then the third and last point would be in regard to a letter that I just recently sent you about awarding contracts to former officials who were involved in serious misconduct during their careers. And I shouldn't say it to imply that you awarded it. I mean to imply that they have an FBI contract. Because I think giving a contract to these people sends a terrible message to agents and the public that there are no consequences for wrongdoing. In fact, you might be rewarded for it. Charlie Matthews, who helped cover up Ruby Ridge, got a contract to travel to Indonesia for an FBI training session. The FBI also awarded a contract to a company called MPRI, where Joseph Wolfinger and Thomas Coyle worked. That contract is to do counterintelligence training. Wolfinger organized a fake conference in the Pottsgate scandal, and Coyle was investigated for Ruby Ridge and was on the Pottsgate disciplinary board despite a major conflict of interest.

These people, in my judgment, are not models for FBI agents, so I am concerned about this, and I entered my letter into the Congressional Record yesterday along with a statement. I appreciate your hearing about these points of view, and now I would ask you to respond.

Director MUELLER. Well, Senator, you asked what we have done to tell persons within the organization that I want to hear about that which we need to do better, and that persons who do provide those differing views should not be retaliated against.

Shortly after I came, I sent an e-mail to everybody that explicitly indicated that I would not countenance retaliation. I have, whenever there has been an accusation of retaliation, referred that to what I consider to be an independent investigative body, the Inspector General's office. I have awaited the determination of the facts because allegations can be made, but it is important that we determine whether there is substance to the allegation. I asked the Inspector General to do that on a number of occasions. And when I have received the report, I on occasion have asked for recommendations, and I have acted on those recommendations.

With regard to getting the message out, I think if you went to any office that I have visited, you will hear that part of what I say to individuals in the FBI is that the good news reaches the top, often the bad news does not. And what I need to know is that which is wrong in the FBI because only by knowing it will I be able to fix it. That is a message I carry wherever I go. And what I want to hear, whether it be by e-mail or by message or otherwise, I want to learn what needs to be done to fix that which is wrong within the Bureau. Otherwise, it festers and it blows up down the road, and we cannot have that. So that is the message I carry out.

With regard to the three particular instances that you mentioned, the individuals that testified before, I became aware of their allegations recently. I understand they went to the Inspector General's office. I know I have had recent contact with Mr. Kiernan, who made a very valuable suggestion with regard to our statement of values, which I took and I adopted. And I look forward to seeing the results of the investigation by the Inspector General's office of those concerns expressed to the Inspector General's office and will take what action is necessary as a result of that investigation, if any.

On the second point with Mr. Basam Yousef, yes, I did hear about that, and I directed our EEO investigator to sit down and address his concerns and, indeed, to invoke the ADR process, alternate dispute resolution process, to get to the bottom of his concerns. I just heard last Friday that he had filed suit, but we did make efforts to address those concerns in the process that we have set up to have an independent body look at the concerns expressed and try to deal with them prior to the filing of the lawsuit.

Lastly, I did receive your letter yesterday involving three individuals, one who recently retired from the FBI, Charles Matthews. Until I received the letter, I had not understood your concerns. During the period that he had been the special agent in charge in Portland, Oregon, he had done a very good job. But I am taking the letter and the concerns you have expressed, and I am looking at that contracting process.

As to the other individuals, Mr. Coyle I don't believe I have met. Mr. Wolfinger I think I have met sometime in the past, but I have no knowledge of some of the concerns that you expressed in that letter, but I will follow up on it.

Senator GRASSLEY. Okay. I want to say to you that I think that those are all very, very good steps, and maybe you get tired of my asking to do more and do more. But I would just ask one additional thing, and this is not a question. It is a statement. If somehow you can send out another message—and maybe you can't send out enough messages, and maybe there is somebody that is never going to get the message, because every organization has somebody that doesn't want to listen. But that to all the management below you that there should not be any further retaliation. I am going to keep hammering on that, and I hope you can do that.

Director MUELLER. And I will tell you, the immediate management below me, we have discussions about it and assure that we have to send the message, each of us—not just me, each of us—out to the field that we want everybody to express their views. And we will accept those views even though we may at some point disagree, which can happen.

The only other point, if I may, Senator is to say that one talks a great deal about the culture of the FBI, but I know you agree that part of the culture and the history of the FBI is the FBI agents' commitment to excellence, the FBI agents' commitment to hard work, the hours that agents and support staff have worked since September 11th are truly extraordinary. And, lastly, part of what makes the FBI agent what he or she is, as well as the support people, is the commitment to the protection of the public of the United States. And that all is part of what we can say is part of the FBI culture.

Thank you, sir.

Senator GRASSLEY. Thank you, Mr. Mueller.

Secretary Hutchinson—and it is difficult to have you before the Committee without saying, "Asa, would you answer a question?"

Secretary HUTCHINSON. That would be fine.

Senator GRASSLEY. Anyway, you obviously have a very tough job and a very new job in a very new Department to do it, and it takes an awful lot to get a new agency undergoing, I know. And that is, of course, securing and protecting our borders. I have done a lot of

oversight on border security problems. I think I have expressed in a hearing I had before my own committee, the Senate Finance Committee, that I am worried about it. I think there is at least one area where we can help each other, and that is visa revocations and terrorism concerns.

I requested a recent General Accounting Office report that found a legal loophole in the visa process. If you get to shore here in the United States before the State Department revokes your visa on terrorism grounds, you are in a sense home free.

If that happens, your Department cannot deport a suspected terrorist, and obviously that doesn't make the common-sense test, as far as I am concerned, because if these people are a threat to our security and just because they got a visa to get here, if we had known that before they got the visa, they wouldn't be here in the first place. It shouldn't be difficult for them to leave the country.

The loophole that I am talking about is in the wording of the revocation certificate. There have been two hearings on this, but the State Department will not budge. Now, I think your Department has authority over visa policy, and the State Department is just supposed to carry it out. So I would like to have you assure me today, if you are aware of this, that you will get the State Department moving and get the loophole closed. And if I can help you in that way in any way, I would like to be able to do it.

First of all, I hope you agree with me and, if you agree with me, that you would do that.

Secretary HUTCHINSON. I agree with you, and you have my assurance that we are going to work to fix that problem. You have correctly stated the issue. The State Department can revoke a visa on information that they have at their discretion. The individual is already in the country. There is a more difficult process for Department of Homeland Security to go through the process to order their removal. But it would be helpful to us—and we have talked to the Department of State about this—that the revocation include that they no longer have authority to stay in this country. That would assist us in the removal process.

We are in communication with the Department of State. You are correct that under the Homeland Security Act the visa policy is shifting to us. We have not fully implemented that transfer. We are getting close to the memorandum of understanding with the State Department. But we are ahead of the game on this and are looking at it to adopt appropriate regulations to remedy this discrepancy.

Senator GRASSLEY. Can I further ask you in further clarification, then what you are telling me is you do agree, you are in the process of getting it done, there is no dispute over the policy, but it is just a case of working it through the bureaucracy? Is that right?

Secretary HUTCHINSON. I was expressing my view with you, and Secretary Ridge, whom I have had the discussion with about this, and the instructions are get it fixed. The Department of State has, as you have indicated, appropriate concerns that they raise, and we are working through that. So I believe that we are going to be very shortly in a position to issue regulations on this matter. But that is what we are working on now, the regulations and addressing the concerns of the Department of State.

But let me illustrate this further, if I might. If a visa is revoked in this country over someone, we take them into custody or we start processing them to remove them from this country. They can still assert asylum. They can still have access to the courts. But it will make it easier if we can cover our bases with the revocation that it removes their authority to stay in the United States, and that is what we are trying to accomplish.

Senator GRASSLEY. Well, I thank you very much.

I am going to just recess. I don't think you can go. I think you better wait until Senator Hatch says you can go. I will go over and vote on the second vote. I have no more questions. If I knew I had this much time, I would have had a lot more questions for you.

Secretary HUTCHINSON. Thank you, Senator.

Director MUELLER. Thank you.

[Recess 12:34 p.m. to 12:45 p.m.]

Chairman HATCH. If I could ask some questions now, I will start with you. Director Mueller, I will start with you.

Director MUELLER. Yes, sir.

Chairman HATCH. There have been reports in the press concerning the soon-to-be-released Joint Intelligence Committee's inquiry into the events of 9/11. Some in the press continue to rehash old news events about alleged pre–9/11 miscues. Now, these criticisms are not new, and they have been leveled over and over again, and I understand that you have already implemented many of the recommendations made by the Joint Intelligence Committee. So I want to commend you, Director Mueller, for your commitment, cooperation, and willingness to embrace these and other reforms to protect the safety of our people here in this country and elsewhere.

Can you outline the Joint Intelligence Committee's recommendations and specifically address what steps you have taken or are in the process of taking to implement these changes? Now, if you have answered this question already, I would be happy to have you just summarize.

Director MUELLER. Well, I have not had an opportunity to address the issue, but let me just spend a couple of moments, if I might, saying first off that the Joint Intelligence report had a number of suggestions, ten specifically that were certainly valid and we are in the process of implementing.

If I can just go through them briefly, the first one was to strengthen counterterrorism as a national program and priority in the FBI. Since September 11th, we have simplified our priorities, and the number one priority is the prevention of an additional terrorist attack. We have backed that up by changing the way we organize addressing counterterrorism and assuring that accountability is in one place and not spread out through a variety of our offices and divisions around the country and headquarters. It is at headquarters, and the accountability for that program resides with the Assistant Director for Counterterrorism.

Supporting that priority, we have shifted resources to address counterterrorism. Prior to September 11th, we had about 1,500, somewhat over, agents and analysts on counterterrorism. Hopefully by the time of the conclusion of the 2004 budget we will be up to almost 3,000 agents and analysts addressing counterterrorism.

And, lastly, as I am sure, sir, you are aware, our program funding goes through particular fund programs, and we try to allocate our resources per those programs. But each special agent-in-charge understands that there should be no counterterrorism lead that goes unaddressed. And to the extent in the past that we have found that to be the case, I have asked the Inspection Division to take a look at a program and to make certain that it is addressing appropriately counterterrorism.

The second recommendation was to establish and sustain career tracks for counterterrorism agents and analysts. With regard to agents, we are looking at that and hope to implement that as part of our re-engineering process. And with regard to analysts, we have established an Office of Intelligence. I brought over Maureen Baginski from the National Security Agency, one of the top career professionals there, to be the Executive Assistant Director, and she is in the process of changing the analytical structure and assuring career paths to the top for not only analysts but intelligence officers.

The third recommendation was to significantly improve our analytical capabilities, particularly in qualifications and training. We established a College of Analytical Studies at Quantico. The curriculum was put together, and part of the teaching is done by our colleagues at the CIA. And we anticipate by the end of the year approximately 340 analysts will have been through that College of Analytical Studies.

Also, in order to give the analysts access to information, we have put together separate databases with analytical tools and afforded it to analysts at the start at headquarters, but we hope to get that to the field in the future.

Number four was to establish a strong reports officer cadre. We have established that at headquarters. We have 21 on board, headed by a CIA reports officer, with another 7 in background. And we expect to expand that capability. In the meantime, we put out intelligence information reports, intelligence articles, and every week we put out intelligence bulletins to State and local law enforcement. We have done a number of strategic analyses and a national threat assessment, and that is all within that cadre of reports officers and the extended use of those reports officers.

We are currently training our new agents in effective use of the analyst and the intelligence analyst role in the Bureau. That is number five. The recommendation was to expand and sustain recruitment of agents and analysts with foreign language skills. We are doing that. And, in particular, when it comes to language specialists, we have undertaken a substantial program to augment our capabilities there. Whereas prior to September 11th we had 70 Arabic speakers, we now have 208; 24 Farsi, we now have 61; Pashtu, 10, when we had one; and Urdu, we have 21, although we still need to augment our capability. And so I will use this opportunity: To those that have those skills, we still want to see you.

Number seven is to increase efforts to penetrate terrorist organizations operating in the United States, and we have dramatically increased our source coverage throughout the United States. I cannot really go into detail here, but I can tell you that throughout the United States, special agents-in-charge and the street agents

are increasing the source coverage, in part with the help of those communities with whom we have reached out to assure that we do have the lines of communication and information that will let us know if somebody is in the community and wants to do harm to the American people.

The next issue was improving our National security law training. Phase one of our program—we have a three-phase program—provides for six 4-day national security conferences, actually eight of them around the country. We have held six. We have two to go, which are attended by agents and national security law unit attorneys as well as our US Attorneys. We have a distance learning program for counterterrorism and counterintelligence agents. And we are going to complete, hopefully by this fall, 2 days of face-to-face instruction in each field office on national security law.

Number nine was the maximization of our exchange of counterterrorism information between the FBI and CIA, as well as Department of Homeland Security; and, lastly, exchange of information with State and local law enforcement.

As I believe you know, we have now 66 joint terrorism task forces, actually, one in each of our 56 field offices, with 10 adjunct joint terrorism task forces around the country. Prior to 9/11, we had 912 participants. We now have in excess of 2,700 participants in our joint terrorism task forces. We have a national joint terrorism task force at headquarters with 30 agencies represented. I have established the Office of Law Enforcement Coordination with Louis Quijas heading it up, who is the former chief of High Point, North Carolina. We provide weekly bulletins and periodic briefings of State and local law enforcement, and I will say that our exchange of information with our other Federal agencies has been enhanced dramatically since September 11th, with the exchange of agents both at headquarters within Washington as well as in the field.

And, lastly, solving our persistent IT problems, the recommendation was to solve those problems, and as you pointed out in your opening remarks, we are on our way to doing that. We have in the last few months put in in excess of 22,000 new desktop work stations, new printers, scanners, in excess of 2,600 switches and routers, 622 local area networks, and our wide area networks went online on March 28th. And as I stated in my opening remarks, we expect to have the user-friendly, Web-based applications for the agents and support employees, to go online in December. With that will be the migration of much of our data, investigative data, to an up-to-date database structure which enables us—not only us but others, but particularly us—to use the latest analytical tools to search that data.

So I believe we are on the right track. We have a ways to go, but thank you for the opportunity to discuss what we have done since September 11th.

Chairman HATCH. Well, thank you.

We will turn to Senator Leahy.

Senator LEAHY. You go ahead.

Chairman HATCH. We will be happy to go to Senator Feingold and come back to you, Senator Leahy.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you very much, Mr. Chairman, and I thank the Ranking Member very much.

Welcome, Director Mueller and Mr. Hutchinson. I first want to thank you, Mr. Director, for the very good meeting we had last week to discuss a lot of aspects of the work of the FBI, and I want you to know publicly as well that I have tremendous respect for the time and dedication and sacrifice by you and all the men and women at the FBI and the Department of Homeland Security in the fight against terrorism.

I do appreciate that you and employees have been under incredible stress and demand since September 11th, and I hope you understand that I raise some concerns in the spirit of assuring the American people that their Government is doing all it can to protect them and to protect the Constitution.

Mr. Hutchinson, I want to thank you, good to see you again, and also for your comments about the Inspector General's report on the September 11th detainees. I think I was the first Senator to raise some questions about these detainees. I was glad to hear that you are committed to addressing the concerns, and I look forward to being informed about how your Department will implement the IG's recommendations and take additional steps to prevent instances of abuse from occurring again in the future.

Mr. Mueller, these questions are somewhat far afield, but I think that is in the nature of the fight again terrorism, so let me first ask you a question relating to Indonesia. Director Mueller, I would like to ask you about the status of the FBI investigation into the murder of American citizens in West Papua on August 31, 2002. I am concerned about the integrity of the investigation process, specifically whether the FBI has been able to conduct interviews without Indonesian military minders present and whether the FBI has been provided access to all the evidence previously requested as part of the investigation. I wonder if you could update us. And how would you characterize the cooperation that the FBI has received from the Indonesian Government and the Indonesian military since the investigation began almost a year ago?

Director MUELLER. Let me answer the question with what I know. I have not been briefed on this in several weeks, but I know that early on, the investigation was going in fits and starts. More recently, we have had a team over in Indonesia working with the Indonesians. I know part of the process while they were there was obtaining all of the evidence necessary to the investigation, and my understanding is that that evidence is currently being flown back to our laboratory for analysis.

I will have to get back to you on the status of the interviews. I know a number of interviews had been undertaken. Whether they had been undertaken without having persons present from the military, I would have to check before I give you an answer. But I would be happy to get back to you on that.

Senator FEINGOLD. I appreciate that, and in light of what you said about the evidence, I will submit a question to you in writing because I would like to know whether there is any indication of tampering with any of the evidence that you have been able to ob-

tain. And I assume your response anticipated that your analysis will determine that.

Director MUELLER. Yes.

Senator FEINGOLD. Now let me switch to Yemen. Director Mueller, as you know, in October 2000, the USS Cole was attacked during a stop in the harbor of Aden, Yemen, resulting in the deaths of 17 crew members, including one of my constituents, and the wounding of 39 others. Like most Americans, I was surprised to learn that on April 11, 2003, ten men, including men suspected of involvement in the Cole bombing, escaped from a prison in Yemen. One month later, the Justice Department unveiled a 51-count indictment against two of the escapees, Jamal al–Badawi and Fahd Al–Quso, who were indicted on various terrorism offenses.

Now, Mr. Director, I am troubled that these people were able to escape, particularly when there was an active Federal investigation underway that resulted in the indictments of two of the escapees.

What steps did the FBI take to get access to the suspects in order to question them? What steps did the FBI take to assist the Yemeni authorities or to encourage other U.S. Government agencies to assist the Yemeni authorities to prevent any possible escape by these suspects?

Director MUELLER. Let me answer the first question. Actually, I would have to get back to you on whether or not we questioned these individuals, and I would have to find out specifically whether or not we were ourselves given access to the individuals or whether we obtained access through the Yemenis. So I can't give you a specific answer on that question now.

I will tell you that we were equally disturbed by the escape and that on two occasions I have been to Yemen. On the second occasion, it was post the escape, and I talked to President Saleh about that. He assured me that he is doing everything in his power to re-arrest those who got away.

I do know that immediately following that escape, he made substantial changes in the hierarchy whom he held responsible for that escape, and generally the cooperation from the Yemeni authorities has been substantial since September 11th.

Senator FEINGOLD. I appreciate that, and I would appreciate any information you can get me, because I have tried every way I know to get an answer, and it just strikes me as mystifying that when we knew that Al–Qaeda operatives were in jail in Yemen, there is just a paucity of information about what we were doing to make sure they would stay there. And I can't figure out how that happened, so I very much would like to be kept informed.

Let me thank you for responding recently to my written questions of June 6, 2002. Several of my questions focused on FBI efforts to recruit agents and translators who speak Arabic, Farsi, Pashtu, Urdu, and other foreign languages, and you have said on a number of occasions that this was a priority for the FBI.

So I was surprised to learn from your written responses, which I received just 2 days ago, that not a single special agent with proficiency in Arabic, Farsi, Pashtu, or Urdu has been hired during the period from October 2001 to at least October 2002, and perhaps to date. It is unclear from your responses whether the figures on

the number of translators and special agents hired are current as of some time this year or as of October 2002.

So my first question is just a clarification. Do these actual hired numbers correspond to the period October 2001 to the present or to some other endpoint?

Director MUELLER. I think they must be to some other endpoint, and I would have to get back to you on those figures. I have today the figures on the language specialists, which I gave in my response to the Chairman's question.

Senator FEINGOLD. I want to be clear. I am talking here not about translators but agents themselves having the capacity.

Director MUELLER. Exactly. I do not have the answer on the number of agents. I do know we have had a number of Arab-American agents—and it may be small. I think it is a small number, but I know because I have recently been at graduations in which we have been graduating agents with that capability. But I would have to get back to you on the numbers.

I will tell you that we are doing everything we can to recruit in all communities around the United States. And we have, I think, since September 11th something like 100,000 applications to be a special agent in the FBI, and a number of those, approximately half, have self-described skills in language or computer or otherwise.

But we are finding that we need to more aggressively recruit Arab-American, Muslim American, Sikh American agents to assure that we have the numbers we need in the Bureau.

Senator FEINGOLD. Well, let me just hone this in more with regard specifically to the languages I mentioned rather than proficiency in foreign languages in general. In written responses, you also described the skill sets sought by the FBI for new special agents you planned to hire in fiscal year 2002: 193 of these agents were to have expertise in foreign language, but only 3 percent of those 193 were to have expertise in Arabic. In other words, the FBI sought to hire no more than six special agents who could speak Arabic. No plans to hire agents with proficiency in Urdu, Farsi, and Pashtu are even mentioned. These low hiring numbers and goals, coupled with the allegations in a lawsuit recently filed by the FBI's highest-ranking Arab-American special agent that he has been systematically excluded from work on terrorism investigations because of his ethnicity I think raise very serious concerns about the FBI's preparedness and ability to truly meet its number one priority: the prevention and disruption of terrorist attacks.

The picture that emerges is the FBI is seeking to hire only minimal numbers of language-proficient agents who would be actually helpful in investigations of Al–Qaeda and other terrorist groups based in the Arab or Muslim world, failing to recruit even that minimal number of special agents it has identified and then, once hired, keeping them away from terrorism cases.

Am in interpreting your statements and responses correctly? And if not, can you explain why the FBI has failed to aggressively hire special agents with language proficiency in Arabic or other specifically regional languages?

Director MUELLER. I will tell you that I would have to look at those answers, so I can't really opine on your interpretation of them.

I will tell you that every special agent-in-charge who is responsible for recruiting in our communities understands the necessity to go out in the community and have the recruiting agents seek speakers of Arabic, Pashtu, Urdu, all of those languages. And that has been hammered home with the SACs in just about every meeting we have with them.

I will have to look at the percentages and the like and what we had in our answers, but I can assure you that we all understand the necessity of having those language capabilities within the Bureau. And I will tell you that those agents who do have those language capabilities are used—I don't want to say "used," but have a special capability to represent us in a number of countries, to participate in investigative efforts with foreign counterparts, to assist in questioning of detainees down at Guantanamo, and everybody in the Bureau understands that if we could clone a number of them, we would be more than happy to do so.

So I share your concern about those numbers, and we are moving to address that.

Chairman HATCH. Senator, your time is—

Senator FEINGOLD. Could I just make one remark and then conclude?

Chairman HATCH. Sure.

Senator FEINGOLD. I just want to be clear. You and I don't agree on every single aspect of all these issues, but this is one where we do agree.

Director MUELLER. Absolutely.

Senator FEINGOLD. My questions are in the spirit of wanting to get this done because I think it is critical to protect American lives, and I am sure you do as well. So I look forward to working cooperatively with you to help try to solve this problem.

I thank the witness and I thank the Chairman.

Chairman HATCH. Okay. We will go to the Democrat leader, and then I will go to the distinguished Senator from Ohio.

Senator LEAHY. I thank both you and Senator DeWine. Mr. Chairman, listening to Senator Feingold's questions reminds me that Senator Grassley and I wrote to the FBI last week. We asked that our staffs be permitted to interview Bassem Youssef, the FBI's highest-ranking Arab-American agent. He has alleged the Bureau has discriminated against him despite his special skills, unique background, fluency in Arabic, and experience in counterterrorism.

I believe Senator Hatch agrees with me on this. He wrote to you earlier this week to join Senator Grassley and my request to interview Agent Youssef. Is he going to be made available to us?

Director MUELLER. I am not familiar with those two letters. I would have to look at that. I cannot see that there would be—well, let me just say I would have to look at the letters and discuss the circumstances with the Department under which he could be made available for you to be interviewed.

I know before he was interviewed at some length by Congressman Wolf, so—

Senator LEAHY. Because Senator Grassley, Senator Hatch, and myself are making the request, this is not a partisan issue. We want to make sure we are carrying out our oversight, and I would hope that the three most senior members of this Committee might carry some weight.

The three of us have also requested an interview with Frank Perry, Patrick Kiernan, and John Roberts. Will you help us arrange their interviews as well?

Director MUELLER. Again, I think we are in discussions with the Department. I have not seen those letters, but I believe there is some discussion with the Department of the circumstances under which they could be made available.

Senator LEAHY. Again, I remind you it is the three most senior members of the Committee who have made the request.

Now, Congress passed by overwhelmingly bipartisan votes the Clean Diamonds Trade Act to reduce the flow of rough diamonds that we understand have been used to finance terrorist groups, including Al–Qaeda, that fuel the bloody civil wars in Africa. These activities have serious implications for our National security.

I understand that the administration has until the end of this month to issue regulations to implement the Clean Diamonds Trade Act and come into compliance with the so-called Kimberly process, the international regime established to stop the illicit traffic of blood diamonds.

Now, that deadline is a week away. Do you think it is important for us to meet this deadline?

Director MUELLER. Senator, I have to say that I am not familiar with that particular subject, and I would have to get back to you on that.

Senator LEAHY. Well, I ask this because I would like to know what some of the consequences to law enforcement or our international efforts might be if we don't stop the flow of conflict diamonds. You may have to submit your response in a classified version, but I would like very much to hear it. As much as I can say in an open hearing, I get concerned when I see the amount of money that flows from this illicit diamond trade into terrorism activity, to say nothing about some of the civil wars it fuels.

Director MUELLER. I will say that we share that concern and have had investigations on that particular subject, and not just on one terrorist group but on several terrorist groups who may have benefited from the trade in conflict diamonds.

Senator LEAHY. Newsweek reported last week that the FBI is conducting a wide-ranging investigation into the forged documents that purported to show Saddam Hussein's regime was trying to buy uranium. The article states that the FBI is sending agents overseas to investigate the origins of the documents to determine who forged them, whether this was part of an orchestrated covert operation to build international support for the war.

Is Newsweek right? Has such an investigation been initiated?

Director MUELLER. The only thing I can say, Senator, is that we are looking at the source of those documents.

Senator LEAHY. Will we be briefed on that when you are done?

Director MUELLER. Well, I believe—

Senator LEAHY. He asked innocently.

Director MUELLER. If we are talking about "we," this Committee, or Congress, I would imagine Congress and maybe in the context of the Senate Intelligence Committee. I would have to see when we are done where we go. I can't prejudge.

Senator LEAHY. Do you have any objections to the proposal Senator Grassley and I have made the FBI Reform Act to eliminate the so-called 14-day rule where members of the Senior Executive Service can be subject to disciplinary suspensions for no more than 14 days?

Director MUELLER. On that issue, no.

Senator LEAHY. I also have questions regarding the Katrina Leung espionage case. The charges are she kept classified national security documents that she obtained from an FBI handler, who apparently was a long-time lover. You said that you firmly believe it is the duty of Congress to engage in its oversight function. Would you agree that the Leung case is one that would come under our oversight function?

Director MUELLER. Congress's, yes.

Senator LEAHY. This Committee's?

Director MUELLER. That I would have to ponder upon. We did keep the Intelligence Committee apprised of what was happening.

Senator LEAHY. Well, would you ponder upon it and let me know whether this is something that we could do in our oversight function without jeopardizing a criminal investigation?

Director MUELLER. Yes, sir.

Senator LEAHY. Secretary Hutchinson, I have a lot of questions which I will submit. As I said before, both of you have always been available to talk with me individually when I have asked. Please get back on some of these answers. And if you have questions about our questions, just pick up the phone and call me.

Thank you, Mr. Chairman, and I thank my good friend from Ohio for his courtesy, too.

Chairman HATCH. Thank you, Senator.

The Senator from Ohio?

Senator DEWINE. Mr. Secretary, Mr. Director, thank you both very much for joining us.

Director Mueller, I have two questions, and they are questions that I have asked you, I think, at least in two other hearings, and I will probably be asking you these same questions at the next hearing. But I think they are very important. I think they are important from a historical point of view, and I think history is going to judge us, frankly, by these two areas, at least these two areas.

One is the whole area—and you have already touched upon this a little bit, but the issue of the computer, where you are with your computer system, the whole technology area. And so my first question is: Do you have enough money in this area? Do you have enough money in 2003? How are things looking in 2004? How are we coming along? That is number one, because I think it is important that you continue. And if you are not getting enough money from this Congress, we need to know that. That is number one.

Number two is the whole change of the culture and the mission of the FBI that, of course, we have talked about, a change from reactive, looking at the crime after it has occurred, trying to solve the crime; to now a great deal of the focus of what you do on terrorism

and the prevention of terrorism, the shifting of people from one mission to the other mission. And what I have asked you before is to detail for Congress and for the American people not just what you are doing, but the other question is what is not getting done. Because I think we have to lay that before the American people, lay that before Congress, and we have to constantly analyze, every 3 months, every 6 months, what we aren't doing. What is the FBI not doing that you have been doing in the past so we can make value judgments and so that we understand what assistance is not being given to local law enforcement, what crimes are not being prosecuted.

You know, we have seen the statistics. We know the numbers. But I think it is helpful if the head of the FBI looks us in the eye and tells us what aren't you doing.

Director MUELLER. Let me address the first question with regard to the funding of our computer systems. We have pending a reallocation of funds to address a shortfall with regard to our computer systems, and assuming that reallocation is approved by the Appropriations Committees, then I believe we are where we need to be in 2003, and then we will see in the 2004 budget. But in our request in the 2004 budget, I do believe we have what is necessary to continue our progress in renovating our information technology systems.

Senator DEWINE. But let me stop you there. If the reallocation in 2003, the year we are in now, is not approved, we will not be where we need to be.

Director MUELLER. That is correct.

Senator DEWINE. Let's just be blunt about it.

Director MUELLER. Yes.

Senator DEWINE. You have to have that reallocation—

Director MUELLER. Yes.

Senator DEWINE. —approved to stay on line of progress that we would hope to be making.

Director MUELLER. Yes.

Senator DEWINE. And we all know how far behind we are. We all know what sorry state of affairs it was when you came into office. And we are not blaming you for that, but we all understand that. Everybody on this panel has complained about your system. So we want to make sure we understand that. You have to have that reallocation.

Director MUELLER. We do. The reprogramming of funds that we have proposed, we do need that to continue the progress for this year.

Senator DEWINE. All right. And you have your request in for 2004.

Director MUELLER. We do.

Senator DEWINE. And you are telling me that the request you have made is adequate?

Director MUELLER. It is adequate.

Senator DEWINE. And we are not going to look back in 2 or 3 years and say, well, that was just not enough?

Director MUELLER. I do not believe that to be the case. I believe that we have looked at what we need to get the job done. We have added $137 million, which was unanticipated. It was substantial,

but I am confident that that is what we need to continue our progress.

Now, I have learned, I have come to learn that as you build information technology systems, you need to integrate them. You have to make certain you have an overall architecture. You have to put the pieces in place. And it is a continuous process. So I cannot tell you that I will not come up in 6 months or a year and say we are going to have to reprogram other funds or we need an additional infusion of funds to handle a particular capacity. But what we have tried to do is request the funds that we need and we can identify that need, explain that need and explain why it is going to advance our progress to bringing the FBI into the 21st century when it comes to providing the information technology capacity to the agents.

Senator DEWINE. All right. Now, my second question?

Director MUELLER. Your second question as to what we are not doing, I will say that, as I believe I testified last year, I redirected a number of agents—I think it was 480—from doing drug cases to doing counterterrorism. And I know we had discussions, Asa and I had discussions, about backfilling, and there has been some backfill from the DEA. I don't think it is a total backfill. What we tried to do is make certain that with that reassignment, realignment of personnel, that no case fell through the cracks, and I believe that is the case. But we are not doing as many drug cases as we have done in the past.

We are more selective in doing a number of other varieties of cases, for instance, bank robberies. We will rarely do a stand-alone bank robbery or a note-pass bank robbery, where we did that before.

In white-collar crime cases, we are focusing on the larger white-collar crime cases; where in the past we have done some of the smaller white-collar crime cases, we are not doing them.

We have had to focus our resources on those priorities that we have established, whether it be in the national security arena or the criminal arena, and make certain that we put our assets towards those resources.

As I have indicated before, every special agent-in-charge has the understanding that there should be no counterterrorism lead that goes unaddressed. That has meant that agents that are assigned to other programs in particular offices are pulled off to do issues relating to counterterrorism in a particular field office. But what I would like to be able to do in the future is be more flexible and more agile in terms of addressing the counterterrorist threat in particular communities when it arises, but not position agents there to stay there afterwards when the threat has been resolved.

So what we are trying to do is be a much more flexible and agile workforce than we have been in the past.

Senator DEWINE. My time is up. Thank you very much.

Chairman HATCH. Thank you. We have just enough time for Senator Durbin to ask his questions.

Senator DURBIN. Thank you very much, Mr. Chairman, and I want to thank the two witnesses for coming before the Committee.

Director Mueller, thank you for being here and thanks for the update on your technology upgrades. You were kind enough to brief

me at the headquarters, and it was time well spent. I was glad to be there, and I am glad to hear that things are improving.

And, Secretary Hutchinson, thank you for being here and for your service to our country.

I would like to ask two questions, if I can. I hope I have the time to get responses to both. One is more complicated than the other.

I have an amendment pending on the floor on the appropriation for the Department of Homeland Security which relates to this issue, asking the Department for an update on their technology improvements and the intraoperability of the computers at DHS with the Department of Justice and other agencies.

What I have found, to my chagrin, is that even though progress is being made in a lot of agencies, there is no communication, technological communication, between these departments in a fashion that would facilitate fighting terrorism. And I would like you, if you could, to comment on progress that is being made between the FBI, Department of Justice, and DHS to share information.

Secretary HUTCHINSON. Thank you, Senator. First of all, we are making that a high priority to fulfill the mandate to share information, and there is a continuous flow of information from the FBI to Homeland Security and vice-versa.

It is important that we develop systems that are more compatible. Steve Cooper is our chief information office, and he is the architect and the one responsible for moving that forward. I believe the first priority is to make sure that the 22 agencies that came on board less than 4 months ago within Homeland Security can bring those systems together, and then obviously both with the FBI, Department of Justice, and the Department of State, to make those systems compatible.

The information is flowing, but it can flow better when we have more compatible systems.

Senator DURBIN. My question is whether there is intraoperability between the computer systems at the Department of Homeland Security and the FBI. I would just ask that question. Can your computers communicate with their computers and the other direction?

Secretary HUTCHINSON. Well, we do on watch lists. We have that capacity that we have that information.

Now, there are limitations. Obviously, they have information that cannot be shared for counterintelligence reasons broadly. Obviously, we can receive that information, but, for example, there is some information they might have that our inspectors in the field at the points of entry might not need.

Senator DURBIN. Oh, understood. Understood. There are certain areas where, for a variety of reasons, you wouldn't want to. But you are telling me that capacity is being developed.

I know I don't have a lot of time, but I want to move to another issue that really concerns me greatly. There was substantial progress made yesterday in Iraq, obviously, with the killing of Saddam Hussein's two sons. This morning's paper reported that one of the reasons why there is an improvement there is the gathering of information from the Iraqis is starting to be a lot more effective. There is more cooperation.

I have learned the difference between law enforcement and intelligence gathering. You deal with communities in a different re-

spect. And I have had—Director Mueller, I think I have told you, I have had one of your agents from a faraway post call me and say we have got to learn this, we have to learn that intelligence gathering is a lot different than just flat-out law enforcement.

You can go in and find technical violations and criminal problems to a fare-thee-well. That isn't going to build up trust and understanding and communication and dialogue for sharing information for intelligence purposes.

And so several months ago, the Department of Justice decided to initiate this interview project profiling the visitors to this country from Muslim Middle Eastern nations to come in and to be interviewed as to their status.

Now, I have asked for numbers as to how many were called in, and I can't get an exact number, but it appears to be somewhere in the 80,000 to 100,000 range of people who were called in from a variety of different countries. And it is my understanding that some 13,000, because of reporting for the interview, were subsequently deported. They were found to be in violation of their immigration status.

I raise that question because, obviously, as a Senator from a very diverse State, I have heard from a lot of these populations saying this is just flat-out discriminatory. These people were cooperating, came in for the interview, were ready to help in any way they could, and were found to be in technical violation and deported.

Can I ask both of you if you would comment on this reaction from them, in light of our need to gather more intelligence from these communities and to work more closely with them, whether or not we did something that might have been counterproductive? We basically said if you cooperate and come forward, be careful, because we are going to fly-speck and find out if you are in technical violation, and if you are, you are gone.

If I could ask Director Mueller and Secretary Hutchinson to respond to that.

Director MUELLER. We undertook a program in advance of hostilities in Iraq of reaching out to Iraqi Americans and interviewing them. And the numbers there, I think we interviewed close to 10,000 across the country. And I would say—I have talked to a number of special agents-in-charge. I have talked to members of the Muslim community, the Iraqi community, and the fact of the matter is the interviews went exceptionally well.

I am not aware of circumstances where, as a result of an interview and our reaching out, someone was deported. I will tell you that the vast, vast, vast majority of persons interviewed were happy to be interviewed and wanted to provide information. The fact of the matter is most of them were refugees from the Saddam Hussein regime, and they had information and intelligence, and that was helpful to our troops overseas. We had in excess of 200 reports that were funneled to our troops overseas about the location of bunkers, weapons, communications facilities. And so those interviews I think went exceptionally well.

There are going to be individuals who resent that, but the vast majority of the interviews, as I have heard from office to office to office, enabled us to develop intelligence and to develop a relationship that had not previously been there.

Secretary HUTCHINSON. I would just second the importance of the outreach. Our ICE agents and, as well, our Customs and Border Protection have engaged in outreach to communicate to those communities that might be impacted by that. Information is critically important, explaining why we are doing this.

You raise the issue of when they are out of compliance, what do you do? We want to make sure—obviously, we have an obligation if somebody is out of compliance to address it, but they are given a notice to appear. They are processed. It is not like they are immediately detained in most circumstances.

And so we try to treat each one fairly and appropriately with good information. We have other investigative techniques from Operation Tarmac, in which we went into critical infrastructure facilities looking at benchmark checks. There were questions raised that adversely impacted the Hispanic community. So we don't want that adverse impact, but we do have an obligation to take care of those that might be in violation and pursue those in accordance with the law.

Senator DURBIN. Thanks.

Mr. Chairman, I will submit my other questions for the record. Thank you very much.

Chairman HATCH. Well, thank you, Senator. I appreciate it.

I promised I would let you go at 1:30. Let me just close with this: I want to state that I want to follow up in writing on an important issue that I am personally interested in, and I think it is important for the FBI to answer, and that issue is the death of Kenneth Trinidu. Now, the circumstances of Mr. Trinidu's death continue to raise questions despite numerous attempts to find out what happened. I made several inquiries about this case myself to Attorney General Reno, and a grand jury was convened, but it did not produce an indictment. An Inspector General's report was produced. A private lawsuit resulted in a finding of suicide. Nonetheless, Mr. Trinidu's family continues to raise questions that to me are indeed troubling.

So I look forward to your answers to the written questions on this important subject, and I hope that you can get back to me on that, if you will.

Director MUELLER. Yes, sir.

Chairman HATCH. Well, you have been very patient. We apologize that it took so long to get you here. We will have others submit questions in writing, and if you can answer them as quickly as possible, we would be very appreciative.

So, with that, we will recess until further notice.

[Whereupon, at 1:32 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

[Additional material is being retained in the Committee files.]

QUESTIONS AND ANSWERS

QUESTIONS FOR THE RECORD
SENATE JUDICIARY COMMITTEE HEARING,
July 23, 2003
UNDERSECRETARY ASA HUTCHINSON.
QUESTIONS BY SENATOR PATRICK LEAHY FOR UNDER SECRETARY HUTCHINSON

1. Section 1001 the PATRIOT Act requires DOJ's Office of Inspector General to receive complaints concerning civil rights and civil liberties violations, and to report, on a semi-annual basis, concerning its investigation of such complaints. The Homeland Security Act contains no such requirement, although it does create a privacy officer and a civil rights and civil liberties officer. Would you be willing to appoint a high-level official within the Department of Homeland Security's Office of Inspector General who would receive civil rights and civil liberties complaints, and commit to providing a similar report to Congress on a semi-annual basis? Would you support legislation to extend section 1001 of the PATRIOT Act to DHS so that this practice is made standard?

Answer: Section 705 of the Homeland Security Act of 2002 establishes an Officer for Civil Rights and Civil Liberties. This official shall:

1) Review and assess information alleging abuses of civil rights and civil liberties, and racial and ethnic profiling by employees and officials of the Department;
2) Make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer; and,
3) Report to Congress annually on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses and any actions taken by the Department in response to such allegations.

The President appointed Daniel W. Sutherland as the Officer for Civil Rights and Civil Liberties for the Department of Homeland Security. Mr. Sutherland reports directly to Secretary Ridge, and is responsible for providing legal and policy advice on the full range of civil rights and civil liberties issues that the Department faces. Since his appointment to this position in April of 2003, Mr. Sutherland has:

- established a system to review matters brought to the attention of the Office that allege abuses of civil rights and civil liberties, and racial and ethnic profiling;
- met regularly with advocacy groups focusing on civil rights, immigration and civil liberties issues;
- reported the views of these groups to the senior leadership of the Department;
- worked to implement throughout DHS the President's instructions to eliminate racial profiling in law enforcement (through the implementation of the Department of Justice's guidance on the use of race in law enforcement activities); and

- worked closely with other senior officials within DHS to review and implement the recommendations of the Department of Justice Inspector General contained in the report, "*The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks.*"

Section 222 of the Homeland Security Act establishes a Chief Privacy Officer for the Department. This privacy officer is statutorily charged with:

(1) Assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;
(2) Assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;
(3) Evaluating legislative and regulatory proposals involving the collection, use, and disclosure of personal information by the Federal Government;
(4) Conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and
(5) Preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

The Secretary has appointed Nuala O'Connor Kelly to serve in this critical role. Ms. O'Connor Kelly reports directly to Secretary Ridge, and is responsible for providing leadership across the department on privacy policy and compliance measures. Since her appointment to this position in April, Ms. O'Connor Kelly has:

- met regularly with advocacy, academic, media, and industry groups focusing on privacy and information;
- reported the views of these groups to the senior leadership of the Department;
- worked to ensure robust implementation of the Privacy Act and new Privacy Impact Assessment requirements across the Department, particularly in high-profile programs such as US-VISIT and CAPPS II;
- worked closely with other senior officials and a team of over 300 Privacy Act and FOIA staff to ensure both free access to information held by the government and the protection of personal information.

Both the Officer for Civil Rights and Civil Liberties and the Chief Privacy Officer play critical roles with respect to investigating complaints. The Chief Privacy Officer has already established mechanisms for members of the public to file complaints alleging violations of their privacy. A Management Directive from Secretary Ridge

has clearly established the roles and responsibilities of the Office for Civil Rights and Civil Liberties. The Officer for Civil Rights and Civil Liberties has established case management and information systems to ensure that all complaints falling within Section 705 of the Act are effectively handled. Mr. Sutherland has also established a Memorandum of Understanding with the Department's Inspector General regarding how the two offices work together when they receive complaints of violations of individual civil rights or civil liberties.

The Secretary has sent to Congress the first annual report on the creation of the Office for Civil Rights and Civil Liberties and the work that the Office has undertaken in the first year. Further, Section 222 of the Act requires the Privacy Office to report, directly and independently to Congress, on that office's activities, controls, and complaints.

Therefore, while the Homeland Security Act does not have a provision that is identical to Section 1001 of the Patriot Act, it does create robust mechanisms for the protection of civil rights, civil liberties, and privacy.

2. Where does the Administration stand in meeting the goal set out in the PATRIOT Act to triple the number of border security personnel along our Northern border? When do you anticipate that goal will be achieved?

Answer: As of December 11, 2004 the Border Patrol has 1,072 agents on board along the northern border. The goal to have 1,000 agents on staff along the northern border was achieved by the end of 2003 calendar year. The aforementioned number represents a staffing increase of 340 border patrol agents to the northern border since September 2001.

3. The comprehensive report that DOJ's Office of Inspector General released in June on the treatment of the 9/11 detainees found that the detainees suffered from "a pattern of physical and verbal abuse." The OIG's July 17 report includes further evidence that Arab and Muslim detainees being held on immigration charges are being subject to abuse. Now that the Department of Homeland Security has the primary responsibility for immigration, what steps are you taking to ensure that immigration detainees, including those who are held at Justice Department facilities -- and especially those who are of Arab or Muslim descent -- are not subject to abuse?

Answer: In 2001 HQ Detention and Removals Office (DRO) began a program wide implementation of 36 Detention Standards. These comprehensive standards are applicable to all ICE/DRO controlled or contracted facilities utilized by DRO that hold detainees for over 72 hours. All detainees held in ICE/DRO controlled facilities receive a site specific Detainee Hand Book, (which is one of the Detention Standards) which details among other things: rules, detention policies services, programs and ***grievance procedures.***

ICE monitors detainee populations in all facilities. Our new staff/detainee communication standard ensures detainees in non-ICE facilities have regular interaction with ICE staff. This provides detainees the opportunity to report any potential allegation of mistreatment or present questions regarding their status. This standard requires regular visits by ICE staff to detention facilities, including BOP facilities, and has time frames for responding to requests.

The Detention Standards are an oversight tool that provides a *transparent* forum for assessing, monitoring and reviewing the safe and secure care, custody and humane administration of detainees while in custody. These procedures will assist in ensuring the rights of detainees are protected. The standards are a series of detailed and specific policies and procedures designed to provide both staff and detainees the most safe, secure and humane environment possible while remaining in compliance with applicable standards and laws

4. Last month's OIG report recommended that the Department, DHS, and the FBI develop clear criteria to determine when an alien is "of interest" for terrorism purposes, and establish a time limit during which such a designation must be made. Do you agree with those recommendations? Are you involved in discussions concerning this recommendation? What steps, if any, have already been taken in response to it? What steps are planned?

Answer: The IG Report highlighted many issues regarding the handling of cases of special interest during the 9/11 investigation. The Department has taken this report very seriously and instituted a number of changes following a vigorous internal review. The IG report analyzed events that took place before the formation of the DHS. Nevertheless, DHS assumed many of the immigration functions that were part of the former Immigration and Naturalization Service during that critical time. Thus, under my supervision, DHS carefully reviewed the IG's findings and recommendations. We have taken significant steps that address the IG report and our actions fully respond to every recommendation for which DHS was responsible. Among the significant steps DHS has taken are: the development of a new detention standard on Staff-Detainee Communication in July 2003, which requires that ICE officials visit detainees regularly to monitor detention conditions and address any detainee concerns that may arise; and the issuance of guidance to DHS personnel in the field, primarily directed at ICE and Customs and Border Protection officers, which establishes timelines for the notice of charges to be served on a detained aliens and narrowly defines exigent circumstances that would permit additional time, and requires that a senior DHS official make the determination of when exigent circumstances exist. The Guidance also requires that DHS officers and attorneys review the individual circumstances in each case in which another federal agency requests the detention of an alien based upon information regarding that person's possible association with terrorism. In addition, we continue to work with

Department of Justice to strengthen communication between agents in the field to ensure that information about aliens who may be associated with terrorism is shared between the two agencies.

5. On July 17, the OIG issued its semiannual report on implementation of section 1001 of the PATRIOT Act. The July 17 report states that the OIG is investigating claims that an INS detention enforcement officer held a loaded gun to an alien detainee's head and threatened him. Are you aware of this investigation? What is the current status of the accused officer?

Answer: Yes, ICE is aware of the OIG investigation. At this time, until a final determination is made about the allegations by the OIG, the officer in question remains on duty and carrying out regular assignments.

6. The July 17 report also says that the OIG is continuing to investigate claims that an INS Supervisory Detention Enforcement Officer entered a gas station operated by a Middle Eastern man, and after demanding "papers" from him, made a disparaging remark about the man's nationality. He allegedly then queried an immigration database using the gas station operator's name and the names of his children. Are you aware of this investigation? What is the current status of the accused officer? If the allegation is substantiated, would this conduct merit dismissal?

Answer: We are aware of the investigation. The accused officer has been detailed to another duty location while the investigation is pending. According to OIG, the investigation is ongoing but should be completed soon. If the allegation is substantiated, removal is within the range of penalties for such an offense. The final decision will be up to the Special Agent-In-Charge of the Miami Field Office.

7. The implementation of a special registration system for nationals of predominantly Arab and Muslim countries was plagued with serious problems, including inadequate publicity concerning important deadlines, inconsistent treatment of visitors with applications pending to adjust their status, and disregard of the right of individuals to have attorneys present during any questioning that took place during the registration process. Please explain (A) how you intend to rectify the problems resulting from inadequate publicity, (B) whether you have now issued policy guidance regarding the treatment of persons with pending status applications, and (C) whether you have issued policy guidance making clear that persons who are registering have a right to an attorney during the registration and any accompanying questioning? Would you support an internal audit of the program, by the Homeland Security Inspector General, to review these problem areas?

Answer: In December 2003, the Department of Homeland Security significantly modified the NSEERS program. At that time, the Department suspended the 30-day and annual re-registration requirements of NSEERS. In Senate testimony given in July 2003, Secretary Ridge stated that the Department was continuing to review the NSEERS program for possible modification.

With regard to the specific types of outreach that were conducted prior to the formation of the Department of Homeland Security, the first deadlines for domestic NSEERS registration were in December 2002. The former INS, and now ICE and CBP, have worked hard to ensure that the public was aware of the NSEERS registration program, and its requirements. Beginning in September 2002, legacy INS community relations officers, both in the field and at Headquarters, conducted thousands of presentations, forums, training sessions, and town hall meetings for a multitude of community-based organizations and foreign embassies/ consulates whose constituents were impacted by NSEERS. Many of the presentations, forums, training sessions, and town hall meetings were conducted during evening hours and our community relations officers worked long hours each day to ensure that all potential registrants complied with NSEERS requirements. As the registration program continued and expanded, so did efforts to ensure that the public was aware of the NSEERS requirements. Community relations officers carefully cultivated relationships within the Arab and Muslim communities throughout the registration process. For example, officers worked closely with the Arab American Institute and the American-Arab Anti-Discrimination Committee as well as different embassies to explain NSEERS, minimize misinformation and build credibility. Another example of cooperation with the public to ensure that the affected communities were given every possible opportunity to be informed about the registration requirements and to register was the extension of the call-in periods for all affected aliens. This public outreach proved successful in reaching over 80,000 who reported for domestic registration. NSEERS policy allows for late registration with good cause, and when individuals are found who failed to complete "call-in" registration, they are advised of the requirement and given the opportunity to properly register.

With regard to the issue of aliens with pending adjustment applications, it is important to understand that having a pending application is not the same as having been granted a legal status to live in the United States. For example, an alien who overstayed a visitor's visa may have an application pending to adjust to lawful resident status, but the fact that the application is pending does not cure the alien's violation of law by failing to depart as required by the initial status. It is also important to note that in order for an alien to adjust status, several steps must occur – the petition from which the alien derives status must be adjudicated, once adjudicated, there must be an immediately available visa number for the alien, and then the alien must establish that he is not inadmissible to the United States. It is important to note that for many that are in the United States with approved petitions, a needed visa number may not be available until years in the future and thus, no adjustment or relief is immediately available for the alien present in the U.S. in violation of law.

Guidance was issued to field directors on what factors should be considered in making decisions on whether to detain or release an alien with a pending adjustment application. In reaching a decision on whether or not to detain an individual who has violated his or her immigration status, each ICE field director must make decisions on a case-by-case basis. Because no two cases are identical, each custody decision will have different factors to be considered and different weight given to the factors.

Some of the factors considered in reaching a custody decision include the likelihood that the adjustment application is legitimate, that the application will be approved, the availability of a visa number if needed, any past criminal history, and how likely the alien is to appear for a removal hearing. In most cases, aliens who are charged with having violated their status are released on their own recognizance or on low bonds. In some instances, it may take a few days for an alien to post a bond, and the alien will be detained until the bond is posted. In other cases, an alien with a serious criminal history may be subject to mandatory detention, regardless of any pending adjustment application.

Regulations and policy existing at the time when NSEERS was implemented provided that, under most circumstances, aliens were permitted counsel during the domestic registration process. Indeed, domestic registration interviews were conducted by adjudicators in non-custodial settings. Thus, it was unnecessary to issue new policy guidance specifically referencing an alien's right to counsel.

ICE welcomes the oversight and input of the Department of Homeland Security Office of the Inspector General.

QUESTIONS FOR THE RECORD OF SEN. CHARLES E. GRASSLEY
SENATE JUDICIARY COMMITTEE HEARING,
July 23, 2003

FOR DEPARTMENT OF HOMELAND SECURITY UNDERSECRETARY ASA HUTCHINSON.

QUESTION ONE
The Immigration and Naturalization Service, which was absorbed into the Department of Homeland Security, was afflicted with numerous problems. I have obtained several reports from the INS' Office of Internal Audit that describe these problems and list recommendations. For each report listed below, please describe which recommendations the Department has implemented, plans to implement or is implementing; and any additional action the Department has taken to address the problems in the report. The reply should also include a timetable of when the recommendations began being implemented, their current status, and the when the Department intends to finish implementing them.

The INS labeled some of these reports "Limited Official Use" and "Law Enforcement Sensitive." I am sympathetic to the needs of the government to prevent terrorists and criminals from learning how to exploit our security apparatus. However, in my 20 years of experience conducting Congressional oversight, I have found agencies often employ these labels for the purpose of preventing embarrassing or negative information from coming to light, rather than to keep truly dangerous information confidential. Moreover, it is clear from the 9-11 attacks and continuing terrorist and criminal enterprises that are uncovered that terrorists and criminals are already quite familiar – sometime more so than the general public – with our vulnerabilities. Thus the confidentiality of the reports often serve no other purpose that to prevent accountability and negative publicity for the agencies involved. In addition, some of the information in reports labeled "Law Enforcement Sensitive" has already been made public in other government reports, such as by Inspectors General, or in media reports. With this in mind, I ask that you review these reports with the aim that they – and your answers – be disclosed in full. If this is not possible, I ask that you identify the specific pieces of information that are "sensitive" and the reasons why the Department labels them as such. Then the Department should provide the full answer, and an answer with the specific and discrete information redacted for public release.

Answer: The terms "Limited Official Use," and "Law Enforcement Sensitive," were stamped on some of these reports as an internal caution to Departmental staff to respect the integrity of this privileged information. The Department regularly shares internal report information with the Office of the Inspector General and the General Accounting Office. In fact, these Offices sometimes use these reports in their work planning.

Report Number 03-01: "The Inclusion of Passport Numbers in Lookout Queries Made During Primary Inspections Air Ports-of-Entry"

REPORT NUMBER	REPORT RECOMMENDATION	ACTION PENDING	STATUS
03-01	01-Incorporate additional guidance contained in the Office of Field Operations memorandum, Strengthening Border Security through Comprehensive Database Queries, March 29, 2002, covering passport number queries in the *Inspector's Field Manual* (IFM).	OIA Final Report (011703): [OIA] requests [CBP] provide the date the IFM's update is issued.	Legacy INS' IFM and legacy U.S. Customs Service Handbook is presently being modified. CBP shall ensure that guidance contained in the legacy INS Office of Field Operations memorandum, "Strengthening Border Security through Comprehensive Database Queries," March 29, 2002, covering passport number queries will be added to the new CBP IFM/Handbook.
03-01	02-Develop procedures to use when lookout system matches attributed to passport numbers are determined not to be an exact match during the primary inspection process. The procedures should particularly address matches that might be part of a sequence of "batch" unassigned stolen passports.	OIA Final Report (011703): [OIA] requests [CBP] provide the date the IFM's update is issued.	CBP will send a memorandum to the field concerning this issue and incorporate this policy in the new CBP IFM/Handbook.
03-01	03-Develop Service-wide quality assurance procedures to monitor activities performed by Inspectors during the primary inspection process. This procedure should include a component to ensure that passport numbers are included in all lookout system queries.	OIA Final Report (011703): [OIA] requests [CBP] provide the date a decision on the quality assurance process will be made. Further, once the course of action has been determined, and the details are being discussed, provide [OIA] with the status updates so that [OIA] can track the corrective action to completion.	There are many people (e.g., U.S. military, people traveling with border crossing cards) who can travel legally and enter the U.S. without a passport. CBP enforces those current regulations and at this time, cannot include passport numbers in all lookout system queries.
03-01	04-Coordinate with the	OIA Final Report (011703):	As of January 2003, the problem

	U.S. Customs Service to investigate and correct a systems problem that intermittently prevents INS Inspectors from correcting passport number errors found in APIS during the primary inspection process.	The [legacy INS] Office of Information Resource Management (OIRM) has not been able to replicate the system problem delineated in the report. However, both [CBP] and OIRM are working to identify the problem and develop a solution. [OIA] requests [CBP] to provide a status report as well as the plan to correct the systems problem so that we can track the corrective action to completion.	of not being able to correct passport number errors has been resolved.
03-01	05-Ensure the National Lookout Unit enters all stolen/lost passport information into lookout systems within 2 to 3 days of receipt.	OIA Final Report (011703): [OIA] requests [CBP] to provide [OIA] with the results of the analysis as well as the proposed plan to address this issue so that we can track the corrective action to completion.	The CBP has made compliance with Section 308 of the Enhanced Border Security and Visa Entry Reform Act of 2002 a priority. The backlog of lost/stolen passports, which existed at the time of enactment of the Act, has been eliminated and CBP remains timely, as is required, with entry of the data into the Interagency Border Inspection System (IBIS). The plan for CBP on this issue is to maintain compliance with the Act by consistent supervisory oversight of the data entry. **All stolen/lost passport information is presently being entered into lookout systems within 2 to 3 days of receipt."**
03-01	06-Request each INS Port Director to reemphasize the priority order of alternative lookout systems that Inspectors must use whenever IBIS becomes unavailable during the primary inspection process.	OIA Final Report (011703): [OIA] reviewed the memoranda listed in the [legacy INS'] response and agree that they address alternative lookout systems. However, we conducted the review subsequent to the issuance of the documents in June 2002, and found that the field offices were still not aware of the priority order of the alternatives. We recommend [CBP] once again re-emphasize the priority	Memorandum re-emphasizing the priority order of alternative lookout systems that inspectors must use whenever IBIS becomes unavailable during the primary inspection process was sent to the field on September 26, 2003, and was entitled "Procedures for Querying Travelers in Cases of Computer System Failures."

		order of alternative lookout systems that inspectors use when IBIS becomes unavailable. Provide us with a plan to address this recommendation so we can track the recommendation to completion.	
03-01	07-Establish a basic training module at the INS Training Academy to train Inspectors how to properly conduct queries in lookout systems that are available in primary inspection. Training should simulate, as closely as possible, actual systems used.	Establish a basic training module at the INS Training Academy to train Inspectors how to properly conduct queries in lookout systems that are available in primary inspection. Training should simulate, as closely as possible, actual systems used.	Open

Report Number 03-02: "Review of the Circumstances Surrounding the Naturalization of an Alien Known to be an Associated of a Terrorist Organization."

REPORT NUMBER	REPORT RECOMMENDATION	ACTION PENDING	STATUS
03-02	01-Take individual corrective actions as deemed appropriate.	Take individual corrective actions as deemed appropriate.	Closed
03-02	02-Ensure that all INS Agents and Supervisors assigned to work as members of the Joint Terrorism Task Force are trained and made aware of their reporting responsibilities to INS. Training should particularly address INS policy related to the reporting of sensitive and special interest cases to the National Security Unit and other responsible INS officials.	Ensure that all INS Agents and Supervisors assigned to work as members of the Joint Terrorism Task Force are trained and made aware of their reporting responsibilities to INS.	Closed

03-02	03-Immediately develop Standard Operating Procedures for the handling of official documents by INS Special Agents who serve as Liaison Officers with FBI HQ. Procedures should particularly address the need for INS Special Agents to log-in the receipt and disposition of all documents. The log should include a brief summary of the document, the date received, who it was received from, the date forwarded, and the name of the INS official who actually took possession of the document.	Develop SOPs for handling official documents by INS Special Agents who serve as Liaison Officers with FBI HQ.	Closed
03-02	04-Require the sequential numbering of all policy memoranda that is provided by the Office of Field Operations. All policy related memoranda should be included in a summary index and include a statement detailing at least the minimum procedural requirements to help ensure general Service-wide compliance. All memoranda should ultimately be included in appropriate Field Manuals or Administrative Manuals.	Require the sequential numbering of all policy memoranda that is provided by the Office of Field Operations. All policy related memoranda should be included in a summary index and include a statement detailing at least the minimum procedural requirements to help ensure general Service-wide compliance. All memoranda should ultimately be included in appropriate Field Manuals or Administrative Manuals.	Closed
03-02	05-Ensure that all INS	Training of INS officers on	Closed

	officers are properly trained in how to respond to Service-wide requests for A-files. Guidance should include steps to be taken when files are unavailable for review, particularly those that are classified or are subject to some type of investigation. Consideration can also be given to a file location code that might identify classified or otherwise "unavailable" files.	responding to Service-wide requests for A-files.	
03-02	06-Develop procedures to ensure a definitive response for all name checks sent to the FBI related to naturalization applications. Presumptive assurance should no longer be considered an acceptable policy. New procedures should prohibit the processing of any application that might have an unresolved "indices popular" designation in the CLAIMS 4 system. Procedures should include a management control to prevent the routine override of this process designation.	Develop procedures to ensure a definitive response for all name checks sent to the FBI related to naturalization applications.	Closed
03-02	07-Initiate steps to ensure that all required FBI name checks are properly conducted to include search detail that is comprehensive	Initiate steps to ensure that all required FBI name checks are properly conducted to include search detail that is comprehensive enough to disclose an applicant's known	Closed

	enough to disclose an applicant's known terrorist affiliations and criminal history.	terrorist affiliations and criminal history.	
03-02	08-Initiate steps to revise the Naturalization Quality Procedures (NQP) to ensure that manual National Automated Inspection Lookout System (NAILS) checks are routinely performed for all naturalization applications regardless of the type of file being used (A- or T-file).	Initiate steps to revise the NQP to ensure that manual NAILS checks are routinely performed for all naturalization applications regardless of the type of file being used (A- or T-file).	Closed
03-02	09-Require the immediate development and issuance of formal Service-wide Standard Operating Procedures for conducting IBIS queries at INS District Offices and Service Centers prior to the approval of any application. At a minimum, procedures should include the availability of the actual file while conducting the query and a search of the file for any aliases or other names of interest that must be run as part of the query process.	Development and issuance of formal Service-wide SOPs for conducting IBIS queries at INS District Offices and Service Centers prior to the approval of any application.	Closed
03-02	10-Develop a program to provide uniform training to all District and Service Center INS officials who are expected to perform IBIS checks on alien applications for INS benefits. Training procedures should include a mechanism to	Develop a program to provide uniform training to all District and Service Center INS officials who are expected to perform IBIS checks on alien applications for INS benefits.	Closed

	formally certify attendance and student comprehension of the material presented.		
03-02	11-Require all District Offices to review their internal procedures related to the receipt and disposition of Reprint Reports provided by a Service Center in order to facilitate the transfer of delinquent A-files. Internal procedures should ensure the proper evaluation of these reports to the specific attention of the Assistant District Director for Examinations and the District Director.	Require all District Offices to review their internal procedures related to the receipt and disposition of Reprint Reports provided by a Service Center in order to facilitate the transfer of delinquent A-files.	Open
03-02	12-Institute a policy to require periodic Naturalization Quality Procedures refresher training for adjudicators in the District Offices. This policy should consider the possible re-certification for all Adjudication Officers involved in the naturalization process every two or three years.	Institute a policy to require periodic NQP refresher training for adjudicators in the District Offices.	Open
03-02	13-Evaluate the report's impact on the universe of INS naturalizations that occurred in past years, since this report suggests the high probability that similar naturalizations of ineligible aliens may have occurred in the past. This evaluation should consider the	Initiate a reassessment of the NQP Assurance process to incorporate quality assurance steps that address the NQP concerns noted in this review related to FBI name checks, IBIS checks, NAILS lookout queries, File Transfer Requests, and Reprint Reports.	Open

	practicality or potential benefit of having ISD selectively assess the appropriateness of past naturalizations to identify those that may be improper.		
03-02	14-Evaluate the report's impact on the universe of INS naturalizations that occurred in past years, since this report suggests the high probability that similar naturalizations of ineligible aliens may have occurred in the past. This evaluation should consider the practicality or potential benefit of having ISD selectively assess the appropriateness of past naturalizations to identify those that may be improper.	Evaluate the report's impact on the universe of INS naturalizations that occurred in past years, since this report suggests the high probability that similar naturalizations of ineligible aliens may have occurred in the past.	Open
03-02	15-Provide immediate Service-wide guidance to District-based records staff to clarify their responsibilities in the INS file transfer process. This guidance should address roles and responsibilities when responses are not received to file transfer requests.	Service-wide guidance to District-based records staff to clarify their responsibilities in the INS file transfer process.	Open

Report Number 03-03: "INS' Processing of Special Interest Aliens at Air Ports-of-Entry"

REPORT NUMBER	REPORT RECOMMENDATION	ACTION PENDING	STATUS
03-03	01-Determine the appropriateness of continuing to register and obtain information on special interest	Determine the appropriateness of continuing to register and obtain information on special interest aliens designated	As a result of the Attorney General's introduction of the National Security Entry-Exit Registration System (NSEERS) on June 5, 2002, and follow-up policy

	aliens designated under 8 CFR § 264.1(f) using the current process. This determination should include an assessment that clearly identifies anticipated benefits and costs. The FBI needs to be included in any assessment done.	under 8 CFR § 264.1(f) using the current process.	issuance from the Executive Associate Commissioner, Office of Field Operations, regarding secondary inspections and NSEERS implementation and operations, OIA agreed that this recommendation should be considered implemented and closed. Taken in their entirety, these changes set forth a new process and policy to collect and disseminate to law enforcement personnel greater amounts of information about Special Interest Aliens visiting this country.
03-03	02-Depending upon INS' determination to continue collecting information on special interest aliens, develop clear policy on which special interest aliens should be processed in secondary inspection. Such policy should address children, older people, and frequent travelers.	Develop clear policy on which special interest aliens should be processed in secondary inspection. Such policy should address children, older people, and frequent travelers..	As a result of the Attorney General's introduction of the National Security Entry-Exit Registration System (NSEERS) on June 5, 2002, and follow-up policy issuance from the Executive Associate Commissioner, Office of Field Operations, regarding secondary inspections and NSEERS implementation and operations, OIA agreed that this recommendation should be considered implemented and closed. Taken in their entirety, these changes set forth a new process and policy to collect and disseminate to law enforcement personnel greater amounts of information about Special Interest Aliens visiting this country.
03-03	03-Develop the following procedures that would supplement the Inspector's Field Manual, section 15.11, to include: (a) Use of the Advanced Passenger Information System list to identify potential Special Interest Aliens	Send to OIA (1) copies of policy memoranda regarding NSEERS, forwarded to Field Manual Project; (2) detailed plan and guidance issued to the field regarding monitoring of lookouts through IBIS that are not referred for secondary; and (3) guidance delineating follow-up procedures.	(a) CBP staff continues to update the Inspector's Field Manual with NSEERS standard operating procedures. The nationality of an alien will be captured in APIS once the final rule is published and becomes effective. The new rule on APIS is currently pending at DHS. Once the regulation is effective, we can examine the possibility of using

Comment [D1]:

	before flights arrive. (b) A monitoring process to periodically check that Special Interest Aliens are properly forwarded to secondary inspection for registration processing. (c) Follow-up procedures that ensure the National Lookout Unit receives two complete sets of information.		APIS to identify some subjects of NSEERS. However, since not all NSEERS criteria are based on nationality, because dual nationality can be a registration factor, and because APIS is not used on the land borders, CBP will not be able to use APIS as a tool to identify all aliens subject to NSEERS.(b) Likewise, the use of multiple criteria in NSEERS is a factor in our inability at present to monitor Special Interest Aliens and ensure that they are properly referred to secondary inspection for registration processing. Only the primary office based on their questioning of the subjects knows these criteria, such as officer discretion and travel patterns. Therefore, there is no way to determine, after the fact, that all aliens who could have been subject to NSEERS registration were referred to secondary. (c) The National Lookout Unit is no longer involved in the Special Interest Alien, or NSEERS process. NSEERS, like US VISIT, uses a combination of existing databases to track and monitor aliens' arrival and departure. NSEERS can access fingerprints, photographs, and biographic data and also uses IDENT to perform queries against CBP's recidivist database and biometric lookout database. All aliens arriving by air and sea referred to secondary inspection at land border (this would be all identified NSEERS registrants) are queried in TECS. Therefore, both biometric and biographic lookouts can be identified during the NSEERS process, including individuals on the Terrorist Screening Center's terrorist watchlist.
03-03	04-Depending upon INS' determination to continue collecting	Develop and implement SOPs	The National Lookout Unit is no longer involved in the Special Interest Alien, or NSEERS process. However, all NSEERS

	information on Special Interest Aliens, the National Lookout Unit must develop standard operating procedures to process this data. Procedures should include controls that ensure: (a) all data has been received from the field. (b) information is retrievable. (c) Information can be analyzed.		information is collected electronically. This information includes fingerprints, photographs and biographic data. The fingerprints are queries in real time against, certain criminal history data, recidivist data, criminal wants and warrants, and the Terrorist Screening Center's watchlist. The data in this system can be queried, analyzed and reported on in an efficient manner.
03-03	05-Consider the ramifications of increased registration of Special Interest Aliens on the existing process.	Develop plan detailing the anticipated manner in which NSEERS effectiveness and impact on existing processes will be assessed.	NSEERS is under the management of the Border and Transportation Security Directorate (BTS), which will determine the criteria, direction, operation and metrics of NSEERS. CBP has been mandated to register aliens who meet criteria that the Secretary of Homeland Security (formerly the Attorney General) and the Secretary of State determine.

Report Number 03-04: "Accuracy of Pending Applications Recorded in INS' Service Center CLAIMS 3 Local Area Network"

REPORT NUMBER	REPORT RECOMMENDATION	ACTION PENDING	STATUS
03-04	01-Implement procedures to ensure that completed applications are appropriately recorded in the Computer-Linked Application Management Information System 3	Implement procedures to ensure that completed applications are appropriately recorded in the CLAIMS 3 LAN.	Open

	(CLAIMS 3) local area network (LAN).		
03-04	02-In coordination with the Office of Financial Management, ascertain whether the items that cannot be captured by the proposed query of each Service Center's CLAIMS 3 LAN are an impediment to an accounting firm's willingness to accept the count methodology for purposes of determining deferred revenue that is reflected in INS' year-end financial statements. Items that cannot be captured by the query are: Fees collected elsewhere, initially rejected and then accepted applications/petitions, and Forms I-751, Petition to Remove Conditions on Residence.	Ascertain whether the items that cannot be captured by the proposed query of each Service Center's CLAIMS 3 LAN are an impediment to an accounting firm's willingness to accept the count methodology for purposes of determining deferred revenue that is reflected in INS' year-end financial statements.	Open
03-04	03-Eliminate the practice by the Missouri Service Center of issuing redundant receipt numbers to applications whenever an existing file must be modified or corrected by the Chicago Lock box.	Eliminate the practice by the Missouri Service Center of issuing redundant receipt numbers to applications whenever an existing file must be modified or corrected by the Chicago Lock box.	Closed
03-04	04-Implement controls in the Chicago Lock box to ensure that application fee data is properly transmitted to the Missouri Service Center.	Implement controls in the Chicago Lock box to ensure that application fee data is properly transmitted to the Missouri Service Center.	Closed
03-04	05-Initiate steps in the	Initiate steps in the Vermont	Closed

	Vermont Service Center to better control its inventory of applications to reduce the rate of files reported as lost within its facility.	Service Center to better control its inventory of applications to reduce the rate of files reported as lost within its facility.	

Report Number 03-05: "Reported Instances of Card Production Without Prior Adjudication Officer Approval"

REPORT NUMBER	REPORT RECOMMENDATION	ACTION PENDING	STATUS
03-05	01-Investigate the validity of the Permanent Resident Card identified in this report as having been produced lacking an Adjudication Officer's approval on the application and implement controls to prevent reoccurrence.	Investigate the validity of the Permanent Resident Card identified in this report as having been produced lacking an Adjudication Officer's approval on the application and implement controls to prevent reoccurrence.	Open
03-05	02-Implement system controls to ensure that an Officer approval code precedes the card production request sent to the Integrated Card Production System.	Implement system controls to ensure that an officer approval code precedes the card production request sent to the Integrated Card Production System (ICPS).	Open
03-05	03-Implement system controls to ensure CLAIMS 3 mainframe records are not archived until a "completed" code indicating a document was mailed for Forms I-90, Application to Replace Permanent Resident Card.	Implement system controls to ensure CLAIMS 3 mainframe records are not archived until a "completed" code indicating a document was mailed for Forms I-90, Application to Replace Permanent Resident Card.	Open
03-05	04-Implement system and management controls to ensure that	Investigate the 48 records that did not have any indication in the file or on the CLAIMS 3	Open

	Adjudication Officer approval codes upload from CLAIMS 3 LAN to CLAIMS 3 mainframe.	LAN screen printout that an IBIS check was conducted prior to the card production request being sent to ICPS.	
03-05	05-Investigate the 48 records that did not have any indication in the file or on the CLAIMS 3 LAN screen printout that an IBIS check was conducted prior to the card production request being sent to ICPS.	Investigate the 48 records that did not have any indication in the file or on the CLAIMS 3 LAN screen printout that an IBIS check was conducted prior to the card production request being sent to ICPS.	Open

Report Number 02-01: "The Electronic Creation of Central Index System Records Resulting from Permanent Resident Card Production"

REPORT NUMBER	REPORT RECOMMENDATION	ACTION PENDING	STATUS
02-01	01-Investigate the validity of the three A-numbers identified where no corresponding A-file or other support documentation could be located in the INS system.	Investigate the validity of the three missing A-files; provide OIA with a statement regarding final disposition of each file.	Closed
02-01	02-Institute process controls to make Service employees aware of the 211,617 CIS records in the review universe where Permanent Resident Card production created the initial record. These controls would advise Adjudication Officers that a heightened level of awareness should be exhibited whenever the file is subject to future activity.	Establish controls to make Service employees aware of the 211,617 CIS records in the review universe where Permanent Resident Card production created the initial record.	Closed
02-01	03-Require Districts to	Require Districts to check	Closed

	check CIS before scheduling adjustment of status applicants, to ensure there is a CIS record.	CIS before scheduling adjustment of status applicants (in addition to at the time of receipt of the application), to ensure there is a CIS record.	
02-01	04-Provide guidance to Districts on what to do if there is no CIS record for the adjustment of status applicant when interviews are scheduled.	Provide guidance to Districts on what to do if there is no CIS record for the adjustment of status applicant when interviews are scheduled, i.e., a second CIS check prior to scheduling the interview).	Closed
02-01	05-Incorporate guidance regarding processing Copy 3 of Forms I-181, *Memorandum of Creation of Record* of *Lawful Permanent Residence*, into the Service-wide I-485, *Application to Register Permanent Residence or Adjust Status*, Standard Operating Procedures.	Incorporate guidance on the decision (interview outcome) aspect of the process involving Copy 3 of Forms I-181, *Memorandum of Creation of Record of Lawful Permanent Residence*, into the I-485 SOPs.	Closed
02-01	06A-Institute an automated system control in CLAIMS that would prohibit the authorization to create a Permanent Resident Card if a corresponding record does not exist in CIS.	Institute an automated system control in CLAIMS that would prohibit the authorization to create a Permanent Resident Card if a corresponding record does not exist in CIS.	Open - CIS
02-01	06B-Institute an automated system control in CLAIMS that would prohibit the authorization to create a Permanent Resident Card if a corresponding record does not exist in CIS.	Institute an automated system control in CLAIMS that would prohibit the authorization to create a Permanent Resident Card if a corresponding record does not exist in CIS.	Open - ICE

Report Number 02-03: "INS Use of the Interagency Border Inspection System (IBIS) During Air Ports-of-entry Primary Inspections"

REPORT NUMBER	REPORT RECOMMENDATION	ACTION PENDING	STATUS
02-03	01-Initiate immediate steps to clarify the general IBIS guidance found in Office of Field Operation's March 21, 2002 policy memorandum. Detailed policy guidance would be most effective if placed in INS' Inspections Field Manual and INSERTS. The clarification should particularly address: - The requirement for using IBIS during primary inspections at land and sea POEs (Revised). - Inspector discretion regarding referrals to secondary inspection. - IBIS query requirements related to in-transit lounge airport passengers. - Inspector's requirements to report IBIS interruptions to their supervisors. - On-going POE supervisory monitoring to ensure mandatory lookout queries. - The specific responsibilities of the National Lookout Unit.	OIA Status Report (100402): Closure of this issue will result when OIA receives a copy of the resultant policy statements and the planned revisions to the IFM.	The CBP IFM has been modified. CBP issued a new memorandum to the field dated March 2, 2004, entitled "Passport Numbers in Lookout Queries Made During Primary Processing at Ports of Entry – IFM Update IN04-03." This memorandum was incorporated into the IFM in June 2004, as required. Addressed in the March 2nd memorandum. Addressed on pgs. 3-5 of the attachment to the March 2nd memorandum. On August 7, 2003, the Department of Homeland Security (DHS) published an interim rule in the Federal Register suspending the Transit Without Visa (TWOV) and International-to-International (ITI) programs, effective August 2, 2003. The programs were suspended due to the receipt of credible intelligence concerning a threat specific to the TWOV program and additional threats against our Nation's security. On August 2, 2003, CBP also issued letters to carriers and the air industry stating that certain transit passengers could continue to transit the United States and remain in the Federal Inspection Service (FIS) area under certain conditions. CBP allows United States citizens, lawful permanent residents of the United States, participants in the

			Visa Waiver Program (VWP), Canadians, and those passengers in possession of a valid visa to transit through the United States **after full CBP processing**. In this case, the ITI transfer of baggage continues. "Full CBP processing" includes IBIS queries. Addressed on p. 15 of the attachment to the March 2nd memorandum. Addressed at the end of the March 2nd memorandum in a requirement to discuss IBIS query procedures "at all daily musters" at ports of entry. National Lookout Units are located at CBP's National Targeting Center (NTC). Specific responsibilities are addressed on pgs. 13-16 of the attachment to the March 2nd memorandum.
02-03	02-Require the numbering of all Inspections related policy memorandums and prepare a regularly updated summary index that is distributed to all field offices to help ensure timely and complete Service-wide implementation. Ultimately, this "Policy by Memorandum" format should yield to a revised/updated Field Inspection Manual.	OIA Status Report (100402): Closure of this issue will result when OIA receives a copy of the planned revisions to the IFM.	The legacy INS' IFM and legacy U.S. Customs Service Handbook are presently being modified.

02-03	03-Initiate steps to provide Service-wide training for all INS Inspectors and supervisors affected by the Service's new March 21, 2002, IBIS guidance.	OIA Status Report (100402): Closure of this issue will result when OIA receives a definitive statement certifying that the training has occurred in the ports of entry.	Training was conducted at 20 INS Districts in 2002. CBP has since submitted the material previously included in its training to the Office of Training for inclusion in all Inspectors' curricula at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA.
02-03	04-Assess the need to provide remedial training in the technical aspects of using the IBIS queries to those Inspectors currently involved in the primary inspection process. Training should particularly address those instances where Inspectors need to quickly retrieve and evaluate IBIS data involved in a lookout "Hit."	OIA Status Report (100402): Recommendation can be closed when 1) the distance learning project is completed; 2) a memorandum is sent to the field concerning IBIS training procedures, reporting requirements, and deadline; and, 3) the resultant training for port of entry inspectors has occurred.	Initially, CBP sought to have all Inspectors at ports of entry complete this training through a distance learning program. However, this approach did not adequately address the need to train all CBP staff at ports of entry. To rectify this situation, CBP will submit the IBIS training material to its Office of Training for its inclusion in the curricula for all port personnel who receive training at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA.
02-03	05-Develop and mandate the use of a national standard flight log database to ensure that flight passenger data is uniformly gathered and reported at each port-of-entry to help ensure the accuracy of INS performance data found in the Service's monthly G-22 report. This database would also facilitate the comparison of flight log information and IBIS information for analysis. This information is critical for staffing, trends, compliance with policy, and other management requirements.	OIA Status Report (100402): Recommendation can be closed when a national standard flight log database has been created.	CBP is continuing to produce the legacy INS G-22 Report, however, the G-22 conveyance and passenger data which is duplicative of legacy Customs data will no longer be reported in the G-22 report. Said data is being replaced with legacy Customs conveyance and passenger data, the quality of which has been validated and deemed satisfactory. Customs Directive 4320-024A "Managing OMR Data Quality" dated August 16, 2000, which is attached, provides a good description of how this type of operational data is validated and the quality is assessed.
02-03	06-Develop and mandate the use of a	OIA Status Report (100402): Recommendation can be	The attached table shows the progress that has been made as of

	national standard flight log database to ensure that flight passenger data is uniformly gathered and reported at each port-of-entry to help ensure the accuracy of INS performance data found in the Service's monthly G-22 report. This database would also facilitate the comparison of flight log information and IBIS information for analysis. This information is critical for staffing, trends, compliance with policy, and other management requirements.	closed when CBP provides documentation that each port of entry has provided evidence that a dedicated passenger analysis unit (PAU) has been created at each port of entry.	November 5, 2004, in establishing dedicated PAUs at international airports in the United States and preclearance stations at international airports in Canada and the Caribbean.
02-03	07- Clarify the impact of the Commissioner's March 22, 2002, *Zero Tolerance Policy* memorandum, particularly in regard to its affect on general POE operations, the discretionary limits for Inspectors involved in the primary inspection process, and the potential consequences for transgressions impacted by this policy (This recommendation is addressed to the Commissioner).	Clarify the impact of the Commissioner's March 22, 2002, *Zero Tolerance Policy* memorandum.	As a result of and subsequent to the *Zero Tolerance Policy* memorandum, dated March 22, 2002, CBP has issued several memoranda that clarify the impact of the original memorandum. These memorandums have been distributed to the field and have been relayed to the field through musters at each port of entry. See attached memorandums entitled *Inspectional Staff Meetings at Ports of Entry*, dated June 9, 2003; *Zero Tolerance Policy; Exercise of Discretion*, dated April 30, 2004;*Exercise of Discretion – Additional Guidance*, dated July 20, 2004. In addition, the Assistant Commissioner, Office of Field Operations has implemented a professionalism initiative to reinforce the traditionally strong professional work culture at Customs and Border Protection.

Report Number 02-04: "INS Interfiling at the National Records Center (NRC) and District Offices"

REPORT NUMBER	REPORT RECOMMENDATION	ACTION PENDING	STATUS
02-04	01-Continue to revise Service guidance on interfiling. The guidance should provide as complete delineation as possible of what documents become part of an A-File, what documents should be held at the District Office, and what documents can be destroyed.		Closed
02-04	02-Establish a Service-wide policy that requires offices to indicate that all required action has been taken on documents earmarked for the NRC.	Memorandum to the field regarding the new "stamp" requirements. Check follow-up file for copy of memo. If not in there, check the net (see ccmail msg in file).	Closed
02-04	03-Return action mail sent to the NRC as interfiling to either the Records Liaison, the INS Records Supervisor, or when the office has a contracted records function, to the INS COTR.	Provide OIA with assurance, such as a memorandum, of corrective action, including examples of returned action mail memoranda.	Closed
02-04	04-Develop a monthly report for District Directors detailing the number of interfiling documents received from each office and their disposition by category, including repeat returns for action sent to their office from the NRC (Revised recommendation).	Provide to OIA a copy of the first formal report sent to the DDs.	Closed

02-04	05-Continue to develop and implement a Service-wide address system. This system should interface with all other Service systems.	Copies to OIA of the Address Issues Task Force's presentation on short-, medium-, and long-term strategies to improve the collection and processing of address changes, and timeframe for implementation.	Closed
02-04	06-Implement a central repository (managed by a single organization) to receive and process address changes. Coordinate the new process with the SITD (Revised recommendation).	Implementation of a central repository for address changes, and provide to OIA plans/timeframes for implementation.	Closed
02-04	07-Ensure all District Offices have been notified of and comply with the interim interfiling guidance issued in September 2001.	Periodic verification process by supervisors, and provide to OIA a copy of the notification memo and the plan outlining the periodic verification process.	Closed
02-04	08-Require INS supervisors to periodically review documents earmarked for mailing to the NRC to ensure compliance with interfiling guidance (Revised recommendation).	Periodic verification process by supervisors, and provide to OIA a copy of the notification memo and the plan outlining the periodic verification process.	Closed
02-04	09-Designate an individual as the INS Records Liaison in each File Control Office (FCO) to provide oversight of records handling and to serve as the point of contact between the FCO and the NRC.	Develop a plan of action, and provide to OIA copies of proposed plans and timeframes.	Closed

02-04	10-Until the Executive Associate Commissioner, Management, issues guidance, develop interim procedures for indicating that action has been taken on all action documents sent to the NRC.		Closed
02-04	11-Until the Executive Associate Commissioner, Management, develops a central repository to process address changes, designate a specific INS position, for example the INS Records Supervisor or INS COTR, at each FCO to receive address changes from the Office of Records Management and disseminate them to the appropriate unit.	Develop a plan of action, and provide to OIA copies of proposed plans and timeframes.	Closed

QUESTION TWO

In May, Secretary Ridge and Attorney General Ashcroft signed a Memorandum of Agreement which provided that the FBI will take the lead on all terrorist financing investigations. According to this Memorandum, the FBI will have sole responsibility for reviewing all Department of Homeland Security money laundering leads to determine if there is a tie to terrorist financing. It is my understanding from this Memorandum that all future money laundering investigations originating within DHS will proceed only after the FBI determines that there is no terrorist financing relationship.

A) Can you please provide the Committee with your assessment of why this memorandum was needed, and why the Committee should be reassured that time will not be wasted in pursuing investigative leads while they are vetted through this new bureaucratic process?

Answer: The Memorandum of Agreement (MOA) between the Department of Homeland Security (DHS) and the FBI formalizes a joint approach between the DHS and FBI for conducting coordinated terrorist financing investigations. The MOA recognizes the investigative expertise of DHS bureaus and the FBI's lead in terrorism. The MOA clarifies the roles of the agencies, and provides a method for resolving the inevitable conflicts that arise when investigators and prosecutors pursue matters in which there is potential conflict.

The MOA does not give the FBI the sole responsibility for reviewing all DHS money laundering leads. DHS agrees to provide the FBI with only those appropriate leads related to terrorism or terrorist financing. The overwhelming majority of leads investigated by DHS have no relationship to terrorism and therefore the MOA has no effect on these cases.

B) **Not for DHS:** Director Mueller, can you please share with the Committee what guidelines will the FBI use to make the terrorist financing determination, as well as a brief description of what part other departments and agencies, including the Department of the Treasury, play in making this determination? Can you please provide a copy of these guidelines for the Record?

C) What effect does the Agreement have on the Department of Homeland Security's ability to proceed with these financial crimes investigations, independent of the FBI? In other words, will DHS be taking the lead on certain investigations prior to the FBI making a terrorist financing determination or the investigation proceed only after the determination has been made?

Answer: The overwhelming majority of financial crime investigations conducted by DHS have no link to terrorism or terrorist financing. In those cases, the MOA has no effect on the pursuit of these investigations.

QUESTION THREE

Prior to its move to the Department of Homeland Security, the Customs Service conducted several successful money laundering investigations. Now, much of that expertise and experience has moved to BICE. On July 8, Secretary Ridge announced the creation of Operation Cornerstone which is a new financial crimes investigation initiative for BICE.

What specific money laundering investigative authorities have been given to Operation Cornerstone?

Answer: Operation Cornerstone will employ the full range of money laundering investigative authorities that was available to the former U.S. Customs Service and which now resides in the Immigration and Customs Enforcement (ICE).

The combination of former Customs and Immigration law enforcement authorities and jurisdictions within ICE has created an investigative bureau with unique tools to investigate money laundering offenses. In order to fully utilize the authorities of the combined agencies, the ICE Financial Investigations Division was reorganized into several sections, with Cornerstone being the central piece of the program. Cornerstone seeks to employ a methodology of identifying and attacking vulnerabilities in financial systems, and disseminating these findings to the financial and trade sectors.

ICE Financial Investigations Division brings a unique assembly of historical expertise, powerful laws, and cutting edge techniques to the arena of financial crimes investigations. A history of over thirty years of expertise in investigating financial crimes now resides in ICE. ICE Financial Investigations will continue to utilize all the enforcement tools in its arsenal to include search and seizure warrants, arrest warrants, cyber crime specialists, and electronic Title III's to penetrate criminal organizations.

Some of the law enforcement authorities that Cornerstone will utilize to fulfill its mission include investigation of criminal violations regarding international transportation of financial instruments such as those involving unlicensed money transmitters, smuggling bulk currency, and transactions to structure or evade currency reporting requirements. Other authorities include those money laundering offenses under ICE jurisdiction such as laundering proceeds derived from drug smuggling, trade fraud, export of weapons systems and technology, alien smuggling, human trafficking, and immigration document fraud.

QUESTION FOUR

If we are going to address money laundering in a coordinated and effective manner, we must have an effective plan of action to direct the attack. Current law requires the Secretary of the Treasury, in consultation with the Attorney General, must submit a yearly National Money Laundering Strategy to Congress by February 1. So far, Congress has not received the 2003 Strategy, now nearly five months after the statutory deadline, and my repeated requests for its delivery have gone unanswered.

A) Have either of you been consulted in the drafting of this Strategy?

Answer: Immigration and Customs Enforcement (ICE) reviewed the draft of the 2003 National Money Laundering Strategy (NMLS) and provided comments on the draft. In addition, ICE provided investigative case information and other data to those at Treasury who drafted and developed the strategy.

B) With creation of DHS and the increased focus on financial investigations at the FBI, do either of you care to comment on who should be overseeing the crafting and implementation of our National Money Laundering Strategy?

Answer: The drafting and implementation of the National Money Laundering Strategy (NMLS) is essential to the United States Government's efforts to identify, disrupt and dismantle organizations and systems used to launder proceeds of criminal activities.

The Secretary of the Treasury should continue to be responsible for drafting the NMLS since Treasury has regulatory authority over many of the financial institutions impacted by the strategy, and plays a key role in working with our international partners in anti-money laundering efforts undertaken by Finance Ministries.

Treasury may want to consider delegating key aspects of the Strategy development and implementation, including law enforcement and anti-terrorist financing measures to those Departments, such as DHS and the Department of Justice with the expertise and responsibility in these areas. Treasury could still ensure that the NMLS would be drafted in a consistent manner, promoted achievable objectives, and obtained multi-agency support.

Hearing before the Senate Committee on the Judiciary
"Oversight Hearing: Law Enforcement and Terrorism"

Questions for the Honorable Asa Hutchison
Undersecretary for Border & Transportation Security
Department of Homeland Security

Submitted by Senator Richard J. Durbin

Welcome Undersecretary Hutchison. As you mentioned in your testimony, the Department of Homeland Security does not have a long history with the Judiciary Committee, and I believe this is your first time before the Committee in your capacity as Undersecretary.

Protecting the homeland while preserving American values should be your top priority. This Committee's top priority should be vigorously overseeing these efforts. I look forward to working with you towards that end.

I sent Secretary Ridge a letter on June 3 regarding the Department of Homeland Security's launch of the United States Visitor and Immigrant Status Indicator Technology (US-VISIT). I have not yet received a response to this letter. I understand that Secretary Ridge, you and your staff are very busy and I accept that you might not always be able to respond to the Committee's questions immediately. But I strongly encourage you to make it a high priority to respond promptly to inquiries from this Committee.

1. I commend you on the launch of US-VISIT. I understand this is a top priority for you. I have supported the creation of an automated entry/exit system that will ensure that we can identify and track the arrival and departure of visitors to our country. However, serious logistical concerns loom as DHS moves forward with implementation of US-VISIT.

> A. Collecting detailed information, including fingerprints and photographs, from all foreign visitors will pose significant challenges. Numerous studies have concluded that such a data collection effort will create significant delays at the border, harming our economy.
>
> What steps are you taking to ensure that data collection will not greatly slow the flow of traffic at the border?

Answer: The Department of Homeland Security (DHS) and the US-VISIT program are aware of concerns that the collection of data will cause unnecessary delays at air, land, and sea borders. To address these concerns, DHS has been monitoring the implementation of US-VISIT to minimize or eliminate any delays. Some of the mechanisms to minimize delays include the upgrade of facilities where needed to speed the processing of visitors, replacement or installation of high-speed data lines to increase computer system communication and performance speed, and optimizing computer

searching routines to ensure a swift entrance into the U.S. while protecting national security. In addition, working groups have been created to examine the inspections process itself, with the goal of re-inventing the process to reduce the amount of time needed to conduct an inspection without compromising on efficiency or security.

> B. It is important that US-VISIT not infringe upon civil liberties or discriminate on the basis of race, religion, or national origin.
>
> What steps is DHS taking to ensure that US-VISIT will not infringe upon civil liberties or discriminate on the basis of race, religion, or national origin?

Answer: The US-VISIT program will focus upon non-immigrants with visas from all the countries of the world, and thus does not discriminate on the basis of race, religion, or national origin. As I have stated publicly, the more we are able to identify people and assess them based on their individual traits, the less dependent we are on broad, general categories such as national origin. That makes the system fairer for everyone.

The US-VISIT Program will be applied fairly to all who come under its aegis.

> C. In order to protect national security and the civil liberties of innocent U.S. citizens and visitors, it is crucial that the information recorded in the database be accurate, complete and regularly updated. If the data is not reliable, law enforcement will not be able to use it effectively to fight terrorism, and innocent people may be unjustly singled out for heightened scrutiny. As we have learned since the 9/11 terrorist attacks, the intelligence community has had serious difficulties processing and analyzing data effectively in order to prevent terrorist attacks. I am concerned that US-VISIT will create a large influx of data that will overwhelm the systems currently in place.
>
> What measures will DHS take to ensure that data collected is accurate, complete and regularly updated, and that it is processed and analyzed appropriately and efficiently?

Answer: Prior to September 11, 2001, coordination between law enforcement and intelligence agencies was not conducted in the most efficient manner possible. Many lessons have been learned from the September 11th attacks, including the need for law enforcement and intelligence agencies to coordinate and cooperate to prevent any further attacks. While a large amount of data will undoubtedly be generated through US-VISIT data collection, the systems and processes set up since September 11, 2001, have been improved and continue to be improved.

There can be no more accurate and complete collection of data than capturing biometric information—a photograph and fingerprints. Biometric information is unique to the individual, and prevents people from using other identities or having their legitimate

identity and information abused by others. Because the data will be collected and uploaded to live systems, the updates are virtually instantaneous within the US-VISIT system. Subsequent analysis can be done quickly, efficiently, and appropriately from this data because it will be collected in formats compatible with existing systems and/or capable of being exported in formats compatible with existing systems. In addition, the organizational structure of US-VISIT allows for teams dedicated to maintaining the data and systems.

D. GAO recently issued a report regarding terrorist watch lists that found that the federal government's approach to using watch lists is decentralized and nonstandard, largely because these lists have been developed in response to individual agencies' unique missions, including their respective legal, cultural, and systems environments. Specifically, nine federal agencies maintain a dozen different watch lists. In addition, about 50 other federal agencies and many state and local government entities have access to one or more of these 12 lists.

GAO determined that these multiple lists include overlapping but different sets of data. Moreover, different policies and procedures govern whether and how these data are shared with others. Further, the extent to which such sharing is accomplished electronically is constrained by fundamental differences in the watch lists' systems architecture (i.e., the hardware, software, network, and data characteristics of the systems).

GAO recommended that DHS, in collaboration with other departments and agencies that have and use watch lists, lead an effort to consolidate and standardize the federal government's watch list structures and policies.

What efforts are currently underway to address the problems identified by GAO? Please identify any impediments that would delay or prevent DHS from leading the effort GAO recommended and making it a success? Have you established a timetable to achieve the necessary standardization, consolidation, and sharing of the watch lists to ensure optimum interoperability and strengthen our nation's homeland security capability?

Answer: The Terrorist Screening Center (TSC) is fully operational. On December 1, 2003 the TSC began 24/7 call center operations, coordination of the U.S. Government response, ensuring information collected was distributed to the appropriate entities, and established a process for addressing outdated and erroneous terrorist records and misidentifications. Currently the names and identifiers of known and suspected terrorist are available to all federal, state, and local law enforcement officials through the National Crime Information Center (NCIC). The terrorist screening database, (TSDB), contains information on both international and domestic terrorist's identities and became operational on March 12, 2004. The TSDB is scheduled for

several enhancements between now and the end of the (calendar) year to allow direct access by agencies performing screening operations. All of the systems referenced in the GAO report have been reviewed by the TSC and, where appropriate, this information has been included in TSDB.

As the single coordination point for Terrorist Encounters, the TSC enables a coordinated response for Federal, State, and Local Law Enforcement. Since December of 2003, the TSC has received more than 4,000 9,000 calls and has identified over 4,000 positive matches. Each parent organization of the individual watchlists provides Assignees to the Terrorist Screening Center for real-time access to TTIC and FBI databases. This includes representation from the Department of Homeland Security, to include 19 20 personnel (including the Deputy Director and Director of the TSC), assigned through the DHS Information Analysis and Infrastructure Protection (IAIP) Directorate.

2. US-VISIT has absorbed the National Security Entry-Exit Registration System (NSEERS). I have expressed concerns about NSEERS' discriminatory nature, utility, and implementation. By singling out a large group of mostly innocent Arabs, Muslims and South Asians, I fear that NSEERS squandered precious law enforcement resources and alienated communities whose cooperation we desperately need.

A. DHS officials have claimed that NSEERS does not discriminate on the basis of race or religion. However, the NSEERS "call-in" program (also known as domestic registration) explicitly targeted visitors from 24 Arab and Muslim countries and North Korea, a state sponsor of terrorism, requiring them to register with local INS offices.

Isn't this discrimination on the basis of national origin and religion? Why or why not?

Answer: ICE does not discriminate against particular communities based on race, religion, or national origin. DHS, in conjunction with the State Department and the intelligence community, has identified countries whose citizens must register under NSEERS. Thus, the decision as to which countries fell under the NSEERS program was not made on the basis of ethnic origin or religion, but instead upon intelligence designed to identify potential threats to the national security of the United States. Those countries with known al-Qaeda activity, other terrorist activity, and/or state-sponsored terrorism or other law enforcement concerns formed the basis for creating the list of countries covered under the NSEERS program. In fact, since the implementation of NSEERS in September 2002, individuals from more than 150 countries have registered. Finally, it must be noted that US-VISIT has not absorbed NSEERS. Until US-VISIT exit capabilities are located in many more ports, insufficient overlap exists between US-VISIT and NSEERS.

B. In response to criticism that the "call-in" program was discriminatory, Justice Department officials said that it would eventually be expanded to include visitors from all countries. Subsequent media reports indicated that it would not be expanded to additional countries.

Will the "call-in" program be expanded to include visitors from other countries? Why or why not? If so, which countries will be added? If not, why did the initial plans to expand the program to other countries change?

Answer: The DHS has no plans to add any other countries to the call-in program, and the previous "call-in" programs have all concluded.

D. More than 82,000 people have reportedly registered pursuant to the NSEERS "call-in," more than 13,000 of whom have been placed in deportation proceedings.

How many people have actually registered pursuant to the NSEERS "call-in"? How many people have actually been placed in deportation proceedings after registering through the "call-in"? How many of these people have been deported? Does deporting those who comply with NSEERS deter other immigrants and visitors from complying with NSSERS and/or cooperating with law enforcement? Why or why not? If a goal of NSEERS is to track possible terrorists, does deporting those who comply with the program undermine the goal of the program, particularly if it reduces future compliance? Why or why not?

Answer: As of September 23, 2003, 175,456 individuals have registered pursuant to the NSEERS "call-in." As of September 23, 13,780 individuals had been placed in removal proceedings as a result of NSEERS.

These individuals were placed in removal proceedings not because they complied with NSEERS, but because they were in the United States in violation of law. Some of these people were convicted criminal felons, while others had overstayed their permitted time and others had committed fraud. As of September 29, 2003, the 72 aliens registered in NSEERS were removed.

E. I understand that many who were required to register in the "call-in" program were technically "out of status" due to delays in processing adjustment of status applications.

How many such individuals have been placed in deportation proceedings? How many have been deported? If so, will those who are out of status due to INS processing delays be granted relief from deportation pending processing of their applications? Why or why not?

Answer: Of the individuals who were out of status, some may have pending applications with the Bureau of Citizenship and Immigration Services (BCIS). In reaching a determination whether or not to place an out of status individual into removal proceedings, one factor considered by officers in the field was whether or not an application was pending for the adjustment of status of that individual. Because of the individual nature of each case, it is not possible to provide a number of people who may be eligible for adjustment of status. Indeed, some seek adjustment after the commencement of their removal proceedings.

In situations where an out of status alien may have a pending adjustment application, it is important to understand that having a pending application is not the same as having been granted a legal status to live in the United States. It is important to note that for many that are in the United States with approved petitions, a needed visa number may not be available until years in the future and thus, no adjustment or relief is immediately available for the alien present in the U.S. in violation of law. This backlog of visa numbers is not caused by BCIS, but instead from the intense demand of people seeking to immigrate to the United States.

Some of the factors considered in reaching a custody decision include the likelihood that the adjustment application is legitimate, that the application will be approved, the availability of a visa number if needed, any past criminal history, and how likely the alien is to appear for a removal hearing. In many cases, aliens who are charged with having violated their status are released on their own recognizance or on low bonds. In some instances, it may take a few days for an alien to post a bond, and the alien will be detained until the bond is posted. In other cases, an alien with a serious criminal history may be subject to mandatory detention, regardless of any pending adjustment application.

Those placed into deportation proceedings retain all applicable rights afforded under the law.

F. NSEERS was also plagued by implementation problems. Due to inadequate publicity and INS dissemination of inaccurate and/or mistranslated information, many individuals who were required to register did not do so.

Did the INS and DHS adequately publicize the "call-in" program? Please describe the efforts to publicize the program. Did the INS or DHS disseminate inaccurate and/or mistranslated information regarding the program? Please explain. As a result of inadequate publicity and inaccurate and/or mistranslated information, did individuals who were required to register not do so or register late? Please explain. How many individuals who registered late have been placed in deportation proceedings? How many have been deported? How many individuals who did not register have been placed in deportation proceedings? How many have been deported? In light of NSEERS implementation problems, will those who did not register or registered late be granted relief from deportation proceedings and/or given another opportunity to register? Why or why not? What will DHS do to avoid such implementation problems in the future?

Answer: Within the time constraints imposed by the implementation schedule, legacy INS made every effort to disseminate "call-in" information to affected communities as quickly as possible.

Notices in English to the impacted communities containing "call-in" information were published on the legacy INS website often within 48 hours of being published in the Federal Register. The "call-in" notices were translated to a number of languages (Bengali, Bahasa, Pashto, Arabic, Farsi, Urdu) and the translated notices were published on the INS website, often within 3-5 days of the Federal Register notification. Although every effort was made to ensure accuracy, I have been informed that in one instance an inaccurate date was given in a translation. Additional safeguards were put in place to ensure accurate translation.

Once the notices were translated, they were also disseminated to the press serving the affected communities and to different embassies for publication on their websites.

NSEERS policy allows for late registration with good cause. The individuals who have been placed in removal proceedings as a result of NSEERS were criminals, violated their immigration status, or otherwise remained in the U.S. in violation of law. As noted above, 13,780 individuals have been placed into removal proceedings. However, an estimate on the number who failed to register is unknown. The call-in portion of the NSEERS program is no longer done.

3. Many of the 9/11 terrorists entered the U.S. on student visas, which highlighted the insufficient tracking available to ensure that student visa holders were attending accredited study programs. This realization prompted Congress to improve the monitoring of foreign students through the creation of SEVIS. Congress directed that SEVIS be fully implemented by January 1, 2003. However, the Department of Justice

Office of the Inspector General found in their March 2003 report that SEVIS is still not fully operational despite numerous extensions provided to the INS.

A. Could you please explain why SEVIS is still not fully operational, what steps you are taking to fix this, and when you expect SEVIS to be fully operational?

Answer: While the Inspector General findings were largely correct at the time of observation, they do not reflect the performance of the Student and Exchange Visitor Information System (SEVIS) since January 2003. The SEVIS is fully functional, with a minimum number of performance problems. Significant strides have been and continue to be made to improve system access, performance and usage. This is clearly validated by the reality that, as of July 29, 2003, 5,937 schools around the nation are in compliance with the SEVIS mandate, which the Congress established. More than 7,000 schools and exchange programs are now SEVIS- certified. (This was a monumental undertaking for all concerned and the schools deserve a great amount of credit for the success of the effort.) Most of the applicable schools met the August 1, 2003 deadline and are now fully SEVIS certified.

With the implementation of any new database system of this scope and scale, there is often an initial period where the user experiences performance inefficiencies or process irregularities. SEVIS was not an exception. For example, an initial performance problem with the SEVIS application caused an overload to the processor housing the SEVIS database, during a particularly busy usage period. Since January of 2003, the system has been upgraded several times to eliminate this anomaly and the system has not experienced any more problems in this area. However, we continue to monitor the system closely and obtain essential feedback from the users in the educational community. This includes input from our dedicated SEVIS national help desk, separate from the main DHS or BCIS/ICE call center to evaluate ways to increase the efficiency and effectiveness of the system and ensure the best level of customer service we can provide.

Since implementation of SEVIS, DHS continues to meet and work with many stakeholder groups regarding their specific concerns about the SEVP and SEVIS. We are aware of the importance of the overall program to the security of this country and the need to certify all applicable schools as soon as possible, in order to facilitate user access to the system. SEVIS is not merely functional, it has been and continues to be improved and enhanced. It is a comprehensive and reliable data platform, fully capable of enabling SEVP to monitor foreign students, while supporting DHS meeting the challenges to national security.

The effectiveness of the SEVIS system is going to be based in large part on how well it is used by each certified school. Concerns have been raised that there is a lack of training for schools using the system and insufficient controls to ensure that schools are complying with the SEVIS requirements.

B. Could you please discuss the steps you are taking to ensure that those with access to the SEVIS program have adequate training and are complying with the reporting requirements?

Answer: For over a year prior to the August 1, 2003 deadline for SEVIS compliance, SEVP conducted an active and far-reaching public relations and information outreach, aimed primarily at the academic institutions throughout the country. The major means for interacting with this community has been through professional associations-submitting news releases and articles in their publications and websites, as well as giving presentations at regional and national conferences.

While the SEVP outreach was intended to let schools know about their new SEVIS requirements, educating and training has been done primarily through the SEVP website, <http://www.immigration.gov/graphics/shared/sevis/>. The website offers a variety of resources to meet the needs of our clientele, such as a newsletter, extensive "Frequently Asked Questions," related notices/regulations/publications, technical manuals and guidelines, PowerPoint presentations, and SEVP policy and procedures memoranda. Particularly useful is an interactive SEVIS tutorial incorporated in the SEVIS software. If a school administrator has questions not addressed by these existing information sources, there has always been a human being available to respond to particular questions or assist with technical problems. SEVP maintains a SEVIS Help Desk, accessible at 1-800-892-4829 between 8 a.m. and 8 p.m., EST or by e-mail at SEVIShelpdesk@eds.com <mailto:SEVIShelpdesk@eds.com>.

As the August 1, 2003 deadline approached, ICE acknowledged the likelihood that some academic institutions would not be certified, that students would arrive without proper documentation, and that inspectors at POEs might be overextended by the large influx of students coinciding with the implementation of new entry procedures and processes. In this context, a number of actions were taken to minimize and mitigate negative consequences of the transition. These include:

1. Establishment of a 24/7 SEVIS Response Team (SRT) at the National Records Center (NRC) in Kansas City, MO. The SRT is comprised of approximately 25 personnel from the following DHS organizations:
   - Investigations
   - Detention & Removal
   - Inspections (CBP)
   - Immigration Officer Academy
   - Headquarters SEVIS Program
   - Law Enforcement Support Center

   The SRT has the capability to be augmented and supported by approximately 15 NRC employees who provide the first level ("Tier 1") response by receiving the incoming calls from the Ports of Entry (POEs) or the schools. The NRC employees will log information regarding the calls into a database so that all cases referred to the Response Team are recorded and can be tracked through final resolution. The SEVIS response team assists the POE Inspectors by obtaining

SEVIS documents from the schools and/or providing required information to facilitate legitimate student entries into the US, after the August 1 deadline.

2. ICE stationed investigators at the POEs that historically have had the greatest volume of students entering the US. The ICE investigators facilitate Investigative and SEVIS related issues, and provide a liaison to the SEVIS Response Team.

3. Expanded SEVIS Help Desk Hours, including 8AM to 4PM on weekends.

4. Establishment of dedicated phone & email addresses to respond to schools with questions about their SEVIS certification status.

5. 25 July 2003: Two separate memorandums were sent to all SEVIS approved and pending schools containing information, guidance and potential impacts related to the August 1 deadline.

6. 28 July 2003: Public Affairs issued a SEVIS News Release.

7. 29 July 2003: ICE provided guidance to all schools with more detailed information about the ICE process to facilitate the entry of eligible students into the US after the August 1 deadline.

The SRT and these measures have provided an enormous training experience for academic institutions, inspectors, and SEVP personnel. While remedying student's entry difficulties, schools that had not heard about SEVIS were informed and entered into the certification process. POE personnel have a wealth of expertise available to them to facilitate verification of student eligibility, as well as to provide clear direction on questions about new policy and procedures. This increased understanding of the SEVIS Program requirements will increase the school's ability to comply with the reporting requirements.

In addition to the academic community, the other key groups accessing SEVIS are BCIS adjudicators and POE inspectors. Training for POE inspectors is addressed in question Q00335 (below). BCIS officers responsible for the school adjudications and Student Reinstatement requests were provided two separate training sessions for SEVIS. The initial session, held in June of 2002, provided an overview of the SEVIS system itself and an opportunity for the adjudicators to experience working "hands-on" within the system itself. The second session, held in August of 2002, focused more on the regulatory requirements for establishing an educational institution's eligibility for enrolling foreign students. Additionally, weekly teleconferences continue to be held between these adjudicators and the SEVIS Program headquarters.

One of the key components of the SEVIS tracking system is to ensure that those entering on student visas are participating in accredited study programs. To ensure that the schools participating in the student visa program are fully certified by the INS, INS inspectors were to conduct on-site certification reviews for each institution. However,

according to the Inspector General's report, the contractors hired for these on-site reviews were under-qualified due to poor training and supervision. Further, the report charges that oversight of the contractors was so poor as to cast doubt on the accuracy of the reviews.

C. Do you agree with the Inspector General's findings? Why or why not? If so, what your doing to remedy this problem?

Answer:

To ensure more effective border security, all of the responsible agencies must have complete access to all information available and share that information in real time. In hearing after hearing, we have stressed the importance of information sharing. It is crucial that the inspectors on the front lines, officers at ports of entry and consular officers overseas, have access to all of the information they need to make decisions as to an applicant's admissibility to the U.S. Therefore, they must be fully trained on the available technology and must have access to all information that will help them identify those who should be denied visas and/or turned away at a port of entry. However, according to the Inspector General's report, border inspectors have not been fully trained on the system and during the busy holiday season access to SEVIS was turned off because it was operating too slowly.

To ensure more effective border security, all of the responsible agencies must have complete access to all information available and share that information in real time. In hearing after hearing, we have stressed the importance of information sharing. It is crucial that the inspectors on the front lines, officers at ports of entry and consular officers overseas, have access to all of the information they need to make decisions as to an applicant's admissibility to the U.S. Therefore, they must be fully trained on the available technology and must have access to all information that will help them identify those who should be denied visas and/or turned away at a port of entry. However, according to the Inspector General's report, border inspectors have not been fully trained on the system and during the busy holiday season access to SEVIS was turned off because it was operating too slowly.

D. Please explain what steps you are taking to ensure proper linkage to IBIS and what steps you are taking to train all inspectors on how to use the SEVIS system effectively.

Answer: 1) During the week of January 13, 2003, a total of 107 sites were trained using FTS 2001 Teleconferencing and Net Conferencing (via the Internet) on the SEVIS. The training was to provide the ports-of-entry (POEs) with instructions on the changes in guidelines, regulations and processing of the new version of the SEVIS Form I-20 and DS-2019. The training program featured a PowerPoint presentation; provided real-time interaction between participants and subject matter experts at Headquarters and the Immigration Officer Academy; a pre- and post-test and was recorded by MCI World

Com. All sites were encouraged to offer the training to as many participants as possible. The feedback from training participants was very positive. Participants were particularly pleased by the timeliness of the information, and by the fact that they were able to interact (to ask and immediately receive answers) with representatives from Headquarters on matters relating to the training program, as well as, problems they had, or were having, accessing the SEVIS system itself

2) IBIS and SEVIS are separate, autonomous data systems. IBIS is used as the primary system at airports for the recording of entry data regarding students. This data is sent to SEVP daily in batch file in order to update SEVIS

The incident of system slowdown referred to in the context, above, relates to an experience with IBIS when a new screen was introduced and inspectors had difficulty adjusting to its use with the demands of the holiday environment. Training was provided to inspectors subsequently, but this has no relationship with SEVIS.

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 4, 2004

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Enclosed are responses to questions posed to the Director of the Federal Bureau of Investigation, Mr. Robert S. Mueller, III, following Director Mueller's appearance before the Committee on July 23, 2003. The hearing concerned efforts to combat terrorism.

We regret the delay in responding but hope that this information is helpful to you. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,

William E. Moschella

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

Responses of Robert S. Mueller, III
Director
Federal Bureau of Investigation
Based Upon July 23, 2003 Testimony
Before the Senate Committee on the Judiciary

Questions Posed by Senator Hatch

As you know, I have been - and remain - concerned about the issues surrounding the death of Kenneth Michael Trentadue, an inmate who died in the Federal Transfer Center (FTC), in Oklahoma City, Oklahoma, on August 21, 1995. At approximately 3 a.m. on August 21, 1995, FTC correctional officers found Mr. Trentadue hanging by a bed sheet around his neck from a grate in his cell.

FTC officials notified the Oklahoma City FBI about Trentadue's death. I understand that a number of entities, including the FBI, the Justice Department's Civil Rights Division, the Justice Department's Inspector General's Office, the Oklahoma Medical Examiner's Office and the Oklahoma County District Attorney's Office have investigated this matter and reached a determination that Mr. Trentadue was not murdered but committed suicide. Notwithstanding the results of these investigations, I continue to have concerns as to the circumstances of Mr. Trentadue's death. To this end, I want to ask several follow up questions relating to the death of Kenneth Michael Trentadue:

1. **Please describe the FBI's involvement in the investigation of Mr. Trentadue's death, and the steps taken by the FBI during its investigation. In describing the FBI's involvement, please address all aspects of the FBI's investigation, including witness interviews, collection and processing of evidence, and all forensic examinations.**

Response:

The FBI's Oklahoma City Division was notified of Mr. Trentadue's death on August 21, 1995. The Oklahoma City Division took photographs, collected evidence, and opened an investigation into Mr. Trentadue's death. During the first few months of the investigation, the Oklahoma City Division interviewed Bureau of Prisons personnel at the Federal Transfer Facility, sent investigative leads to other field offices requesting that they locate and interview Trentadue family members and inmates who had been at the Federal Transfer Facility at the time of Mr. Trentadue's death, and sent evidence to the FBI Laboratory for forensic examination. In December 1995, the Oklahoma City Division assigned an additional Agent to the investigation in order to increase the investigative effort, and after that time additional forensic tests and numerous interviews were conducted.

An October 9, 1997, Department of Justice (DOJ) press release states that Federal prosecutors worked with the FBI and with a grand jury in Oklahoma, conducting a careful review of the evidence. That review included consulting experts and interviewing scores of witnesses, including prisoners, correctional officers, prison officials, law enforcement investigators, forensic experts, and medical personnel. As the DOJ press release indicates, the investigation into all allegations and potential leads failed to establish evidence that was inconsistent with a conclusion that Mr. Trentadue committed suicide.

Because appeals in the civil lawsuit brought by Trentadue against the United States are still pending, the FBI believes that further comment is inappropriate under DOJ regulations (28 C.F.R. section 50.2(c)).

2. **As you know, the Department of Justice's Inspector General criticized the FBI's investigation of Mr. Trentadue's death, citing deficiencies in the initial investigation, the handling of evidence, and the failure to conduct forensic testing of certain items of evidence. While the IG noted these deficiencies, the IG concluded that there was no evidence that the FBI engaged in any cover up relating to the death of Mr. Trentadue. Please address the IG's report and the specific issues relating to the FBI's handling of this investigation.**

Response:

While the full IG report is still subject to an 11/9/99 Protective Order issued by the U.S. District Court for the Western District of Oklahoma in the civil lawsuit brought by Trentadue against the United States, a published summary of the report includes six recommendations. Those recommendations address evidence control, the need for thorough documentation of investigative work and orderly file maintenance, and the importance of coordination with medical examiners and appropriate DOJ components when the FBI investigates deaths that may involve civil rights violations.

Documentation and file maintenance are fundamental aspects of effective investigations, and have been emphasized through additional training. Similarly, evidence control is crucial to the FBI's law enforcement mission, and has been the subject of additional training and policy clarifications. The FBI has addressed the concerns regarding inadequate coordination through a 1998 Memorandum of Understanding (MOU) with Oklahoma's Chief Medical Examiner and Bureau of Prisons officials.

3. **A grand jury investigation into the death of Mr. Trentadue was conducted in early 1996. Did the FBI assist in this investigation? How? What was the result of the grand jury investigation?**

Response:

It is our understanding that Federal Rule of Criminal Procedure 6(e) prohibits the disclosure of matters occurring before a grand jury in this context. The October 9, 1997, DOJ press release indicates that, following the grand jury, career prosecutors from DOJ's Civil Rights Division declined prosecution.

4. What conclusion did the FBI reach with regard to the circumstances of Mr. Trentadue's death? Please explain the reasons for the FBI's conclusion.

Response:

Although the FBI is constrained by 28 C.F.R. 50.2(c) in discussing an issue which is the subject of pending litigation, such as the cause of Mr. Trentadue's death, it is evident from the trial testimony of the FBI case agent, which is a matter of public record, that he determined that the cause of death was suicide. This determination was based on extensive investigations by the FBI and others (including the Medical Examiner for the State of Oklahoma and the Oklahoma County District Attorney's Office), which included numerous forensic examinations and numerous witness interviews. The injuries to Mr. Trentadue's body, the evidence in his cell, the apparent suicide note on the wall of his cell, and the testimony of the witnesses who found him hanging, as well as other evidence collected and analyzed by the FBI and other agencies, was consistent with suicide, and there was no credible evidence inconsistent with suicide (such as evidence of other persons being in his cell at the time of death or motive to harm him). This information was presented to Federal prosecutors, who considered it, along with information obtained through grand jury and other means, in determining whether prosecution was warranted. As indicated in DOJ's October 9, 1997, press release, the investigation "failed to establish credible evidence that any Bureau of Prison personnel violated federal civil rights laws. Nor did it establish evidence that was inconsistent with a conclusion that Trentadue committed suicide."

5. Are you aware of any evidence that is inconsistent with, or would alter, the conclusions reached by the Department of Justice Civil Rights' Division, the FBI, the Oklahoma State Medical Examiner's Office, the Department of Justice's Office of Inspector General, and the Oklahoma County District Attorney's Office that Mr. Trentadue was not murdered but that he committed suicide?

Response:

The FBI is not aware of any credible evidence that is inconsistent with, or would alter, the unanimous conclusion reached by these authorities.

Questions Posed by Senator Grassley

Grassley 1: **This is a question about the FBI recently awarding contracts to several former senior officials. The former top officials are Charles Mathews III, who recently retired from the position of Special Agent in Charge of the Portland, Oregon Division; Thomas Coyle, who held the position of Assistant Director, Personnel Division, and Special Agent in Charge of the Buffalo, New York Division; and Joseph Wolfinger, who retired in the late 1990s from the position of Assistant Director of the Training Division in Quantico, Virginia.**

First, it is my understanding that Mr. Mathews recently was selected to accompany several current FBI officials on a trip to Jakarta, Indonesia, to conduct training for law enforcement and security officials.

Second, it is my understanding that MPRI, an Alexandria, Virginia defense and security contracting company, was awarded a contract worth between $500,000 and $1.5 million to conduct counter-intelligence training for FBI agents. Mr. Wolfinger, who holds the title of Senior Vice President and General Manager, heads MPRI's "Alexandria Group," which "will provide the highest quality education, training and organizational expertise, to law enforcement and corporations around the world," according to the company's Web site, Mr. Coyle is listed as "Senior Law Enforcement Affiliate" for the company.

1. Regarding Mr. Wolfinger and Mr. Coyle.

A. Please provide a list of Mr. Wolfinger's involvement in counterintelligence cases during his career in the FBI, including the John Walker spy case. This list should include the name of the counterintelligence investigation, a brief description of the case, his role in the case, his title and place of work at the time. Also, please provide detailed information on any counterintelligence training Mr. Wolfinger participated in or led during his career at the FBI.

Response:

The FBI does not maintain its records in a manner that permits us to compile the information requested concerning an employee's involvement in particular cases. The following information concerning Mr. Wolfinger's assignments is available based on a review of the Bureau's automated personnel records. Because these records were not automated until 1975, information concerning his assignments between 1969, when he entered on duty, and 1975 is not currently available.

Date	Assignment
08/02/1975	Counterintelligence Division (Special Agent)
11/23/1975	Counterintelligence Division (Special Agent)
12/05/1976	Counterintelligence Division (Supervisory Special Agent)
03/09/1980	Counterintelligence Division (Supervisory Special Agent)
09/28/1981	Inspection Division (Supervisory Special Agent)
06/21/1982	Counterintelligence Division (Supervisory Special Agent)
11/28/1982	Counterintelligence Division (Supervisory Special Agent)
01/12/1983	Norfolk Division (Supervisory Special Agent)
07/05/1987	Norfolk Division (Supervisory Special Agent)
06/01/1992	Norfolk Division (Inspector)
04/19/1994	Buffalo Division (Special Agent in Charge)
10/10/1996	Training Division (Assistant Director)
01/01/1999	Retirement

B. What role did Mr. Wolfinger, David Szady, Assistant Director of the Counterintelligence Division, and Beverly Andrews, a Deputy Assistant Director in the Counterintelligence Division, play in the John Walker spy case? This reply should include their titles and place of work at the time, their duties and responsibilities, and the time period each person worked on the case.

Response:

From the inception of the John Walker investigation on February 25, 1985, until it was closed December 28, 1989, Mr. Wolfinger was assigned as the Foreign Counterintelligence Supervisor in the Norfolk Field Office in Norfolk, Virginia, and was responsible for the field supervision of the John Walker espionage case. Norfolk was the Office of Origin for the Walker investigation. Ms. Andress was a Special Agent and Co-Case Agent on the Walker investigation in the Norfolk Field Office from its initiation until she was transferred to the Washington Field Office in August of 1985. Mr. Szady was the Intelligence (now Counterintelligence) Division supervisor assigned to FBI Headquarters responsible for the Walker case. While the Walker case was a high priority, the duties and responsibilities of these three individuals at the time encompassed an array of operational and investigative activities related to the FBI's Foreign Counterintelligence mission.

C. Did their relationship play any role in the awarding of the contract to Mr. Wolfinger and MPRI?

Response:

The contract awarded to MPRI was the result of a competitive procurement action conducted in accordance with the Federal Acquisition Regulation (FAR). In addition to MPRI, requests for proposals were issued to Northrop Grumman (which has purchased TRW), Booz Allen and Hamilton, and Gray Hawk Systems. All of the above vendors, including MPRI, hold General Services Administration (GSA) contracts under the Federal Supply Schedule - Management, Organization and Business Improvement Services activities (MOBIS). To obtain such a contract, a corporation must participate in a screening process and be accepted by GSA. This process is separate and apart from any subsequent agency contract process. The FBI is, of course, not at all involved in the GSA screening process.

The individuals referenced in the inquiry (Mr. Szady and Ms. Andress) did not participate in either the solicitation process or the awarding of the contract, and their relationship to Mr. Wolfinger did not play any role in the awarding of the contract.

D. Did any FBI official, in the course of awarding the contract, consider the potential appearance of favoritism if the contract was awarded to Mr. Wolfinger and MPRI?

Response:

As stated above, award of the contract to MPRI was accomplished in accordance with the FAR and the terms and conditions of the MOBIS contract issued by GSA, which also must comply with the FAR.

FAR Part 6, Competition Requirements, articulates the procedures required of full and open competitive acquisition. Adherence to this Part, as well as the rest of the FAR, ensures that contract awards are made in a fair competitive manner without favoritism.

Because this acquisition was conducted as a full and open competition amongst the vendors on the GSA MOBIS contract and in accordance with the FAR, favoritism for a particular vendor clearly was not a consideration. There were no pre-conceived ideas as to who the successful contractor should or would be.

E. Please describe in detail the role that Mr. Wolfinger and Mr. Coyle play in supervising MPRI contract personnel conducting the counterintelligence training, and their role in fulfilling the contract in general.

Response:

Mr. Coyle is not a participant in the FBI's contract with MPRI.

Mr. Wolfinger's participation was described in MPRI's proposal as being the MPRI executive to provide support "in a reach back capacity." We interpret this to mean he would serve as a business manager responsible for acquiring resources for the contract activity.

The Chief Instructor for MPRI on the FBI's contract is responsible for supervising contract personnel conducting the training. The Chief Instructor is responsible for ensuring that the requirements of the contract are fulfilled. Mr. Wolfinger is not the Chief Instructor.

F. What objective performance measurements does the FBI employ to check whether MPRI personnel on this contract are tardy or absent from some training sessions, or lack the appropriate security clearances?

Response:

Lack of attendance or tardiness would be noted for each class by the FBI's Course Director (each class has an FBI employee from the Operational Training Unit (OTU) designated as Course Director). Such deficiencies would not be tolerated without a reasonable explanation. These instances would be reported to the Contracting Officer's Technical Representative (COTR). Appropriate actions would be taken by the COTR in conjunction with the Contracting Officer.

Prior to receiving the FBI's Request for Proposals, vendors were required to have clearances at the "SECRET" level. The course syllabus provided with the solicitation was classified. Security clearances are coordinated between the Counterterrorism Division's OTU and the FBI's Security Division. Only appropriately cleared personnel are allowed to participate in contract performance.

G. Please provide all documents and materials relating to performance evaluations of MPRI contract personnel, including for Mr. Wolfinger and Mr. Coyle.

Response:

As indicated above, Mr. Coyle is not a participant on the MPRI FBI contract.

Mr. Wolfinger's participation in the contract, as previously stated, was almost solely in the capacity of a business manager and not as a contract performer or instructor. Mr. Wolfinger did, however, provide instruction on one day as a substitute for an instructor who had a scheduling conflict.

With respect to the request for documents, we would be pleased to respond to a separate Committee oversight request from the Chairman regarding this matter.

H. Who was/were the deciding official(s) at the FBI who selected Mr. Wolfinger/MPRI for this contract? In addition, please identify all the persons involved in the contract process, including those persons dealing with the Request For Proposal, evaluating bids and making the decision to award the contract.

Response:

The FBI has identified three non-management level employees who served as technical evaluators. On the basis of that evaluation, the contract was awarded to MPRI by Ms. Doreen Williams, the Contracting Officer and an FBI employee.

Mr. Walter Meslar, FBI Supervisory Contract Specialist, participated as a reviewing official.

I. Please provide all records generated in the course of selecting a company for this contract, including information submitted by MPRI, Mr. Wolfinger, and other bidders on the contract, as well as FBI records. This reply should include the FBI's Request For Proposal, detailed criteria used to evaluate the bidders and select MPRI.

Response:

The FBI provided the Request for Proposals to vendors associated with the GSA MOBIS contract, under which GSA has prenegotiated hourly rates. MPRI was the only contractor who submitted a bid in response to the solicitation.

With respect to the request for documents, we would be pleased to respond to a separate Committee oversight request from the Chairman regarding this matter.

J. Please provide any records of contacts between the deciding official(s) for this contract and Mr. Szady or Ms. Andrews. This list of contacts should include copies of, among other things, all 1) e-mail; 2) facsimiles; 3) facsimile logs; 4) correspondence; 5) memoranda; 6) telephone bills and logs; 7) notes; 8) working papers; 9) reports; 10) minutes of meetings, transcripts or electronic recordings that the FBI or its employees, contractors or counsel have in their control or possession regarding the contract.

Response:

There were no contacts between the acquisition team/evaluators identified in response to H above and Mr. Szady or Ms. Andress relevant to the selection of MPRI as the contractor.

A meeting on February 7, 2003, was attended by Ms. Andress, Contract Specialist Doreen Williams, and others. The purpose of this meeting was to familiarize Ms. Andress with the Government contract process and did not address MPRI.

K. Please provide a copy of the contract. In addition, provide in summary form the compensation and general conditions and terms, as well as any modifications, deletions and changes.

Response:

The contract, issued under the GSA MOBIS schedule, requires the provision of a minimum of two Counterintelligence Operations training courses, each of which includes classroom instruction, practical exercises, field exercises, written assignments, and formal tests. The contract provides for a base year with an estimated cost of $77,571, and four option years costing a total of $332,498.60, with a total contract price if all options are exercised of $410,069.60.

With respect to the request for documents, we would be pleased to respond to a separate Committee oversight request from the Chairman regarding this matter.

2. Regarding Mr. Mathews.

A. By what criteria and on what basis was Mr. Mathews selected for the trip of FBI officials to Jakarta, Indonesia for a training seminar? This reply should include details of Mr. Mathews qualifications for the specific purpose of the trip. This reply should also include, if relevant, the FBI's Request For Proposal, Mr. Mathews bid, and other bids. If this was not a competitively bid contract, please explain the selection process in detail.

Response:

The Department of State's Anti-terrorism Assistance Program (DOS/ATA) asked the FBI's International Training and Assistance Unit (ITAU) to put together 12 courses over 15 weeks on relatively short notice. One course was Major Case Management, the seventh in the series of courses. On or about May 5, 2003, Supervisory Special Agent (SSA) Debra A. Lees asked the lead instructor, former Special Agent in Charge (SAC) Brian Carroll, a contractor to the University of Virginia (UVA), to assist in identifying additional individuals he felt would be appropriate to assist in the training. With respect to the Indonesian Initiative, it was determined that an instructor of ethics would be appropriate, as well as a "sitting" SAC or Assistant Special Agent in Charge (ASAC) with current management oversight of active terrorism cases.

In an effort to appropriately staff the training commitment, Program Coordinator SSA Lees contacted Unit Chief (UC) Michael Ferrence of the Leadership Development Unit, assigned to the FBI Academy; James Bernazzani, an FBI executive assigned to the Counterterrorism Center;

and Patrick Patterson, Acting Assistant Director of the Training Division. Mr. Ferrence advised SSA Lees of his unavailability, Mr. Bernazzani was not available due to a new assignment, and Mr. Patterson's attempt to obtain a commitment from an ASAC in the FBI's Los Angeles Division was also unsuccessful. Thereafter, SSA Lees contacted UC Judson M. Ray, who was on assignment in Dubai, United Arab Emirates, who advised SSA Lees to contact SAC Charles Mathews. UC Ray advised SSA Lees that SAC Mathews was a "sitting" SAC with counterterrorism experience, who had previously taken time out of his busy schedule to support the FBI's international training obligations, and had provided well-received training in the past.

It is always difficult to obtain training assistance from those responsible for "operational" areas, particularly with respect to counterterrorism because of the demands placed on that area in the current threat environment. The unavailability of those initially contacted confirmed that the FBI would encounter the predicted difficulty in this case. SAC Mathews had over 33 years of FBI experience, 25 of which were spent as a manager within the FBI. Also, as indicated above, SAC Mathews was a "sitting" SAC at the time we were seeking training assistance. Because SAC Mathews had historically supported the FBI's international training commitments by assigning agent resources, had provided training himself on prior occasions, was successful on those occasions (receiving excellent reviews for each presentation), and was qualified to provide this particular training, he was again asked to participate.

He advised, however, that he was reaching the age of 57 and would be required to retire at that age (under 5 U.S.C. section 8335(b)) unless he was granted an extension. While SAC Mathews did not know if an extension would be granted, he advised that he would be willing to provide the training in another (non-employee) capacity in the absence of extension. SAC Mathews did not receive his extension; therefore, an effort was made to utilize an existing and approved mechanism to contract for his services. The mechanism existed within the FBI's ITAU, which was permitted to hire instructors and support personnel under an existing UVA contract intended to assist in the development and implementation of the International Law Enforcement Academies and other training commitments. The contract was originally designed to service the National Academy but was later extended to the ITAU program. Under this contract, personnel who had the required skills were offered the training assignment and an appropriate stipend by UVA. If a prospective candidate accepted the assignment, UVA would be responsible for processing the appropriate employment and tax documents. On behalf of the FBI, the ITAU would also complete a separate document provided by UVA which addressed details associated with the training assignment, allowable expenses, and an agreed upon stipend. Both the Program Manager and the ITAU Chief were required to sign the document indicating final approval. UVA thereafter entered into an independent contract with the prospective instructor and hired him/her as an adjunct instructor based on the agreed upon stipend and travel related expenses. Following the training, the instructor was required to submit a bill and receipts directly to UVA for payment. UVA thereafter submitted a bill to the FBI through the ITAU for approval and reimbursement.

This process has proven to be highly effective and efficient, as it enables the FBI's ITAU to operate under an existing contract. These professional stipends are determined based upon

market analysis, academic credentials, experience, background, and other factors aimed at recruiting the very best people to assist the FBI. ITAU Chief Ray has historically opposed spending appropriated funds on outside personnel resources if they can be identified from within the "on-board" ranks of the FBI, as noted by the limited use of four contractor support employees for Fiscal Year (FY) 2002. This commitment is further evidenced by a recent communication drafted by UC Ray recommending that the FBI Director encourage division heads to become more actively supportive of international training requests for instructors.

Although one team member was reluctant to embrace the inclusion of SAC Mathews on this trip during the planning stages, and did not make the specifics of his concern known until well after the trip was completed, SAC Mathews was selected based upon the criteria set forth above.

In summary, although the FBI intended to send former SAC Mathews on the training assignment to Jakarta, Indonesia because he was the best qualified employee available, he retired before the training was initiated. Because there was an existing and approved contract available through UVA to provide instructor services to the FBI's National Academy and ITAU, former SAC Mathews was referred to UVA to be considered for the Jakarta training assignment. UVA elected to utilize former SAC Mathews' expertise based on the FBI referral. UVA processed all of the required documents to utilize former SAC Mathews in the Jakarta training assignment; thereafter, the FBI was billed for the expenses incurred and Mathews received a stipend for his services.

B. Who was/were the deciding official(s) at the FBI who selected Mr. Mathews for this trip? Please identify all persons - including title and place of work - involved in selecting Mr. Mathews for the trip.

Response:

UC Judson M. Ray, ITAU, FBI Academy, Quantico, Virginia; and SSA Debra A. Lees, Program Manager for the Indonesian Initiative.

C. Was Mr. Mathews compensation approximately $7,000 for this 10-day trip, plus expenses? If not, please explain what his compensation was, including expenses billed to the FBI.

Response:

Mr. Matthews was compensated $6,300 for the 10-day trip ($700 professional stipend per day for nine days), plus expenses. His travel expenses were vouchered under a University of Virginia invoice in the amount of $8,224.90.

D. Please provide the names, affiliation and titles of all other persons who went on the trip, whether they are or were employed by the US government or not.

Response:

1) Brian Carroll, retired SAC. 2) SSA Patrick Kiernan, Office of Law Enforcement Ethics, Office of Professional Responsibility (OPR), FBI Academy, Quantico, Virginia.

E. Please provide detailed information on the nature and purpose of the trip, including the names and a brief synopsis of lectures or seminars provided by Mr. Mathews and others on the trip.

Response:

In early FY 2003, at the request of DOS, ITAU accepted a tasking order pursuant to an existing MOU between the FBI and DOS/ATA to provide 12 courses over 15 weeks in Indonesia aimed at developing investigative capacity for the newly created investigative directorate of Indonesia to combat international terrorism. The budget for this tasking was approximately $760,000. The Major Case Management course was one of the 12 courses delivered in Indonesia.

The purpose of the course was to develop the skills of foreign police executives in the management of major terrorist investigations. The course was designed to enhance the management ability of senior police officials, supervisors and chiefs of investigations, and principal investigators of major terrorist criminal investigations. The 30 participants in this course included primary officials of the Indonesian National Police who would be responsible for combating terrorism and would work closely with U.S. law enforcement entities.

Below are listed the specific topics taught each day, beginning on June 2 and ending on June 6, 2003, and by whom they were taught.

Day One - Monday, June 2, 2003
Introduction to Course - review manual and contents
Lesson 2-1, Elements of a Major Case - Brian Carroll
Lesson 2-2, Theory of Management - Brian Carroll
Lesson 2-3, Overview of Crisis Management - **Charlie Mathews**
Lesson 1-6, Case Study - Pat Kiernan

Day Two - Tuesday, June 3, 2003
Lesson 2-3, Major Case Management Overview - Brian Carroll
Lesson 3-1, Elements of the Major Case (planning) - Brian Carroll
Review Model of Plan furnished to Students (discuss roles and assignments) - **Charlie Mathews**
Lesson 7-2, Gaining Public Support (Ethics) - Pat Kiernan

Day Three - Wednesday, June 4, 2003
Lesson 7-2, Ethics (continued) - Pat Kiernan
Lesson 1-3, Overview of Terrorism - **Charlie Mathews**

Lesson 3-2, Organizing the Major Case - Brian Carroll
Lesson 8-2, Managing Information in the Major Case - **Charlie Mathews** and Brian Carroll
Visit from Police Director - Comments for group from **Charlie Mathews**

Day Four - Thursday, June 5, 2003
Lesson 4-3, What Solves the Case - **Charlie Mathews**
Lesson 7-1, Gaining Public Support (media) - Pat Kiernan
Lesson 5-2, Developing the Major Case Team - Brian Carroll
Lesson 4-1, Change Management (development of vision statements, exercise to develop mission statement) - Brian Carroll, **Charlie Mathews**, Pat Kiernan as facilitators

Day Five - Friday, June 6, 2003
Lesson 3-3, The Executive and Planning (strategic planning) - Brian Carroll
Lesson 10-1, Strengths, Weaknesses, Opportunities, Threats - Brian Carroll (substitute for ill **Charlie Mathews**)
Exercise to Develop a Strategic Plan - Brian Carroll, **Charlie Mathews**, Pat Kiernan as facilitators
Summary of Major Case Management - Brian Carroll, with participation of Pat Kiernan and **Charlie Mathews**
Critiques

F. What official government-issued identification or identity documents did Mr. Mathews use for his travel?

Response:

Mr. Mathews was initially issued a visa in his official passport. Upon initial contact with Mr. Mathews, he advised he was subject to mandatory retirement at the end of the month of May, whereas the departure for the trip would have been on May 28, 2003. Mr. Mathews indicated, however, that he was willing to provide the training in a non-employee capacity if he retired before accomplishing the training. It was determined that he could be hired by UVA as an independent contractor if this occurred. Mr. Mathews advised there was a slim possibility the Director would extend him to remain as an employee of the FBI past his mandatory retirement date, so it was decided he would fill out the necessary paperwork as an on-board employee as well as prepare to be hired as a contractor through the University of Virginia. Since Mr. Mathews had both a tourist and an official passport, SSA Lees contacted UC Coral Losinski, from the Protocol Affairs Unit at FBI Headquarters, to ask for her guidance with respect to SAC Mathews' special situation. UC Losinski requested visas for both passports in order to have both available in preparation for either scenario. An e-mail was generated to confirm the situation. Ultimately, the Protocol Affairs Unit was able to acquire a visa only for Mr. Mathews' official passport, but not for his tourist passport. Both the official passport, with a visa, and the tourist passport were forwarded to Mr. Mathews at his residence the day he was to fly to Indonesia.

G. Please provide all records of any evaluations of Mr. Mathews performance and behavior on the trip.

Response:

With respect to the request for documents, we would be pleased to respond to a separate Committee oversight request from the Chairman regarding this matter.

H. Please provide a copy of Mr. Mathews' contract for this trip. In addition, please provide copies of, among other things, all 1) e-mail; 2) facsimiles; 3) facsimile logs; 4) correspondence; 5) memoranda; 6) telephone bills and logs; 7) notes; 8) working papers; 9) reports; 10) minutes of meetings, transcripts or electronic recordings that the FBI or its employees, contractors or counsel have in their control or possession regarding the contract.

Response:

With respect to the request for documents, we would be pleased to respond to a separate Committee oversight request from the Chairman regarding this matter.

I. Will Mr. Mathews be considered for future contracts with the FBI?

Response:

The FBI will again review all of the information available in Mr. Mathews' personnel records and also consider any other information obtained from other law enforcement and government entities before a final decision can be made.

Grassley 2. In May, Secretary Ridge and Attorney General Ashcroft signed a Memorandum of Agreement which provided that the FBI will take the lead on all terrorist financing investigations. According to this Memorandum, the FBI will have sole responsibility for reviewing all Department of Homeland Security money laundering leads to determine if there is a tie to terrorist financing. It is my understanding from this Memorandum that all future money laundering investigations originating within DHS will proceed only after the FBI determines that there is no terrorist financing relationship.

A. Can you please provide the Committee with your assessment of why this memorandum was needed, and why the Committee should be reassured that

time will not be wasted in pursuing investigative leads while they are vetted through this new bureaucratic process?

B. Director Mueller, can you please share with the Committee what guidelines will the FBI use to make the terrorist financing determination, as well as a brief description of what part other departments and agencies, including the Department of the Treasury, play in making this determination? Can you please provide a copy of these guidelines for the Record?

C. What effect does the Agreement have on the Department of Homeland Security's ability to proceed with these financial crimes investigations, independent of the FBI? In other words, will DHS be taking the lead on certain investigations prior to the FBI making a terrorist financing determination or the investigation proceed only after the determination has been made?

Response:

The Memorandum of Agreement (MOA) concerning terrorist financing investigations signed May 13, 2003 provides for a joint, coordinated approach to terrorist financing investigations utilizing the resources and expertise of the FBI and the Department of Homeland Security (DHS). The MOA identifies DOJ "as the lead law enforcement agency for combating terrorism . . . and terrorist financing" and designates the FBI as the lead in terrorist financing investigations. The MOA clarifies the roles and responsibilities of each organization and establishes mechanisms to de-conflict overlapping investigations to ensure priority targets are addressed more effectively in a combined effort.

Pursuant to the MOA, Operation Greenquest (OGQ) ceased to exist as a program name as of June 30, 2003. It was agreed that DHS would focus its activities on protecting the integrity of U.S. financial infrastructures, and DHS implemented the Bureau of Immigration and Customs Enforcement (BICE) led Operation Cornerstone. Operation Cornerstone will identify vulnerabilities in financial systems through which criminals launder their illicit proceeds, bring the criminals to justice, and work to eliminate the vulnerabilities. The majority of the former OGQ case inventory was criminal cases, with no nexus to terrorism. These cases were converted from OGQ to Operation Cornerstone. Those cases that had a nexus to terrorism and were investigated by the former OGQ are currently being assessed for transition to the appropriate FBI Joint Terrorism Task Force (JTTF). Ongoing and future Operation Cornerstone investigations that develop links to terrorism will be referred to the FBI through the Terrorist Financing Operations Section (TFOS). BICE and TFOS are coordinating investigative initiatives that will enable BICE to identify financial systemic vulnerabilities and enable TFOS to identify ties to terrorism and terrorist financing. In addition, there is a liaison from BICE assigned to TFOS, and investigators from BICE will be represented on the JTTFs.

The MOA formalizes the sharing of intelligence on terrorist financing investigations in a manner that ensures the protection of classified information while assuring that DHS is aware of terrorism links to ongoing investigations. Members of TFOS have been assigned to the financial division at BICE to facilitate the sharing of information and the identification of terrorism related investigations.

The FBI and BICE have established procedures utilizing the existing framework at BICE to vet money laundering and financial crimes-related investigations initiated by BICE to ascertain if any terrorism nexus exists. These procedures are non-intrusive and collaborative in nature, and allow BICE financial investigations to continue unimpeded. If a terrorism nexus is established, the Chief (FBI Agent) and Deputy Chief (BICE employee) of TFOS determine the most effective and efficient means of addressing the investigation, taking into consideration the impact of the investigation on the United States Government's overall counter-terrorism priorities.

The overall government approach to terrorist financing investigations is coordinated through the Policy Coordinating Committee on Terrorist Financing (PCC) sponsored by the National Security Council (NSC). Through the PCC, the array of tools available to the United States can be considered and the most effective tools selected to address a specific target. The PCC is composed of senior officials from DOJ, Treasury Department, DOS, FBI, DHS, Central Intelligence Agency (CIA), and the NSC. Other components of government also participate in the PCC on a regular basis.

Grassley 3: Prior to its move to the Department of Homeland Security, the Customs Service conducted several successful money laundering investigations. Now, much of that expertise and experience has moved to BICE. On July 8, Secretary Ridge announced the creation of Operation Cornerstone which is a new financial crimes investigation initiative for BICE.

What specific money laundering investigative authorities have been given to Operation Cornerstone?

Response:

In 1990, DOJ, the Treasury Department, and the Chief Postal Inspector signed an MOU regarding money laundering investigations. Section III, entitled "Investigatory Jurisdiction" states, "A bureau's investigatory actions in pursuit of section 1956 or 1957 violation shall be conducted only in those areas in which the investigating bureau has existing jurisdiction, independent of the money laundering statutes, as set forth in this Section." To date, there is no other MOU superseding this document. Upon the creation of DHS and the consolidation of the United States Customs Service and the Immigration and Naturalization Service into DHS's BICE, BICE assumed the jurisdictional authorities of its constituent services. There have been no additional money laundering authorities provided to Operation Cornerstone.

Grassley 4. **If we are going to address money laundering in a coordinated and effective manner, we must have an effective plan of action to direct the attack. Current law requires the Secretary of the Treasury, in consultation with the Attorney General, must submit a yearly National Money Laundering Strategy to Congress by February 1. So far, Congress has not received the 2003 Strategy, now nearly five months after the statutory deadline, and my repeated requests for its delivery have gone unanswered.**

A. **Have either of you been consulted in the drafting of this Strategy?**

Response:

The 2003 National Money Laundering Strategy was transmitted to Congress in November, 2003. The FBI was consulted and had the opportunity to review drafts provided by the Treasury Department to DOJ. The FBI worked closely with DOJ and provided comments.

B. **With creation of DHS and the increased focus on financial investigations at the FBI, do either of you care to comment on who should be overseeing the crafting and implementation of our National Money Laundering Strategy?**

Response:

It is the opinion of the FBI that the drafter of the Strategy is irrelevant as long as there is a collegial process in which each department plays an equal role in crafting and implementing the Strategy.

Grassley 5: **Information Sharing.**

A. **Immediately after 9/11, I met with numerous first responders in Iowa and they shared with me that in addition to money and communications equipment, their next greatest need is improved information sharing from federal law enforcement agencies. Since that meeting, I have continued to hear that concern voiced. I appreciate your efforts to improve information sharing by using the drug and terrorism task forces, but information sharing should occur outside the walls of a task force.**

Not too long ago, the FBI issued a white paper entitled, "National Incident-Based Reporting System (NIBRS): What's In It For Law Enforcement." This paper states that "now that UCR Automation design has been completed, and a prototype has system created, may valuable ways to use IBR data have been identified."

- **I would like to know what the FBI has done to implement the vision of this paper.**

Response:

Since the composition of "NIBRS: What's In It for Law Enforcement," there has been significant progress in developing the Uniform Crime Reporting (UCR) Program to enhance its contribution to the national mandate for information sharing among all segments of law enforcement. The FBI has conducted three national meetings of UCR stakeholders, which spawned a Strategic Planning process to better delineate and advance the vision enunciated by this white paper on a national scale. Currently, police departments, sheriffs' offices, and federal law enforcement agencies in thirteen states have agreed to a prototyping and piloting process for developmental modeling and field-testing purposes. Also, a major contract vehicle is now in place enabling the necessary technical and business development processes to begin.

- **Has NIBRS been fully automated, and if not, why not?**

Response:

No. NIBRS has not been fully automated. However, the above-mentioned movement has occurred during a period in which both the FBI and DOJ have been working to identify the best solutions for federal law enforcement information sharing. This extensive work has involved significant liaison for the purpose of consensus building, not only within the federal law enforcement sphere, but also with those responsible for significant state and local law enforcement information sharing coordination. At present, the FBI's CJIS Division plans to dedicate approximately $11 million for the design, prototyping, and piloting phases of the UCR Automation Project mentioned above. Prior to these activities, states have not fully embraced the NIBRS concept and federal funding has not been provided to support NIBRS development needs.

- **What efforts have been taken to increase the input of IBR data by federal, state, and local law enforcement agencies?**

Response:

The information sharing initiative described above leverages prior NIBRS development efforts and advances NIBRS goals by adding identifying information to the NIBRS data set. This approach has been well received by state and local agencies. It not only will deliver the information sought by NIBRS, it will provide a very significant information sharing benefit across all levels of law enforcement.

- **Has the vision of improving information sharing by use of IBR data been abandoned? If so, how does the FBI plan to use IBR data and improve the sharing of information?**

Response:

No. On the contrary, the vision of using NIBRS for information sharing purposes is now stronger and more recognized by the law enforcement community than it has ever been.

The CJIS Division has proposed to the Nation's law enforcement community the creation of a "System of Services" information sharing concept which is based upon the premise of a comprehensive data interchange and correlation system operating between all of the CJIS Division's vast information repositories. A reconstituted, enhanced NIBRS data set will be at the heart of the concept's operation. It will act as law enforcement's main data input system triggering the CJIS System of Services information sharing process.

B. In an effort to impact terrorism and other crimes the FBI's Counterterrorism Division created an Information Sharing Initiative (ISI) in St. Louis, Missouri. This project was to integrate the investigative information of federal, state, and local agencies within a single database, effectively providing local law enforcement with a single source for all criminal investigative records.

- **I would like an update on how the ISI project in St. Louis is progressing. Are local law enforcement agencies participating in the project? Have any agencies pulled out of the project, and if so why? Does the FBI still plan to expand this project to other metropolitan areas or regions? If so, are any of these areas rural?**

Response:

In late August 2003, the FBI signed a firm fixed price contract with Veridian to complete the St. Louis project, which became operational on 10/16/03. Four local agencies participate in the project: Missouri State Highway Patrol, Illinois State Police, St. Louis Metropolitan Police Department, and St. Louis County Police. No agencies have pulled out of the project, although the St. Clair County Police will not be in the initial release due to an issue with a virus in their system. The FBI does not plan on expanding this project to other areas.

This project is being used as a proof of concept only, to demonstrate that sharing information between state, local, and federal agencies is feasible. The program the FBI will use to provide information sharing nationwide (given a successful proof of concept) is the Multi-agency Information Sharing Initiative (MISI), which will provide information sharing using a centralized data repository.

- **What role does NIBRS play in the St. Louis project, and is IBR data stored in this single database and shared with the law enforcement agencies participating in the project?**

Response:

NIBRS does not play a direct role in the St. Louis project. However, under the FBI Information Sharing Plan, NIBRS data will be stored in the centralized MISI database and thus be accessible to participating agencies.

Questions Posed by Senator Leahy

Leahy 1. **According to a report issued by the Justice Department's Office of the Inspector General earlier this year, Assistant Director Robert Jordan, head of the Office of Professional Responsibility, acted negatively against congressional witnesses such as John Roberts, creating the appearance of retaliation for their cooperation with this Committee.**

A. **What if anything has the Bureau done to follow up on this finding by the OIG?**

Response:

The DOJ Office of the Inspector General (OIG) conducted an inquiry into allegations that OPR UC John Roberts was retaliated against for his appearance on an October 26, 2002 broadcast of "*60 Minutes*." During this broadcast, UC Roberts made statements that were viewed as critical of the FBI's investigation and adjudication of employee misconduct. Following UC Roberts' appearance on the broadcast, it was alleged that former OPR Assistant Director (AD), Robert Jordan, attempted to retaliate against UC Roberts for his comments. In a report dated February 21, 2003, IG Glenn A. Fine concluded that former AD Jordan did not intend to threaten or harass Roberts for his statements on the show. However, the IG did find that former AD Jordan exhibited poor judgment in his management of the situation. As a result of this finding, former AD Jordan received non-disciplinary counseling and was required to attend training regarding "whistleblower" protections. Former AD Jordan attended that training on April 23, 2003. It should be noted that the DOJ OIG inquiry was related to UC Roberts' appearance on "*60 Minutes*" rather than to his previous Congressional testimony.

B. **Did Mr. Jordan's recent transfer to head a field office in Seattle have anything to do with OIG's findings?**

Response:

The IG's report did not play any role in the decision to transfer Mr. Jordan to head the Portland Division of the FBI. Mr. Jordan expressed an interest in the Portland Division vacancy and was determined by a Senior Executive Service Career Board to be the best qualified candidate for the vacancy. Mr. Jordan has had an exemplary career with the FBI , excelling in every position to which he has been assigned. Based upon recommendation of the Career Board, and in view of the totality of Mr. Jordan's career, he was selected to be the SAC of the FBI's Portland Division.

Leahy 2. **The FBI continues to refuse the release of Special Agent Robert Wright's manuscript, "Fatal Betrayals of the Intelligence Mission," which Agent Wright submitted for prepublication review in October 2001. Please explain why it has already taken more than 20 months to review Agent Wright's**

manuscript for classified or sensitive information, and when you expect the review process to be complete.

Response:

Special Agent (SA) Wright submitted an amended copy of the manuscript "Fatal Betrayal of the Intelligence Mission" on February 10, 2002. Due to the sensitive nature of the material, particularly material that related to open investigations and matters that were pending before a Federal grand jury, it was necessary for the amended manuscript to be reviewed by affected U.S. Attorney Offices and FBI field offices. The FBI informed SA Wright, by letter dated May 10, 2002, that he would not be allowed to publish the material in its current iteration because it contained information regarding open investigations, matters before a Federal grand jury, and sensitive law enforcement techniques.

In response to a congressional request, the FBI has undertaken another review of the manuscript. SA Wright will be notified of the results of that review and, if the publication of portions of the manuscript is determined to be unobjectionable, SA Wright may release those portions to Congress if he so chooses.

Leahy 3. **The Clean Diamonds Trade Act passed earlier this year by an overwhelming bipartisan vote. This legislation is designed to reduce the flow of rough diamonds, which have been reportedly used to help finance terrorist groups, including al-Qaeda, and fuel bloody civil wars in Africa. Both of these activities have serious implications for U.S. national security. According to information that I received, the Administration has until July 31, 2003, to issue regulations to implement the Clean Diamonds Trade Act and come into compliance with the Kimberley Process - the international regime established to stop the illicit trade in blood diamonds. The deadline is upon us.**

A. **Please advise us on the status of these regulations. If the regulations have, in fact, been implemented, please provide a copy or summary of their substance.**

Response:

The Kimberley Process Certification Scheme, or simply the Kimberley Process, was entered into by fifty diamond-importing and exporting countries in South Africa in November 2002, with the aim of curbing the trade in "conflict" or "blood" gems. Pursuant to that agreement, President Bush signed the Clean Diamond Trade Act into law on April 25, 2003, to help eliminate conflict diamonds from the global trade. That Act went into effect on July 30, 2003, upon the issuance of Executive Order 13312 and implementing regulations, thus bringing the U.S. into compliance with the Kimberley Process.

The Act requires that diamonds be tracked from mines to jewelry stores in order to stop the use of these gems to support rebel groups in Africa, including Sierra Leone, Angola, and the Congo. The Act requires that the diamond industry, to include dealers and traders, obtain written certificates tracking the origin of the gems from their sources all the way to the ultimate purchasers of the gems. Dealers may purchase diamonds only from sellers who attest that the gems originated from official, non-conflict diamond sources. Therefore, for example, the buyer of a diamond ring for his fiancée in Peoria IL will receive this warranty certifying the diamond was not mined or used to finance rebel groups in Africa. It is hoped that this will eliminate conflict diamonds from the global supply chain, similar to the way the elephant ivory trade was stopped.

Several agencies have promulgated regulations pursuant to the Clean Diamonds Trade Act, including the Treasury Department's Office of Foreign Assets Control (at 31 C.F.R. Parts 591 and 592) and the Census Bureau (at 15 C.F.R. Part 30).

B. Do you believe that the Kimberley Process Certification Scheme will be helpful in curtailing the trade in conflict diamonds and drying up sources of terrorist funding related to this commerce?

Response:

It is believed this agreement will implement certain auditing and record keeping requirements within the U.S. diamond industry, as part of their normal course of business. It is not known which U.S. agency, if any, will be verifying the implementation to ensure compliance with the Kimberley Process; implementation and vetting may be done from within the diamond industry itself.

The Kimberley Process is a good first step but will not stop the illicit diamond trade. The majority of gems in Western Africa continue to be exported illicitly outside the Kimberley Process. It is very easy to smuggle gems to nearby countries and bribe corrupt government officials to certify the gems as having originated from there. FBI interviews conducted during a trip to Sierra Leone determined this practice is occurring in Sierra Leone. The majority of gems in Sierra Leone are not being exported through official channels but smuggled into Guinea, where they are falsely certified and then "legally" exported into Belgium and worldwide. This is common throughout the region. For example, the country of Ghana does not produce diamonds, yet exports millions of carats every year.

On the terrorist financing side, the Financial Crimes Enforcement Network (FinCEN) is preparing rules regarding precious gems pursuant to the USA PATRIOT Act. The PATRIOT Act placed requirements on the jewelry industry (precious metals, stones, and jewels) even before the Clean Diamond Act was passed.

It should be noted that the FBI, Defense Intelligence Agency (DIA), and CIA, as well as Great Britain, Belgium, and other countries, have been unable to substantiate allegations made in the

Washington Post linking al Qaeda to the conflict diamond trade. The FBI conducted a thorough investigation, including investigation in West Africa, Sierra Leone, and Burkina Faso, in early June 2003 on this issue.

The FBI has met with the U.S. DOS, U.S. intelligence community, Belgium military and law enforcement authorities, Scotland Yard, Israeli police, and others to discuss these issues. DOS and the U.S. intelligence community, as well as the international U.N., European Union organizations, and Non-Government Organizations (NGOs), need to do more to monitor the movement of gems from within and outside Africa to ensure compliance with the Kimberley Process by the countries in which the gems are mined. The international community should engage officials in these countries to increase compliance with the Process.

The Kimberley Process and its certification scheme are clearly very good steps and should work with regard to the U.S., as most diamonds already have these certificates prior to arrival here. The U.S. purchases the majority of worldwide gems, and almost all have the proper certificates before they arrive. The Clean Diamond Trade Act will ensure the process continues to be followed within the U.S.

Leahy 4. **Shortly before you testified last week, the Committee received answers to written questions submitted to you more than 13 months earlier, following our oversight hearing of June 6, 2002. In response to a question I had posed regarding the so-called "Phoenix EC," you stated that "Access to the Phoenix EC was restricted to the Phoenix Division and FBI Headquarters," By contrast, the recently released "Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001," by the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence reflects that the Phoenix EC was sent not only to FBI Headquarters but also to two agents on an international terrorism squad in the New York field office. Can you clarify this apparent inconsistency?**

Response:

The "apparent inconsistency" arises because the cited passages concern two separate issues. My testimony responded to questions concerning the Bureau's Automated Case Support (ACS) system and specifically the ability of individuals who were not recipients of the Phoenix EC to query ACS using search terms and locate the document. The "Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001" passage discusses handling of the document by individuals who were designated recipients of the Phoenix EC.

As set forth above, written questions were submitted in connection with my testimony before the Senate Judiciary Committee on June 6, 2002. With respect to the "Phoenix EC," these questions arose from my testimony that the Phoenix EC was not available to agents in Minnesota who were investigating the Moussaoui case. The specific question referenced above asked whether access

to the Phoenix EC within ACS was blocked or restricted in any fashion. As cited above, the FBI's written response stated that access to the Phoenix EC was restricted to the Phoenix Division and FBI Headquarters. This response is accurate to the extent it seeks to explain why FBI Agents assigned to the Minneapolis Division, doing an ACS query for information of interest in their case, would not have located or identified the Phoenix EC through an ACS search. Prior to September 11, 2001, ACS access to counterterrorism intelligence investigations was restricted in order to protect sensitive information, including sources and methods. After September 11, 2001, access restrictions were removed to facilitate the free flow of information between criminal and intelligence investigations.

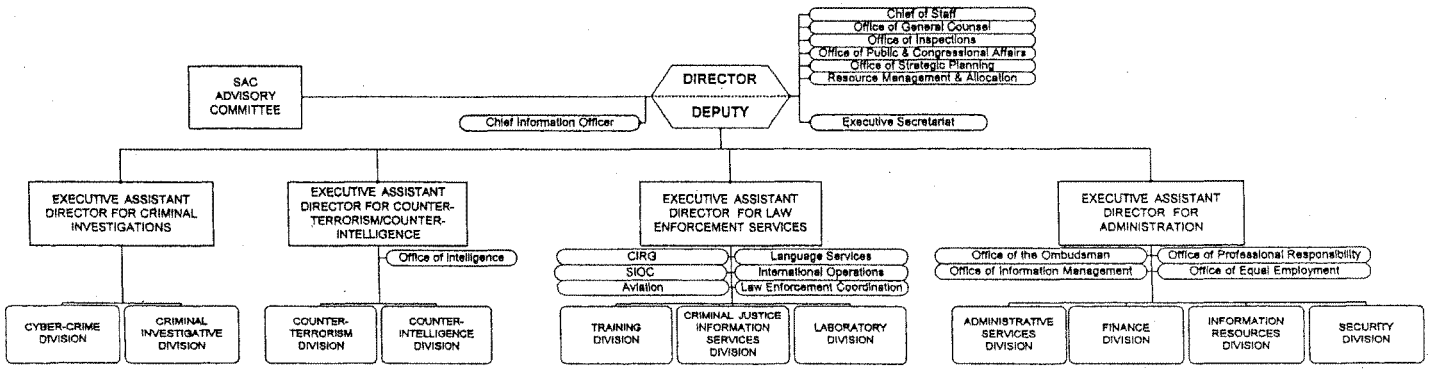
The question also cites to discussion of the Phoenix EC in the Joint Inquiry Final Report. The report states that the Phoenix Agent sent the communication to four individuals in the Radical Fundamentalist Unit and two individuals in the Usama Bin Ladin Unit in the Counterterrorism Division at FBI Headquarters, and to two Agents on international terrorism squads in the New York Office. These individuals were on the addressee line of the document. The report goes on to state that only three of the eight addressees recall reading the communication prior to September 11, 2001. The fact that the document was addressed to specific individuals in the New York Office is not inconsistent with the statement that prior to September 11, 2001, access to the document through ACS was restricted to FBIHQ and Phoenix.

Leahy 5. Please provide organizational charts of the FBI before and after the May 2002 reorganization.

Response:

FBI Organization Charts dated 11/26/01, 5/29/02, and 5/21/03 follow.

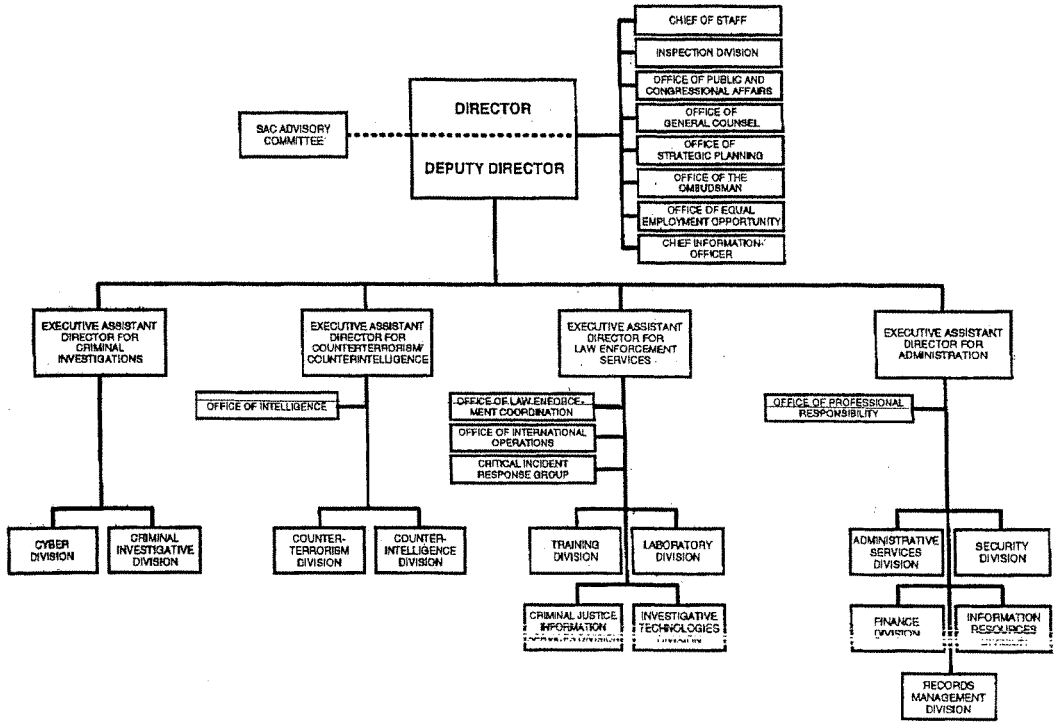
FEDERAL BUREAU OF INVESTIGATION



Approved: John Ashcroft — Date: 11.26.01

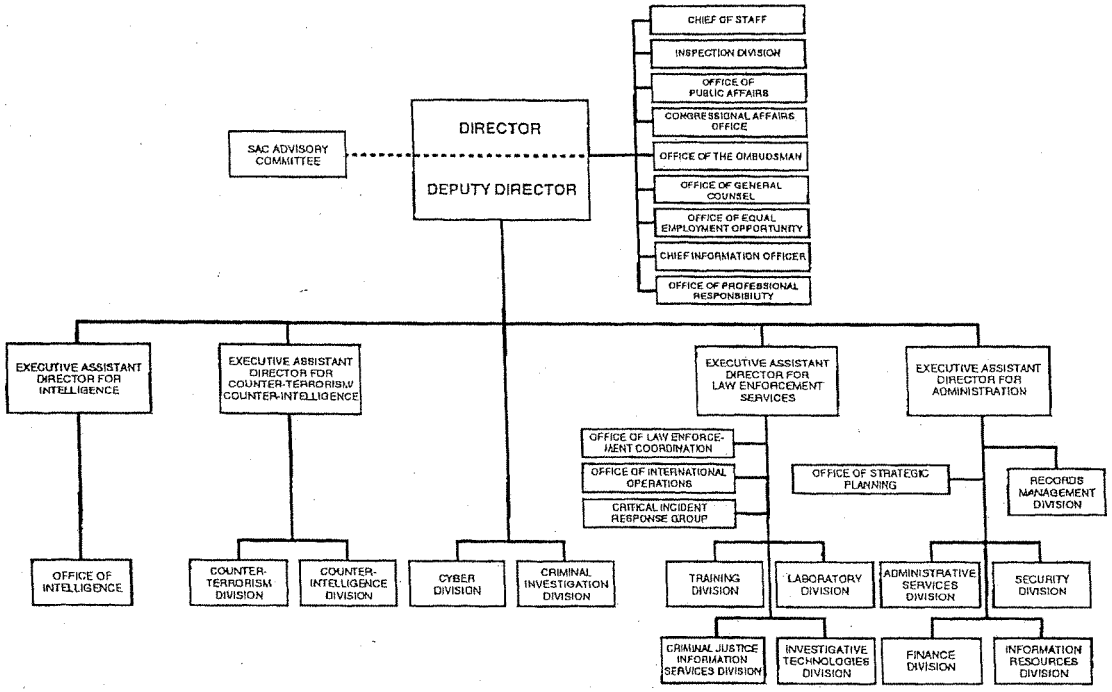
John Ashcroft
Attorney General

FEDERAL BUREAU OF INVESTIGATION



Approved by: John D. Ashcroft — JOHN D. ASHCROFT, Attorney General — Date: 5-29-02

FEDERAL BUREAU OF INVESTIGATION



Approved by: John Ashcroft Date: 5/21/03
JOHN O. ASHCROFT

Leahy 6. **The Grassley-Leahy FBI Reform Act would require the establishment of a counterintelligence screening polygraph program for FBI personnel in exceptionally sensitive positions. The program would include several protections for employees, including procedures for identifying and addressing "false positive" results and ensuring quality assurance and control. No adverse personnel actions could be taken against solely by reason of an employee's physiological reaction during a polygraph examination without further investigation and the Director's personal determination that the personnel action is justified. Further, employees would have prompt access to any unclassified reports regarding an examination that relates to any adverse personnel action taken against them. Please describe the polygraph program that is now in place at the FBI, and how it differs from the statutory proposal contained in Grassley-Leahy FBI Reform Act.**

Response:

Those involved in the FBI's Personnel Security Polygraph Program (PSPP) remain very aware of the possibility of "false positives" (calling a polygraph result deceptive when the subject was in fact not deceptive when responding to the relevant questions) during personnel security polygraphs (PSPs), and the FBI PSPP has been established in a manner to ensure a deceptive polygraph result is not the sole determinant of adverse personnel actions.

Experience has shown that the vast majority of FBI employees taking the PSP examination successfully complete the process. However, if upon completion of a thorough polygraph examination, there is a "no opinion," inconclusive, or deceptive result, the result is considered "unexplained" or referred to as an "examination pending resolution." Consistent with existing policy, no adverse action is taken based upon the polygraph results alone; however, further review, inquiry, and/or investigation is initiated to resolve the unexplained PSP results.

Unexplained PSP examination results are reported by the Polygraph Unit to the AD, Security Division, who functions as the Security Program Manager (SPM). The SPM initiates an immediate review, in conjunction with the employee's division head, the Counterintelligence Division, and/or other appropriate management officials, of the risk associated with maintaining the employee's access to sensitive information while attempts are made to resolve the unexplained examination results. A representative of the Office of General Counsel (OGC) participates in the process.

These entities additionally conduct a review or investigation to explain the results. All inquiries are tailored to the specific case. A Senior Review Panel composed of the ADs or their designees from the employee's division, Counterintelligence Division, OPR, and Administrative Services Division monitor the equity and reasonableness of the PSPP process. The General Counsel or a designee participates on the panel as a legal advisor. The SRP also reserves the right to invite

representatives of other FBI components, as appropriate, to provide input. The SRP considers both the requirement to safeguard national security and the rights of the affected employee.

If, after a thorough review, inquiry, or investigation of an unexplained PSP examination, no information exists to indicate that the person has engaged in any activity that violates existing laws, security policies, or guidelines, the Security Division conducts an assessment of the risks of allowing the person to continue to access sensitive and/or national security information at the level enjoyed prior to the PSP examination. The Security Division will prepare recommendations to the SRP to mitigate any identified risks. This mitigation may range from no action deemed necessary to mitigate risks, to additional monitoring of the person's access to sensitive and/or national security information, to a possible recommendation that the person be reassigned to a position that presents less risk to the national security. In the event that a Security Division recommendation will result in an action deemed adverse to the person, the Director of the FBI will personally approve implementation of the recommendation after a review of all available information.

If significant derogatory information exists, the SPM may suspend or revoke an employee's security clearance. In cases resulting in revocation, the employee may take advantage of due process procedures established by Executive Order 12968. The FBI has an established due process mechanism which allows for a review of the revocation action by DOJ's Access Review Committee.

Literature and a video tape presentation have been prepared by the Security Division's Polygraph Unit to explain the PSPP and the procedures employed in conducting PSP examinations.

The polygraph technique is not regarded by the FBI as an exact science, but it is considered an effective investigative tool. Knowing that false polygraph results do occur on occasion, the FBI has taken steps to minimize the possibility of the occurrence by providing extensive training to all of its polygraph examiners and ensuring all PSPs polygraph examination results are throughly reviewed at the FBI Polygraph Unit before a final opinion is rendered.

The FBI's PSPP differs from the Grassley-Leahy statutory proposal only with respect to the frequency of testing and the population subject to the PSP. Under the Grassley-Leahy statute, those subject to the PSP are identified as FBI employees and FBI contractor employees who are in exceptionally sensitive positions as identified by the FBI Director. The FBI PSPP proposes to afford PSPs to JTTF members throughout the country who have access to sensitive FBI information. Additionally, pursuant to the FBI PSPP those in exceptionally sensitive positions are subject to both random PSPs and to five-year periodic PSPs. Compelled PSPs may be directed by the AD, Security Division, when certain circumstances exist.

Currently, all new FBI employees are subject to PSP prior to employment. On-board employees assigned to the Counterintelligence, Counterterrorism, and Security Divisions are subject to PSP both periodically (in conjunction with the periodic security background reinvestigation generally conducted every five years) and randomly. The following non-Bureau personnel are subject to

PSP upon initial clearance, access to FBI information or information systems, or FBI space, and to both periodic and random PSP thereafter: Joint Task Force members, contractors (such as contract linguists and contract adjudicators), employees of FBI contractors (such as Dyncorp and SAIC), and others who perform functions requiring access to FBI information, information systems, and space if there is a requirement to perform a function similar to, or to have access to the same sensitivity of information as, an FBI employee who is subject to PSP. In addition, the SPM is authorized to compel any Bureau or non-Bureau person with access to FBI information or space to submit to a polygraph examination whose scope is tailored to resolve specific issues which may impact on the person's trustworthiness. The SPM will use the 13 Adjudicative Guidelines associated with Executive Order 12698 to determine whether a PSP examination is warranted.

The procedures to be utilized by the Security Division to conduct PSPs are the same for employees, contractors, or others with access to FBI information, information systems, or space. Upon determination that a PSP examination is required, the Security Division will conduct a review of the individual's security sub file. This review will focus on determining whether any security issues should be addressed with the employee. If PSP is appropriate, the individual will be notified that he or she is to be scheduled for a PSP, provided with literature explaining the PSP process in detail, and offered the opportunity to view a video presentation prepared by the Polygraph Unit demonstrating the PSP process.

Prior to the PSP, the individual will be interviewed regarding the counterintelligence areas to be addressed during the PSP, and will be offered the opportunity to fully explain any issues that may be of concern during the PSP. The results of the interview will be provided to the Polygraph Examiner to assist in the preparation and conduct of the PSP.

The Security Division's goal is to ensure that the PSPP is applied as accurately and consistently as possible. Established quality control and review procedures are applied to the PSP process. Upon completion of the examination, the polygraph charts are forwarded to the Polygraph Unit for review and the application of quality control procedures prior to a determination of the results of the examination. Therefore, individuals will not be advised by the Polygraph Examiner of the results of the PSP, but will be advised of successful completion as soon as possible thereafter.

Leahy 7. **One of the most serious problems highlighted by the Leung espionage case concerns the Bureau's use of Confidential Informants, or "CIs". Any experienced agent or prosecutor knows that most problems in the handling of CIs arise in two situations: first, the CI goes "bad" and either commits a crime or witnesses one, and second, the handling agent becomes too close with the CI. In the Leung case, both problems appear to have occurred. I am concerned that the Justice Department's new guidelines regarding the use of CIs may not provide sufficient guidance to field agents. For example, on the issue of relationships between CIs and FBI agents, the guidelines state only**

that "a federal law enforcement agent shall not socialize with a CI except to the extent necessary and appropriate for operational reasons."

A. Are there any other guidelines or memoranda provided to FBI agents that expressly and clearly prohibit them from having any sexual relationship with a CI, whether or not they would deem it "necessary and appropriate for operational reasons"?

Response:

Yes. To comply with the "Attorney General Guidelines Regarding The Use Of Confidential Informants," specific FBI policy was drafted and published to employees in an internal Operations manual. These guidelines reiterate the Attorney General Guidelines, and in some cases are more restrictive regarding the use of confidential informants (CIs). For example, this policy states: "An FBI Agent shall not . . . [s]ocialize with a CI except to the extent necessary and appropriate for operational reasons and, under no circumstances, may an agent engage in an intimate and unduly familiar social relationship with a CI." (Emphasis added.) The term "intimate" has always been interpreted by the FBI to include a sexual relationship. The FBI policy prohibiting inappropriate socializing and intimate relationships between agents and CIs extends to the handling of all human sources.

In addition to the above, the FBI has drafted a new provision, currently under review, that clearly prohibits an FBI agent from having any sexual relationship with a cooperating witness.

B. In light of the Leung case, do you have any plans to further tighten controls on CIs and the agents who handle them?

Response:

Yes. The FBI's human intelligence base consists of CIs, cooperating witnesses, and "assets" who provide information to the FBI concerning criminal and intelligence matters. Leung was a human source considered by the FBI to be an "asset." "Assets" include those who provide information on matters related to national security.

The FBI's Criminal Informant and Asset program guidelines and policy continue to be updated to permit the recruitment of viable sources with adequate controls, including FBI management's monitoring of the relationship between the control/handling agent and the source. To enhance this capability, the FBI is currently drafting policy to establish an Asset review process similar to the current Confidential Informant Review Committee (CIRC). FBI policy established in 2002 requires assets falling into certain categories to be subject to an Asset Validation Review (AVR) process within the first year of recruitment and every 18 months thereafter. The AVR consists of case agent assessment, production evaluation, and counterintelligence review conducted by the

appropriate substantive unit. FBI supervisors are required to conduct 60-day file reviews for privileged sources and 90-day file reviews for all other criminal sources.

The following additional procedures and program enhancements have improved the security, effectiveness, and productivity of this program.

After each field office inspection, a communication is generated by the Inspection Division and forwarded to the Asset/Informant Unit (A/IU) at FBIHQ, which is responsible for the administration and oversight of human source programs. If the inspection results in findings concerning deficiencies in this area, instructions or recommendations for training or other improvements are communicated to the field office. The field office must respond in writing within a specified period, indicating the resolution for each deficiency.

The FBI's A/IU Staffing Level was enhanced in FY 2002. The current on-board staff consists of six SSAs and one UC, as well as 17 Program Analysts. To enhance the A/IU's program oversight, SSA's with strong operational backgrounds handling Assets (as opposed to CIs) were hired into the unit in FY 2003.

During June 2003, approximately 50 FBI Special Agents with less than five years of investigative experience participated in a one-week informant development in-service hosted by the A/IU. This training focused on the management and operation of human sources. Similar training will be conducted on an on-going basis.

As mandated by the Attorney General Guidelines, the CIRC is comprised of the Deputy AD, FBI Criminal Investigative Division, a Deputy Assistant Attorney General for DOJ's Criminal Division, and a member of the Federal prosecutor's Office. The CIRC was formed to provide oversight regarding the operation of high-level, long-term (more than six years), or privileged informants, as well as those affiliated with the media. To date, 273 informants have been reviewed. Pursuant to the CIRC process, the FBI closed two sources in the New York Division.

The A/IU published its first Asset Training Manual in FY 2001 and its first newsletter in September 2003. The newsletter is designed to keep agents apprized of current guidelines and policy regarding the administration and oversight of human sources. Additionally, a new "Advisory Notice" was created to inform field offices of policy violations in order to enhance policy awareness and compliance.

The A/IU initiated a two-week Field Orientation Training Program (FOTP) in FY 2002 designed to bring SAs to FBIHQ. This program gives the SAs first-hand experience managing sources from a headquarters perspective and also gives participants a clear sense of the complex issues confronted by FBIHQ in the operation and administration of human sources on a day to day basis. In FY 2002, five Agents participated in the FOTP.

Finally, the FBI developed a "Back To Basics" training lesson plan to be used by each Asset/Informant Coordinator in conducting Human Source Recruitment and Management training for all assigned FBI Special Agents.

C. With respect to the Leung case, did any FBI employee report suspicions at any time of Leung's romantic involvement with one or more FBI agents and, if so, how were those reports handled?

Response:

No. All matters related to inappropriate activity by FBI employees are reported to OPR. OPR records indicate that no FBI employee reported suspicions of any type of romantic involvement by Leung with any FBI agent.

Leahy 8. Two months ago, you announced the establishment of a Commission to review the FBI's Office of Professional Responsibility, to be headed by former Attorney General Griffin Bell and former FBI Associate Director Lee Colwell. You stated at that time what many of us on this Committee have been saying for some time, namely, that there is "an erosion of trust" within the FBI, and I commend you for taking this step to reassess and correct the problem. I am sure you would agree that independence and objectivity will be critical to the Commission's work.

A. Are you confident that the Commission has the independence and unfettered access that it needs to do its job properly?

Response:

I am fully confident in the independence of the OPR review led by Judge Bell and Dr. Colwell. I am also confident that they have been provided with unfettered access to all FBI personnel and pertinent information regarding the OPR process. Both Judge Bell and Dr. Colwell have unquestioned reputations for integrity and sound judgment. They have been provided with everything they have requested, including access to information and personnel they deem necessary to make reasoned decisions on the issues facing OPR. In addition to interviewing key personnel in the OPR process (both current and former employees), Judge Bell, Dr. Colwell, and their team have interviewed all FBI employees who independently requested to be interviewed or otherwise sought to participate in the study process. Where appropriate, the Commission has spoken to and received information from FBI employees independent of any official FBI involvement. During sensitive interviews, they have also purposely excluded FBI personnel to insure an atmosphere conducive to a full and frank discussion of the issues. It is my understanding that all of the interviews have been fully candid and beneficial. As Judge Bell and Dr. Colwell complete their fact-finding, they have requested that an additional communication be sent to all FBI employees requesting their input in any manner in which the individual employee

feels most comfortable. Based on the above, I am fully confident that the Commission has full independence and access to all pertinent information.

B. In particular, have you or Attorney Genera] Ashcroft placed any restrictions on the Commission's ability to conduct interviews in private (as was done with respect to Governor Kean's 9/11 Commission)?

Response:

No restrictions have been placed on the ability of Judge Bell, Dr. Colwell, or their team to conduct interviews, either by myself or the Attorney General. At the inception of the study, I informed both Judge Bell and Dr. Colwell that they would have full access to all FBI personnel. To date, we have not placed any restrictions on who may be interviewed. Similarly, there have been no restrictions placed upon the study's areas of inquiry.

Leahy 9. No one disagrees that post-9/11, the FBI must make investigating and preventing terrorism its number one priority. Equally, no one can deny the resource burdens placed on State and local law enforcement authorities when hundreds of Federal agents are reassigned from their traditional crime-fighting duties. What if anything is the FBI doing to address the concerns of its State and local partners about the reallocation of agent resources and the resulting void that they must fill to investigate drugs, bank robberies and other types of violent crime?

Response:

As the Senator points out, the emerging burden of fighting terrorism has been placed squarely on the shoulders of the law enforcement community. This new priority has not only tasked every state, local, and federal law enforcement agency in a worldwide effort to fight terrorism, but challenged every agency's ability to address the continuing crime problems their communities face.

The FBI has worked closely with state and local law enforcement over the years to address violent crime and other crime issues that impact local communities. The FBI works closely with FBI National Academy graduates and continues to build and participate in multi-agency task forces as force multipliers to prepare its state and local partners to assume a greater share of this law enforcement role. We also recognize that limitations on our resources can adversely impact our partners to some extent, and we continue to seek ways to minimize that impact. We are working to strengthen our collaboration with state and local law enforcement on these issues through efforts like the Director's Law Enforcement Advisory Group and by participating in our partners' annual association conferences.

Leahy 10. **It has been reported that virtually every agent assigned the responsibility of investigating civil rights violations has been reassigned in the last year. How many special agents and analysts are currently assigned full-time to investigating civil rights violations? How many were assigned to this duty in each of the last 5 years?**

Response:

Civil Rights, like every other investigative program within the FBI, was affected substantially by the events of September 11, 2001. In FY 1999 the equivalent of 190 full-time agents were assigned to civil rights investigations, the equivalent of 161 were assigned in FY 2000, and the equivalent of 141 were assigned in FY 2001.

Immediately after the terrorist attacks, agents who had been involved extensively in civil rights investigations were needed to cover investigative matters connected to the September 11 investigation. This did not mean that important work in civil rights went unaddressed. For example, in response to a potential developing crime problem, backlash crimes against Arab and Muslim Americans, the FBI responded aggressively. I instructed FBI field offices to give these backlash attacks the highest priority.

However, the prioritization of terrorism investigations has affected the utilization of agents previously assigned to civil rights cases. In FY 2002, the FBI assigned the equivalent of 105 full-time agents, and through the 3rd Quarter of FY 2003, we have assigned the equivalent of 116 full-time agents.

There are no analysts assigned full-time to civil rights investigations in field offices. Investigative assistants and financial analysts are, however, assigned to civil rights matters as needed at the discretion of managers in the field.

At FBI Headquarters, the Civil Rights Program is managed full-time by six SSAs under the direction of a UC. There are four program analysts and three program assistants assigned full-time to the Civil Rights Unit.

Leahy 11. **Please define what the FBI considers to be a "civil rights violation" or a case credited to "civil rights enforcement."**

Response:

The FBI Civil Rights Program is comprised of four sub-programs. These sub-programs are:

1. Hate Crimes
2. Color of Law
3. Freedom of Access to Clinics

4. Involuntary Servitude and Slavery

Hate Crimes - The FBI has jurisdiction to investigate those crimes against a person or property wherein the motivation appears to have been based on bias against a person's race, religion, or ethnicity/national origin. Hate crimes (also referred to as Bias Motivated Crimes) investigated by the FBI are most commonly prosecuted under 18 U.S.C. section 245 (Interference with Federally Protected Activities), 18 U.S.C. section 247 (Damage to Religious Property), and 42 U.S.C. section 3631 (Discrimination in Housing). Traditional crimes which can qualify as hate crimes include murder, manslaughter, forcible rape, aggravated assault, simple assault, intimidation, arson, and destruction, damage, or vandalism of property. Typical FBI investigations in this area include cross burnings, assaults, and threatening communications. Church arson and other cases of malicious damage to religious institutions are also investigated under the hate crimes sub-program. In housing cases, disability, gender, and family status can form the basis for bias crime investigations.

Color of Law - Color of Law violations involve any individual acting under the authority granted by a federal, state, or local law. Such acts are done outside the boundaries of lawful authority. In addition to law enforcement officials, persons who are bound by laws, statutes, ordinances, or customs (such as mayors, councilpersons, judges, nursing home proprietors, and security guards) can be investigated for Color of Law violations. Color of Law cases are typically prosecuted under 18 U.S.C. section 242, Deprivation of Rights Under Color of Law, and 18 U.S.C. section 241 Conspiracy Against Rights. Federal prosecutions under these statutes are only brought when the government can prove that the subject willfully deprived a victim of civil rights. Crimes committed in this area include excessive force, assaults, sexual assaults, deprivation of property, false arrest, and the fabrication of evidence.

Freedom of Access to Clinics - The Freedom of Access to Clinic Entrances (FACE) Act (18 U.S.C. section 248) prohibits the use of force, or threat of force, or physical obstruction for the purpose of injuring, intimidating, or interfering with a person seeking to obtain or provide reproductive health services. Damage or destruction of property at these sites is also prohibited. The FBI investigates cases involving the use of force, threat of force, or physical obstruction: to intentionally injure, intimidate, or interfere with persons because they are seeking or providing reproductive health services; to intimidate others from seeking or providing such services; and/or to damage or destroy the property of a facility because the facility provides reproductive health care services.

Involuntary Servitude and Slavery - Involuntary Servitude and Slavery crimes (also referred to as Human Trafficking crimes) involve the acquisition of human beings through the use or threat of force, fraud, or coercion for the purpose of sexual exploitation or forced labor. These cases often involve the recruitment and smuggling of foreign nationals into the United States for work under appalling conditions. Increasingly, the FBI is investigating cases involving domestic servitude and the sex trade. The Trafficking Victims Protection Act of 2000 created new criminal prohibitions against forced labor (18 U.S.C. section 1589), trafficking in connection

with servitude (18 U.S.C. section 1590), and sex trafficking of children or by force, fraud, or coercion (18 U.S.C. section 1591). The Mann Act (18 U.S.C. section 2421) is also applied in involuntary servitude and slavery cases.

Leahy 12. Since September 11, 2001, please list all indictments, informations and arrests for any civil rights cases in which the FBI has been the lead investigative agency. The list should include the name of the defendant(s), the violation charged, the district in which the case was brought, the status of the case, and a brief summary of the facts.

Response:

Statistical accomplishments, i.e., arrests, informations, and indictments within FBI programs, are tracked on a quarterly basis. The quarter immediately following September 11, 2001, began with the start of FY 2002, on October 1, 2001. Since that time, the FBI has initiated a total of 3,624 civil rights investigations (through the 3rd quarter of FY 2003). The FBI is not always the lead investigative agency. In some cases, the investigations are conducted jointly with other agencies, and in others the FBI provides assistance and support, such as technical expertise or lab assistance. In FY 2002, and through the 3rd quarter of FY 2003, there were 216 arrests, 184 indictments, and 47 informations recorded for the civil rights program. For the same period, 304 convictions were obtained in civil rights cases.

The following summaries represent significant cases where the FBI was the lead investigative agency and for which an arrest, indictment, information, or conviction was obtained since September 11, 2001.

- Field Office: Albuquerque

  Defendant(s): Alfred Clyde Stinnett

  Violation(s): Deprivation of Rights Under Color of Law, Witness Tampering

  Judicial District: District of New Mexico

  Summary: On November 7, 2001, Officer Stinnett, Ruidoso Police Department, arrested a female juvenile for being a runaway. Stinnett reportedly used unnecessary force during the arrest. While the juvenile handcuffed to a bench in a holding cell, Stinnett grabbed her by the arm and threw her to the floor. The incident was recorded on video and received significant media attention. In January 2003, Stinnett was indicted by a federal grand jury.

- FBI Field Office: Atlanta

  Defendants(s): Grady Anderson, Roy Cobb, Kenneth R. Royal

  Violation(s): Conspiracy Against Rights, Use of Fire in Commission of a Felony

  Judicial District: Middle District of Georgia

  Summary: The defendants in this case were sentenced in 2001 for burning a cross at the home of the only African-American residents in an all-white neighborhood in Richland, Georgia. The victims had previously found a note affixed to their front door which read, "Leave Niggers." The case generated significant local media attention. All three subjects pled guilty. Cobb was sentenced to 18 months in prison, Royal was sentenced to 6 months of home confinement, and Anderson was sentenced to 5 years of supervised release.

- FBI Field Office: Atlanta

  Defendants(s): Michael Craig Jordan, David Archie Morris

  Violation(s): Use of Fire in the Commission of a Felony, Conspiracy Against Rights

  Judicial District: Middle District of Georgia

  Summary: Defendants were indicted in February 2003 for burning a cross on a field adjacent to the home of a Spanish female and an African-American male. Both defendants confessed their roles during the investigation and acknowledged the crime was racially motivated.

- FBI Field Office: Atlanta

  Defendants(s): Santos Ruiz Gonzales, Thomas Kszyminski, et al

  Violation(s): Deprivation of Civil Rights Under Color of Law

  Judicial District: Middle District of Georgia

Summary: Investigation was conducted by the FBI into injuries sustained by the victim. The investigation revealed that the victim was struck on the top of his head while handcuffed behind his back, causing severe injuries. Numerous inconsistencies in the stories of the officers were developed through interviews and review of reports related to the incident. Pursuant to a federal grand jury investigation, one subject pled guilty and indictments of other subjects are expected.

- FBI Field Office: Birmingham

  Defendant(s): Thomas Edwin Blanton, Jr.; Bobby Frank Cherry

  Violation(s): Religious Discrimination - Force/Violence, Civil Rights - Racial Discrimination

  Judicial District: Northern District of Alabama, State of Alabama

  Summary: This case involved the bombing of the 16th Street Baptist Church, which occurred on 09/15/1963 and resulted in the deaths of four young African-American girls and injury of 19 others. Following the incident, an extensive investigation was undertaken and closed after five years, with no arrests being made. In 1976, an additional investigation of the bombing incident resulted in the arrest and conviction of Robert E. Chambliss. The original investigation indicated that four individuals were involved in the direct placement of the explosive device which detonated inside the church. These individuals were identified as Herman Frank Cash (deceased), Chambliss, Blanton, and Cherry. On 5/16/2000, Blanton and Cherry were indicted by a Jefferson County, Alabama, grand jury. The FBI was the lead agency on this investigation and charges were brought in state court, where Assistant United States Attorneys tried the case with state prosecutors. Both subjects were charged with four counts of murder in connection with arson or bombing and four counts of universal malice. On 5/1/2001, Blanton was convicted and sentenced to four life terms in prison. Cherry was convicted on 5/22/2002 and received a life sentence.

- FBI Field Office: Birmingham

Defendant(s): Kevin Wade Jung, Kenneth L. Pollard, Jr.

Violation(s): Deprivation of Civil Rights Under Color of Law

Judicial District: Northern District of Alabama

Summary: On 06/28/2003, Sergeant Jung and Officer Pollard were involved in the arrest of the victim for DUI and resisting arrest. Statements allegedly made by these officers to paramedics were inconsistent with the statements made to investigators of the District Attorney's Office. Statements by witnesses were also inconsistent with subject officers' statements. The victim sustained massive head injuries and was hospitalized on life support. The FBI worked the case with local authorities and both officers were indicted on state charges. Trial is pending.

- FBI Field Office: Birmingham

  Defendants(s): Michael Allen White, Benjamin Michael Sloan, Lee Wayne Bray

  Violation(s): Conspiracy Against Rights, Interference in Housing Rights, Use of Fire in the Commission of a Felony

  Judicial District: Northern District of Alabama

  Summary: FBI investigation determined that on June 14, 2002, the subjects conspired to build and burn a cross on the front yard of a home occupied by white residents who were friends of an African-American male. The subjects set the cross on fire and smashed windows in the dwelling to awaken the occupants. The case generated significant interest in the local community and media.

  All three subjects pled guilty. Bray was sentenced to 6 years in prison, Sloan was sentenced to 8 years, and White received a sentence of 11 years and 6 months.

- FBI Field Office: Boston

  Defendants(s): Brian Bailey, Eric Connelly, Anthony Nuzzo, Melvin Massuco, Michael Ross, Patrick Cook

Violation(s): Deprivation of Civil Rights, Obstruction, Witness Tampering, Conspiracy.

Judicial District: District of Massachusetts

Summary: The subjects were correctional officers at the Suffolk County Jail, Boston, Massachusetts. They conspired to use unjustified and excessive force over a two-year period to punish and retaliate against pre-trial detainees who were perceived to be disruptive, disrespectful, and/or assaultive toward officers. The officers also wrote false reports and gave false and misleading statements to investigators regarding the incidents of excessive force at the jail. This case contributed to the removal of the Suffolk County Sheriff and his entire management staff.

Bailey was convicted in March 2003 of conspiracy. Connelly, Nuzzo, and Massuco pled guilty to all charges, and Ross and Cook entered guilty pleas to one count in exchange for testimony at trial.

- FBI Field Office: Buffalo

  Defendants(s): James Charles Kopp

  Violation(s): FACE Act

  Judicial District: Western District of New York

  Summary: On 10/23/1998, Dr. Barnett A. Slepian, a provider of reproductive health services, was shot and killed by a single round fired through a window of his home in a Buffalo, NY, suburb. Joint investigation by the FBI, state, and local law enforcement led to the identification of James Kopp as the subject. Kopp was charged with federal and state violations in November 1998, and remained a fugitive until his arrest in France on 3/29/2001. The case has generated national media attention. Kopp will be prosecuted under the federal indictment of November 2000, charging FACE Act and firearms violations.

- FBI Field Office: Chicago

  Defendants(s): Shaun L. Derifield, Harley F. Hermes

Violation(s): Conspiracy Against Rights, Discrimination in Housing

Judicial District: Northern District of Illinois

Summary: On 8/30/2002, the four victims (all black female teenagers) were walking home from a football game when the subjects (white males) confronted them. The subjects repeatedly called the victims racial epithets and threatened bodily harm. One of the victims was surrounded by the subjects after the three other victims ran. The subjects continued to verbally taunt the victim who remained with racial insults and to threaten her with bodily harm. At least one subject placed a folding knife with an open blade to her throat while threatening to kill her. She was not physically harmed. Hermes admitted to being a member of the White Aryan Nation. Derifield was affiliated with the Outlaw Hammerskins. Both subjects were members of the Lake County Skinheads.

The subjects were arrested by FBI agents on federal warrants in May 2003 and pled guilty to conspiracy to violate the teenagers' civil rights in August and September 2003.

- FBI Field Office: Dallas

Defendant(s): Dino Antonio Molina, Dilcia Suyapa Aguilar-Galindo, Susana Aguilar-Galindo, Marco Antonio Sanchez, Steven Flores, Maria De Los Angeles Galindo-Carrasco

Violations: Involuntary Servitude/Slavery

Judicial District: Northern District of Texas

Summary: On 4/04/2002, investigation revealed dozens of young Honduran females were being illegally smuggled into the United States where they were made to work as lap dancers and prostitutes to repay their importation fees. Investigation led to the identification of subject Molina and associates. On 5/16/2002, approximately 200 federal, state and local law enforcement personnel conducted a search/raid of three Fort Worth strip clubs and six residences. A total of 88 people were taken into custody on immigration and naturalization charges, including 39

victims. Molina and five of his associates were among those arrested. Numerous convictions have been obtained in the case, including the convictions of the principal subjects, who have received lengthy prison terms.

- FBI Field Office: Denver

  Defendant(s): David Armstrong; Pedro Castillo; Jake Geiger; Charlotte Gutierrez; Michael LaVallee; Roderick Schultz; Robert Verbickas

  Violations: Conspiracy Against Rights; Deprivation of Rights Under Color of Law

  Judicial District: District of Colorado

  Summary: Investigation was initiated on 05/22/1996, when a staff member at the United States Penitentiary - High Security in Florence, Colorado, reported that two Correctional Officers (COs) physically assaulted a restrained inmate. Investigation determined that several COs at the facility were known to regularly abuse restrained or compliant inmates. These COs, known as the "the Cowboys," engaged in this pattern of abuse over a number of years. Investigation further revealed that the subjects falsified incident reports and fabricated injuries and allegations of prisoner misconduct to justify the use of force. Additionally, the subjects threatened other COs to secure their silence. Three COs pled guilty to federal color of law violations (Armstrong, Gutierrez, and Geiger) and testified against other former COs (LaVallee, Schultz, and Verbickas), whose sentences ranged from 30 to 41 months in prison. Castillo, who was also convicted of Color of Law violations, died prior to sentencing.

- FBI Field Office: Honolulu

  Defendants(s): Kil Soo Lee, et al

  Violation(s): Involuntary Servitude, Money Laundering, Conspiracy

  Judicial District: District of Hawaii

Summary: After a 3-month jury trial, Kil Soo Lee was convicted on 14 of 18 counts, including Involuntary Servitude and Slavery, Extortion, Money Laundering, and Conspiracy charges. Two other subjects were convicted pursuant to guilty pleas. The case involved the defendants' abuses of Vietnamese and Chinese workers who were brought into American Samoa to work at the Daewoosa Samoa, Limited (Daewoosa), garment factory from late 1998 through February, 2001. Daewoosa was owned and operated by Kil Soo Lee. The prosecution case included numerous Vietnamese witnesses who described how they were recruited to work for Daewoosa under false pretenses, required to pay large amounts of money to travel and gain entry into American Samoa, held in the Daewoosa compound against their will, forced to work for little to no pay, and beaten when they did not work.

- FBI Field Office: Houston

  Defendant(s): Frank Bird

  Violations: FACE Act

  Judicial District: Southern District of Texas

  Summary: On 3/7/2003, Frank Bird, a frequent anti-abortion protester, intentionally drove his white commercial van into the front entrance of a Planned Parenthood facility in downtown Houston because he wanted to "stop the killing." Bird was taken into custody by the Houston Police Department and charged with Felony Criminal Mischief. Bird was indicted on 5/9/2003 and arrested on 5/20/2003 due to his unwillingness to comply with restrictions placed on him by the court. A Stipulated Bench Trial set for 7/14/2003 was postponed to allow U.S. District Court Judge Kenneth Hoyt to review Motions and provide a written response. On 8/18/2003, Judge Hoyt dismissed the charges against Bird, ruling that a portion of the FACE Act was unconstitutional. In 2000, the United States Supreme Court ruled Congress had no authority to "regulate non-economic, violent criminal conduct based solely on that conduct's aggregate affect on interstate commerce." Judge Hoyt applied this Supreme Court decision as precedent in the Bird case. It

has not been decided whether Judge Hoyt's ruling will be appealed.

- FBI Field Office: Indianapolis

  Defendants(s): Mark A. White

  Violation(s): Deprivation of Rights Under Color of Law

  Judicial District: Northern District of Indiana

  Summary: The victim was beaten by Gary, Indiana, police officer White and then placed under arrest while at the hospital receiving medical attention. White was in uniform working a second employment when he became involved in a fight with the victim. Witness statements verified the victim's complaint. White was convicted in a jury trial and sentenced to 27 months' incarceration and $750.00 in restitution.

- FBI Field Office: Jackson

  Defendants(s): Ernest Henry Avants

  Violation(s): Murder on Federally Owned Land

  Judicial District: Southern District of Mississippi

  Summary: In February 2003, the defendant, who had previously been acquitted by a state jury in 1967, was convicted on federal charges of aiding and abetting a 1966 murder and was sentenced to life in prison. The federal charges were predicated on the fact that the homicide occurred on federal property, within the Homochitto National Forest near Natchez, Mississippi. The prosecution presented evidence that the victim, a 67-year-old black farmer, was killed in the forest by Avants and two accomplices, one of whom allegedly indicated that the killing was part of a larger plot to lure Martin Luther King, Jr., to Natchez to be assassinated.

- FBI Field Office: Knoxville

  Defendants(s): Jason B. Kitts, Travis L. Kitts

Violation(s): Hate Crime in Connection with a Federally Protected Activity

Judicial District: Eastern District of Tennessee

Summary: On 9/24/2001, subjects Jason and Travis Kitts physically attacked and injured two employees of the Pine Trace Inn. At the time of the attack, the Kitts believed the employees to be Muslims from the Middle East, though they were actually of Indian descent. One of the victims was admitted to the hospital with head and facial injuries, a broken sinus bone, a concussion, and a fractured skull.

Both defendants pled guilty in federal court. Travis Kitts was sentenced to three years' incarceration. Jason Kitts was sentenced to 20 months' incarceration. Jointly, the Kitts were ordered to pay $4,516 in restitution to the victims.

- FBI Field Office: Louisville

Defendants(s): Devlin Jason Burke, Matthew Carl Campbell, Jeffery Dean Henson, Kimberly Denise Hill

Violation(s): Interference with Housing, Conspiracy, Aiding and Abetting

Judicial District: Eastern District of Kentucky

Summary: The victim, a black male, was beaten with baseball bats by the white subjects in Covington, Kentucky, on 06/01/2001. There were no witnesses. Circumstantial evidence indicated that the subjects were present during and after the beating, and that they had made racial remarks after the incident that were consistent with the hate crime assault. The subjects are members of a local skinhead group. With the aid of a cooperating witness, enough evidence was obtained to charge the subjects.

All defendants pled guilty in February 2003 and were sentenced in July 2003 to 24 to 87 months in prison, as well as supervised release and possible restitution.

- FBI Field Office: Louisville

Defendants(s): Bobby G. Hackworth, Terry G. Meadows

Violation(s): Deprivation of Rights Under Color of Law and False Statements

Judicial District: Eastern District of Kentucky

Summary: On April 9, 2001, the victim was arrested by subjects while driving a pick-up truck to his daughter's residence. Meadows started jabbing at the victim with his fingers and calling him various profane names. When the victim felt Meadows was going to hit him with a flashlight, the victim punched Meadows in the eye. The victim was then struck from behind by Hackworth. The subjects tackled the victim to the ground, where he was handcuffed. The subjects then proceeded to beat the victim with open hand slaps and kicks to his head and face, causing significant bodily injury. In 2001, Hackworth and Meadows were indicted for Deprivation of Rights Under Color Of Law and False Statements. Both pled guilty and in April 2003 Hackworth was sentenced to 6 months of home detention and 3 years of probation, while Meadows was sentenced to 8 months of home detention and 5 years of probation.

- FBI Field Office: Mobile

  Defendants(s): Clete Davis

  Violation(s): Deprivation of Civil Rights Under Color of Law

  Judicial District: Middle District of Alabama

  Summary: Clete Davis, a sergeant in the Mosses, Alabama, Police Department, was investigated based upon numerous allegations of physical abuse and color of law civil rights violations. The FBI investigation led to Davis' federal indictment on 6/27/2002, and trial is pending.

- FBI Field Office: Mobile

  Defendants(s): William A. Butler

  Violation(s): Felon in Possession of a Firearm

Judicial District: Southern District of Alabama

Summary: Butler was suspected of sending racially motivated hate mail to the residence of his neighbors, a white couple raising their granddaughter, who is African-American and white. In connection with that investigation, the FBI executed a search warrant on Butler's home. Butler, a previously convicted felon, was found to be in possession of numerous firearms. He was indicted in August 2002, and pled guilty in October, 2002, to being a felon in possession of firearms (18 U.S.C. section 922). Butler was sentenced to 33 months in prison.

- FBI Field Office: New York

  Defendants(s): Lemrick Nelson, Jr., Charles Price

  Violation(s): Hate Crime in Federally Protected Activities

  Judicial District: Eastern District of New York

  Summary: All indictments in this case were obtained prior to 9/11/2001, however, a major re-trial occurred in May 2003, after Nelson's previous conviction was overturned on appeal.

  In August 1991, an African-American boy was accidently run over by a car driven by a Hasidic Jew. Violent racial unrest ensued. In retaliation, a visiting Jewish scholar from Australia was stabbed by Nelson, who was with a group of other African-American youths, including Price. In August 1996, Price and Nelson were indicted for violating 18 U.S.C. section 245. In April 2002, Price pled guilty after his previous conviction was overturned on appeal. In May 2003, Nelson was convicted of violating the Jewish scholar's civil rights, but the jury found that he did not cause the victim's death. Sentencing is pending.

- FBI Field Office: New York

  Defendants(s): Justin A. Volpe, Charles Schwarz, et al

  Violation(s): Deprivation of Civil Rights Under Color of Law, Conspiracy Against Rights, False Statements, Perjury

Judicial District: Eastern District of New York

Summary: A major retrial in this case took place in September 2002, after the 1999 conviction of Charles Schwarz was overturned on appeal. In August 1997, Abner Louima was arrested by the New York City Police Department and beaten and sexually assaulted in a bathroom at the 70th Precinct. Volpe was indicted and pled guilty in July 1999 to violating 18 U.S.C. section 242. He was sentenced to 30 years of incarceration. On March 25, 2002, Schwarz was indicted for perjury in connection with testimony he provided during his second trial. On July 16, 2002, Schwarz was found guilty of perjury. On September 21, 2002, Schwarz was sentenced to five years of confinement.

- FBI Field Office: Oklahoma City

  Defendant(s): Michael Dodson, Edward Hutto, Kathy Gavin, Crystal Mandrell

  Violations: Conspiracy Against Rights, Interference with Housing Rights, Obstruction and Use of Fire in Commission of a Felony

  Judicial District: Western District of Oklahoma

  Summary: In October 1998, in Chickasha, Oklahoma, a burning cross was thrown into the victim's front yard. Three white males were seen driving away in a small white pick-up truck. Dodson pled guilty, in state court, to a cross burning which occurred in 1996, and is currently incarcerated for a state conviction unrelated to this matter. Hutto confessed to the cross burning and provided information to incriminate Dodson. In 2002, all four subjects pled guilty prior to the commencement of a federal jury trial and received prison sentences ranging from 22 to 177 months.

- FBI Field Office: Philadelphia

  Defendants(s): Reginald Steptoe, Cornell Tyler, Glen Guadalupe

  Violation(s): Conspiracy Against Rights, Deprivation of Rights Under Color of Law, Witness Tampering

Judicial District: Eastern District of Pennsylvania

Summary: The victim was incarcerated at the Curran Fromhold Correctional Facility. On March 11, 1999, a surprise search was conducted in the victim's unit. The victim, who admitted to having attempted to hide 15 packets of marijuana, resisted the guards, resulting in lacerations to his face and head that required approximately 19 stitches. A federal investigation within the prison system led to conviction of former guards Steptoe and Tyler for violation of 18 U.S.C. section 242, and conviction of former deputy warden Guadalupe for obstruction of justice (for covering up the attack) in violation of 18 U.S.C. section 1512(b)(3).

- FBI Field Office: Portland

  Defendants(s): Brian Hauth and five minor males known as the Oregon State Boot Boys

  Violation(s): Conspiracy Against Rights

  Judicial District: District of Oregon

  Summary: Hauth and five minor males were involved in a series of bias crimes in Portland, Oregon. Hauth and the minors were locally charged with misdemeanor intimidation. Several later testified in a grand jury against Hauth on federal charges of Civil Rights violations. Six search warrants were signed and two were executed with the substantial assistance of the FBI Portland Division's Special Weapons And Tactics (SWAT) team.

  Hauth was sentenced in federal court to 3 months in prison and ordered to pay $836 in restitution for federal hate crimes.

- FBI Field Office: Salt Lake City

  Defendants(s): James Michael Herrick

  Violation(s): Interference with Federally Protected Activity

  Judicial District: District of Utah

Summary:	Herrick set fire to the exterior of the Curry In a Hurry restaurant, a Pakistani-owned restaurant in Salt Lake City, Utah, and was arrested at the scene. In 2002, Herrick was convicted in Federal District Court of one count under 18 U.S.C. section 245 and sentenced to 51 months in prison. Herrick additionally received a concurrent sentence of five years to life from a Utah State court.

- FBI Field Office: Salt Lake City

  Defendants(s): Louis James Poleate

  Violation(s): Deprivation of Civil Rights Under Color of Law

  Judicial District: District of Utah; Third Judicial District of Utah

  Summary: The case was initiated upon a complaint by the victim that Poleate had raped her in a Utah State Prison cell on 9/17/2002 while Poleate was to have been transferring the victim to the infirmary. The case was worked jointly by the FBI and local authorities. Poleate was charged in the Third Judicial District Court, State of Utah, with having sexual contact with an inmate and third degree felony rape. Poleate was sentenced to five years in the Utah State Prison.

- FBI Field Office: San Antonio

  Defendant(s): Ernesto Flores

  Violations: Deprivation of Rights Under Color of Law

  Judicial District: Southern District of Texas

  Summary: On 8/20/2001, the Mercedes Police Department provided to San Antonio FBI agents statements and police reports regarding accusations that Municipal Court Judge Ernesto Flores was requiring various female victims to perform sexual acts in order to reduce bonds, have charges dismissed, or obtain other favorable results in criminal cases.

  Flores pled guilty and was sentenced on 3/18/2003 to 24 months in jail and 12 months' probation.

- FBI Field Office: San Antonio

  Defendant(s): Juan Carlos Soto, Hector Soto, Armando Soto-Huarto, Martin Cortez-Gutierrez

  Violations: Alien Smuggling, Hostage Taking, Involuntary Servitude, Firearms

  Judicial District: Southern District of Texas

  Summary: San Antonio has been investigating a long-established alien smuggling operation which was brought to light in March 2003, when searches were conducted on truck trailers by Border Patrol and local authorities in Edinburg, Texas. Four subjects, Juan Carlos Soto, Hector Soto, Armando Soto-Huarto and Martin Cortez-Gutierrez were identified as the leaders of the smuggling operation, in which aliens were victimized with threats of violence, extortion, and sexual assault. Evidence was provided by women who escaped and informed the Hidalgo County Sheriff's Department that they had been forced to cook, wash, and clean the trailers, and to wash the subjects' vehicles. The victims also alleged that they had been raped by the subjects at gun point.

  On 07/31/2003, DOJ issued a press release announcing the indictment of all four subjects on federal violations, including hostage taking, alien smuggling, extortion, and firearms offenses. The case was worked jointly by the FBI, the Alien Smuggling Unit, U.S. Border Patrol, the Bureau of Immigration and Customs Enforcement (DHS), the Hidalgo County, Texas Sheriff's Department, and the McAllen, Texas Police Department.

  Currently eleven individuals have been indicted and two subjects have entered into plea agreements.

- FBI Field Office: San Antonio

  Defendant(s): John Craig Waldrum, Christopher James Westbrook, Tim Otis Duncan

  Violations: Deprivation of Civil Rights Under Color of Law

Judicial District: Western District of Texas, San Antonio

Summary: A lengthy investigation into corruption at the Frio County Sheriff's Office has revealed that captioned subjects have engaged in numerous civil rights violations involving numerous victims for over three years. The subjects, while acting under color of law, committed numerous acts of theft of property, theft of firearms, arson, burglary, assault, falsifying reports, and arrest by "planting" evidence. This case has produced spin-off investigations of other law enforcement personnel in Pearsall and adjoining counties. The subjects pled guilty and received federal prison sentences ranging from six to eight years.

- FBI Field Office: San Francisco

  Defendants(s): Michael Powers, Jose Garcia

  Violation(s): Deprivation of Civil Rights Under Color of Law

  Judicial District: Northern District of California

  Summary: This case was initiated after inmates who had been convicted of child molestation complained that members of the Pelican Bay State Prison staff had either assaulted them or caused them to be assaulted. Investigations by prison investigators disclosed improprieties but little or no action was taken. One such assault resulted in an inmate being shot by a staff member during a fist fight. Investigation revealed that staff members assaulted inmates who would not do what staff wanted them to do or who had lost favor with the staff, as well as a conspiracy among officers at the institution who contracted with inmates to assault prisoners in the institution.

  Powers and Garcia were convicted at trial in 2002, and were sentenced to 84 and 76 months respectively.

- Field Office: San Francisco

  Defendants: Lakireddy Bali Reddy

  Violation(s): Transportation of Minors for Sexual Activity, Conspiracy, Immigration Fraud

Judicial District: Northern District of California

Summary: The subject pled guilty to bringing numerous Indian national female victims, including minors, into the United States, where they were forced to work in restaurants owned by Reddy and to provide sexual favors to the defendants. Reddy was sentenced to 97 months in federal prison and restitution of $2 million.

- Field Office: San Francisco

  Subject(s): Carlos Rodarte

  Violations(s): Deprivation of Civil Rights Under Color of Law, Abuse of a Ward

  Judicial District: Northern District of California

  Summary: The subject was a correctional officer at the Federal Correctional Institute in Dublin, California. Two victims claimed that he entered their cell on the pretext of a search and forced them to engage in sex with him. DNA evidence corroborated the victims' claims. On 08/06/2002, Rodarte was indicted by a federal grand jury and trial is pending.

- Field Office: Seattle

  Defendant(s): Patrick Michael Cunningham

  Violations: Obstruction of Free Exercise of Religion, Firearms

  Judicial District: Western District of Washington

  Summary: On 09/14/2001, Cunningham attacked two worshipers as they left a Seattle mosque. He doused two cars with gasoline in an attempt to ignite them and cause an explosion that would damage or destroy the Islamic Idriss Mosque. In addition, he approached the victims with a gasoline can and a revolver and attempted pulled the trigger but the gun did not fire. He continued to pull the trigger while running away, and was subsequently detained by local law enforcement.

On 09/26/2002, Cunningham pled guilty to one count each of Title 18 U.S.C. section 247(a)(2) (Obstruction of Persons in the Free Exercise of Religious Beliefs) and section 924(c) (firearms violations). On 12/17/2002, Cunningham was sentenced to six years in federal prison.

- FBI Field Office: Washington Field Office

  Defendants(s): Zachary J. Rolnik

  Violation(s): Interference with Violation of Federally Protected Activities

  Judicial District: District of Massachusetts, District of Columbia

  Summary: Immediately after the September 11 attacks, a threatening telephone call was made to James Zogby, President of the Arab-American Institute, Washington, D.C. Investigation identified Zachary Rolnik, living in Massachusetts, as a subject. Rolnik was interviewed and admitted placing a telephone call to Zogby and leaving a voice mail message in which he threatened to kill Zogby and his children because of Zogby's role in encouraging others to participate in the political process and to enjoy federal benefits without limitation due to race, color, religion, or national origin. In conjunction with DOJ and the United States Attorney's Office in Washington, D.C., and the United States Attorney's Office, District of Massachusetts, this matter was successfully prosecuted in Boston. Rolnik pled guilty and was sentenced in August 2002 to serve 60 days in jail, two years' probation, and a $5,000.00 fine.

- Field Office: Los Angeles

  Defendant(s): Irving David Rubin, Earl Leslie Krugel

  Violation(s): Conspiracy to Use a Destructive Device, Attempted Arson at a United States Government Facility, Possession of a Destructive Device During and in Relation to a Crime of Violence, and Solicitation to Commit a Crime of Violence, among others. In addition, Krugel was named in the indictment for Possession of a Machine gun and Possession of an Unregistered Firearm.

Judicial District:	United States District Court for the Central District of California
Summary:	The subjects, both members of the Jewish Defense League, were indicted in Los Angeles for conspiracy to bomb the King Fahd mosque, possession of an explosive bomb to carry out the conspiracy, and attempt to damage and destroy, by means of an explosive, the office of the Muslim Public Affairs Council and the district office of U.S. Representative Darrell Issa.

- Field Office: Jacksonville

Defendant(s):	Charles D. Franklin
Violation(s):	Damage to Religious Real Property and Obstruction of Persons in the Free Exercise of Religion
Judicial District:	United States District Court for the Northern District of Florida
Summary:	The subject was indicted on April 17, 2002, for crashing a pick-up truck into the door of the Islamic Center Mosque in Tallahassee, Florida.

- Field Office: Milwaukee

Defendant(s):	Thomas Iverson
Violation(s):	Threat by Mail, Telephone, Telegraph, or Other Instrument of Interstate or Foreign Commerce
Judicial District:	United States District Court for the Western District of Wisconsin
Summary:	Subject pled guilty to making two threatening phone calls, one to a Jordanian American threatening to burn down his liquor store in Beloit, and another to 9-1-1 threatening to bomb the same store, and was sentenced to 27 months of incarceration.

- Field Office: San Antonio

Defendant(s):	Joe Luis Montes

Violation(s):	Making a Harassing Telephone Call
Judicial District:	United States District Court for the Western District of Texas
Summary:	In Hewitt, Texas, subject pled guilty to making telephone bomb threats against Sikhs employed at a truck stop on September 17, 2001, and was sentenced to two years' probation and a $500 fine.

- Field Office: Detroit

Defendant(s):	Justin Scott-Priestly Bolen
Violation(s):	Criminal Interference with Right to Fair Housing
Judicial District:	United States District Court for the Eastern District of Michigan
Summary:	Subject pled guilty on February 6, 2002, to interference with the housing rights of a Pakistani-American family in Fenton, Michigan, by leaving a threatening message on its answering machine on October 10, 2001. He was sentenced to 10 months in prison.

Leahy 13. **The House Committee on International Relations recently held a hearing to examine whether proceeds from counterfeited goods were funding terrorism. During testimony before that Committee, Ron Noble, Secretary General of Interpol, stated that "Intellectual Property Crime is becoming the preferred method of funding for a number of terrorist groups," citing examples from Northern Ireland, Kosovo, Chechen separatists, Hizbollah, and al-Qaeda. What action, if any, is the FBI taking to reduce piracy as a source of terrorist funding?**

Response:

FBI Legal Attachés work closely with the Economics Sections at most Embassies on Intellectual Property Rights (IPR) issues and compliance with U.N. and World Trade Organization rules. The terrorist funding aspect of IPR issues has recently become more important in locations such as Paraguay and other areas of a significant Lebanese diaspora presence.

There are several cases in multiple United States locations and overseas targeting Hizballah and/or Lebanese affiliated groups trafficking in counterfeit goods, including zig-zag paper, cigarettes, and clothing. These cases can typically not be discussed in an open forum.

An FBI case in Charlotte, NC, concerning Mohamad Hammoud, et al, identified a group of 19 individuals who were involved in a ring in which cigarettes were smuggled from North Carolina to Detroit in a tax avoidance scheme. Approximately $7.5 million in cigarettes were smuggled by the group and a portion of the profits was identified as being funneled to the Hizballah terrorist organization. This was the first Title 18 U.S.C. section 2339B case (provision of material support and resources to Hizballah) to be tried before a court, and all subjects were convicted. Among the facts established at trial were that Hammoud was the leader of a group of Lebanese Shia Muslims involved in the smuggling, and that he solicited donations for Hizballah operations in Lebanon at weekly prayer meetings. Testimony also established another defendant's (Said Harb) role in an elaborate procurement scheme based in Canada. Harb and others purchased a variety of dual-use items, including night vision goggles, global positioning system devices, advanced aircraft analysis software, computers, mining equipment, stun guns, blasting equipment, nitrogen cutters, military-style compasses, and laser range finders, and sent those items to Hizballah in Lebanon. Intercepts compiled by the Canadian Security Intelligence Service were used in court to establish this portion of the conspiracy.

Leahy 14. **Piracy via P2P networks is one of the primary ways that copyrighted works are illegally distributed. In fact, it is estimated by Viant, an independent consulting firm, that 400,000-600,000 films are illegally downloaded every day, and you can find on P2P networks hundreds of copies of every one of the top ten films currently in theaters. Recently, a copy of the film "The Hulk" was available on P2P networks two weeks prior to its theatrical opening. Fortunately, the criminal was quickly convicted, and law enforcement should be applauded for its role in that outcome. But it is notable that this is the only example in which criminal sanctions have been brought against a person who illegally made copyrighted works available over P2P networks. During a recent hearing before the House Judiciary Committee, Jana Monroe, who heads the Cyber Division, promised that more prosecutions like the "Hulk" case are on the horizon.**

A. What steps are you taking to address P2P piracy?

Response:

While there is some individual pirating of copyrighted material for personal or limited use, the principal suppliers of pirated materials are those who are organized and who conspire to release copyright protected material, which includes digital music, computer software, computer games, and digital movies. The material is then distributed using such methods as websites, auction sites, chat rooms, mass e-mail, and File Transfer Protocols. After copyrighted products are

shared among these groups, they become available to the general public. Once in the possession of the general public, the copyrighted products are distributed utilizing Peer to Peer (P2P) file sharing. While P2P software and networks are not inherently illegal, and are used more by the general public than by the organized conspirators, the use of these sharing systems has turned into a vast network of illegal activity. The FBI investigates online piracy, including P2P file sharing, as a copyright violation, using online or undercover operations, as well as traditional investigative methods. The FBI addresses all online piracy as an Internet crime problem, investigating and prosecuting the organized aspect of this problem so as to exert an achievable and ongoing impact on the problem. The FBI's goal is to reduce the supply of copyright protected material to public networks by dismantling the organizations. To provide a focused attention on this crime problem, the FBI created a specific operational unit within the Cyber Division to address Intellectual Property issues.

To address the P2P file sharing problem, the FBI has been working in partnership with DOJ and private industry in three areas: investigation, prosecution, and education. The FBI has hosted, and continues to host, meetings with DOJ's Computer Crime and Intellectual Property Section and various affected private industry associations, including the Recording Industry Association of America, the Business Software Alliance, the Software and Information Industry Association, the Entertainment Software Association, the International Intellectual Property Alliance, and the Motion Picture Association of America. At these meetings, discussions center around the P2P problem and various strategies, both by industry and government, which should be followed to combat the sharing of illegal files. A joint effort between private industry and the government will be the most effective means of addressing the illegal sharing of files. To better educate the public, which will also deter illegal file sharing, the FBI drafted and proposed an educational letter which focuses on the three cornerstones of concern with respect to the use of P2P: illegal file sharing, child pornography, and unauthorized computer access or hacking. Upon approval, the FBI letter will be publically available, and will be afforded to others in private industry for use in their deterrence programs.

B. Are there changes in the law we should consider to enable the FBI to address this problem more effectively?

Response:

The FBI is effectively investigating violations of criminal copyright infringement under 18 U.S.C. section 2319. The FBI's investigative impact was strengthened when, in 1997, the President signed into law the No Electronic Theft Act, commonly referred to as the NET Act (H.R. 2265). The FBI's criminal statistics, to include indictments and convictions, were steadily increasing until the terrorist acts of September 11, 2001. Since September 11th, the FBI's number one priority has been Counterterrorism, followed by Counterintelligence, then Cyber crime. With the creation of the FBI's Cyber Division in 2002 and its IPR Unit, the FBI's pending cases and statistics have rapidly risen toward pre-September 11th levels.

The FBI considers the existing criminal copyright statutes effective for investigation and prosecution. However, we are always considering ways in which the laws we enforce many need to be updated to account for new developments, and we will continue to do so in regard to the copyright law.

Leahy 15. In June, DOJ's Office of the Inspector General filed an exhaustive report on the 9/11 detainees, and found serious problems within the FBI as well as other agencies that led to detainees, who turned out not to have any connection to terrorism, being mistreated. In July, the Inspector General reported 34 "credible" allegations of civil rights violations against detainees and others since December 16, 2002. You have committed to reforms that will prevent these abuses from continuing to recur. Could you please give us an update on specific policy changes you have made in response to the Inspector General's report on 9/11 detainees?

Response:

The FBI continues to vigorously pursue all allegations of civil rights violations. There have been seven allegations of physical and/or verbal abuse made by Arab-American detainees against Bureau of Prison Officers since September 11, 2001 which were investigated by the FBI. Each of these allegations occurred in New York City institutions and a Civil Rights investigation was conducted in each case. The results of those investigations were provided to the United States Attorney's Office for that District and also to the Criminal Section, Civil Rights Division, DOJ. DOJ evaluated the results of the investigations and determined that there was insufficient evidence to support a prosecutable violation of federal civil rights laws. Since September 11, 2001, the FBI has made the investigation of Civil Rights violations against Arabs and Muslims the number one priority within the Civil Rights Program.

Leahy 16. The June 18, 2003 report by the GAO on FBI Reorganization notes that the FBI is "now authorized to visit public places or events, but retention of information from these visits is prohibited unless it relates to potential criminal or terrorist activity." The GAO Report observes that "there is no indication of whether or how agents are to document the activity, how supervisors are to ensure that the purpose of the activity is detecting or preventing terrorism, and how compliance with the prohibition on maintaining information is to be verified."

A. What if anything is being done to address these concerns?

Response:

The Guidelines explicitly prohibit the retention of information from visits to public places or events unless the information relates to potential criminal or terrorist activity. In guidance

provided to field offices by the FBI after issuance of the Guidelines, agents were advised that if information obtained during the visit rises to the level of a lead, such information should be properly documented, including a statement describing how the information is related to potential criminal and/or terrorist activity, and then filed accordingly. If the visit does not develop information relating to potential criminal or terrorist activity, an agent should note in the file the date, time, and place visited and that the visit had negative results. No other information may be recorded. This provides a means for FBI management to review the investigative activity of agents to determine if the agents' actions comport with the guidelines.

B. The GAO Report states that the supervisory case file review process "is the primary vehicle to ensure that agents comply with applicable policies and procedures - and do not go beyond their stated authorities." If retention of information from FBI visits to public places and events is prohibited, how will review of a presumably written supervisory case file ferret out problems or violations of any policies?

Response:

A field supervisor has daily contact with the agents under his or her supervision. This contact can occur either in person or through the flow of paperwork submitted to the file. The documentation that an agent must prepare as a result of his/her attendance at a public place or event (whether it results in a lead or is negative) will be seen by the agent's supervisor. In addition, FBI regulations require that a direct line supervisor conduct a review of an agent's case work every 90 days. During this file review, the supervisor and agent discuss the agent's investigative efforts and accomplishments during the previous 90 days. This file review process provides a mechanism by which a supervisor reviews the activities undertaken in a particular case to determine if, among other things, the activities comport with FBI guidelines, policies, and procedures.

C. The GAO Report reflects that "FBI headquarter officials are currently considering whether to require mandatory supervisory approval prior to allowing an agent to enter a public place or attend a public meeting," Have you made any final decisions on this matter? What is the possible downside of requiring supervisory approval of this easily abused investigative technique?

Response:

In implementing this provision of the Guidelines, existing FBI policy states that, unless time does not permit seeking such approval, an agent should obtain his or her supervisor's approval before visiting a public place or attending a public event to detect or prevent terrorist activity. No final decisions have been made as to whether such prior approval should be mandatory. In considering whether such a requirement would be appropriate, the FBI does not want to

discourage the effective use of this provision in the primary mission of detecting and preventing terrorism. The Guidelines are intended to "enable Agents of the FBI to perform their duties with greater certainty, confidence and effectiveness," while providing the American people with "a firm assurance that the FBI is acting properly under the law." (Guidelines, Preamble.) Any policies or procedures that are adopted must conform to this intent.

Leahy 17. In a May 13 letter to the Chairman of the House Judiciary Committee, the Justice Department reported that over 4,500 intelligence files were reviewed following passage of the PATRIOT Act, and that the "evidence or information from this review has been incorporated in numerous cases."

A. Did the FBI participate in the review of the 4,500 intelligence files, and in what capacity?

B. What types of criminal cases were generated by the review? For example, were most of the prosecutions related to terrorism? Immigration violations? Drugs and violent crime?

Response:

No. DOJ directed its paralegals to review FBI intelligence files. Since the FBI did not participate in this review, the FBI defers to DOJ.

Leahy 18. During the Committee's oversight hearing of March 4, 2003, you described the establishment of a FISA Unit responsible for ensuring that FISA applications move expeditiously through the FISA process.

A. Please update the Committee on the status of the FISA Unit. Is it fully operational? Has it helped to prevent the processing delays that you acknowledged were a source of frustration among agents?

Response:

The Foreign Intelligence Surveillance Act (FISA) Unit was created in November of 2002 with a staffing level of 20 (3 SSAs and 17 support positions). The make up of the Unit was designed as follows: one SSA UC, two SSAs, two lead Intelligence Operations Specialists (IOSs), six staff IOSs, five Legal Technicians, two Program and Management Analysts, and two Information Technology Specialists (IT Specialists). The current on-board complement of the FISA Unit is twelve. The selection process for the two IT Specialists is underway. In addition, six IOS positions will be filled within the Unit.

In order to address delays in the processing of the increased volume of FISAs, the FBI is seeking to automate the process, through development of the FISA Management System (FISAMS). The

development and implementation of the FISAMS is the responsibility of the FISA Unit. FISAMS allows users to generate FISA requests and track them to completion.

The FISAMS is being developed under a contract let in early 2003. Work began in February 2003 with a goal of having a pilot system available for testing in July 2003 and an Initial Operating Capability (IOC) in October 2003.

The prototype system was fielded and tested by users in field offices and at FBI Headquarters in July 2003 using test data sets. Feedback was used to modify the system and guide further development.

In October 2003, the contractor delivered Version 1.0 of the system for certification and accreditation testing by the Security Division. The FISAMS application was approved in November but the FBI's Information Resources Division (IRD) encountered a problem with portions of the operating system supporting the FISAMS, requiring testing of updated operating system software to correct this problem. IRD is working to provide to DOJ's Office of Intelligence Policy Review (OIPR) connectivity to the FBI production environment. Once these tasks are completed and the FISAMS is available on the production servers, the Security Division will issue approval to operate and the FISA Unit can begin to load the organizational structures and users into the system so actual operational use of the production system can begin.

During December 2003, the FISA Unit conducted user training for FBI Headquarters and Washington Field Office personnel. Training for other field offices will take place starting in January 2004.

The contractor is additionally developing Version 2.0 of the system, which will provide additional features and an enhanced database. IRD is hiring two IT Specialists who will be dedicated to further development of the system in the coming years. In the future, the FBI plans to explore electronic signature for documents, electronic filing with the FISA Court, and electronic distribution of court orders to common carriers and service providers.

In addition, the FISA Unit, DOJ's OIPR, and the FISA Court have all taken steps to improve the distribution of orders and warrants after the court approves them. These changes have resulted in having a serviceable copy of a signed order in the hands of a carrier or service provider in a matter of two or three days after signature rather than two or three weeks.

B. What position within the FBI is responsible for supervising the FISA Unit and to whom does that individual report?

Response:

The Chief of the FISA Unit is a GS-15 SSA who reports to the Deputy General Counsel of the National Security Law Branch (NSLB), OGC.

C. You once stated that FISA applications would be reviewed, if necessary, all the way up to your level in the Director's Office. Is there a procedure in place for that type of review? Have you in fact personally reviewed any FISA applications since the 9/11 attacks?

Response:

I have instructed FBI officials involved in the FISA process that, if there is a dispute among the officials as to whether a FISA application is factually sufficient, the dispute should be brought to my attention. In the course of discussing ongoing investigations, I am often involved in discussions concerning the availability of FISA coverage.

D. Has the FBI established a set "turnaround time" for ensuring that the FISA applications are timely reviewed and sent back to the field office for submission to the court? If so, what is it?

Response:

There is no set "turnaround time" for FISA applications, and the time that is necessary to complete FISA applications varies for a number of reasons. Officials in the Counterterrorism Division meet weekly with attorneys from DOJ's OIPR to discuss and coordinate priority FISA matters.

Leahy 19. In your March testimony, you stated that the FBI's National Security Law Unit and the Justice Department's Office of Intelligence Policy and Review "are collaborating on a number of procedural and legal initiatives that are streamlining and simplifying the process by which FBI agents obtain FISA authority." Please update us on the state of this collaboration.

Response:

In addition to the FISAMS (discussed above), the FBI, working with OIPR, has undertaken several additional steps to speed the process. Effective March 1, 2003, field offices began using a standard "FISA Request Form" to request initiation, renewal, and modification of FISA coverage. This single, standard form replaced a variety of communications used in the past to request coverage. The form helps ensure that the drafters of the FISA packages receive all pertinent information in the initial submission.

In order to ensure that each FISA initiation request passed from FBI Headquarters to OIPR is viable and complete, the FBI has begun implementing a new process in which the FBI's NSLB attorneys receive copies of counterterrorism initiation requests when they arrive from the field. The attorneys will work closely with SSAs and analysts in counterterrorism to finalize these requests and submit them to OIPR in a timely fashion. The goal of this change is to increase the

level of legal review given to FISA initiations at the outset, identifying at an early stage any deficiencies in the factual basis for the applications.

Also effective March 1, 2003, field offices began sending requests to renew and amend existing FISAs directly to OIPR. Previously, all requests to renew or amend existing FISAs had to come through FBI Headquarters for approval before forwarding to OIPR for drafting. Now, renewal requests are due at OIPR 45 days prior to expiration.

In November 2003, the FBI, OIPR, and CIA began biweekly meetings to discuss and resolve FISA-related issues. These issues have included means of improving the FISA process, such as filing with the FISA Court descriptions of frequently used techniques and definitions so that FISA declarations can be streamlined through incorporations by reference. With input from OIPR, the FBI has also created a form for requesting business records, and will begin using this form in the FISA Court in the near future. The FBI has also begun drafting certain FISA initiations and renewal applications, and will increase this role as developments in technology permit.

In addition, as previously noted, the FISA Unit, OIPR, and the FISA Court have all taken steps to improve the distribution of orders and warrants after the court approves them. The changes together have resulted in having a serviceable copy of a signed order in the hands of a carrier or service provider in a matter of two or three days after signature rather than two or three weeks.

Leahy 20. **No question 20 was submitted.**

Leahy 21. **In your March testimony, you reported that since September 11, 2001, the FBI has made full and "very productive" use of the emergency FISA process whereby the FBI can often establish electronic surveillance within hours of establishing probable cause that an individual is an appropriate FISA subject. In this regard, you reported that, in the one-year period from September 11, 2001 to September 19, 2002, the FBI obtained 113 emergency FISAs, compared to the 46 emergency FISAs obtained in the prior 23 years since the FISA statute came into existence.**

A. **Of the 113 instances in which the FBI used the emergency FISA process in the year after the 9/11 attacks, in how many did the FBI apply to the FISA court for a judicial order approving the surveillance within 72 hours from the time of authorization by the Attorney General? In how many did the FBI terminate the surveillance within 72 hours, without having sought a judicial order?**

Response:

The answer to this question calls for classified information, which is ordinarily supplied to the Congress by DOJ's OIPR.

B. How many times has the FBI used the emergency FISA process since September 19, 2002? In how many of those instances did the FBI apply to the FISA court for a judicial order approving the surveillance within 72 hours from the time of authorization by the Attorney General? In how many did the FBI terminate the surveillance within 72 hours without having sought a judicial order?

Response:

The answer to this question calls for classified information, which is ordinarily supplied to the Congress by DOJ's OIPR.

C. Has the Bureau established any guidelines for when agents may use the emergency FISA process?

Response:

Within the FBI, the use of emergency FISAs is assessed on a case-specific basis. The primary formal guidelines for the emergency process have been promulgated by OIPR. In order to seek Attorney General approval for an emergency FISA, OIPR requires that the FBI provide: (1) the basis for the conclusion that an emergency situation exists with respect to the employment of electronic surveillance and/or physical search to obtain foreign intelligence information before an order authorizing such collection can be obtained with due diligence; (2) the factual basis for issuance of a FISA order to approve such collection; (3) a statement that the facts supporting the request are accurate and have been confirmed with the appropriate FBI personnel; (4) a statement that the relevant AD has approved the emergency request; (5) a statement that the Director or other appropriate certifying official concurs in the emergency request and will be available to sign a timely certification supporting the request; and (6) a statement that any specified carrier or other specified person whose assistance is necessary to effect the collection is prepared to immediately render the required assistance.

Leahy 22. In the aftermath of September 11, 2001, there has been much debate and criticism about possible intelligence failures that enabled Al-Qaeda to attack America. Bush Administration officials have said the intelligence community "simply failed to connect the dots" - that is, that there was a failure of analysis. Others have suggested that the more important problem was the fact that there were too few useful "dots" to connect - in other words, that there was a failure of information-gathering. TTIC is aimed at improving our ability to analyze intelligence, but it will not help us collect more intelligence. Do you believe that we need to generate more actionable

intelligence on hostile organizations and terrorist cells operating within the United States and abroad, and if so, what has the FBI done in this regard since 9/11?

Response:

Yes, the FBI does need to generate more actionable intelligence on hostile organizations and terrorist cells operating within the United States and abroad. The criticisms following events of September 11, 2001, appear to place before us a choice between which was the greater deficiency of the Intelligence Community (IC): analysis or collection. In our view, both in fact were problematic, and the key to improving both lies in analysis. First, instead of analyzing what we can collect, we must begin to analyze what to collect. Intelligence analysts often fail to connect dots because there is too much information and it is too hard to understand. We collect a great deal of information, but it is important that we collect the right information to answer key questions about threats. Our approach to solving this problem is to produce a collection baseline that defines the sum total of resources the FBI can bring to bear on a given threat. We will match those resources to information requirements articulated by both the law enforcement and national security communities. Using the baseline, we will identify gaps in our knowledge about threats. We will then form "targeting teams" of analysts and agents whose job will be to determine who (i.e., which social networks) might have information that would address the gap. That information will then be turned over to operational units in the field for source development. Our collection baseline will be completed by mid-November, with preliminary gap analysis and some targeting teams established by early December.

The above approach is aided immensely by the Counterterrorism Division's Model Counterterrorism Investigative Strategy (MCIS), which focuses investigative resources on the development of intelligence. As a result of recent legislative, judicial, and policy changes, the FBI can share the results of its investigations with other federal, state, and local agencies. The MCIS capitalizes on this ability by directing that all investigations be opened first as intelligence cases. This allows the FBI to develop intelligence regarding the nature and extent of the threat, the individuals involved, and their capabilities, to include support, training, recruitment, and financing. This approach, coupled with targeted collection against key gaps, will generate a substantial amount of actionable intelligence on hostile organizations and terrorist cells.

Leahy 23. Has TTIC proven effective in information dissemination? Please provide examples.

Response:

The Terrorist Threat Integration Center (TTIC) has been effective in information dissemination. For instance, on August 1, 2003, the TTIC launched a new website that provides a robust venue for sharing information about terrorist threats to United States interests, at home and abroad. TTIC Online is currently accessible by more than 2,000 United States Government officials,

including intelligence, homeland security, law enforcement, and military personnel. The website provides ready access to a wide range of information derived from TTIC partner vantage points, from raw intelligence reports to finished products. TTIC Online also serves as an important forum for analytic discussions. Over time, the website will increasingly be used by DHS and the FBI (who are the designated conduits of information to state and local representatives and private industry) to pass along to non-federal entities products tailored to their needs.

TTIC is also facilitating information dissemination by hosting a joint program office to implement a systematic approach to interagency information sharing. This joint program office was established by the senior leadership of the FBI, TTIC, and DHS as a mechanism to ensure that all obligations are met, as detailed in the Homeland Security Act of 2002 and in the Homeland Security Information Sharing MOU, signed by Attorney General Ashcroft, Director of Central Intelligence Tenet, and Secretary of Homeland Security Ridge in the early spring of 2003.

Leahy 24. Because the head of TTIC reports to the director of the CIA, the new center is perceived by many as just another CIA operation. In your view, does TTIC have the institutional independence it needs to succeed?

Response:

It is our belief that TTIC has the institutional independence it needs to succeed. The Director of TTIC reports to the Director of Central Intelligence in his statutory capacity as head of the IC. TTIC is not part of the Central Intelligence Agency and it does not belong to any other department or agency. TTIC operates as an innovative joint venture of partner agencies. As such, it is our view that the TTIC Director is actively responsive to the Director of the FBI and the Secretaries of Homeland Security, Defense, and State.

Leahy 25. Please describe in detail (A) any contracts that DOJ or the FBI has with commercial providers of personally identifiable data; (B) any data mining that DOJ or the FBI is engaged in; and (C) any plans that DOJ or the FBI has for future data mining.

Response:

(A) IRD has contracts with several providers of personally identifiable data, including the following public source providers whose data can be accessed over the internet. Choice Point (CP) is a comprehensive public records database that provides access to a subject's name, address, SSN, date of birth, phone number, company, vehicles, property, associates, and relatives. Lexis-Nexis provides information similar to CP, but subscribes to different public data sources. Lexis-Nexis provides access to a subject's name, address, SSN, date of birth, phone number, vehicles, property, voter registration, marriage records, death records, bankruptcies, and legal judgments. Lexis-Nexis also provides access to newspapers and magazines. CP

International provides the same type of data as CP, but for subjects or records that are outside the United States. Dun and Bradstreet captures domestic and international business information, such as a company's major stockholders, its CEO, major officers, and judgements or liens against the business. The Credit Bureau Reports provide data regarding credit reports, property reports, and public record reports. Westlaw provides information regarding statutes and archived news for the past fifteen years. Ivans captures information regarding insurance fraud.

The FBI currently has agency-wide contracts for Lexis-Nexis/Westlaw and Dun and Bradstreet that allow for access by an unlimited number of Bureau and task force personnel. The FBI also has a contract with CP that allows access by an unlimited number of Bureau personnel. Currently, the contract with CP does not provide access to task force members.

There are also a number of systems that service the entire FBI population, but are restricted to access at select sites known as FBI Information Technology Centers (ITCs). FBI and task force personnel may request a search by the ITC; the ITC performs the search and provides the results to the requestor. The companies with this restricted access are CP International, Credit Bureau Reports, and Ivans.

Although these databases can generally be accessed from more than one location, the FBI has one contract with a commercial provider of personally identifiable data that restricts access to one FBI ITC. This contract is with Experian and applies to their product called MetroSearch. MetroSearch information is provided on a CD-ROM and contains the published telephone subscriber information for more than 117 million individuals. This information includes date of birth, name, address, and telephone number of the subscriber, as well as information concerning additional household members.

(B) The FBI would like to clarify what is meant by "data mining." Broadly speaking, the term simply refers to the ability to work with larger amounts of data, at faster speeds, in ways that were previously not possible computationally due to size or speed limitations. In recent debates, however, some have begun to use the term "data mining" as a shorthand reference to the specter of abusive searches through vast amounts of publicly available data on innocent private citizens. The term should not be construed as connoting any such abuse.

"Data mining" really means searching. When permissible by law, and useful to a particular work activity, information gleaned from searching other databases is included in FBI systems. Once there, it may be accessible to another employee conducting a search. In the simplest example, an employee in one case obtains an address or phone number through an outside database search and then enters the information in an FBI system; an employee working on a different case conducts a search for something the two cases have in common and the second employee discovers the information the first employee got from an outside source. In a more complex example, the Foreign Terrorist Tracking Task Force looks for evidence that known terrorists are, or have been, in the United States by searching a whole list of names at the same time.

The FBI also would like to clarify the meaning of the term "pattern recognition." Pattern recognition refers to the ability to search a database or multiple databases for information that appears to be statistically significant. The FBI is exploring the potential of pattern recognition. For example, if a "pattern recognition" program could identify anything statistically significant about known terrorists which is distinct from the general population, this might be an aid in identifying tradecraft. Another example is the concept of using pattern recognition to enhance security; the ability to identify a computer user whose use of the system is statistically anomalous to his/her assigned duties might provide significant assistance to those responsible for internal security.

Beginning in late FY 2002, the FBI undertook to develop and acquire several technologies to provide a single repository for counterterrorism data to support post-September 11 counterterrorism investigative activities. With FY 2003 appropriations, made available in March 2003, these technologies (referred to as the "Secure Counterterrorism Operational Prototype Environment" or SCOPE) were incorporated into the Investigative Data Warehouse (IDW) design and deployment planning. The IDW project encompasses counterterrorism activities, as well as the deployment of criminal investigative capabilities. These capabilities will be extended Bureau-wide and to joint activities (including the JTTFs). In FY 2004, the IDW will enter the "steady state" or maintenance phase.

For FY 2005, budget resources will be directed to such needs as normal system hardware and software maintenance costs, planned storage increases and upgrades, contractor operational support, and engineering services associated with planning for system enhancement. Enhancement of the IDW will include information sharing with other federal, state, and local organizations.

IDW is a concept describing the preparation and organization of a variety of databases so they can be searched in a coordinated fashion along with other databases. This coordinated searching across several databases is known as advanced data analysis. The IDW provides FBI investigators and analysts, particularly those investigating terrorism and criminal conspiracies, with a new capability to easily and rapidly search and share information across all FBI investigative files, which include text, photographs, video, and audio materials.

In the area of highest priority - preventing terrorist attacks - the files included in the databases to be exploited include all counterterrorism files at FBI field offices, which have been scanned and converted to a machine-readable format (thus allowing computer analysis for the first time), documents and other materials collected in Afghanistan and other Operation Enduring Freedom countries, as well as other FBI case files.

Without IDW, investigative information is collected and processed using manual and semi-automated processes and incorporated into various databases that must be accessed separately. This process is extremely time consuming and labor-intensive and does not yield integrated information in a form that can be efficiently utilized. IDW automates the most time

consuming aspects of this task by using advanced scanning and optical character reading technologies.

With the incorporation of administrative capabilities in FY 2005, the IDW end-state contemplates a user base composed of all Bureau employees, numbering approximately 28,000. The scalability of the IDW will allow for information sharing with other federal, state, and local users.

The IDW will be implemented in incremental segments. The IDW development environment is using a managed evolutional development approach to assess functionality for system components. This assessment process is based upon spiral development increments in 90-120 day time frames. Initially, the set of requirements to implement functionality that were assessed and tested in the SCOPE environment will be implemented in the IDW system, version 1.0, to be deployed in February 2004. Incremental functionality assessed in the IDW spiral development environment will be expressed in follow-on requirements. These incremental implementations will be treated as "technology modules." The incorporation of a new "technology module," such as a module for facial recognition or Arabic language extraction, will be accomplished to the greatest extent possible.

IDW enables coordinated searches of FBI files, making it possible to determine if the subject is FBI (or other agency) databases, and displaying views of the relationships of others. This enables the FBI to take advantage of new and existing data, and share it in a timely manner to help prevent terrorist acts and other criminal activities.

IDW enables FBI investigators and analysts to conduct data analysis and data sharing across all FBI and other source data files. This ability will greatly increase the probability that investigators and analysts will be able to identify high probability suspects in terrorist cells, foreign intelligence operations, and other conspiracies. With appropriate security implemented, this coordinated searching will be extended beyond FBI databases to files at other agencies. The more databases that can be accessed and searched in this coordinated fashion, the greater the capability to find significant details that could prevent a terrorist or other criminal act. The prototype was developed using live investigative counterterrorism data, allowing the FBI to test the effectiveness of new technologies and identify the IDW system's operational needs.

IDW supports all of the top 10 FBI priorities, as described in the following table. With full IDW deployment, the FBI will have now the ability to recognize the relationships among the totality of the data in its possession. The IDW will provide access to its information, and IDW advanced data analysis tools will provide the capability to automatically correlate that information. Without this initiative, the FBI would not be able effectively to perform its mission of protecting the United States against terrorist attacks, foreign intelligence operations, and other conspiracies.

(C) The Master Data Warehouse (MDW) centralizes all FBI data, enabling exploitation of the data employing "user friendly" analytical tools. FY 2005 resources will be directed to three components: basic enhancement of processing power employing distributed processing

technologies for the FBI's investigative data (i.e., counterterrorism, counterintelligence, and criminal files); a load balancing/data replication capability to ensure information availability and reliability; and an initial investment in decision management and administrative tools to support Bureau re-engineering efforts.

Distributed Processing

MDW will develop and deploy enhanced capabilities to support centralized investigative data processing (to include counterterrorism, counterintelligence, and criminal files). With this capability, IDW becomes a subset of the MDW, and enables processing of the expected growth in data.

Distributed computing processes will be engineered to process large masses of data, in the multi-petabyte range, available in the IDW and MDW, enabling exploitation of investigative FBI data. For investigators and analysts, this will allow comprehensive and instantaneous views of patterns and relationships which would not otherwise be obvious or predictable. Deployment of the IDW, initiated in FY 2003, provides the FBI with technologies having an unprecedented capability to exploit and share virtually unlimited amounts of investigative data both internally and with other intelligence and law enforcement partners at the federal, state, and local levels. With this enhancement, the FBI and its cooperating intelligence and law enforcement partners will for the first time be able to search relevant FBI and "all source" data at the same time, correlate the data, and see patterns and associations of information which indicate criminal relationships. With these technologies applied to the MDW, FBI managers and staff will be able to correlate and analyze diverse information in dozens of "ad hoc," "stove-piped" databases. Intelligence and law enforcement will be able to access IDW data, in seconds to near real-time, from public and private sources, and view all information with relevance to an investigation. Technologies to address this type of information management and distributed computing processes have been developed in other computing environments, primarily in large corporate organizations. These capabilities must be made available in the FBI to address crime detection and prevention. Distributed computing services will enable the FBI to sustain its position as the pre-eminent law enforcement and counterintelligence organization.

Load Balancing/Data Replication

MDW will deploy the first of two facilities to ensure that the FBI's information is available without fail and maintains its integrity in the event of failure in the main MDW operations site.

Although the IDW has internal load balancing and file copying (fail-over) capabilities incorporated into its architecture (employing Oracle and Veritas software), the FBI must be capable of keeping its law enforcement and management resources operating at optimum levels, ensuring internal data integrity and availability, as well as accurate and current interfaces with its federal, state, and local partners. The load balancing/data replication component requested will ensure the FBI's significant investment in its computer science, hardware, and software technologies can provide continuous processing of its large masses of data and a comprehensive,

instantaneous, view of patterns and relationships which would not otherwise be obvious or predictable. FY 2005 will allow for a first site, at Clarksburg, West Virginia (a second site in Pocatello, Idaho, will be proposed in out-years). To maximize value to its customers, the MDW must be able to timely provide accurate investigative, predictive, and management capabilities internally, and share investigative data with its intelligence and law enforcement partners at the federal, state, and local levels. To maximize efficiency, it is essential that a comprehensive approach to load balancing and data replication be initiated in FY 2005 with development and deployment of these capabilities. Load balancing applies to both the overall site, the front end metaframe servers, and the application servers.

Decision and Administrative Support

In FY 2005, MDW will initiate development of integrated decision and administrative support tools to enable re-engineering of Bureau business processes (initial candidates are human resource management, personnel security, and procurement/property management).

The MDW will enable the FBI to work with its management and administrative information so that it can be displayed in useful ways, both historically and, using sophisticated analytical tools, prospectively. With MDW technologies, the FBI will be able to correlate its administrative and management data, enabling the display of patterns of information which would indicate the need for management intervention or other action, and interface with other public and private service providers to allow exploitation of outside tools and sources. Technologies are available now, in various venues, to enable these processes, but due to the FBI's traditional approach to internalizing these functions, the FBI has not been able to take advantage of them. MDW will change this, allowing for the employment of the "best practices" found in other government agencies and the private sector. The data management technologies and tools to be provided under the MDW project are critical for the success of the FBI's re-engineering efforts, and an essential element in the Bureau's efforts to modernize its information technology. Under the MDW program, FBI management and staff will be able more effectively to invest scarce human and infrastructure resources in their mission-critical tasks, instead of supporting labor-intensive administrative functions. In its decision-making and administrative responsibilities, management and staff will be able to display all the information relating to a single issue or to a set of related subjects of interest, which is currently impossible due to the dispersal of data among diverse, stove-piped databases. This antiquated approach results in the need to invest hours, days, and even weeks using paper-based or semi-automated systems, allowing conclusions based only on the information readily available. The MDW will allow management and staff a complete view of all related information, such as personnel, property, and security records. MDW will also allow the FBI to securely "off-load" many routine administrative functions.

The MDW system will enable all FBI agents and analysts to access multiple investigative and internal administrative databases with a single query. Moreover, investigative queries will receive timely responses with the data organized and presented in such a manner as to reveal potential terrorist conspiracies, identifying patterns of foreign espionage, cyber attacks, and other criminal activities. Similarly, responses to administrative queries will provide FBI staff with

relevant information to support internal FBI business processes. The MDW broadens the character of the data and functionality of the system by incorporating FBI administrative functions and administrative data into a master data warehouse and expands investigative and administrative capabilities to the entire FBI.

To accomplish its mission, FBI agents must have rapid, easy access to all available source materials potentially associated with conspiracies (counterterrorist, counterintelligence, and major crime). They must have state-of-the-art tools that imperiously search, identify, and present coherent, relevant information extracted from vast databases. Similar needs are faced by other law enforcement and intelligence agencies.

MDW will give FBI criminal investigators and analysts the ability to analyze and share data across both the FBI and other external data sources. With this ability, investigators and analysts greatly increase the probability that they will be successful in identifying high probability suspects in terrorist cells, foreign intelligence operations, and other conspiracies. With full implementation of the MDW system, analysis can be extended beyond the limits of FBI databases to data at other agencies. The greater the number of databases that can be accessed and searched using MDW's data mining and analysis tools, the greater the likelihood that agents will uncover significant details that could prevent a terrorist or other criminal act.

Among the FBI's top priorities is upgrading its technology to successfully perform its mission. Accordingly, the MDW addresses the FBI's need to modernize its business and decision-making processes to efficiently use the human capital now available. Through the MDW system, the Bureau will invest in the latest automated technologies to handle its internal business functions and activities. The FBI intends to use commercially available or other federal agency software products to accomplish internal business activity. Using existing, proven applications will not only reduce the development and maintenance effort required of such systems, but will enable the Bureau to leverage many business processes and create an environment for better utilization of limited human capital.

Leahy 26. The GAO recently published a report again confirming that the FBI lacks adequate support services and needs more foreign language specialists. What is the FBI doing to ensure appropriate language and job skills and diversity in its workforce to meet the law enforcement and intelligence needs of the international community in which it operates?

Response:

With respect to the FBI's efforts to ensure appropriate language and job skills in its workforce to meet the law enforcement and intelligence needs of the international community, please see the FBI's response to Senator Durbin's Question 3, parts A and B.

Leahy 27. What sort of training do FBI representatives living abroad receive with respect to local languages, customs and cultures, to help them better assimilate in the country to which they are assigned?

Response:

The FBI offers foreign language training to all employees selected for assignment abroad or for any position in which foreign language ability is considered necessary or useful. However, because Legal Attaché personnel are often selected only three to six months before they are to report overseas, they may not have enough time available for the training required to achieve these goals. Nevertheless, the FBI does everything it can to accommodate the employee's schedule, and arranges for private sector vendors to provide instruction even if for only a short period. All foreign language training includes familiarization with the customs and cultures of the country of assignment.

The FBI also arranges for Legal Attaché personnel to receive language training in the host country following the foreign language training provided in the United States. Training is provided at the United States embassy or through private vendors.

Leahy 28. In three cases to date, the Administration has designated suspected terrorists as "enemy combatants" and transferred them to military custody, where they may be detained indefinitely, without access to counsel. Justice Department and military officials have reportedly stated that decisions whether to label a suspected terrorist as an enemy combatant are made on a case-by-case basis. Has the FBI participated in this ad hoc decision making, and to what extent?

Response:

In keeping with the broad emphasis on information sharing across the government as part of the global war on terrorism, the FBI provides factual information about individuals who may be connected with al Qaeda to numerous other government entities. Some of those entities may use that information in evaluating whether an individual qualifies as an enemy combatant. In particular, the FBI provides factual information to the Criminal Investigative Task Force at the Department of Defense (DOD). As you know, determination of enemy combatant status is primarily a question for DOD. Inquiries about DOD's internal processes or deliberations concerning enemy combatant status would have to be directed to appropriate officials at DOD. The FBI also provides information to DOJ's Criminal Division, and that information may be used by the DOJ in providing legal analysis concerning whether an individual lawfully may be held as an enemy combatant.

[The questions posed by Senator Leahy contain two Questions # 29. They have been re-labeled for clarity as 29a and 29b.]

Leahy 29a. Two months ago, Senator Feingold and I wrote to Attorney General Ashcroft regarding the Department's aggressive use of material witness warrants following the 9/11 attacks. There have been several reported instances of misuse of these warrants, including the case of eight Egyptian men in Evansville, Indiana, who were imprisoned for an extended period based on what turned out to be false allegations in the supporting affidavit. Since the 9/11 attacks, has the FBI adopted any new policies or guidelines regarding the use of the material witness statute or are any under consideration?

Response:

The FBI has not adopted any changes to existing policies, nor are new policies under consideration with respect to the material witness statute.

Under the authority of the federal material witness statute (18 U.S.C. section 3144), the government may petition the court to issue a warrant authorizing the arrest of an individual if the government has sufficiently demonstrated to the court that the individual has information material to a criminal proceeding and that it may be impracticable to secure the appearance of the individual at the proceeding with a subpoena.

It is the policy of the FBI, communicated to agents through the Legal Handbook for Special Agents, to obtain prior approval from the United States Attorney's Office before requesting an arrest or search warrant from the court. In the context of a material witness warrant, this approval is essential, as the purpose of a material witness warrant is to secure the appearance of an individual as part of a criminal proceeding, i.e., grand jury, preliminary hearing, or trial. Thus, FBI agents work with the Assistant United States Attorney assigned to the underlying investigation to assess the propriety of the warrant.

As has been well-publicized, the federal material witness statute was used by the government following the attacks of September 11, 2001. The incident to which your question refers is an example of the government's use of material witness warrants to facilitate the investigation of allegations that individuals were planning an imminent terrorist attack. In the Evansville incident, the government received information it believed to be credible from a source very close to one of the subjects. The source indicated that the eight men who were arrested on material witness warrants were knowledgeable about an imminent terrorist attack because they had participated in its planning. Our priority was, and remains, to prevent acts of terrorism. As a result of the imminent nature of the threat and the evaluation by the government of the credibility of the source's information, particularly given that the source reported it had first-hand knowledge of the alleged threat, material witness warrants were sought and obtained from a court. Regrettably, the individuals were held for seven days before the continuing investigation revealed that the information was false. The eight men were then promptly released. Thereafter, the government was able to have the arrest warrant expunged from each man's criminal history.

Leahy 29b. **A July 28, 2003 article in the Washington Post titled "Ready for Anthrax" states that "In any attempted terrorist attack against this country, smallpox and anthrax would be the only two biological agents capable of causing mass casualties. And while the government has invested considerable effort in planning for a potential smallpox attack, no equivalent plan exists for anthrax." The article makes several suggestions for "closing" what the authors believe is a "window of vulnerability in our homeland." Please describe what resources have been devoted within the FBI in order to protect the Nation against another anthrax attack.**

Response:

Critical to fulfilling the FBI's mandate to prevent bioterrorism in the United States is a close partnership with other elements of the United States IC, as well as cooperation with foreign intelligence services and law enforcement officials. These partnerships assist the FBI by providing foreign intelligence of terrorist activities and targeting, analysis of foreign terrorist trends and developments, and modeling of terrorist-related bioweapons and/or dissemination devices. This intelligence is evaluated by the FBI for potential bioterrorism threats within the United States or against United States personnel abroad. Domestically, the intelligence and law enforcement partnerships are established through a number of entities at FBI Headquarters, the 56 FBI Field Offices, and their respective Resident Agencies. Internationally, this is accomplished through FBI Legal Attachés located throughout the world. Additionally, FBI Headquarters exchanges detailees with DOD, DHS, CIA, and Interpol. The FBI is currently in the process of moving Counterterrorism personnel to be co-located with CIA Counterterrorism Center personnel in a common building in Northern Virginia to more closely coordinate terrorism threat analysis and tracking between these two agencies.

In the prevention, detection, assessment, and response to bioterrorism threats in the United States, the FBI also works closely with the United States Department of Health and Human Services (this liaison is typically with the Centers for Disease Control and Prevention (DHHS/CDC)), the United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA), as well as local law enforcement, public health officials, agricultural and food inspectors, and veterinarians. These United States agencies and local officials provide information relating to unusual signs or symptoms and disease clusters, which could signal that a bioterrorism event has occurred or that individuals, animals, or crops have been exposed to a bioterrorism agent such as *Bacillus anthracis*, the causative agent of anthrax. Detection by these agencies of potential contamination of these products and notification of the FBI are critical steps in preventing the dissemination of a bioterrorism agent through these key aspects of United States infrastructure.

In order to maintain these close relationships and foster reporting of relevant information, liaison with federal government partners at the headquarters level is maintained by the Weapons of Mass Destruction Operations Unit (WMDOU), the Weapons of Mass Destruction (WMD)

Countermeasures Unit, and the National Joint Terrorism Task Force (NJTTF). At the state and local levels throughout the United States, the FBI has designated field office Weapons of Mass Destruction Coordinators (WMDC) in each division to actively engage with local public health and law enforcement officials and the broader community. In addition to maintaining these relationships, WMDCs provide presentations to educate critical sectors of their communities in the prevention and detection of a WMD release. Specifically in regard to prevention, private and university researchers are made aware of security concerns and the need to protect biological materials, as well as notification procedures to follow regarding suspicious activity at a research facility or by facility personnel. WMDCs provide presentations for local school boards, hospital associations, community watch groups, and others, to raise awareness within these communities to the potential of a bioterrorism attack. These groups are provided with information regarding notification procedures if suspicious activity occurs. WMDCs also participate in local and regional training exercises with public safety, emergency response, and public health agencies involved in homeland security. These exercises increase the level of awareness regarding the potential for bioterrorism among first responders, local law enforcement, and local public health officials.

Once notified of a bioterrorism threat, either through case information, intelligence reporting, or reported incidents/suspicious activities, WMDOU facilitates a real-time threat assessment conference call with subject matter experts qualified to render opinions and advice regarding the nature, credibility, and consequence of the threat. This call will include expert personnel from such agencies as the DHHS/CDC, DHS, USDA, FDA, the FBI's Hazardous Materials Response Unit (HMRU), the FBI's Bomb Data Center (BDC), and the National Center for the Analysis of Violent Crime (NCAVC), the FBI's behavioral experts. NCAVC can provide behavioral analyses in a variety of contexts. The make-up of the call's participants is determined by the nature of the threat. Information from the analysis provides valuable information to FBI field offices, as well as state and local emergency response officials, to assist their efforts to effectively resolve the threat. If an incident has occurred, the assessment can also provide important life-saving information and assist officials in determining the extent of the crisis. This threat assessment process serves as the trigger for the federal crisis management response to a terrorism incident involving WMD. In addition, the information developed through this assessment assists Federal consequence management officials in identifying possible requirements for assistance to affected areas.

In addition to the liaison, outreach, and training provided by WMDCs, each FBI field division has formed a JTTF with local and regional law enforcement, public health investigators, fire, hazardous materials, intelligence community, emergency response, and emergency medical services officials to share intelligence regarding potential threats to the community. The JTTFs are managed by the NJTTF located at FBI Headquarters. The NJTTF has representatives from each of the federal agencies involved in prevention, detection, response, and prosecution of terrorism.

As mandated by Public Law 107-188, "Public Health Security and Bioterrorism Preparedness Response Act of 2002" (Bioterrorism Act), DHHS/CDC and USDA have overlapping

responsibility for regulating the possession, use, and transfer of specific human, livestock, and crop pathogens and toxins which are deemed a threat to public, animal, or plant health. These pathogens and toxins are termed "select agents," and include those pathogens and toxins deemed most likely to be used in a bioterrorism attack such as anthrax. As part of the FBI's effort to prevent a bioterrorism release, WMDOU and field office WMDCs maintain active liaison with DHHS/CDC and USDA to ensure rapid response and proper notification in the event that certain agents are stolen or missing, and to coordinate criminal investigation of unauthorized possession, use, or transfer. The security guidelines include submitting fingerprint cards to the FBI's CJIS Division as one component of the security risk assessment conducted by CJIS regarding individuals who have applied for access to certain agents. If it is determined that an applicant matches any of the restrictive categories, and there is an open or pending criminal investigation, CJIS notifies the FBI's Criminal Investigative Division (CID), Counterterrorism Division/Domestic Terrorism Operations Section, and WMDOU.

The FBI's Laboratory Division (LD) also undertakes various activities in support of initiatives to prevent the use of WMD. HMRU provides the LD's most extensive capabilities for WMD prevention. Vital capabilities that complement those of HMRU for WMD prevention are present elsewhere in the LD, especially in the BDC, Evidence Response Team, Chemical-Biological Sciences Unit (CBSU), and Counterterrorism and Forensic Sciences Research Unit.

HMRU fulfills the FBI's mission for technical and scientific support in response to criminal acts and other suspicious events where WMD materials are involved. This support includes assessing WMD-related threats, training FBI personnel from HQ and the field, and collecting and transporting WMD-related evidence. HMRU maintains and supports several programs for the prevention of biological attacks. In direct support of the FBI Field Divisions, the HMRU has developed and conducts various technical courses that train FBI Special Agents and representatives of other United States government agencies to recognize indicators of possession, production, and/or use of hazardous biological materials. HMRU also supports on-going WMD-related investigations by providing subject matter experts and hazardous materials officers to the Field Divisions during the conduct of searches, interviews, and document reviews. In addition to these activities within the FBI, the HMRU actively participates in community outreach programs with public health, public safety, and biological organizations to strengthen awareness about potential vulnerabilities and appropriate responses, and to establish communication networks prior to an incident. In addition, the IC and DHS forward information for review and technical assessment. This inter-agency cooperation allows the FBI to investigate and possibly prevent the proliferation or dissemination of biological, chemical, and radiological/nuclear materials.

As noted previously, other LD units play important roles in WMD prevention. This is especially true in the case of CBSU. CBSU has established working relationships with United States government partners, such as the U.S. Army Medical Research Institute for Infectious Diseases, the U.S. Army Edgewood Chemical and Biological Center, and the Department of Energy's Savannah River Technical Center. CBSU is putting in place a cadre of qualified FBI forensic examiners who can conduct their work in the partner facilities, thus avoiding the need to transport WMD-contaminated evidence to Quantico. Additionally, CBSU is forming other

partnerships to extend its capabilities so that laboratories are geographically dispersed and redundancy is assured, thereby eliminating the FBI's need for a sole-source partner in any WMD functional area and expediting the processing of evidence.

FBI Field Divisions are equipped with SWAT teams, some of which have enhanced capabilities for operating in hazardous materials environments. Additionally, the FBI maintains Hostage Rescue Teams at Quantico that are capable of operating in hazardous materials environments and are trained to operate with DOD and DOE components. These special teams, in various levels of deployment, are available should the FBI develop information indicating that terrorists are preparing for a biological release.

The Domestic Emergency Support Team (DEST) is a specialized interagency United States Government team that includes FBI members and is designed to expeditiously provide expert advice, guidance, and support to the FBI On-Scene Commander during a WMD incident or credible threat. The standard DEST composition is designed to permit response to a variety of WMD threats or incidents, but may be tailored depending on the nature of the threat. Designated FBI personnel assigned to the DEST mission include representatives from the WMDOU, HMRU, Crisis Management Unit, Crisis Response Unit, BDC, NCAVC, European Union, and National Preparedness Office. This composition allows the FBI to provide an on-scene, real-time WMD threat assessment capability to the On-Scene Commander and assist the field by addressing ongoing legal, jurisdictional, investigative, and operational issues.

Leahy 30. Last week, a declassified version of the congressional inquiry into the 9/11 attacks was released for public review. Please describe the FBI's role in the declassification process, and why that process took more than seven months to complete.

Response:

At the end of last year, the Joint Inquiry asked the Director of Central Intelligence to coordinate an IC review of the Joint Inquiry's Final Report for the purpose of declassification. The FBI participated in that review as a member of the IC. It is important to remember that the original report of the Joint Inquiry, consisting of over 800 pages, was classified at the "Top Secret" level and additionally contained compartmented information from some of the Government's most sensitive SCI programs. The original report was not portion-marked and the information in the report was not sourced to the original IC documents from which the information was derived. This made the classification review and declassification process very difficult.

The FBI did not take the declassification review lightly. We engaged in months of painstaking line-by-line review and consultation within the IC. Representatives of the IC began substantive discussions with the Joint Inquiry staff concerning classification issues in March 2003. This dialogue continued through June 2003. Ultimately, negotiations came down to 28 pages -- 28 out of more than 800. At the conclusion of the process, the IC recommended to the White House that a portion of the report remain classified because disclosure of that information could

compromise pending investigations and sources and methods, and could significantly harm our capabilities in the war against terrorism.

Leahy 31. **Finding 9 of the Joint Inquiry Report states that "The U.S. Government does not presently bring together in one place all terrorism-related information from all sources." There has been much discussion since September 11 of the need for so-called "information sharing" among Federal, State and local authorities. Indeed, a "new FBI" has been advertised to the public, though some of the descriptions provided of the reorganization efforts often sound redundant - a veritable bureaucratic maze of new acronyms and elaborate job descriptions. Given the "new FBI" that is now in place, is Finding 9 of the Joint Inquiry Report still true today? If not, please identify that "one place" where all terrorism-related information is brought together, and also describe how and to whom that information is disseminated.**

Response:

Great strides have been made within the FBI and across the United States Government to ensure that there are no "seams" in terrorism analysis and that terrorism-related information is shared in a timely manner among federal, state, and local authorities. The establishment of TTIC is a manifestation of progress made toward addressing the issues identified in the Joint Inquiry Report, including the need to "bring together in one place all terrorism-related information from all sources." Building on initiatives underway at the Bureau, full partner participation in TTIC is part of our overall approach to strengthening the nation's posture relative to the terrorism mission. We view TTIC as a force multiplier. TTIC brings together the expertise and authorities (as well as statutory restrictions) of the FBI, DHS, DOD, DOS, and CIA, where we are collaboratively integrating terrorist threat-related information, collected domestically and abroad, to form a comprehensive threat picture. TTIC disseminates this information to appropriate officials throughout the federal government. DHS has the lead for providing terrorism-related information to state and local officials and private industry, while the FBI is responsible for providing terrorism-related information to federal, state, and local law enforcement personnel.

Leahy 32. **Finding 12 of the Joint Inquiry Report states, among other things, that "difficulties with FBI applications for Foreign Intelligence Surveillance Act (FISA) surveillance and the FISA process led to a diminished level coverage of suspected al-Qaeda operatives in the United States." We are all familiar with the FBI's much-publicized failure to obtain a FISA warrant in the Moussaoui investigation. Were there other instances directly or indirectly connected with the September 11 attacks where, because of the "perception" within the FBI that the "FISA process was lengthy and fraught with peril" (see Finding 12), investigative avenues were not pursued? Please describe any such instance where FISA was considered but not used.**

Response:

The FBI has not and will not back down on the appropriate use of FISAs for any reason.

To ensure that FISA is widely understood as an available option in appropriate cases, DOJ is undertaking to engage United States Attorney's Offices in the FISA process. In addition, pursuant to Section 901 of the USA PATRIOT Act, the FBI will be participating with the Community Management Staff and other members of the IC in establishing the priorities governing the use of FISA in the war on terrorism. This overall prioritization process, which is currently performed on a daily basis by the FBI and OIPR, will provide broad guidance about which terrorist threats require the most FISA attention, which will in turn inform the FBI's decision-makers about the use of FISAs in its investigations.

Additionally, the FBI's NSLB has instituted a continuing legal education program for FBI Headquarters and Field Division personnel. This program provides a substantial amount of training, including eight hours of instruction (provided approximately 20 times a year in various locations) concerning FISA and the Collection and Dissemination of Foreign Intelligence and Foreign Counterintelligence. The NSLB is also working with FBI Academy personnel to develop videotapes and other types of self-paced instruction on FISA and other national security law matters for dissemination to all personnel involved in FBI intelligence and counter-intelligence programs.

Leahy 33. Finding 16 of the Joint Inquiry Report states that prior to September 11, 2001, "there was no coordinated U.S. Government-wide strategy to track terrorist funding and close down their financial support networks." Please describe the current strategy being used to track terrorist funding. What has been done since September 11th to "close down" financial support networks of terrorist activities? If the PATRIOT Act was used in any measure to "close down" a financial support network, please describe those efforts and results in detail.

Response:

Currently, there exists a much better understanding of terrorist financing methods than prior to the 9/11 attacks. More sophisticated and effective processes and mechanisms to address and target terrorist financing continue to be developed and to evolve. Pro-active approaches are increasingly being used. Awareness throughout the world on the part of law enforcement, government agencies, regulators, policy makers, and the private sector of terrorist financing methods, suspicious financial activity, and vulnerabilities is much higher since 9/11. International cooperation has reached unparalleled levels. Outreach with, and cooperation from, the private sector has been outstanding and continues to develop, particularly the level of two-way interaction between law enforcement and the private sector. The ability to access and obtain this type of information immediately has significantly enhanced the FBI's ability to identify,

investigate, and resolve immediate threat situations involving potential terrorist activity. For example, the ability to monitor specifically identified financial activity has been invaluable not only to investigations ongoing in the United States, but also to foreign law enforcement and intelligence agencies in related investigations.

Extensive training and support of international investigations by the FBI's Terrorist Financing Operations Section (TFOS) has led to Agent visits, exchanges, and training programs involving a variety of countries in Europe, Southeast Asia, the Middle East, and South America. In support of specific high-profile joint terrorist financial investigations, a number of countries and agencies, including the United Kingdom, Switzerland, Canada, and Europol, have detailed investigators to TFOS on a temporary duty basis. TFOS has engaged in extensive coordination with authorities of numerous foreign governments in terrorist financing matters, leading to joint investigative efforts throughout the world. These joint investigations have successfully targeted the financing of several overseas al Qaeda cells, including those located in Indonesia, Malaysia, Singapore, Spain, and Italy. Furthermore, with the assistance of relationships established with the central banks of several strategic countries, successful disruptions of al Qaeda financing have been accomplished in countries such as the United Arab Emirates, Pakistan, Afghanistan, and Indonesia.

TFOS has developed a specific curriculum regarding terrorist financing/money laundering crimes for use in international training. This curriculum includes such topics as: acquiring and handling evidence in document intensive financial investigations, major case management techniques, forensic examination tools, and methods of terrorist financing. At the request of DOS, TFOS has led an interagency team to provide this curriculum to a number of countries identified as needing law enforcement training on conducting terrorist financing investigations (training in approximately 38 countries is currently scheduled).

TFOS has cultivated and maintains contact with private industry and government sources/persons who can provide financial data, including real-time monitoring of financial transactions. Many of these contacts can be reached or accessed regarding emergencies 24 hours a day 7 days a week, allowing TFOS to respond rapidly to critical incidents.

Through these contacts, TFOS has access to data and information from a variety of entities including: banking institutions; credit/debit card services; money services businesses; securities and brokerage firms; insurance companies; travel agents; Internet service providers; the telecommunications industry; law enforcement agencies; federal and state regulatory agencies; public and open source data providers; the intelligence community; and international law enforcement and intelligence contacts. The timeliness and accessibility of the data are contingent on a variety of factors including whether the acquisition of the information requires legal process, the search capabilities of the data provider, and the size and depth of the data request. The ability to access and obtain this type of information quickly has significantly enhanced the FBI's ability to identify, investigate, and resolve immediate threat situations involving potential terrorist activity.

The ability to identify and track financial transactions and links after a terrorist act has occurred, or terrorist activity has been identified, represents only a small portion of the mission; the key lies in exploiting financial information to identify previously unknown terrorist cells, recognize potential terrorist activity/planning, and predict and prevent potential terrorist acts. Prior to 9/11, less emphasis was placed on addressing the mechanisms and systems associated with terrorist financing and disrupting them before they could be utilized to further terrorist activities. Since 9/11, TFOS, together with DOJ's Criminal Division's Counterterrorism Section, has begun a number of proactive link analysis initiatives to identify potential terrorists and terrorist related financing activities.

The overriding goal of these projects is to proactively identify potential terrorists and terrorist related individuals, entities, mechanisms, and schemes through the digital exploitation of data. To accomplish this, TFOS seeks to: 1) identify potential electronic data sources within domestic and foreign government and private industry providers; 2) create pathways and protocols to acquire and analyze the data; and 3) provide both reactive and proactive operational, predictive, and educational support to investigators and prosecutors.

Information sharing is critical to all of our efforts. The intelligence community, including the FBI, produces and obtains tremendous amounts of classified intelligence information. While much of the information can be of significant value in terrorist finance investigations, the value will not be realized or maximized absent the ability to filter the information, analyze it, and disseminate it in an appropriate manner to those who can make the best use of the information. Toward this end, TFOS participates, among other joint activities, in joint endeavors involving the CIA, FBI, Treasury Department, DOJ, and DHS involving potential terrorist-related financial transactions. TFOS has personnel detailed to the CIA Counterterrorism Center (Financial Operations) and personnel from that entity work directly with TFOS on financial intelligence matters.

The NSC formalized the PCC at the end of 2001. The Department of Treasury chairs the PCC and representatives from the CIA, DOD, DOJ, DHS, NSC, DOS, and FBI attend meetings. The PCC generally meets at least once a month to coordinate the United States government's campaign against terrorist financing. The meeting generally focuses on ensuring that all relevant components of the federal government are acting in a coordinated and effective manner to combat terrorist financing.

Our efforts to combat terrorism have been greatly aided by the authorities of the USA PATRIOT Act. Success in preventing another catastrophic attack on the United States homeland would have been much more difficult, if not impossible, without the Act. It has already proved extraordinarily beneficial in the war on terrorism, and our opportunities to use it will only increase. Most importantly, the PATRIOT Act has produced greater collection and sharing of information within the law enforcement and intelligence communities.

Title III of the Act, known as the International Money Laundering Anti-Terrorist Financing Act of 2001, has armed us with a number of new weapons in our efforts to identify and track the

financial structure supporting terrorist groups. Past terrorist financing methods have included the use of informal systems for transferring value in a manner that is difficult to detect and trace. The effectiveness of such methods should be significantly eroded by the Act, which establishes stricter rules for correspondent bank accounts, requires securities brokers and dealers to file Suspicious Activity Reports (SARs), and mandates that certain money services register with FinCEN and file SARs for a wider range of financial transactions.

Other provisions of the Act have considerably aided our efforts to address the terrorist threat including: strengthening the existing ban on providing material support to terrorists and terrorist organizations; the authority to seize terrorist assets; and the ability to seize money subject to forfeiture in a foreign bank account by authorizing seizure of a foreign bank's funds held in a United States correspondent account.

Leahy 34. In your July 22, 2003 response to questions posed by Senator Cantwell following our June 6, 2002 hearing, regarding concerns that new authorities under the PATRIOT Act will be abused by the FBI (Question 6), you stated, "The FBI has a number of internal and external safeguards in place today that did not exist in the past." You then cited as "two key external safeguards" Executive Order 12333 - which was signed by President Reagan in 1981 -- and the FCIG - which was put in place by Attorney General Reno in 1995. You also cited as an "important internal safeguard" the Intelligence Oversight Board established by Executive Order 12863 - which President Clinton issued in 1993.

A. On what basis did you state that these "internal and external safeguards" are "in place today" but "did not exist in the past?"

Response:

The safeguards referenced in the question, Executive Order 12333 and the FCIG, were cited in response to a question that asked, "What assurances can you give us that these new authorities will not be abused in the name of terrorism or intelligence matters, as similar authorities had been abused by the FBI in the past?" We believed that the question's mention of "past abuses" referred to the sort of activities exposed in the 1976 report of the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, better known as the "Church Committee." Executive Order 12333 and the FCIG did not exist during that era, but are in place now. We did not mean to suggest that these safeguards were not in existence when the USA PATRIOT Act was passed.

B. Can you identify any safeguards against FBI abuse of its PATRIOT Act and other investigative authorities that are now in place, but did not exist prior to September 11, 2001?

Response:

There are formal and informal safeguards against FBI abuse of its investigative authorities that did not exist prior to September 11, 2001. First, some of the investigative authorities that were created or expanded by the USA PATRIOT Act contain safeguards against abuse. For example, Section 214 of the Act altered the standards for obtaining a pen register under FISA. Such a pen register may be obtained upon a certification that the information likely to be obtained is relevant to an ongoing investigation to protect against international terrorism or clandestine intelligence activities. Section 214 also now requires that the pen register applicant certify to the court that the underlying investigation of a United States person is not conducted solely on the basis of activities protected by the First Amendment. Such a certification requirement ensures that individuals will not be investigated solely because of what they say or how they worship. Section 214 also preserved the existing court-order requirement. Now, as before, law enforcement cannot install a pen register unless it applies for and receives permission from the FISA court.

Likewise, Section 216 (which codified the applicability of the criminal pen register/trap and trace investigative authority to Internet communications) contains a number of safeguards and restrictions. Section 216 preserved all of the law's pre-existing standards. As before, law enforcement officials must obtain court approval before installing a pen register and must show that the information sought is relevant to an ongoing investigation. The pen/trap statute (18 U.S.C. chapter 206) was amended throughout to make clear that the contents of communications may not be the intended object of a pen register or trap and trace order. Also, in response to concerns about the FBI's investigative tool DCS1000 (formerly known as Carnivore), the USA PATRIOT Act imposed stringent reporting requirements on the government's installation of government-owned pen/trap devices on public providers' packet-switched data networks. (See 18 U.S.C. section 3123(a)(3).)

In addition, since the USA PATRIOT Act was passed, FBI agents have received guidance concerning appropriate implementation of certain provisions of the Act. This guidance will serve as a safeguard against FBI abuse of its PATRIOT Act and other investigative authorities. For example, Section 203 of the Act permitted law enforcement to share with the intelligence community information obtained from grand juries and Title III wiretaps. Pursuant to the Act, on September 23, 2002, the Attorney General issued Guidelines for Disclosure of Grand Jury and Electronic, Wire, and Oral Interception Information Identifying United States Persons. These Guidelines require labeling of information that identifies United States persons so that it will be properly retained and disseminated by intelligence agencies.

Congressional oversight of the FBI's activities also provides some assurance that the FBI is conducting investigations in accordance with the Constitution and other law. Some of the investigative authorities modified by the USA PATRIOT Act contain safeguards in the form of requirements to report to Congress on use of these new authorities. For example, Section 215 of the Act amended the statute granting access to business records for foreign intelligence and international terrorism investigations, codified at 50 U.S.C. section 501. Pursuant to 50 U.S.C.

section 502, on a semiannual basis, the Attorney General must fully inform the IC concerning all requests for production and must also provide the Committees on the Judiciary a report on the numbers of requests and orders.

In at least one instance, a law passed after the USA PATRIOT Act created an additional safeguard by imposing an additional reporting requirement. The Electronic Communications Privacy Act, codified beginning at 18 U.S.C. section 2701, provides privacy protection for electronic communications, such as e-mail and associated records. It also outlines the compulsory process that law enforcement can use to obtain both the content of communications and records held by an electronic communications service provider or a remote computing service, most often an Internet Service Provider. The USA PATRIOT Act created a voluntary disclosure provision that explicitly permits, but does not require, a service provider to disclose customer records to law enforcement in emergencies involving an immediate risk of death or serious physical injury to any person. 18 U.S.C. section 2702(b)(7); 18 U.S.C. section 2702(c)(4). With the passage of the Homeland Security Act of 2002, P.L.107-296, section 225(d)(2), the FBI was required to provide information on emergency disclosures received. This information must also be reported to Congress one year after enactment of the Homeland Security Act of 2002.

Leahy 35. In February 2003, the FBI's National Infrastructure Protection Center warned on the FBI Web site that "growing tensions between the United States and Iraq could lead to an increase in global computer hacking activities on both sides." According to the Web site, "Regardless of the motivation, the NIPC reiterates such activity is illegal and punishable as a felony .... The U.S. government does not condone so-called "patriot hacking" on its behalf." Please describe what the website reference to "patriot hacking" encompasses and whether, since February 2003, any U.S. citizens or residents have engaged in "patriot hacking."

Response:

"Patriot hacking" is when a person breaks into a computer system, usually a website, leaving symbolic or patriotic messages. During the "Navy Plane" incident, a group of Chinese hackers took credit for defacing 1,000 websites with pro-Chinese and anti-American slogans.

The FBI is aware of only one incident that can be described as patriot hacking during the Iraq war. Following is a summary of that incident.

On or about March 26, 2003, John William Racine II, 24, a website designer from Norco, California, gained control of the ALJAZEERA.NET domain name by defrauding Network Solutions where Al Jazeera maintained an account for its domain name services. Racine impersonated an Al Jazeera system administrator and contacted Network Solutions by telephone

and e-mail. Via a forged "Statement of Authorization" form, Racine induced Network Solutions to give him control of the Al Jazeera account.

Racine subsequently changed the ALJAZEERA.NET account settings and redirected all web traffic through another dynamic domain name service and ultimately to his website containing the American flag. In addition, he also redirected all e-mail traffic of ALJAZEERA.NET to an account he had created on MSN HOTMAIL using the name of an Al Jazeera system administrator. While Racine maintained control of Al Jazeera's domain name, Internet users were unable to access the Al Jazeera website, and Al Jazeera was unable to receive e-mails sent to its domain.

On March 27, 2003, Racine admitted to the FBI that he was responsible for the hijacking and redirection of the ALJAZEERA.NET domain. Racine conducted this attack after learning in March 2003 that ALJAZEERA.NET had broadcast pictures of executed and dead American soldiers during Operation Iraqi Freedom. Racine believed that this action by Al Jazeera was immoral, indecent, and irresponsible and violated the Geneva Convention.

On June 9, 2003, the United States Attorney's Office in Los Angeles, California, filed a two-count information against Racine charging him with wire fraud and unlawful interception of an electronic communication. Racine pled guilty to two felony violations of 18 U.S.C. section 1343 (wire fraud by defrauding NetworkSolutions.com) and violation of 18 U.S.C. section 2511 (illegal intercept of an electronic signal, i.e., an unauthorized wire tap).

Leahy 36. **In July 2002, President Bush signed a secret order directing the government to develop, for the first time, guidelines for determining when and how the United States would launch cyber-attacks against enemy computer networks. The Administration confirmed the secret order seven months later in February 2003. Have those guidelines been developed and are they available for review by this Committee?**

Response:

We cannot provide a response to this question in an unclassified document.

Leahy 37. **In this week's issue, Newsweek contends that "the FBI has gone out of its way to avoid talking about Saudi state sponsorship of terrorism." The Newsweek article cites a June 26 hearing of the Senate Judiciary Subcommittee on Terrorism, Technology and Homeland Security where Assistant Director Larry A. Mefford did not mention Wahhabi, an ideology accepted by some Saudis that some contend is supportive of Islamic extremism and terrorist groups, and, instead, "portrayed the Saudis as victims and U.S. partners." By contrast, the Newsweek article reports, the Department of Treasury, has not been reticent to touch the Saudi-Wahhabi**

issue, David Aufhauser, Treasury's General Counsel, recently told the Senate Judiciary Subcommittee that Saudi Arabia is the "epicenter" behind the funding of Islamist terrorism.

A. Do you agree with Mr. Aufhauser's assessment Saudi Arabia is the "epicenter" behind the funding of Islamist terrorism.

Response:

Generally, the FBI concurs with General Counsel Aufhauser's assessment. Funding emanating from Saudi Arabia is a major concern for us in our efforts to cut off the flow of money to Islamist terrorists worldwide. At the same time, the Saudi Arabian Government has been increasingly cooperative in this arena, particularly since the May 12, 2003, bombings in Riyadh. The Saudi Government has, for example, enacted stringent laws to curb money laundering and to increase oversight over NGOs such as charities.

B. What if anything is the FBI doing to investigate the role of Wahhabism in terrorism?

Response:

The FBI is investigating terrorists and terrorism sources wherever they may reside or occur, but has not investigated an individual simply based upon his or her religious beliefs. While the status and results of its investigations in this regard are classified, the FBI has added additional resources to fight the global war on terrorism and has seen precedent-setting cooperation from the Saudi Government. TFOS has engaged in extensive coordination with foreign governments, leading to joint terrorist financing investigative efforts throughout the world. These joint investigations have successfully targeted the financing of several overseas al Qaeda cells. The newest such venture, the Joint Saudi Financial Investigative Unit, has combined the investigative powers of the Mabahith, the FBI, and the Treasury Department. Furthermore, with the assistance of relationships established with the central banks of several strategic countries, successful disruptions of al Qaeda financing operations have been accomplished in several countries.

C. Has any official of the Administration advised, directed or ordered the FBI, directly or indirectly, not to investigate a possible Saudi connection to the September 11 attacks?

Response:

No official of the Administration has advised, directed, or ordered the FBI, directly or indirectly, not to investigate a possible Saudi connection to the September 11 attacks.

Questions Posed by Senator Durbin

Durbin 1. The FBI played a lead role in a Justice Department project to interview thousands of Arab and Muslim men. The FBI also led an effort to interview thousands of Iraqi-American men before and during the war with Iraq. I understand that the FBI did not initiate this project. Attorney General Ashcroft's office conceived it and directed the FBI and others to implement it. I want to share with you my concerns about it. My belief is that counterterrorism measures that explicitly target large groups of Arab and Muslim immigrants for heightened scrutiny do little to improve our security. My fear is that we are squandering precious law enforcement resources by casting the net so wide. I am also concerned that we are alienating communities whose cooperation we desperately need. This seems to run counter to basic principles of community policing, which reject the use of racial and ethnic profiles and focus on building trust and respect by working cooperatively with community members.

The GAO reviewed this project and concluded:

How and to what extent the interview project - including investigative leads and increased presence of law enforcement in communities - helped the government combat terrorism is hard to measure. DOJ has asserted that the project netted intelligence information and had a disruptive effect on terrorists. DOJ has also stated that the interview project strengthened relationships between law enforcement and Arab communities. Some law enforcement officials and representatives for aliens held the opposite view ... More than half of the law enforcement officers that [the GAO] interviewed raised concerns about the quality of the questions or the value of the responses. For example, they noted that the questions were redundant, did not produce complete answers, had limited value, and elicited responses that aliens thought would help them avoid attracting further attention from law enforcement.

The GAO expressed concern that the project was not completed nine months after it began, and that the Justice Department did not know the status of the project and had no plans to conduct an assessment of the project. They recommended that the Justice Department formally review the project and report on its findings, particularly since it seems the government plans to conduct additional interview projects. The Justice Department has not responded to this recommendation.

A. As one of the lead agencies in the Interview Project, do you believe that it was an effective use of limited government resources? Why or why not? Do you believe that it alienated the target communities? Why or why not?

Response:

At the time of the post 9/11 interviews, JTTF resources were stretched thin due to the thousands of leads following the terrorist attacks. There were only 35 JTTFs in existence on 09/11/2001. Since that time, JTTFs have been expanded to all 56 Field Offices and 28 additional annexed resident agencies.

Approximately 1,300 FBI Special Agents, more than 600 state and local officers, and over 500 other federal agencies currently participate full-time on the existing JTTFs. While it is difficult to say with certainty that at that time the JTTFs could have made a difference in the results obtained by DOJ, the JTTF program as presently constituted would be fully capable of handling such a request in a timely manner. To illustrate this, the JTTFs played a key role in assisting FBI Special Agents in completing more than 10,000 interviews of Iraqis during the FBI's Iraqi Phase II Project in less than three weeks. These interviews were very well received within the community and produced useful information.

B. According to the GAO, "Attorneys and advocates told us that interviewed aliens told them that they felt they were being singled out and investigated because of their ethnicity or religious beliefs."

Do you believe that the interviews alienated the target community and reduced the likelihood that they will cooperate with the FBI in the future? Why or why not?

Response:

The FBI conducts interviews in a professional and responsible manner. Many sources were developed during the interview process, which is always positive. Each of the SACs of the 56 Field Offices has established informal committees with Arab-American community leaders. As a result, more positive interaction will occur during future encounters.

C. Do you agree with the GAO finding that the Justice Department should conduct an assessment of the project? Why or why not? Has the FBI conducted such an assessment of its participation in the interviews? Why or why not?

Response:

Although the FBI did not conduct an assessment of this initiative, we did conduct an informal assessment of the Iraqi interview initiative and found it to be quite valuable to DOD in Iraq and in the development of new sources of relevant information.

D. Two U.S. Attorneys Offices sent letters to interviewees to inform them about the interviews, rather than appearing unannounced at their homes or workplaces, as investigators in other jurisdictions did. The GAO found that the community reaction to this approach was very positive. This seems more in keeping with community policing principles.

Do you believe that this approach might be more effective in building trust between law enforcement and the community? Why or why not? If so, would you recommend that the Justice Department replicate it in other jurisdictions when such interviews are conducted in the future? Why or why not?

Response:

The use of announced or unannounced interviews would be part of an investigative strategy that would be determined based upon existing circumstances.

Durbin 2. The Justice Department's Inspector General recently issued a careful and balanced report that validates the concerns that I and many of my colleagues have raised about the Department of Justice's post-9/11 detention policies and practices. The report rightly acknowledges that the Justice Department faced very difficult circumstances after September 11th, but concludes that there were "significant problems" in the way the Department treated September 11 detainees.

In the past, Attorney General Ashcroft has assured us that the Justice Department's resources were focused on terrorists. He told this Committee:

Each action taken by the Department of Justice ... is carefully drawn to target a narrow class of individuals - terrorists. Our legal powers are targeted at terrorists. Our investigation is focused on terrorists. Our prevention strategy targets the terrorist threat.

This report makes clear this assertion was not accurate. It finds that the Justice Department did not adequately distinguish between subjects of the September 11th investigation and other detainees. It criticizes, "the

indiscriminate and haphazard manner in which the labels of 'high interest,' 'of interest,' or 'of undetermined interest' were applied to many aliens who had no connection to terrorism."

I am especially concerned by the IG's finding that the Justice Department did not adequately distinguish between subjects of the September 11th investigation and other detainees. The report found that the Department detained 762 aliens as a result of the September 11th investigation. Exactly zero of these detainees were charged with terrorist-related offenses. No one is suggesting that the Department should never use immigration charges to detain a suspected terrorist, but the broad brush of terrorism should not be applied to every out-of-status immigrant who happens to be Arab or Muslim.

The Inspector General's report said:

[W]e criticize the indiscriminate and haphazard manner in which the labels of "high interest," "of interest," or "undetermined interest" were applied to many aliens who had no connection to terrorism. Even in the hectic aftermath of the September 11th attacks, we believe the FBI should have taken more care to distinguish between aliens who it actually suspected of having a connection to terrorism as opposed to aliens who, while possibly guilty of violating federal immigration law, had no connection to terrorism but simply were encountered in connection with PENTBOM lead.

A. Do you agree with this conclusion? Why or why not? What steps are you taking to ensure that such problems do not occur in the future? Given the FBI's limited resources, wouldn't it be more efficient to attempt to distinguish carefully between aliens with possible links to terrorism and other aliens so that investigative resources could be focused on the former? Why or why not?

Response:

While the FBI always attempts to conduct investigations as efficiently as possible, it is often difficult distinguish between an alien who is "merely" in the United States illegally and one who has terrorist ties. For example, while a given individual may currently have no clear link to terrorists or terrorist activity, investigation may reveal prior associations with known terrorists, financial or other assistance to terrorists, or education or activities that are inconsistent with the individual's background but consistent with terrorist intent. Once an individual is determined to have no connection to terrorism it may appear, in hindsight, that earlier release would not have posed a threat to the national security, but

releasing an individual before we can reach that determination has clear national security risks.

As the Acting Deputy Attorney General explained in his November 20, 2003, Memorandum to the Inspector General in response to the Inspector General's report, the FBI will work with DHS to establish criteria for future investigations (the specific criteria will depend on the nature of the national emergency). In addition, the FBI has taken numerous steps since September 11, 2001, to establish entities such as the FTTTF and the NJTTF. With these enhancements, we believe that we will have an improved flow of information in the event of another large-scale terrorist attack.

An FBI official testifying before this Committee said that, due to the FBI's limited resources, you rightly devoted your time and attention to neutralizing potential threats instead of clearing detainees of links to terrorism.

B. Do you agree with this assertion? Why or why not? In the absence of any affirmative evidence that an immigration detainee is linked to terrorism, isn't it a poor use of resources to attempt to prove a negative - that every detainee has no links to terrorism, instead of focusing on known threats? If not, why not?

Response:

Following the 9/11 attacks, locating and neutralizing potential threats was the FBI's top priority. This does not mean that the FBI failed to devote resources to completing checks of those who were first encountered in connection with investigation of the 9/11 attacks, identified as in this country illegally, and detained on immigration charges. As noted above, the initial absence of affirmative evidence of terrorist links does not necessarily mean these links will not be revealed with further investigation. "Known threats" are often only "known" after significant investigation. The FBI's ability to assess the threat environment would have been severely compromised if we had "cleared" those encountered in connection with the 9/11 investigation and in this country illegally before we determined whether they had terrorist ties. Accepting the explanations of these individuals without verification would have been an abrogation of the FBI's responsibility.

According to the GAO, "The FBI's current policy is that no counterterrorism leads will go unaddressed, resulting in a need for these shifts in resources. This policy results in substantial commitment of resources that may have to be reassessed in the future."

C. Would it be a more effective use of the FBI's limited resources to focus on threats that experienced counterterrorism agents deem credible, rather than chasing every lead to ground? Why or why not?

Response:

When the FBI uses the term "lead" we mean a matter requiring follow up. An FBI Agent will "set a lead" when he or she determines that there is a basis for believing the response will inform a pending investigation or inquiry. The FBI's requirement that all counterterrorism leads be followed is intended to ensure that all those matters identified as likely to produce valuable information receive appropriate and timely attention.

Durbin 3. **I am very concerned about the Bureau's need for additional human resources. Numerous studies have found that the FBI lacks adequate support personnel, especially intelligence analysts, foreign language specialists, computer specialists, and administrative support. Specifically, the GAO found that "inadequate numbers of intelligence analysts and foreign language specialists resulted in delays to investigative work," that, due to the lack of computer personnel, "[a]gents reported they sometimes have to wait for several days to get computer hardware support they need," and "the staffing level of administrative and clerical support personnel was inadequate and that this adversely affected the efficiency of their investigative activities."**

These personnel gaps have been a problem for several years. They are negatively impacting your ability to combat terrorism, so filling them must be a top priority for the Bureau.

A. **Do you agree with the GAO's findings? Why or why not? What are you doing to fill these mission-critical positions? When do you expect to fill them? Why is it taking so long to address this problem?**

With respect to special agent hiring, I understand that you have made more progress. However, hiring of special agents with foreign language skills has lagged significantly behind. According to the GAO, you have hired only 34% of the needed special agents with foreign language proficiency. The Bureau reportedly has fewer than 25 special agents who are fluent in Arabic. In the aftermath of 9/11, this is obviously vitally important, especially given what we have learned about the important information contained in documents related to the 1993 World Trade Center bombing trial that were never translated. The FBI has reportedly not hired any special agents fluent in Arabic, Farsi, Urdu, and Pashto since 9/11.

B. **What are you doing to recruit more agents and support personnel who are foreign language proficient, particularly in Arabic, Urdu, Farsi, and other Middle Eastern languages? How many FBI agents are fluent in each of these**

languages? How many FBI support personnel are fluent in each of these languages? How many agents and support personnel who are fluent in each of these languages has the FBI hired since 9/11? Why has it been difficult to meet your goals for hiring in this area? When do you expect to meet your goals?

Response to Parts A and B:

The FBI has finite resources and is confident that those resources have been deployed to provide the maximum possible support according to the FBI's priorities. The FBI continues to improve computer support systems and to recruit to meet other investigative needs.

Increased Translation Support

The FBI addresses its translation requirements through the use of Language Specialists (LSs) (full-time employees) and Contract Linguists (CLs).

Since 09/11/2001, translation workload in Arabic, Urdu, Pashto, and various other Middle Eastern languages has increased by 50% or more. Translation requirements in other traditional, high volume languages, to include Mandarin and Russian, have also held steady. To address this increasing workload, the FBI has aggressively recruited and processed more than 30,000 linguist applicants since 09/11/2001, yielding 439 additional CLs and 68 additional LSs. More than 2,000 additional CL and LS applicants remain at various stages of processing. While the FBI's successful recruitment and applicant processes makes it possible to produce additional, appropriately cleared linguists on an unprecedented scale, current funding limits real growth beyond present levels. Electronic surveillance (ELSUR) collection volumes are expected to increase appreciably over the coming months and years due to: 1) statutory revisions to FISA authority (USA PATRIOT Act); 2) a shift of FBI investigative resources to Counterterrorism and Counterintelligence programs heavily dependant upon ELSUR collection; 3) the formation of JTTFs which expand the opportunities for FISA coverage; 4) increase in available ELSUR line capacity; and other factors.

Should additional translation resource funding be made available, the FBI's workforce planning, recruitment, and applicant processing efforts would provide for greater linguist capacity to meet these escalating needs and to accommodate surge demands. This increased resource level could also be used by the National Virtual Translation Center and other integrated inter-agency initiatives.

Emphasis on Recruiting Special Agent and Support Candidates with Foreign Language Proficiencies and Other Critical Skills

Although there has been an adequate pool of SA applicants to fill all funded positions, efforts to hire Agent personnel with language capabilities continue. To this end, the FBI's National

Recruiting Team targets specialty conferences, career fairs, and other meetings of those with the "most wanted" skill sets and backgrounds. The head of each field division is tasked with conducting community meetings, speaking at local events, and overseeing the recruitment of qualified SA and support candidates. Field Offices aggressively develop recruitment strategies tailored to their particular candidate pools and their efforts are monitored closely to ensure each contribute to the Bureau's overall hiring effort. Offices have been advised to immediately implement local advertising and recruitment strategies, including the processing of SA linguists for testing. The SA on-line application system, which was implemented in February 2002, has made a significant contribution to the number of applications being received and has increased the pool of well-qualified candidates who possess critical skills. In addition to providing an increased pool of candidates, it has created a more efficient and effective application process. Some examples of programs instituted to increase or improve our efforts follow.

- On 8/14/03, the FBI issued a press release announcing our immediate need for Agent applicants who possess a fluency in the Middle Eastern languages (i.e., Arabic, Farsi/Persian, Pashto, Punjabi, Hindi, and Urdu), as well as other critical languages such as Chinese (all dialects), Vietnamese, Korean, Japanese, Hebrew, Russian, and Spanish. Included in the announcement was a need for Agent applicants with backgrounds in computer science/information technology (CS/IT), science, engineering, intelligence, accounting/finance, law, law enforcement, and the military.

- In addition to media campaigns, we continue to target foreign language departments within colleges and universities for viable candidates; to target national foreign language organizations and conferences which attract large audiences of persons from Middle Eastern countries; to advertise on foreign language websites, as well as in newsletters and magazines; to conduct massive foreign language proficiency testing of all Agent applicants who have passed the Phase I portion of the Agent testing process and who are fluent in one or more of the critical languages; to survey field offices to identify SAs possessing fluency in a foreign language and to schedule proficiency testing as soon as possible; to reach out to on-board personnel with Middle Eastern backgrounds to obtain their assistance in identifying additional resources for recruitment potential; and to continue to streamline the internal processing of applications to speed up the overall background/hiring process.

- In 2/02, the FBI implemented a new CS/IT entry program for SA candidates. Under this program, an applicant must demonstrate CS/IT skills through possession of an accredited four-year degree in CS/IT, a related major field of study, or any discipline plus certification as a Cisco Certified Network Professional or Cisco Certified Internetworking Expert. If an applicant meets one of the above requirements, the requirement for three years of full-time work experience is waived. This program, and our overall recruitment program, have resulted in increases in the number of SAs hired with CS/IT skills. Since 9/11/01, 408 Agents have been hired who possess IT skills, bringing the total number of Agents in the FBI with IT skills to over 1,900.

In FY 2002, the FBI, in concert with EdVenture Partners, initiated a collegiate marketing program designed to specifically partner with targeted universities. This program allows students to become the FBI's marketing/advertising agents for the semester while earning credit. The universities are specifically identified based on their potential recruitment benefits in staffing the FBI's most critical positions. The program also increases FBI awareness within targeted communities, which generates goodwill and positive perceptions about the FBI. To date, the program has proven to be beneficial and has resulted in the submission of approximately 386 applications, including 42 for SA positions.

- The FBI utilizes the services of a full-scale advertising agency to implement various recruitment and marketing strategies. Currently, the agency is working to develop a foreign language media plan.

Total Hires Since 09/11/2003

Support Positions

Between 9/11/01 and 7/30/03, the FBI hired a total of 1,648 professional support personnel, which included 19 conversions from the SA ranks and 405 temporary/term hires. Included in this total are personnel to fill some of our critically identified positions, such as 68 LSs, 20 Financial Analysts, and 156 Intelligence Operations/Research Specialists.

The FBI's Support Hiring Plan for FY 2003 requires that we hire 1,123 employees. As of 8/25/03, we have hired 1,018 personnel.

Special Agent Positions

In FY 2002, the FBI's SA hiring goal was set at 920, with 923 SAs actually hired. Hiring needs were reevaluated at the beginning of FY 2003 and the FY 2003 SA hiring goal was set at 820. As of 8/25/03, a total of 737 SAs had been hired. The following reflects the SA Hiring Plan goals and critical skill sets for FY 2003, with goals met by 8/25/03 shown in brackets:

164	(20%)	CS/IT	[96.3%]
164	(20%)	Language	[37.2%]
82	(10%)	Physical Science	[112.2%]
82	(10%)	Engineering	[81.7%]
123	(15%)	Intelligence	[91.9%]
82	(10%)	Accounting/Financial	[123.2%]
123	(15%)	Law Enforcement, Military, Attorney, Etc.	[117.9%]
820	TOTAL		

Language Hiring Accomplishments Since 9/11/01

* This information will be provided under separate classified cover.

The FBI will continue to direct its recruitment and applicant processing resources toward those critical skills needed, including foreign languages, as it adapts to its evolving investigative mission.

You have made the recruitment of Arab and Muslim Americans personnel a high priority. I commend you for this, because I think it will greatly facilitate the Bureau's efforts to work cooperatively with these communities. However, these efforts have reportedly not been very successful. Counterterrorism efforts that explicitly target Arab and Muslim immigrants have reportedly made it more difficult to recruit in these communities. I also understand that first-generation Arab-Americans are having difficulty obtaining security clearances because they have relatives in the Middle East.

C. Do you agree with this? Why or why not? Can you update us on your recruitment efforts? What is the FBI doing to recruit Arab and Muslim American agents? How many Arab and Muslim American agents are there?

Response:

The FBI recognizes that shared cultural backgrounds facilitate communications and cooperation, and we work hard to create a diverse workforce because of the benefits to both our investigations and the overall quality of our workforce. We do not, however, specifically track the number of recruits who have Arab or Muslim backgrounds, just as we do not track French American recruits or Catholic recruits.

The FBI does track the recruitment of translators, and we have been very successful in recruiting and hiring translators of Middle Eastern extraction since 09/11/2001. Our level of success at hiring translators with a 3 level proficiency or greater (native speakers) is unprecedented within the IC, and we currently have filled 417 of our 446 funded positions.

With respect to the difficulty of obtaining security clearances, we note the requirements of Executive Order 12968, Access to Classified Information, dated August 2, 1995, section 3.1(b).

> [E]ligibility for access to classified information shall be granted only to employees who are United States citizens for whom an appropriate investigation has been completed and whose personal and professional history affirmatively indicates loyalty to the United States, strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to

> abide by regulations governing the use, handling, and protection of classified information. A determination of eligibility for access to such information is a discretionary security decision based on judgments by appropriately trained adjudicative personnel. Eligibility shall be granted only where facts and circumstances indicate access to classified information is clearly consistent with the national security interests of the United States, and any doubt shall be resolved in favor of the national security.

The FBI works hard to provide clearances when consistent with national security, regardless of an applicant's background, but we must also fulfill our responsibility to prevent the employment of those who may endanger our national security. While we do not maintain statistics concerning the reasons for delays in providing clearances or whether our inability to determine a candidate's trustworthiness is based on problematic or unverifiable associations, which may include Middle Eastern relatives, we do know that some countries do not systematically record births, some do not recognize a birth date as significant and therefore require clan affiliations back several generations to identify an individual, and some use a relatively small number of family names and given names, so that almost every search is for the equivalent of a "John Smith" or a "Mary Jones." Native speakers are more inclined to have spent a considerable amount of time in their native country, or other foreign countries, and verifying trustworthiness under these circumstances is always a demanding, and often a time-consuming, task.

Durbin 4. **I want to commend you for your continuing outreach efforts to the Arab and Muslim American communities. I think these will greatly facilitate the Bureau's efforts to work cooperatively with these communities, I understand that the Washington DC field office recently created the FBI's first Arab-American Advisory Committee. Arab-American leaders who serve on this Committee have encouraged community members to cooperate with the FBI and have worked to facilitate FBI counterterrorism efforts, e.g., recent interviews of Iraqi Americans. One leader explained: "The recent local interviews were relatively smooth due to the efforts of the FBI's Washington Field Office. They took great care to explain the procedures and goals of the interviews while remaining sensitive to the community's concern." It strikes me that this Advisory Committee is a fine example of community policing. Building trusting relationships with communities facilitates law enforcement efforts.**

Do you have plans to replicate this Committee in other areas, especially those with large Arab, Muslim and South-Asian American populations, like Chicago? Why or why not?

Response:

The SAC of each of the 56 Field Offices has established communication with Arab-American community leaders. These contacts may be formalized at the discretion of the SAC and community leaders. As part of the FBI's liaison functions, SACs are encouraged to utilize such forums.

Durbin 5. **The Attorney General revised the FBI's investigative guidelines to permit FBI agents to monitor public events and places, for example, an anti-war march or a prayer service at a mosque. Agents are prohibited to retain information about such visits unless it is related to potential criminal or terrorist activity. I am concerned that this might open the door to abuses by overzealous agents.**

What supervisory measures have you implemented to prevent abuses of this new authority and to ensure that prohibited information is not retained? Are agents required to obtain supervisory approval before monitoring a public event or place? Why or why not?

Response:

The new Guidelines enhance the FBI's ability to visit public places and attend public events, yet still impose sufficient limitations to properly balance public safety and civil liberties. Use of this investigative tool proactively, meaning prior to the development of a lead, is explicitly limited to activities designed to detect and prevent terrorist activities. If an agent desires to collect evidence of other crimes by visiting public places and attending public events, he or she must first be within one of the categories of authorized investigative activity, meaning either the prompt and extremely limited checking out of leads, a preliminary investigation, or a full investigation.

Moreover, in permitting visits to public places and public events to detect and prevent terrorist activities, the Guidelines specifically limit the FBI "to visit[ing] any place and attend[ing] any event that is open to the public, *on the same terms and conditions as members of the public generally.*" The Guidelines additionally provide that investigative activity may not be based solely on activities protected by the First Amendment or the lawful exercise of rights protected by the Constitution or other law.

In implementing this provision of the Guidelines, FBI policy states that, unless time does not permit such approval, an agent should obtain his or her supervisor's approval before visiting a public place or attending a public event to detect or prevent terrorist activity. This policy will help to ensure that the attendance is for a law enforcement purpose authorized by this provision, and reflects the appropriate balance between law enforcement and First Amendment concerns. In assessing the use of this law enforcement technique, the FBI has instructed supervisors that they

should consider factors such as the potential to detect or prevent terrorist activity and the potential chilling effect on First Amendment protected activity.

The guidelines explicitly prohibit the retention of information unless it relates to potential criminal or terrorist activity. If information obtained during the visit rises to the level of a lead, such information should be properly documented, including a statement describing how the information is related to potential criminal and/or terrorist activity, and then filed accordingly. If the visit does not develop information relating to potential criminal or terrorist activity, an agent should note in the file the date, time, and place visited and that the visit had negative results. No other information may be recorded. This provides a means for FBI management to review the investigative activity of agents to determine if the agents' actions comport with the Guidelines.

SUBMISSIONS FOR THE RECORD

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

July 23, 2003 Contact: Magarita Tapia, 202/224-5225

Statement of Chairman Orrin G. Hatch
Before the Senate Committee on the Judiciary
On

"Oversight Hearing: Law Enforcement and Terrorism"

Good morning and welcome to this oversight hearing that will examine recent efforts by the Federal Bureau of Investigation and the Department of Homeland Security to combat the unceasing threat of terrorism. As I have stated before, I am committed to conducting meaningful oversight of the FBI and the Department of Homeland Security to ensure that as we fight the war against terrorism, we achieve maximum security without compromising the freedoms and liberties we cherish in this great country.

As we focus on the FBI's and the Department of Homeland Security's recent efforts to prevent and deter future terrorist attacks against our country, it is important that we hear from the two distinguished witnesses who are here before us today. It is indeed an honor to have before the Committee, Robert Mueller, the FBI Director, and Asa Hutchinson, Under Secretary for Border and Transportation Security at the Department of Homeland Security. I look forward to hearing from both of you on your continuing efforts and commitment to winning the war against terrorism.

The challenges we face in this war continue to be unprecedented. We fight a fanatical enemy, dedicated to the destruction – at all costs – of America. When Director Mueller took over the FBI days after the 9/11 attacks, he faced extraordinary challenges. He assumed responsibility for a law enforcement agency that suffered from antiquated information technology, and inadequate intelligence systems. Following September 11, Director Mueller acted quickly to re-focus the FBI, to reallocate its resources, to improve its internal information systems and to transform its central mission from reactive crime-fighting to proactive terrorist prevention. Congress recognized the enormity of this task, and provided in the PATRIOT Act a set of new tools that has enabled the FBI to complete this transformation.

It is apparent from news reports and recent independent reviews, such as those conducted by the Government Accounting Office (GAO) and the National Academy of Public Administration's (NAPA) Academy Panel on FBI Reorganization, that the FBI has made great progress in its role as the lead terrorist prevention agency. By using many of the new tools provided in the PATRIOT Act, and by increasing information sharing, the FBI - with the assistance of other federal, state, and local law enforcement and intelligence agencies, as well as our international partners - has demonstrated a number of successes in capturing and prosecuting terrorists. Under Director Mueller's able

leadership, the FBI has significantly upgraded its information technology systems, revised its FISA application and review procedures, and implemented a new infrastructure that will maximize the gathering, analysis and dissemination of critical intelligence information among law enforcement and intelligence agencies. While much has been accomplished, more remains to be done.

Equally impressive has been the creation and operation of the new Department of Homeland Security, which required the consolidation of over 21 separate agencies and the merging of nearly 180,000 employees into a single, unified agency. The Homeland Security Act placed within Secretary Hutchinson's jurisdiction the primary responsibility for securing our nation's borders from terrorists who seek to enter and attack our country. In short order, Secretary Hutchinson dedicated himself to implementing new systems and policies designed to prevent the entry of terrorists and the instruments of terrorism, without disrupting the efficient flow of lawful traffic and commerce at our borders. I look forward to working with you Secretary Hutchinson as you implement programs to accomplish these goals, such as the new US-VISIT Program.

Now, I want to mention one other issue that I expect we will address today in follow up to the Committee's June 25th hearing on the Department of Justice's Inspector General's report on the treatment of the 9/11 detainees. The June 25th hearing was a fair and objective hearing. It is clear that the government faced unprecedented challenges in responding to the 9/11 attacks. Dedicated public servants worked around the clock to investigate the attacks, identify and locate terrorist cells within in our country and secure our borders from further attacks. But having said that, it is also apparent from the IG's report that there are valuable lessons to be learned from our response to the 9/11 attacks

I look forward to hearing from each of you today about the reforms you are implementing, and your efforts to protect our country from future terrorist attacks.

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STATEMENT OF THE HONORABLE ASA HUTCHINSON

UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY

BEFORE THE SENATE JUDICIARY COMMITTEE

JULY 23, 2003

Mr.Chairman, Senator Leahy, and distinguished members of the Committee, thank you for inviting me to testify before you today. It is also a privilege to appear along with my friend and colleague, Bob Mueller.

I welcome the opportunity to appear before you at this important hearing on the Department of Justice Inspector General Report, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks."* I want to assure the Committee that the Department of Homeland Security is appreciative of the report and takes the findings and recommendations very seriously. In addition to our internal discussions, I have met with a coalition of civil rights and civil liberties advocacy groups to get their thoughts on the report and on how DHS should implement it. I want to also assure the Committee that we will be working closely with FBI Director Muller and the entire Department of Justice to coordinate our work on this matter.

Before I go into more specifics about the Inspector General's report, I would like to lay the foundation for my subsequent discussion by providing you with the perspective of the Department of Homeland Security on the topic for today's hearing. This Committee has for many years provided oversight to the Department of Justice with regard to civil rights and civil liberties issues. The Department of Homeland Security does not have a long history with this Committee, and therefore I would like to outline our general perspective on the protections of civil rights and civil liberties. Then I will specifically address the Inspector General's report.

When mass terrorism struck our nation on September 11, 2001, our country's priorities changed. We all became determined to bring the terrorists to justice and work harder than ever to protect our country from future attacks. Nearly two years after the terrorist attacks, the Department of Homeland Security is coordinating a comprehensive national strategy to strengthen the security of our country. We are working to strengthen security at airports; to realign our intelligence-gathering functions; to improve the enforcement of our nation's immigration laws; to better protect our critical infrastructure; and a host of other important security measures.

From the very beginning of the homeland security effort, President Bush has emphasized the need to protect and cherish our civil rights and civil liberties. In November 2001, just weeks after the terrorist attacks, President Bush reminded a conference of federal prosecutors that, "[W]e have a huge responsibility, and that's to defend America while protecting our great liberties." In a Presidential proclamation on December 9, 2001,

President Bush wrote, "Americans stand united with those who love democracy, justice and individual liberty. We are committed to upholding these principles, embodied in our Constitution's Bill of Rights, that have safeguarded us throughout our history and continue to provide the foundation of our strength and prosperity."

Our core mission at the Department of Homeland Security is not just to protect America's assets – our buildings and airports and power plants - but to protect America and our way of life. We must protect those things that make us a "shining city on a hill," like freedom of speech, freedom of worship, the right to dissent, and our personal privacy. Secretary Ridge has pledged that "our strategy and our actions [will be] consistent with the individual rights and civil liberties protected by the Constitution."

The measures we put in place as part of our strategy to improve security must be effective. But, we will also keep clearly in our minds that we must implement those measures in ways that respect and enhance our civil rights and civil liberties. Through open communication with the American people, and in particular with communities that have been most directly affected by the post-September 11 detentions, we will strive to protect America by taking the steps that will be effective in diminishing the security threats we face without sacrificing core American principles.

With regard to the Inspector General's report, a starting point is obvious: the Department of Homeland Security took responsibility for 21 agencies in March of this year; we did not exist in September 2001. Nevertheless, the Department of Justice Inspector General's

report is relevant to our work. As you know, the Department of Homeland Security assumed many of the immigration functions that were, during that critical time period, part of the Justice Department. As Under Secretary for Border and Transportation Security, I have responsibility for the operations of several agencies, including two that are most applicable to the subject at hand today – the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement (BICE). Within BICE, the focus is on criminal investigations and enforcement of the nation's immigration and customs laws. The Bureau of Customs and Border Protection focuses on securing our borders and facilitating the movement of legitimate trade and travelers. These two organizations now perform many of the functions that were once the responsibility of the Immigration and Naturalization Service (INS). It is our intention that this reorganization will help streamline communications between the agencies and the senior leadership, which will help address one of the Inspector General's main recommendations.

The IG Report examines the immediate actions of the FBI and INS and the arrest and detention of 762 individuals. Noting the tremendous challenges the agencies faced as they responded to the September 11 attacks during this chaotic period, the Inspector General urges us to learn from the experience and take specific steps that will prepare us for another national emergency. At the Department of Homeland Security, we are prepared to do this.

Let me give you some specific comments on the recommendations made in the Inspector General's report.

The IG recommends that new steps be taken to ensure that if another emergency such as September 11 happens again, a clear and effective process be in place to guide DHS and DOJ through the crisis. We completely concur with this recommendation. We agree, for example, that there should be clear post-arrest communication between the FBI and DHS regarding: an immigrant's likely association with terror; regarding whether an alien detainee be labeled as a person "of interest" to an investigation; and, regarding when an alien can be removed from the list of those that are "of interest." We will establish with the Justice Department an effective crisis management process.

I want to assure this Committee and the country that should we ever find ourselves in another national emergency involving terrorism, we will have mechanisms in place to work cooperatively with the FBI and to ensure that individuals detained pursuant to our laws are treated fairly. Although we will work cooperatively, it is imperative that the Department of Homeland Security independently review the underlying facts and make assessments to both the necessity for detention and the appropriate detention facility in every case. This will also ensure that DHS can make the proper recommendations to the Court on bond, detention and removal. This independent assessment is essential because DHS lawyers are officers of the court and must have confidence in the representations made to the court.

The IG asserts in its report that many detainees were held for a lengthy period of time without having charges filed against them. We agree that we need to put in place comprehensive instructions to clarify and streamline the process for serving charges – what are called "notices to appear" in the immigration context – on alien detainees.

The IG concluded that the conditions some alien detainees faced were unsatisfactory. The IG therefore recommended that DHS amend its detention standards to mandate that detention and removal personnel regularly visit alien detainees held at facilities not owned by DHS. The IG also recommended that issues raised regarding conditions of confinement at Bureau of Prison facilities be addressed. I am pleased to report that last week BICE issued a new detention standard that addresses the issue of BICE visitation of aliens in detention at DHS controlled facilities as well as facilities controlled by other entities. The new standard covers communications between BICE staff and detention facility staff and detainees. This standard requires that Detention and Removal personnel within the Bureau visit on a weekly basis each detainee housed at a Service Processing Center, contract facility, or Bureau of Prisons facility. Officers must also review the facility's special management units to interview BICE detainees and monitor housing conditions. The central goal of this new standard is to ensure that detainees have access to BICE personnel. Finally, the standards include specific timeframes during which officers must respond to certain enumerated detainee requests. All detainees in DHS controlled facilities are required to have access to counsel, telephone calls, and visitation privileges consistent with their classification. The Bureau has issued an operational order emphasizing the need for its employees to follow all applicable policies, procedures and

regulations governing the detention of aliens. This order particularly noted the importance of detainees' access to legal representation and consular officials.

I also want to assure the Committee that BICE's Detention and Removal Office has in place a set of standards that set a high standard with regard to immigration detention facilities. These standards apply to facilities owned and operated by DHS or operated under contract to DHS. Moreover, it has instituted a vigorous program "jail inspections program." For these facilities to ensure that the standards are adhered to. In the past two years, BICE's Detention and Removal Office has trained over 350 agents to serve as "reviewers" of immigration detention facilities. I am going to revisit that program to ensure that it is sufficiently strong to meet our objectives.

Finally, the IG concluded that DHS needs to ensure that immigration officials in the field consistently conduct "post-order custody reviews" for all detainees who remain in custody after the typical 90-day removal period. As the BICE organization has been created, we have established a new BICE field structure. Under the new structure, BICE has established a clear chain of command and new field office structure that will enable the field offices to consistently conduct post-order custody reviews for all detainees who remain in custody after the 90-day removal period. This coupled with improved coordination between the Department of Justice and DHS and current ongoing training for our field personnel should ensure that post order custody reviews are completed in a timely manner in the future.

Although we have taken some steps to address the concerns raised by the Inspector General, we clearly need to accomplish much more. With Director Mueller, we will establish mechanisms to appropriately process aliens who may have a connection to terrorism in the event of another national emergency that involves alien detainees. I would be pleased to present further testimony on this issue to this Committee as DHS fully implements all of its policy and procedural changes.

Thank you. I am happy to answer your questions at this time.

Statement of Senator Edward M. Kennedy
Senate Judiciary Committee Oversight Hearing:
Law Enforcement and Terrorism
July 23, 2003

The brutal terrorist attacks on September 11 were a tragedy that America will never forget. The Justice Department and many other law enforcement agencies deserve great credit for mobilizing so quickly to protect the nation in those very difficult days. But, in the months after September 11, it has become increasingly clear that they did not always respond effectively, or even legally.

The highly critical report released last month by the Inspector General of the Department of Justice found that the FBI used fear of terrorism as an excuse to rely on ethnic profiling, not genuine evidence, to arrest and detain hundreds of persons, predominately from Arab and South Asian countries. As the report stated, many persons were arrested as a result of "chance encounters or tenuous connections" to investigative leads rather than "any genuine

indications of a possible connection with or possession of information about terrorist activity."

INS officials were ignored when they raised concerns about the lawfulness of these practices. The investigators' concerns are understandable, since even one mistake could have led to another catastrophic terrorist attack. But too often, there was a blatant disregard of the fundamental rights and protections on which our country is founded. The gravity and scope of the violations indicate that the Justice Department has not made the protection of innocent civilians a priority in the war on terrorism.

In a committee hearing last month, we questioned officials from the FBI and the Bureau of Prisons about the Inspector General's report. No one from the former INS and none of the senior Department or FBI officials responsible for the policies discussed in the report testified.

The Inspector General's report is not the only source of our concern about how the Department is using law enforcement to combat terrorism. Many of us are concerned by the inclusion of immigration information in the FBI's national crime information database. Blurring of lines between criminal investigations and immigration investigations makes it difficult for immigrants to trust law enforcement officers. It jeopardizes legitimate terrorism investigations and local law enforcement efforts.

It is also important for our Committee to exercise effective oversight over the development of the U.S. Visit entry-exit system. If it is developed well, the system can be an important security tool. If not, the new system could jeopardize the rights of both visitors and immigrants without providing useful security data.

Needless to say, we continue to be concerned by ongoing reports of civil rights abuses by the FBI.

Congress and the country need to know more about current policies in the wake of the Inspector General's report on Sept. 11 detainees. I look forward to hearing from our witnesses today about their views on defending our country from terrorism without resorting to the harsh tactics of the investigations that followed the Sept. 11 attacks.

U S. SENATOR PATRICK LEAHY

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Statement Of Senator Patrick Leahy,
Ranking Democratic Member, Senate Judiciary Committee
"Oversight Hearing: Law Enforcement And Terrorism"
July 23, 2003

I want to welcome our distinguished witnesses this morning, and thank you both for coming. I know that I speak for everyone in this room when I say that I appreciate your dedication and hard work in these difficult times. All of the employees of the FBI and the Department of Homeland Security who work tirelessly to keep this country safe and strong have my deep gratitude and unwavering support.

Director Mueller, I have anticipated your testimony for months now and look forward to hearing your views on a number of issues. At our committee's last oversight hearing, back on March 4th, Chairman Hatch said he would ask you to testify again soon regarding the FBI's use of its authorities under the Foreign Intelligence Surveillance Act (FISA). I did not know then that the FBI would not re-appear on the Committee's agenda for nearly five months, or that our limited time together would again be shared with another senior Administration official. Nor did I know that the hearing would be a free-ranging discussion, as opposed to a more focused look at the many significant issues surrounding FISA. But any opportunity for oversight – no matter how overdue and diffuse – is appreciated. Much has happened in recent months, and there is much to cover this morning.

I would like to take a moment to welcome Undersecretary Hutchinson, who has always made himself available to this Committee. Among other things, your appearance will allow members of the Committee to ask both you and Director Mueller about the Justice Department Inspector General's two recent reports alleging, among other things, the abuse of immigrants being held in Federal custody. I am deeply concerned by the allegations in these reports that Muslim and Arab immigrants being held on civil violations of our immigration laws are being subject to abuse. I hope that you both can explain to the Committee today the role that you are playing in addressing these charges, and the changes, if any, that the FBI and Department of Homeland Security will make in response to these reports.

I know we are all interested to know what progress the FBI has made on the road to reform. Director Mueller, you once said that it is "critically important" that you hear criticisms of the FBI, so that you can improve it. I could not agree more. Now more than ever, the FBI must be open to new ideas, to criticism from within and without, and to admitting and learning from past mistakes.

- more -

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During the last Congress, our Committee unanimously approved the Leahy-Grassley FBI Reform Act of 2001. Unfortunately, our bipartisan efforts were stymied by an anonymous Republican hold, which prevented the bill from being considered on the floor. We did, eventually, succeed in passing some of the bill's reform provisions as part of the Department of Justice authorization act, but other needed reforms were senselessly blocked. These reforms remain as important and urgent as ever, and yesterday Senator Grassley and I re-introduced them as the FBI Reform Act of 2003.

Although Director Mueller has spoken publicly about changes within the FBI, and has taken the added step of commissioning a review of the Bureau's Office of Professional Responsibility, there are still reports of poor agent morale, double standards in discipline, and an internal climate that chills employees from coming forward and making appropriate disclosures. A growing chorus of senior FBI agents are alleging that they were retaliated against for exposing misconduct and wrongdoing within the Bureau. The FBI Reform Act addresses these and other problems which I hope to discuss with Director Mueller this morning.

I also hope that we will also have time this morning to devote to the original focus of this hearing – the FBI's use of its surveillance powers under the USA PATRIOT Act. As Director Mueller knows, I worked closely with the Justice Department in crafting that law, because of the Administration's claim that these new powers were needed to prevent terrorism, and because I trusted the Department's promise that it would use these powers appropriately. But to borrow a phrase from former President Reagan, it is often useful to "trust, but verify."

In this regard, several members of this Committee – Senator Grassley, Senator Specter, Senator Feingold, Senator Edwards, and I – have introduced the Domestic Surveillance Oversight Act, S.436. This bill does not in any way diminish the government's powers, but it does allow Congress and the public to monitor their use. We cannot fight terrorism effectively or safely with the lights turned out and with little or no accountability.

Along the same lines, while I appreciate that this is an open hearing today, I hope that Director Mueller will be able to shed some light on one of the Bush Administration's most closely-guarded secrets – the status of the so-called PATRIOT II legislation. Does it exist? Have you seen it? Can anyone on this Committee expect to see it and comment on it before it is officially dropped in our laps?

I look forward to hearing Director Mueller's report on how the FBI's increased focus on terrorism – and resulting decreased attention on other crimes – has affected other Federal, state, and local crime-fighting agencies. Similarly, what progress has been made – and what still remains to be done – in improving information-sharing with State and local law enforcement? I continue to believe that first responders are not receiving the assistance they need to fight crime and protect our communities.

- more -

On another subject, Katrina Leung, an FBI confidential informant, and James Smith, her former FBI handler, were indicted earlier this year in an espionage case that implicates serious security lapses at the FBI. Senators Grassley, Specter and I asked Chairman Hatch in April for a hearing to examine issues raised by this case. Though our request was refused, perhaps in this forum, Director Mueller, you can shed light on any systemic problems that may still be present within the FBI that led to such a dangerous security breach.

I am also interested in hearing more about the Evansville, Indiana, men who were arrested as material witnesses following the September 11 attacks, and later released, with the apologies of the FBI, after it became clear that they had been wrongly accused. Several members of this Committee have voiced concerns about the Department's aggressive post-9/11 use of the material witness statute. I believe that this statute, as currently drafted, invites confusion and abuse, and would be interested in hearing the FBI Director's views on whether it needs fixing. I should note that I wrote to Attorney General Ashcroft about this on June 3rd, but I have yet to receive a reply.

Obviously we have a lot of ground to cover today with Director Mueller, and I expect that Committee members will have extensive written questions on these and other current and important issues. I hope and expect to receive responses more promptly than we have in the past. During the last week, this Committee finally received a partial response to questions we submitted to you and Attorney General Ashcroft more than a year ago. This kind of delay is inexcusable and seriously undermines this Committee's oversight responsibilities. To give just one example of how absurd it is to conduct business this way, the Department devoted fully 15 pages to discussing the TIPS program, which Congress pulled the plug on more than eight months ago.

Undersecretary Hutchinson, in addition to addressing the two recent DOJ Inspector General reports, I hope that you can also update the committee on his Department's progress in implementing the Congressionally-mandated entry-exit system to track foreign visitors to the United States. As a representative of a border state, I know firsthand the importance of balancing security and commerce, and I look forward to hearing from the undersecretary how that balance is being drawn here.

I would also appreciate an update on the Department's progress in increasing the number of border personnel guarding our border with Canada. As Mr. Hutchinson knows, I have been involved for many years in seeking additional personnel at our Northern Border – to promote both security and trade – and included provisions in the USA PATRIOT Act to triple the personnel in place along the border.

I thank the Chairman for holding this hearing, and I look forward to hearing from our witnesses.

# # # # #

AMERICA'S CHALLENGE
Domestic Security, Civil Liberties, and National Unity after September 11

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Migration Policy Institute

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"The very qualities that bring immigrants and refugees to this country in the thousands every day, made us vulnerable to the attack of September 11, but those are also the qualities that will make us victorious and unvanquished in the end."

U.S. Solicitor General Theodore Olson
Speech to the Federalist Society, Nov. 16, 2001.
Mr. Olson's wife Barbara was one of the airplane passengers murdered on September 11.

Foreword

The intersection of civil liberties, national security and immigration policy is an area of special concern for the Migration Policy Institute (MPI). The ability to understand and untangle these forces is critical to our identity as a nation. Understanding the vitality of immigrant communities and engaging these communities in combating terrorism is necessary both to resolve contradictions between security and liberty and to strengthen fundamental principles of justice.

This report illustrates MPI's commitment to generating informed and thought-provoking proposals that support sound immigration policy. The report's findings and recommendations point the way toward answers to some of the most difficult challenges facing the United States today. They also reveal the promise and the strength of the country's diversity and the fundamental values that have evolved through the experience of this nation of immigrants.

Led by two of MPI's most senior staff, an experienced team of authors has drawn on the public record as well as a unique set of interviews with immigrant leaders and communities most directly affected by post-September 11 domestic security measures. The report describes and evaluates the impact of government policies on the country's vulnerability to terrorism, on civil liberties—especially as experienced by Arab- and Muslim-Americans—and on the sense of national unity that has long been one of the United States' great strengths. The authors had the benefit of advice from a distinguished panel of experts, as well as invaluable pro bono research from one of the country's most respected law firms. This report thus brings together an unprecedented body of original research and expert analysis to support policy recommendations in which security and civil liberties are complementary rather than competitive.

The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think-tank dedicated to the study of the movement of people worldwide. The Institute provides analysis grounded in research and practical experience, develops policy proposals and offers evaluation of migration and refugee policies and programs at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that large-scale migration, whether voluntary or forced, presents to communities and institutions in an increasingly integrated world.

The importance of thoughtful migration policymaking has increased exponentially in recent years as states have been compelled to balance their interests in economic growth, humanitarian response, national security, and social cohesion in the face of sweeping demographic change. This report aims to enlarge the range of options that governments and societies may consider in pursuit of policies that simultaneously strengthen their nations' cohesion, security and liberty.

Kathleen Newland and Demetrios G. Papademetriou
Co-Directors, Migration Policy Institute

Acknowledgments

The creation of this report has truly been a team effort. Many institutions and individuals have contributed to an undertaking that lasted over 18 months. September 11, 2001, and the events that followed, profoundly touched the lives of many of us. The need to respond in some tangible way was perhaps partly responsible for the generosity and willingness with which many offered to work on the report. They deserve our deepest gratitude.

This report would not have been possible without the extraordinary support that the Migration Policy Institute (MPI) received from the law firm of Cleary, Gottlieb, Steen & Hamilton. The firm contributed its resources and thousands of hours of time of its associates, summer associates, paralegals, and partners over the last year. MPI and the authors are grateful to the firm particularly for its assistance with Chapters Two and Three, and its compilation of empirical data and statistical tabulations on detainees and other appendix materials. Although it is not possible to individually recognize each of the attorneys and staff who assisted with this report, we particularly thank Jeff Lewis, Evan Davis, Aslı Bâlı, Adam Barcan, Stephen Foundos, Sabra Gandhi, Michael Hanna, Anil Kalhan, Tal Kastner, Rupa Mitra, Katherine Mooney, Diana Moreno, Greg Tzeutschler, and Amélie von Briesen. We especially thank Aslı Bâlı for the sustained energy she brought to her role coordinating the work of the Cleary team.

Three other institutions made significant contributions to the report: Cornell Law School students Lauren Harris, Sarah Schuette, Rachana Trivedi and Cristina Velez prepared the initial draft of the chronology of post-September 11 actions and interviewed numerous lawyers to prepare summaries of people detained after September 11. Cornell Law School students Mary Mulhearn and Jonathan D. Rosenblatt assisted in finalizing the detainee summaries. Rebecca Miller and Sandeep Solanki, two students from the Immigrants Rights Clinic at New York University School of Law, also interviewed detainees and lawyers. Sameer Ashar supervised their work. Mehdi Bozorgmehr and Anny Bakalian of the Middle East and Middle Eastern American Center of the City University of New York provided valuable insight and guidance in the development of Chapter Three.

Although the authors are responsible for the overall report, individual chapters were penned by different people; thus the different styles in which the chapters are written. Chapter One was principally written by Jay Peterzell; Chapter Two by Michael Wishnie, with the assistance of the Cleary team; Chapter Three by Muzaffar Chishti and Stephen Yale-Loehr, with the assistance of the Cleary team; and Chapter Four by Doris Meissner. Demetrios Papademetriou contributed to all the parts. Finally, Paul Sherer's astute and masterful editing of an often unwieldy manuscript provided the final important touches to the entire effort.

At MPI, various colleagues assisted in the many tasks that go into a report of this size. We especially thank Kathleen Newland, Alex Aleinikoff, Kim Hamilton, Amy Mehringer, Jon Pattee and Adam Mugavero for their comments and contributions.

We gratefully acknowledge the generosity of the Ford Foundation, the Open Society Institute, the Carnegie Corporation of New York, and the Charles Evans Hughes Memorial Foundation for funding this project.

The members of our Advisory Panel deserve special gratitude. They were patient and understanding with the long drafts they reviewed. Their ideas, debates, and judgments contributed significantly to our analysis and recommendations. However, final responsibility for the content and conclusions herein rests with the authors alone and does not reflect the positions of the other individuals or organizations that participated in the report's preparation.

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* Members provided valuable advice and guidance for this project. The views presented in the report are those of the authors alone.

America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11

Summary

The U.S. government's harsh measures against immigrants since September 11 have failed to make us safer, have violated our fundamental civil liberties, and have undermined national unity.

The devastating attacks of September 11 demanded a wide-ranging response. The United States has responded with military action, as in Afghanistan; through intelligence operations to disrupt al Qaeda and arrest its members; and by re-organizing homeland security.

But our new security measures must be effective rather than merely dramatic, and must not destroy what we are trying to defend. The government's post-September 11 immigration measures have failed these tests.

These actions have not only done great harm to the nation; they have also been largely ineffective in their stated goal of improving our domestic security. Despite the government's heavy-handed immigration tactics, many of the September 11 terrorists would probably be admitted to the United States today.

Al Qaeda's hijackers were carefully chosen to avoid detection: all but two were educated young men from middle-class families with no criminal records and no known connection to terrorism. To apprehend such individuals before they attack requires a laser-like focus on the gathering, sharing, and analysis of intelligence, working hand-in-glove with well-targeted criminal and immigration law enforcement.

Instead, the government conducted roundups of individuals based on their national origin and religion. These roundups failed to locate terrorists, and damaged one of our great potential assets in the war on terrorism: the communities of Arab- and Muslim-Americans.

We believe it is possible both to defend our nation and to protect core American values and principles, but doing so requires a different approach. It is too easy to say that if we abandon our civil liberties the terrorists win. It is just as easy to say that without security there will be little room for liberty. What is hard is to take both arguments with equal seriousness and to integrate them within a single framework. We set out to reach that important balance in this report.

As we worked on this project we became convinced that more than security and civil liberties—that is, the rights of individuals—are at stake. There is a third element: the character of the nation. Our humblest coin, the penny, bears the words *e pluribus unum*, or "from many, one." The phrase goes to the heart of our identity as a nation and to the strength we derive from diversity. We strongly believe that fully embracing Muslim and Arab communities as part of the larger American society would not only serve this American value but help break the impasse between security and liberty, strengthening both.

Harsh Measures Against Immigrants Have Failed to Make Us Safer

Our 18-month-long review of post-September 11 immigration measures determined that:

- The U.S. government overemphasized the use of the immigration system;
- As an antiterrorism measure, immigration enforcement is of limited effectiveness; and
- Arresting a large number of noncitizens on grounds not related to domestic security only gives the nation a false sense of security.

In some cases, the administration simply used immigration law as a proxy for criminal law enforcement, circumventing constitutional safeguards. In others, the government seems to have acted out of political expediency, creating a false appearance of effectiveness without regard to the cost.

Our research indicates that the government's major successes in apprehending terrorists have not come from post-September 11 immigration initiatives but from other efforts such as international intelligence activities, law enforcement cooperation, and information provided by arrests made abroad. A few noncitizens detained through these immigration initiatives have been

characterized as terrorists, but the only charges brought against them were actually for routine immigration violations or ordinary crimes.

Many of the government's post-September 11 immigration actions have been poorly planned and have undermined their own objectives. For example, the goals of the special call-in registration program have been contradictory: gathering information about nonimmigrants present in the United States, and deporting those with immigration violations. Many nonimmigrants have rightly feared they will be detained or deported if they attempt to comply, so they have not registered.

Our research also found serious problems at the Federal Bureau of Investigation (FBI) that are hampering our nation's counterterrorism efforts and damaging other key national interests. The State Department has tried for 10 years to get access to FBI information to add to its terrorist watchlists; those discussions are still going on. Automating this process would help to overcome long delays in visa approvals that are damaging U.S. political and economic relations abroad. It would also allow agencies to focus on a more in-depth risk assessment of visa applicants who raise legitimate security concerns.

Finally, the Justice Department's efforts to enlist state and local law enforcement agencies into enforcing federal immigration law risks making our cities and towns more dangerous while hurting the effort to fight terrorism. Such action undercuts the trust that local law enforcement agencies have built with immigrant communities, making immigrants less likely to report crimes, come forward as witnesses, or provide intelligence information, out of fear that they or their families risk detention or deportation.

Government Immigration Actions Threaten Fundamental Civil Liberties

The U.S. government has imposed some immigration measures more commonly associated with totalitarian regimes. As this report details, there have been too many instances of long-time U.S. residents deprived of their liberty without due process of law, detained by the government and held without charge, denied effective access to legal counsel, or subjected to closed hearings. These actions violate bedrock principles of U.S. law and society.

Take the experience of Tarek Mohamed Fayad, an Egyptian dentist arrested in southern California on Sept. 13, 2001, for violating his student visa. During Fayad's first 10 days of incarceration he was not allowed to make any telephone calls. Thereafter, he was allowed sporadic "legal" calls and only a single "social" call per month. The "legal" call was placed by a Bureau of Prisons counselor either to a designated law office or to one of the organizations on the INS's list of organizations providing free legal services in the region. The privilege of making a call was deemed satisfied once the call was placed, regardless of whether the call was answered. Of the agencies on the list provided to Fayad, only one number was a working contact for an agency providing legal counseling to detainees and none of the organizations agreed to provide representation. In the meantime, Fayad's friends had hired an attorney for him, but the attorney was unable to determine his location for more than a month. Even after the attorney found out that Fayad was being detained at a federal facility in New York, the Bureau of Prisons continued to deny that Fayad was in custody.

Rather than relying on individualized suspicion or intelligence-driven criteria, the government has used national origin as a proxy for evidence of dangerousness. By targeting specific ethnic groups with its new measures, the government has violated another core principle of American justice: the Fifth Amendment guarantee of equal protection.

The government also conducted a determined effort to hide the identity, number and whereabouts of its detainees, violating the First Amendment's protection of the public's right to be informed about government actions. This right is at the heart of our democracy, and is crucial to maintaining government accountability to the public.

The government's post-September 11 actions follow a repeating pattern in American history of rounding up immigrant groups during national security crises, a history we review as part of this report. Like the internment of Japanese-Americans during World War II, the deportation of Eastern-European immigrants during the Red Scare of 1919–20, and the harassment and internment of German-Americans during World War I, these actions will come to be seen as a stain on America's heritage as a nation of immigrants and a land where individual rights are valued and protected.

Report Profiles 406 Detainees, Despite Government Secrecy

More than 1,200 people—the government has refused to say exactly how many, who they are, or what has happened to all of them—were detained after September 11. Despite the government's determined efforts to shroud these actions in secrecy, as part of our research we were able to obtain information about 406 of these detainees. The appendix to this report contains summaries of each of these individuals, which we believe to be the most comprehensive survey conducted of the detainees. They reveal the following:

- Unlike the hijackers, the majority of noncitizens detained since September 11 had significant ties to the United States and roots in their communities. Of the detainees for whom relevant information was available, over 46 percent had been in the United States at least six years. Almost half had spouses, children, or other family relationships in the United States.
- Even in an immigration system known for its systemic problems, the post-September 11 detainees suffered exceptionally harsh treatment. Many were detained for weeks or months without charge or after a judge ordered them released. Of the detainees for whom such information was available, nearly 52 percent were subject to an "FBI hold," keeping them detained after a judge released them or ordered them removed from the United States. More than 42 percent of detainees were denied the opportunity to post bond. Many of the detainees were subjected to solitary confinement, 24-hour lighting of cells, and physical abuse.
- Although detainees in theory had the legal right to secure counsel at their own expense and to contact family members and consular representatives, the government frequently denied them these rights, especially in the first weeks after September 11.
- Many of the detainees were incarcerated because of profiling by ordinary citizens, who called government agencies about neighbors, coworkers, and strangers based on their ethnicity, religion, name, or appearance. In Louisville, KY, the FBI and INS detained 27 Mauritanians after an outpouring of tips from the public; these included a tip from a suspicious neighbor, who called the FBI when a delivery service dropped off a box with Arabic writing on it.

  In New York, a man studying airplane design at the New York Institute of Technology went to a Kinko's store to make copies of airplane photos. An employee went into the wastebasket to get his information and then called the FBI; after nearly two months in detention, he accepted voluntary departure. Nearly 28 percent of the detainees were arrested because of a tip to the authorities by private citizens.

Most important, immigration arrests based upon tips, sweeps, and profiling have not resulted in any terrorism-related convictions against these detainees. Of the four detainees in our sample who had terrorism-related charges brought against them, all four were arrested based on traditional investigative techniques, not as the result of immigration enforcement initiatives. One has since been convicted and two have been acquitted; charges were dropped against the fourth individual, and he was deported.

Government Targeting of Arab- and Muslim-Americans Undermines National Unity

The government's actions against Arabs and Muslims have terrified and alienated hard-working communities across the nation.

President Bush's visit to a Washington mosque shortly after September 11 had a temporary positive impact on Arab- and Muslim-American communities. But the subsequent failure of government leaders to speak out on a sustained basis against discrimination, coupled with the Justice Department's aggressive immigration initiatives, sent a message to individuals and companies that discrimination against Arabs and Muslims was acceptable, leaders of these communities said. These views emerged in a coast-to-coast series of interviews that the Migration Policy Institute conducted to gauge the impact of the crisis on Arab- and Muslim-Americans.

"September 11 has created an atmosphere which suggests that it is okay to be biased against Arab-Americans and Muslims," said a regional director of an Arab-American civil rights organization.

The Justice Department's decision to conduct closed immigration proceedings for many of the detainees only increased suspicion that Arab- and Muslim-Americans were being treated under a different standard of due

process. "The automatic association with terrorism is present in all these proceedings," said a prominent Arab-American lawyer in Michigan.

There is a strong belief among Arab- and Muslim-Americans that these measures are ineffective in responding to threats of terrorism, but are being undertaken for political expediency or public relations at a huge price to their communities. "This is political smoke to make people feel good," said the spokesman of a national Arab-American organization.

In a striking consensus, however, many leaders of the community have developed a positive reaction to law enforcement agencies since September 11, especially to local police. "The local police are our friends," said the chief imam of a New York Islamic center, citing their constant presence to protect his mosque.

Discrimination in the workplace soared after September 11. So overwhelming was the number of complaints it received that the Equal Employment Opportunity Commission (EEOC) created a new category to track acts of discrimination against Middle Eastern, Muslim and South Asian workers after September 11. In the 15 months between Sept. 11, 2001, and Dec. 11, 2002, the EEOC received 705 such complaints. Many more went unreported. And to add insult to injury, some of those who were detained after September 11 have been fired by their employers as a result.

Yet the experience of Arabs and Muslims in America post-September 11 is more than a story of fear and victimization. It is, in many ways, an impressive story of a community that at first felt intimidated but has since started to assert its place in the American body politic. Naturalization applications from Arab and Muslim immigrants have jumped and voter registration has risen since September 11.

September 11 and its aftermath have ushered in what could be called the "Muslim moment:" a period of rising Muslim self-consciousness, new alliances outside their own communities, interfaith dialogue, and generational change. The sense of siege has strengthened some Muslim- and Arab-American political organizations and has led them to a greater focus on civil rights, social services, economic development, and engagement with government agencies. The notion of a distinct "American Muslim" identity has gained new currency. It is an identity that seeks to assert its independence from forces abroad, one that combines the essential elements of Islam and the values of U.S. constitutional democracy.

An Alternative Framework for Immigration Enforcement and Domestic Security—Defending Our Nation and its Core Values

America's challenge is to meet new security demands while defending and strengthening the civil liberties and national unity that contribute to our great strength as a nation. The terrorist threat demands a reaction that is strong but also smart. The necessary measures may please neither civil libertarians nor those who believe civil liberties are a luxury we can no longer afford.

To meet this challenge, Congress must reassert leadership. Congress has accorded extraordinary deference to the executive branch since September 11. This may have been understandable immediately after the attacks. But in our constitutional system, it is now vital for Congress to assert its policy and oversight role, and to closely monitor the executive branch's use of its expanded domestic security powers.

The primary domestic security responses to terrorism should be strengthened intelligence and analysis, compatible information systems and information-sharing, and vigorous law enforcement and investigations. Improved immigration controls and enforcement can support good antiterrorism enforcement, but they are not enough by themselves.

The broad framework that should guide the nexus between immigration policy and counterterrorism should center on four broad policy imperatives:

- **Mobilizing intelligence and information capabilities:** More than anything else, September 11 demonstrated the need to dramatically improve the nation's intelligence capabilities. The immigration system captures voluminous amounts of data that can be important in "connecting the dots" about individuals under investigation. But for this to be effective, information from visa and immigration data systems must be fully linked to establish complete immigration histories of visitors and residents, and government agencies must greatly improve their information-sharing and their systems for maintaining watchlists.
- **Protecting the security of air, land and sea borders and beyond:** Border enforcement must permit vast numbers of legitimate crossings while identifying and stopping a very small, but potentially lethal, number of wrongdoers. This calls for new systems,

infrastructure, and policies rooted in risk management principles that identify reliable people and traffic, so that enforcement officials can concentrate on unknown and high-risk travelers that may constitute security threats.

- **Supporting vigorous law enforcement and law enforcement cooperation:** Strengthened enforcement of immigration laws can play an important role in combating terrorism. In specific cases, immigration violations and charges may be a method for identifying or developing criminal or terrorism-related charges, just as tax evasion has been used to thwart organized crime. But safeguards must also be established so that violations of immigration status requirements, for example, do not serve as a pretext for avoiding due process requirements.

  Tools such as the use of classified information in terrorism prosecutions should be allowed only on a case-by-case basis and only with judicial authorization. Arrests and detentions for immigration violations should be subject to time limits that may be extended, but only in exceptional instances, case-by-case, and with a showing before and authorization from an immigration judge. And individuals detained for immigration violations, who do not now enjoy the right to government-appointed counsel because immigration proceedings are civil matters, should be granted that right when immigration charges result in detention.

- **Engaging Arab- and Muslim-American communities:** It is crucial for law enforcement to engage Arab- and Muslim-American communities as it works to identify terrorism-related conspiracies, recruitment, and financial networks. This requires cultivating new relationships and building trust. The government should also embrace these communities as bridges of understanding to societies and peoples around the world who are deeply alienated from the United States.

Immigration strategies grounded in this framework will make us safer and can be designed to respect civil liberties and uphold constitutional standards. They also recognize, strengthen and use the advantage Arab and Muslim immigrant communities offer the United States in advancing its long-term domestic and foreign policy interests.

Instead, by targeting and alienating these communities, immigration actions since September 11 have deepened the perception abroad that America is anti-Muslim and that its principles are hypocritical. This strengthens the voices of radicals in their drive to recruit followers and expand influence, at the expense of moderates and others more sympathetic to Western philosophies and goals. Thus, in the name of buttressing security, current U.S. immigration policy may be making us *more* vulnerable to terrorism.

In the post-September 11 era, immigration policy must be part of a new security system in which the measures we take to protect ourselves also help us win the war for hearts and minds around the world.

Findings and Recommendations

They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.

Benjamin Franklin

I. Findings

To combat terrorism since September 11, the U.S. government has relied to an excessive degree on its broad power to regulate immigration.

Although parts of the immigration system have been tightened to good effect, even under the best immigration controls most of the September 11 terrorists would still be admitted to the United States today. That is because they had no criminal records, no known terrorist connections, and had not been identified by intelligence methods for special scrutiny. The innovation al Qaeda introduced is "clean operatives" who can pass through immigration controls.

Immigration measures are an important tool in the domestic war against terrorism, but they are not effective by themselves in identifying terrorists of this new type. The immigration system can only set up gateways and tracking systems that: (1) exclude terrorists about whom the United States already has information; and/or (2) enable authorities to find "clean" operatives already in the country if new information is provided by intelligence agencies. The immigration and intelligence systems must work together for either to be effective.

To that end, the lead domestic security responses to terrorism should be strengthened intelligence and analysis, compatible information systems and information-sharing, and vigorous law enforcement and investigations. Improved immigration controls and enforcement are needed and can support good anti-terrorism enforcement, but they are not enough by themselves.

The government's use of immigration law as a primary means of fighting terrorism has substantially diminished civil liberties and stigmatized Arab- and Muslim-American communities in this country. These measures, which were primarily targeted at Muslims, have diminished the openness of U.S. society and eroded national unity.

Congress has accorded extraordinary deference to the executive branch. This may have been understandable immediately after September 11. But in our constitutional system, it is now vital for Congress to assert its policy and oversight role.

Despite the government's refusal to provide information about the more than 1,200 noncitizens detained immediately after September 11, we were able to obtain information on 406 of them. We believe this to be the most comprehensive survey conducted of these detainees. The summaries, which are contained in the Appendix to this report, reveal the following:

- One-third of the detainees in our survey were from just two countries: Egypt and Pakistan. We found no rational basis for this disproportionate concentration.
- Of the detainees for which information about the total amount of time spent in the United States was available, over 46 percent had been in the United States at least six years. Of those for whom relevant information was available, almost half had spouses, children, or other family relationships in the United States. This suggests that the majority of noncitizens detained since September 11 had significant ties to the United States and roots in their communities, unlike the hijackers.
- We did not find any substantial evidence that government officials systematically used Middle Eastern appearance as the primary basis for apprehending these detainees. However, we found that many of the detainees were incarcerated because of profiling by ordinary citizens, who called government agencies about neighbors, coworkers and strangers based on their ethnicity or appearance. We also found that law enforcement agencies selectively followed up on such tips for persons of Arab or Muslim extraction. These findings are based on our

review of these 406 cases and on interviews with community leaders, lawyers, and advocates who had contact with the detainees.

- Large numbers of detainees were held for long periods of time. Over half of the detainees for whom such information was available were detained for more than five weeks. Almost 9 percent were detained more than nine months before being released or repatriated.
- Even in an immigration system known for its systemic problems, the post-September 11 detainees have suffered exceptionally harsh treatment. Many of these detainees had severe problems notifying or communicating with their family members and lawyers or arranging for representation at all. Many were held for extensive periods of time before they were charged on immigration violations. Many had exceptionally high bonds posted against them or were not allowed to post bond. Of the detainees for whom such information was available, approximately 52 percent were believed to be subject to an FBI hold, preventing their repatriation for weeks or months even after they were ordered removed from the United States and did not appeal.

- Most importantly, from our research it appears that the government's major successes in apprehending terrorists have not come from post-September 11 detentions but from other efforts such as international intelligence initiatives, law enforcement cooperation, and information provided by arrests made abroad. A few noncitizens detained after September 11 have been characterized as terrorists, but the charges brought against them were actually for routine immigration violations or unrelated crimes.
- We found that established due process protections have been seriously compromised:
  - Nearly 50 people have been held as material witnesses since September 11. The use of the material witness statue allowed the government to hold them for long periods without bringing charges against them. Many were held as high security inmates subjected to the harshest conditions of detention. The government's use of the material witness statute effectively resulted in preventive detention, which is not constitutionally permissible.
  - Over 600 immigration hearings were closed because the government designated the detainees to be of "special interest" to the government. Such hearings raise serious constitutional concerns and have been applied primarily to Muslim detainees.
  - Although detainees had the legal right to secure counsel at their own expense and to contact family members and consular representatives, the reality of the detentions frequently belied the government's assertions regarding these rights.
- The government has selectively enforced immigration laws based on nationality since September 11. Though claiming to include other factors, the record is one of de facto national origin-based enforcement. In addition to arrest and detention policies, examples of nationality-based enforcement include:
  - *The voluntary interview program.*

    This program greatly alarmed Arab- and Muslim-American communities. In some places, the FBI worked to establish good relations with the community and conducted the program in a non-threatening manner. Problems occurred, however, when poorly-trained police officials were tasked to implement the program. Moreover, the goals of the program (investigating the September 11 terrorist attacks, intimidating potential terrorists, recruiting informants, and enforcing immigration violations) were contradictory. The immigration enforcement focus and public fanfare that surrounded the program worked against its potential for intelligence gathering.
  - *The absconder initiative.*

    As a general immigration enforcement measure, the absconder apprehension initiative is legitimate and important. However, after September 11 the government changed the character of the program to make it nationality-specific. This has marginal security benefits, while further equating national origin with dangerousness. Although stepped-up absconder apprehension efforts are eventually to encompass all nationalities, this has not happened so far.
  - *Special registration.*

    The "call-in" special registration program (part of the National Security Entry-Exit

Registration System (NSEERS)) has been poorly planned and has not achieved its objectives. Its goals have been contradictory: gathering information about non-immigrants present in the United States, and deporting those with immigration violations. Many nonimmigrants have rightly feared they will be detained or deported if they attempt to comply, so they have not registered. Moreover, any potential security benefits of registering people inside the United States will fade over time as new non-immigrants are required to register at the border.

- Another critical civil liberties concern is the administration's assertion that local police officials have inherent authority to enforce federal immigration statutes and enter information about civil immigration violations into the National Crime Information Center (NCIC) database. We found no clear statutory authority to allow immigration information to be stored in NCIC. Such measures undercut the trust that local law enforcement agencies have built and need with immigrant communities to fight terrorism and other crimes.
- Arabs and Muslims in America feel under siege, isolated, and stigmatized. They believe they have been victimized twice: once by the terrorists and a second time by the reaction to that terrorism.

The President's visit to a Washington, D.C. mosque shortly after September 11 had a profound positive impact on Arab- and Muslim-American communities. Community and religious leaders all emphasized the symbolic importance of such actions and a critical need for senior government officials to deliver sustained messages of inclusiveness, tolerance, and the value of diversity.

Hate crimes against Muslims soared after September 11, rising more than 1,500 percent. The number of violent hate crimes has since tapered off.

Employment discrimination against Muslim-Americans, Arab-Americans, and South Asians also increased dramatically. The federal Equal Employment Opportunity Commission (EEOC) received over 700 complaints concerning September 11-related employment discrimination in the first 15 months after the attacks. Community leaders believe many hate crimes and acts of employment discrimination have gone unreported. Government officials have spoken out only occasionally against such incidents.

Paradoxically, the sense of siege has also resulted in some communities starting to assert their civil and political rights and engage in the political process in new, classically American ways. And Arab- and Muslim-American organizations have started to react to the crisis of the attacks as a significant opportunity to strengthen their organizational structures, build new alliances, and increase their profile as advocates.

We also reviewed the historical record. In times of similar crisis in the past, U.S. immigration law has often been misused to selectively target noncitizens based on their nationality and/or ethnicity under the pretext of protecting domestic security. In most of these cases, the government failed to prove the existence of the alleged threat from within these communities, and the U.S. public has come to regret our government's actions. Targeting whole communities as disloyal or suspect has damaged the social fabric of our country as a nation of immigrants.

- Finally, we found an important international echo effect from domestic immigration policy. By targeting Muslim and Arab immigrants the U.S. government has deepened the perception abroad that the United States is anti-Muslim and that its democratic values and principles are hypocritical. This echo effect is undermining U.S. relationships with exactly the moderate, pro-Western nations and social groups whom we need in our fight against terrorism.

II. Recommendations

The issues examined in this report touch wide-ranging aspects of our national life. They span the distance from how we interact with one another individually to the policymaking role of Congress under the Constitution. They truly are "America's Challenge." To reflect this range, we have grouped our recommendations into six themes.

A. Congressional Oversight and Legislation

1. New executive branch powers, especially those provided by the USA Patriot Act, should be carefully monitored on an ongoing basis. Congress sensibly included sunset provisions in that legislation, recognizing that emergency measures passed to deal with the unprecedented threat presented by the rise of terrorism deserve ongoing evaluation, oversight, and reconsideration before becoming a permanent part of our legal tradition. This decision was particularly

appropriate given the amorphous and open-ended character of the terrorist threat and the uncertainty of the long-run costs and benefits of these measures. These sunset provisions in the USA PATRIOT Act should be retained, and Congress should use the oversight opportunities that they invite. Any new anti-terrorism legislation should include similar sunset provisions to ensure that such measures receive the ongoing reassessment and reevaluation that they deserve before becoming a permanent part of our law.

2. Congress has accorded extraordinary deference to the executive branch. This may have been understandable immediately after September 11. But in our constitutional system, it is vital for Congress to assert its policy and oversight role. Among the issues for review should be the USA PATRIOT Act's amendments to the Foreign Intelligence Surveillance Act (FISA) that allow surveillance where foreign intelligence is a "significant purpose" rather than "the purpose," as originally enacted. This does not enhance collection of information on foreign terrorists and raises the possibility that FISA will be used to gather evidence of ordinary crimes, which we believe is unconstitutional. The original language should be restored and language added making it clear that the law permits gathering evidence to prosecute specified foreign intelligence crimes.
3. Congressional committees should also assert their oversight role in evaluating how immigration law provisions have been used since September 11. For example, the government asserts that closed immigration hearings in which the person's name is kept secret are useful to recruit informants. Congress should evaluate the validity of this assertion, especially in light of the Supreme Court's recent decision not to hear a case on this issue. Even if determined to be useful, the practice is so counter to U.S. notions of justice that Congress should carefully consider whether it should be used at all. Congressional review should similarly include the government's practice of withholding information on the post-September 11 detainees, and the use of the material witness statute. Based on their assessment, the Intelligence committees should issue a report so that public debate is possible.
4. The Intelligence and Judiciary Committees should carefully examine the many issues raised by data-mining, a technique that officials hope will identify terrorist suspects and networks among general populations. Does it work? How should officials handle the many false-positives that are produced? Will people identified this way be subject to further investigation based on previously unknown forms of reasonable suspicion? Will data-miners range over private sector as well as government information? Will they examine IRS or other confidential government files?

B. Information-Sharing and Analysis

1. Unifying and automating government watch lists must be completed on an urgent basis. As the CIA has done, the FBI should provide all relevant information for inclusion in TIPOFF, the State Department's terrorist watch list. Centralizing this information in TIPOFF will avoid long visa processing delays, which damage U.S. political and economic relations abroad.
2. To protect against violations of individual rights caused by mistaken or incomplete information, clear procedures for who is placed on and taken off watch lists should be developed. These procedures should be subject to public comment and review and should:
   - Establish explicit criteria for listing names;
   - Provide for regular review of names listed; and
   - Set out steps for assessing the quality of information that can result in listing or removing names.
3. The State Department, CIA, and FBI should devise mechanisms for doing in-depth risk-assessments of particular visa applicants who are of plausible security concern. To be effective, these must be based on narrower intelligence criteria than mere citizenship in a country where al Qaeda or other terrorist organizations have a presence.

C. Due Process and Immigration Procedure Issues

1. A disturbing trend exists in recent legislation to criminalize minor immigration violations. In addition, immigration violations are now being widely used as a basis for investigating more severe criminal violations. For these reasons, immigration detainees, who traditionally have not enjoyed the right to government-appointed counsel because

immigration proceedings are considered civil matters, should be granted the right to such counsel.

2. Closed proceedings should be allowed only on a case-by-case basis. Arguments and evidence to close some or all of a hearing should be presented to a court for its approval. Similarly, classified information should be allowed only on a case-by-case basis.
3. Prolonged detentions without charge pose the strongest threat to civil liberties. A charge should be brought within two days of detention unless there are extraordinary circumstances that require an additional period of initial detention. The case for extraordinary circumstances should be presented to an immigration judge. Pre-charge detentions beyond two days and FBI holds should be subject to judicial review.
4. Detention is the most onerous power of the state, and should rarely be used as a preventive or investigative tool absent a charge. Bringing timely charges when evidence is available has no security cost. If the government requires additional time in extraordinary circumstances, an individual showing should be made to a judge.
5. Those detained should be released on bond unless there is a clear flight risk. Immigration authorities should not have automatic authority to overrule an immigration judge's bond determination. If the government disagrees with a bond decision, it can appeal and obtain a stay while the decision is pending. The Attorney General's recent decision challenging immigration judges' discretion to grant bonds lends special urgency to address this issue.
6. According to an "automatic stay" rule issued shortly after September 11, immigration authorities can automatically stay an immigration judge's decision to order a noncitizen's release from detention if the bond has been set at $10,000 or higher. The rule should be rescinded. Immigration judges balance security, flight risk and right-to-release claims. If the government disagrees, the decision can be appealed.
7. Individuals should be promptly released or repatriated after a final determination of their cases. The government should only be able to detain an individual for security reasons after a final removal order if a court approves the continued detention. The detainee should have full due process rights in such a proceeding.
8. With the secrecy, erosion of rights, and fear surrounding immigration, it is more important than ever that immigration officials take special care to uphold the following policies:
   - Informed consent to waivers of the right to counsel should be guaranteed and should be in writing in the detainee's own language.
   - Those offering legal counseling or pastoral services should have access to detainees, as should consular officers for their nationals.
   - When detainees are transferred to locations away from their families or to places where access to counsel is limited, notice should be promptly provided.
   - INS detention standards should be upheld to prevent abusive conditions (solitary confinement, lack of appropriate and adequate food, 24-hour exposure to lights, physical abuse, the inability to engage in religious practices, and harassment), especially when the INS contracts with non-federal facilities. Investigations of alleged abuses should be prompt and thorough.
9. The material witness statute should not be used to circumvent established criminal procedures. Any individual detained as a material witness should be entitled to the full procedural protections of the Fifth and Sixth Amendments, including due process and the immediate right to counsel.

D. Law Enforcement Programs

1. Revised FBI guidelines allow field offices to approve terrorism investigations. That authority should be returned to FBI headquarters officials. New Attorney General guidelines for domestic and foreign terrorist investigations have given the FBI broad authority to collect information on First Amendment activity to enhance domestic security. The breadth of these new powers calls for improved agency oversight to address legitimate civil liberties concerns.
2. Law enforcement officials at all levels must build ties with immigrant communities to obtain information on unforeseen threats. If special circumstances arise in the future that require interviews of immigrants, such interviews must be truly voluntary. As our research and a recent General Accounting Office report found, interviewees in the recently concluded voluntary interview program did not

believe the program was truly voluntary. If special contingencies require voluntary interview programs again in the future, the model adopted by law enforcement officials in Dearborn, Michigan should be followed. Individuals should receive written requests informing them of the voluntary nature of the program and have the opportunity to have counsel present during the interview. Participants should be assured that no immigration consequences will flow from coming forward to be interviewed.

3. In pursuing absconders, immigration authorities should enforce final orders of removal based either on nationality-neutral criteria, such as dangerousness, criminal records, or ability to locate, or on intelligence-driven characteristics, which can include nationality but only in combination with these other characteristics.
4. Absconders who are apprehended should be able to reopen their final orders if they are eligible for immigration remedies or if they can establish that their in absentia orders were entered through no fault of their own.
5. Registration of nonimmigrants entering the country is part of entry-exit controls that have been mandated by Congress. It is a defensible and long-needed immigration control measure as long as it is not nationality-specific and is driven by intelligence criteria. But the "call-in" registration program, which has been mischaracterized as part of the entry-exit system, is nationality-specific and is being implemented with contradictory goals of compliance and immigration law enforcement. Since the government has not extended call-in registration to all countries, which was its original stated intent, follow-up reporting requirements for those who have already registered should be terminated.
6. Any future registration of nonimmigrants already in the country should only be carried out under the following circumstances:
   - Compliance should be the goal. This requires providing meaningful incentives for out-of-status individuals to register, including eventual regularization of their status.
   - To be meaningful, registration must be nationality-neutral and must include all nonimmigrants in the country, including the large undocumented population.
   - Registrants with pending applications for adjustment of status, including under section 245(i) of the Immigration and Nationality Act, should not be put into immigration proceedings or detained.
   - Registrants who are unlawfully present in the United States should be allowed to apply for a waiver of the three- and ten-year bars that normally apply to them.
   - A registration program must be carefully planned, with sufficient lead-time and resources to handle literally millions of registrants, and be accompanied by a major outreach and public education program.
7. The government should reaffirm that state and local law enforcement agencies do not have inherent authority to enforce federal immigration law. Cooperative agreements between the Justice Department and the state governments (allowed under a 1996 law) that permit state and local officials to enforce immigration law should contain detailed plans regarding training such officials in immigration procedures. State and local law enforcement agencies should not affirmatively enforce federal immigration law.
8. Civil immigration information should not be entered into the NCIC, and the Justice Department's proposal to waive privacy standards for NCIC information should be abandoned.
9. To ensure effective oversight of civil rights issues in the work of the new Department of Homeland Security (DHS) and to aggressively investigate complaints alleging civil rights abuses, the Secretary of Homeland Security should establish a new position of Deputy Inspector General for Civil Rights in the DHS Office of Inspector General. Only with a dedicated senior official able to dedicate full attention to this portfolio will there be the oversight and accountability these sensitive issues require.

E. National Unity

1. An independent national commission on integration, made up of a wide spectrum of distinguished civic leaders, should be created to address the specific challenges of national unity presented by post-September 11 events and actions. The commission's goals should be guided by the principle that long-term interests of the nation lie in policies that

strengthen our social and political fabric by weaving into it, rather than pulling out of it, all immigrant and ethnic communities. In the post-September 11 world, this means paying special attention to the experiences of Arab and Muslim communities, as well as to South Asian communities who are sometimes mistaken to be Muslim or Arab. Examples of issues the commission might address include:

- Policies that consciously and systematically prevent stigmatization of Muslim and Arab communities and actively turn them into social, political, and security assets.
- Sensitivity by airport personnel and other private and public entities to dress codes and protocols of Muslims, Arabs, and South Asians.
- The need for educational instruction about Islam and Muslims in schools and workplaces.
- Encouragement for interfaith dialogue at national and local community levels that leads to common programs across faiths.
- The role that charitable giving plays in the lives of Muslims and the implications on religious freedom of new bans on or monitoring of Muslim charities.

2. Public leadership and government policies and actions also have important roles to play:
   - To reassure the Muslim and Arab community in the United States, the President should use the moral authority of his office to deliver sustained messages of inclusiveness, tolerance, and the importance of diversity in our society.
   - Senior administration officials should consistently address conferences and other public events hosted by Arab and Muslim community groups. Similarly, issue-specific meetings should regularly be held with leaders of those communities.
   - There should be an increased and visible presence of Arab- and Muslim-Americans in key policymaking roles in the government. In particular, the FBI and other law enforcement agencies should expand efforts to hire Arab- and Muslim-American agents.
   - Widespread bans on Islamic charities should be re-examined. The U.S. government should issue guidelines to Muslim not-for-profit agencies regarding distribution of funds for charity purposes.
   - The government should aggressively pursue acts of private discrimination.
   - Relevant government agencies should use "testers" to track housing and employment discrimination against Muslims, Arabs, and South Asians to determine whether there has been a sustained increase in discrimination against such groups since September 11 and whether additional efforts to address it are needed.
3. Islam is misunderstood in America. This creates a special burden for Muslim Americans and Muslim immigrants living in America who have to cope with prejudices about their communities and their religious beliefs, while also experiencing the more general post-September 11 security fears that they share with other Americans. But many of the leaders also recognize the extraordinary opportunity they are presented with. Community, business, and religious leaders in Arab and Muslim communities should take a more active role both in promoting democratic values overseas and in promoting their own rights and interests through the political process in the United States.
4. A small number of extremists have misappropriated Islam to promote acts of terrorism and preach hatred. Muslims have a special obligation to denounce such acts. Similarly, leaders of other religions have a responsibility for fostering an understanding of Islam and to denounce hate speech within their own faiths.
5. It is especially important that Islam's impressive history of tolerance and respect for pluralism be promoted and publicized. This is a huge challenge that can only partially be met through the efforts of the Muslim community in the United States. Like so many other ethnic and religious minorities, Muslim-Americans cannot alone dispel the prejudices about their communities and religion. Rather, Americans generally, and the U.S. government in particular, must share the responsibility to learn about the different traditions and faiths that make up the true mosaic that is American society.
6. The advocacy, representational, and service capacities of Arab- and Muslim-American organizations

should be expanded and strengthened. The donor community has a special role to play here.

F. Foreign Policy

1. Immigration policy has always had foreign policy dimensions and implications. But rarely has it had the resonance in national security matters that it has today. In re-examining domestic policies to strengthen national security, policymakers should also weigh the impact U.S. immigration policies have on our nation's long-term foreign policy goals in combating terrorism.
2. Immigration policy should not rely on enforcement programs that give propaganda advantages to terrorist foes and contribute to their ability to influence and recruit alienated younger generations. Immigration policy should also not undermine the great comparative advantage we have as a nation, which is openness to the world and to people of all nationalities and cultures. Instead, immigration policy should be actively used to promote cultural exchange, education, and economic activities that serve America's national interests abroad.

America's Challenge:
Domestic Security, Civil Liberties, and National Unity after September 11

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"This report is a crucial appraisal of the challenge to America: how to ensure security for our country while remaining an open society that protects the rights of all its residents. It is both a courageous and practical report that requires serious attention by our legislators and policymakers."

Vincent Cannistraro
Former Senior Intelligence Official, Head of Counter-terrorism Operations and Analysis, Central Intelligence Agency (CIA)

"The 'America's Challenge' report provides vitally important information for some of the most significant policy debates that now confront the American public and policymakers. How we keep America both safe and free is one of the most important and yet vexing issues of our generation.

The Migration Policy Institute report provides definitive recommendations in the areas of immigration, national security, and inter-group relations. It will certainly be one of the most significant documents consulted by future historians as they assess how this generation of Americans has fared in assuring national security without sacrificing our cherished freedoms."

Anthony D. Romero
Executive Director, American Civil Liberties Union (ACLU)

"While concern for national security allowed some to initially justify many of the laws and programs implemented in the wake of September 11, 2001, the costs and consequences experienced by thousands of recent Arab and South Asian Muslim immigrants were devastatingly high.

The work of the Migration Policy Institute provides a sober and detailed assessment of the constitutional, human and political impact of these Department of Justice initiatives, complete with valuable recommendations that will enable us to correct our course."

James Zogby
President, Arab American Institute (AAI)

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PREPARED STATEMENT OF
ROBERT S. MUELLER, III
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

Before the
United States Senate
Committee on the Judiciary

July 23 , 2003

Good morning Chairman Hatch, Senator Leahy, and Members of the Committee.

I am pleased to be here this morning to update you on the issues we discussed during my March 4th appearance before the Committee and to assure you that the FBI has been working hard to protect the American people from another terrorist attack. The FBI has continued to make significant progress in our reorganization, our ongoing efforts to improve our collection and use of intelligence, and our commitment to demonstrating our respect for Constitutional liberties in all our investigations and programs. I also want to thank you for your continued commitment and interest in ensuring the success of the FBI -- the men and women of the FBI appreciate that support and demonstrate daily their determination to fulfill the great responsibility that you, and the public, have entrusted to them.

Challenges and Progress Since March 2003

Even in the relatively short time since I appeared before this Committee in March, we have continued to make progress in improving and reorganizing the FBI so that we function more efficiently and are able to respond more rapidly to world events and changes in technology - both the technology available to us and that used by criminals to threaten our economic interests and infrastructure.

We are committed to using the authorities provided by the Patriot Act to protect the American people while continuing our commitment to honoring Constitutional protections, including First Amendment freedoms of speech, religion, and assembly.

Patriot Act

Our efforts to combat terrorism have been greatly aided by the provisions of the Patriot Act. Our success in preventing another catastrophic attack on the U.S. homeland would have been much more difficult, if not impossible, without the Act. It has already proved extraordinarily beneficial in the war on terrorism, and our opportunities to use it will only increase. I would like to take a minute to discuss how the USA Patriot Act has made the FBI more effective.

First, and foremost, the Patriot Act has produced greater collection and sharing of information within the law enforcement and intelligence communities.

As you know, prior to the USA Patriot Act, the Foreign Intelligence Surveillance Act (FISA) statute was interpreted as requiring that FISA surveillance was permitted only when the "primary purpose" of the FISA surveillance was to obtain foreign intelligence information. In order to ensure that the primary purpose of FISA surveillance did not shift during the investigation, criminal investigators were essentially walled off from intelligence investigations. A metaphorical "wall" was erected between intelligence and law enforcement out of concern that sharing of information between intelligence and criminal investigators would lead to coordination of intelligence investigations with criminal investigations and that the primary purpose of the FISA surveillance would become developing evidence for a criminal case.

Section 218 of the Act displaced the "primary purpose" standard, permitting the use of FISA when a "significant purpose" of the surveillance was to obtain foreign intelligence information. In addition, section 504(a) clarified that coordination between intelligence and criminal personnel was not grounds for denial of a FISA application. These changes, when combined with the 2002 FISA Court of Review decision interpreting the new language, effectively dismantled the wall between law enforcement and intelligence personnel. The resulting free flow of information and coordination between law enforcement and intelligence has expanded our ability to use all appropriate resources to prevent terrorism.

As a result, although the legal standard for obtaining a FISA warrant is still "probable cause" to believe that the target is a foreign power or an agent of a foreign power, we now have more opportunities to employ FISA and greater dissemination of the information that flows from FISA surveillance.

I should add that information is flowing more freely in both directions. Patriot Act Section 203 modified the rules governing the handling of information obtained through the grand jury or Title III surveillance, so that we may now disclose, without delay, any foreign intelligence information obtained through these criminal investigative tools to the Director of Central Intelligence and Homeland Security officials. In fact, Section 905 mandates these disclosures.

In addition, Section 219 gave federal judges the authority to issues search warrants that are valid outside the issuing judge's district in terrorism investigations. In the past, a court could only issue a search warrant for premises within the same judicial district. Our investigations of terrorist networks often span a number of districts, and this change, which is limited to terrorism cases, eliminated unnecessary delays and burdens associated with having to present warrants to other judges across the country.

Title III of the Act, also known as the International Money Laundering Anti-Terrorist Financing Act of 2001, has armed us with a number of new weapons in our efforts to identify and track the financial structure supporting terrorist groups. Past terrorist financing methods have included the use of informal systems for transferring funds in a manner that is difficult to detect and trace. The effectiveness of such methods should be significantly eroded by the Act, which establishes stricter rules for correspondent bank accounts, requires securities brokers and dealers to file Suspicious Activity Reports or SARS, and certain cash businesses to register with FinCEN and file SARS for a wider range of financial transactions.

There are other provisions of the Act that have considerably aided our efforts to address the terrorist threat including: strengthening the existing ban on providing material support to terrorists and terrorist organizations; the authority to seize terrorist assets; and the power to seize money subject to forfeiture in a foreign bank account by authorizing the seizure of a foreign bank's funds held in a U.S. correspondent account.

Mr. Chairman, it is important for the Committee and the American people to know that the FBI is using the Patriot Act authorities in a responsible manner. We are making every effort to effectively balance our obligation to protect Americans from terrorism with our obligation to protect their civil liberties.

Intelligence

In addition to these areas, the Patriot Act also created new opportunities to strengthen and expand the FBI's long-standing intelligence capability and allowed us to move from thinking about "intelligence as a case" to finding "intelligence in the case" and sharing it broadly both within the FBI and with our Intelligence and Law Enforcement Community partners. Intelligence has always been a core competency of the FBI and organic to the FBI's investigative mission. The intelligence cycle of requirements, collection, analysis, dissemination and feedback always was and is now carried out across our extended investigative enterprise of Headquarters divisions, field offices, resident agencies and legal attaches. With the Patriot Act, we have been able to share the information resulting from those activities across the FBI enterprise to create a single information space for FBI analysts to assess the threat environment. Cases have always been and remain a viable organizing principle for FBI work. The Patriot Act has allowed us to ensure that the aggregate intelligence gleaned from those cases is analyzed for trends and for connections that might not be visible to us from a review of individual cases. This threat-based look at FBI intelligence has allowed us to uncover terrorist networks and connections within the United States that otherwise might not have been found.

Similarly, the Patriot Act has allowed FBI and our Intelligence and Law Enforcement Community partners to exchange information that previously was not shared. The wide availability of threat information from all sources has been key to our success in using intelligence to drive our investigations toward prevention. Today we view all cases as intelligence cases, and prosecution as only one tool in the available national toolkit for neutralizing threats to the homeland. Among the many lessons that September 11, 2001 taught us was that threats neither respect geographical boundaries nor the authorities of those charged with acting to prevent them. Our ability to share threat information with all of our partners has been a key factor in neutralizing many threats through a variety of means.

To properly manage this expanded intelligence capability, I decided in January of this year to elevate intelligence to program status at the FBI. I made that decision because of the success we had achieved with intelligence in the counter-terrorism mission, thanks in large measure to help from our partners at the CIA. As we succeeded in doing strategic analysis and sharing raw intelligence with our partners, it became clear to me that we must take the lessons learned and apply them across the FBI. I wanted the same single focus on intelligence that I had created for our operational missions. To that end, I proposed the creation of an Executive Assistant Director for Intelligence and have undertaken a program to develop and implement concepts of

operations for key intelligence functions.

The result of this program will be a strategic plan for intelligence at the FBI and the implementation of a series of pilots and high-leverage initiatives. The FBI has always been a great collector of information. With our new program and the Patriot Act, we have now become a great and powerful producer of information for the nation.

Information Technology Update

Finally, I would like to provide to the Committee an update concerning our progress in upgrading our Information Technology capabilities.

Since the 9/11 tragedy, the FBI has had a number of IT successes. The most significant of our system related successes is the upgrade of our data communications infrastructure. As part of the Trilogy program, the FBI's world wide high speed data communications network (the Trilogy Network) became operational on March 28, 2003. This network is a significant increase in capability to share all kinds of data, to include video and images, among all FBI locations throughout the world. It is a fully integrated modern data network utilizing leased lines and the TCP/IP communications protocols as well as state of the art switches, routers and encrypters. It is capable of being managed end-to-end from our new Enterprise Operations Center (EOC), also part of the Trilogy upgrade. The network at the SECRET level will be available to all FBI personnel worldwide. This network will be the backbone for the implementation of most of our IT systems for years to come.

In order to support our increased counterterrorism efforts and to support our efforts to share information with other agencies in the intelligence community, we have installed a Local Area Network that can carry compartmented intelligence information. This network is called SCION or SCI Operational Network. It was formerly called the TS/SCI LAN. It became operational to more than 100 analysts in January of 2003 and in June was extended to more than 500. At the present time, all users are located at Headquarters. This is being extended to the TTIC this month. It will also be extended to field locations as resources become available. It will be carried by our new data network but protected by its own separate encryption.

As part of the Trilogy upgrade, Bureau personnel throughout the world are having their desktop computers upgraded to state of the art. This upgrade is complete for all field locations and is currently ongoing at headquarters. Additionally, all servers have been upgraded. The upgrades that have been completed are the Trilogy Fast Track effort that is a result of the 9/11 disaster. Additional upgrades, primarily in software are targeted for completion in November, 2003. All of these upgrades are necessary for the first implementation of the Virtual Case File, scheduled for December, 2003. The VCF is the result of a re-engineering of workflow processes and combines several existing databases into one and simplifies the workflow. Previous automation efforts in the FBI basically automated paper process, retaining all of the steps in those processes. The VCF development team took a hard look at those processes and with the involvement of agents and support personnel from the field, has re-engineered them to obtain significant efficiencies from our systems. The final version of VCF is targeted for delivery in June, 2004.

Mr. Chairman, we have developed an on-line information technology presentation at FBI Headquarters of the FBI's terrorism database and a demonstration of the analytical tools available to our analysts. In fact, many members of this Committee have been to Headquarters for the presentation. I would like to take this opportunity to reiterate the invitation to all members to come to Headquarters for a more in-depth discussion and demonstration of our enhanced information technology capabilities.

Conclusion

In closing, Mr. Chairman, I would like to thank this Committee for its continued leadership and support. The FBI's capabilities are improving daily in large part due to that support, and we will continue on this positive path with the benefit of your continued interest and leadership.

I am happy to respond to any questions you may have.