RECENT INSPECTOR GENERAL REPORTS CONCERNING THE FBI

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

FEBRUARY 24, 2010

Serial No. 111–102

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RECENT INSPECTOR GENERAL REPORTS CONCERNING THE FBI

WEDNESDAY, FEBRUARY 24, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:05 p.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. "Bobby" Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott and Gohmert.

Staff Present: (Majority) Bobby Vassar, Subcommittee Chief Counsel; Ron LeGrand, Counsel; Veronica Eligan, Professional Staff Member; (Minority) Caroline Lynch, Counsel; Kimani Little, Counsel; and Crystal Jezierski, Counsel.

Mr. SCOTT. Good afternoon. The Subcommittee will now come to order. And I am pleased to welcome you today to this oversight hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on recent Department of Justice inspector general reports regarding the FBI.

Now, we expect votes any minute now, so we will probably get called before we get to witnesses. So I will get my statement out of the way, and perhaps the Ranking Member might want to, too.

The Office of Inspector General conducts independent investigations, audits, inspections and special reviews of the United States Department of Justice personnel and programs to detect and deter fraud, waste and abuse and misconduct; to promote integrity, economy, efficiency and effectiveness in the Department of Justice operations. To that end, the OIG has released several reports that focus on the Federal Bureau of Investigation's track record with respect to handling information and effective cooperation with other Federal, State and local law enforcement agencies.

Today we will focus oversight on three recently released OIG reports: The Explosives Investigation Coordination between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Federal Bureau of Investigation's Foreign Language Translation Program; and A Review of the Department's Anti-Gang Intelligence and Coordination Centers.

And we recognize that the Office of Inspector General has released other studies, including a review of the Bureau's use of exigent letters and other informal requests for telephone records. We will not address that issue today, but reserve it for a later hearing.

We are here today to hear testimony about recent audits conducted by the Office of Inspector General regarding FBI operations, audits that will tell us how the FBI is doing in the specific areas assessed.

It is not unusual for Federal agencies to have overlapping jurisdictions over particular subject matters or sections of Federal Criminal Code. The FBI and the Bureau of Alcohol, Tobacco and Firearms, for example, have overlapping jurisdiction regarding explosives investigations and other explosives-related programs. As such, communication and information sharing between these two Departments is critical to the Department's counterintelligence strategy. Failure to achieve effective intelligence sharing poses substantial risk to the safety and security of our Nation.

In this report the Office of Inspector General analyzed the level of coordination and cooperation between the two agencies, with specific emphasis on information sharing on explosives-related investigations. Some of the issues to be addressed will include whether these agencies are working together on a common goal of ensuring our Nation's security. Also, are they demonstrating the necessary leadership and inspiring cooperation, confidence and respect within and among other Federal, State and local law enforcement agencies when responding to explosives-related events? Also, are their respective operations conducted in ways to ensure that the most effective and efficient use of the taxpayers' dollars is being used effectively? Are the most effective investigative and training methodologies being utilized? Are these agencies sharing all available information and resources not only with each other, but also with other agencies in order to ensure that potential explosive-related terrorism is thwarted?

We look forward to hearing not only about the FBI and ATF issues that I have referred to earlier, but we also need to hear from the Bureau's Language Services Section witnesses about the backlog of foreign translation materials and the challenges of meeting its goals for hiring linguists.

Finally, we hope to gain better understanding of the status of the Department's antigang efforts and its progress and its challenges. We acknowledge and appreciate the tremendous work that the Bureau has performed over the last 100 years, and certainly recognize that it makes contributions to national security and safety in a number of areas other than those examined here today. However, we must ensure that our agencies are effectively and efficiently administering the programs and resources we provide, and that is the primary goal of this oversight hearing regarding the areas examined by the Office of the Inspector General.

Opening statements will be made by the Department's inspector general, Mr. Glenn Fine, and Jennifer Shasky Calvery, the senior counsel to the Deputy Attorney General, who will deliver a statement on behalf of the Department of Justice and the FBI. It is also my understanding that Ms. Margaret Gulotta, the Section Chief of the Language Services Section of the FBI will not make an opening statement, but will respond to questions.

At this time I will yield to the Ranking Member of the Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Mr. Chairman. And out of deference to our witnesses who have gone to a lot of trouble to be here, and

with regard to the votes we are about to have to have, I would ask unanimous consent to submit my written eight-page statement for the record and go right to the witnesses.

Mr. SCOTT. Okay. Thank you.

[The prepared statement of Mr. Gohmert follows:]

Statement of Crime Subcommittee Ranking Member Louie Gohmert
Oversight Hearing on Recent IG Reports Concerning the FBI
Wednesday, February 24, 2010

Thank you, Mr. Chairman.

This hearing will examine three reports prepared by the Justice Department's Office of Inspector General, which address a variety of topics relating to FBI, ATF and Justice Department operations.

The first report addresses the FBI's language translation program. This is the third audit of the program in five years. The FBI's Language Services Section oversees the Foreign Language Program, which is responsible for all of the FBI's translation efforts and manages over 1,300 linguists across the country.

Not surprisingly, the breadth and scope of the Program has expanded in the eight years since the 9/11 terrorist

attacks and in keeping with the FBI's intelligence-focused mission. Linguists provide translation of materials for FBI counterterrorism and counterintelligence investigations. The FBI also relies upon these linguists for a variety of other tasks including verbatim translations for court proceedings, reviewing evidence for *Brady* materials, and interpreting suspect or witness statements.

The Inspector General's report found that while the FBI reviewed all of the 4.8 million foreign language texts for counterterrorism, counterintelligence, and criminal investigations, it failed to review 31 percent, or 14.2 million of the 46 million electronic files.

The report also concluded that the Program did not review 25 percent, or 1.2 million of the 4.8 million audio hours the FBI had collected. According to the Inspector

General, the bulk of this un-reviewed audio material was collected for counterterrorism and counterintelligence cases.

With respect to the Program's quality control measures, the Inspector General concluded that the absence of a consolidated collection and statistical reporting system prevents the FBI from accurately determining the quantity of foreign language materials that it collects and reviews.

The Inspector General offered twenty-four recommendations to improve the Foreign Language Program, such as protocols to ensure the timely review of materials in high-priority counter-terrorism and counter-intelligence cases and to improve the efficiency of its contract linguist hiring process.

The second Inspector General report reviewed the coordination between the FBI and ATF for explosives investigations.

The two agencies share jurisdiction for investigating federal explosives crimes. Despite attempts at streamlining their mutual responsibilities, the ATF and FBI have historically developed separate and often conflicting approaches to explosives investigations, training, information sharing, and forensic analysis.

Because of a lack of coordination, the report found disputes over jurisdiction occur throughout the country. These disputes can cause confusion for local first responders about which agency should be contacted for explosive-incident responses. In turn, many investigations are unduly delayed.

Unfortunately, the report concluded that disputes between ATF and FBI personnel have affected working relationships, and in some locations have resulted in their racing to crime scenes to determine which agency leads an investigation.

The report makes 15 recommendations to assist in improving coordination and reducing conflict in explosives investigations, training, and analysis.

Among other things, the inspector general recommended that the Department implement new directives delineating lead authority for explosives investigations. The report also suggested that the agencies develop protocols on joint investigations for explosives incidents.

Notably, the report also recommended that the agencies consolidate and standardize a DOJ-wide curriculum for post-blast investigative techniques and streamline laboratory analysis.

The third report assessed the performance of the Justice Department's anti-gang intelligence and coordination centers. As part of the Department's efforts to address gang violence, the National Gang Intelligence Center (NGIC) and the National Gang Targeting, Enforcement, and Coordination Center (GangTECC) were established in 2006, along with the creation of a gang unit within the Criminal Division.

NGIC is intended to serve as an intelligence resource for gang investigations and provide analytical support to law enforcement agencies. The NGIC is administered by the FBI and includes intelligence analysts from federal, state and local law enforcement organizations.

GangTECC is a national anti-gang task force tasked with coordinating multijurisdictional gang investigations, sharing intelligence information between law enforcement agencies, and de-conflicting gang investigations.

The Inspector General made a series of findings regarding the operation and coordination of these centers. With regard to NGIC, the Inspector General found that it has failed to create a gang information database as directed by Congress and is not effectively sharing gang intelligence information.

The Inspector General found that GangTECC has insufficient resources to carry out its mission, lacks the necessary staff to coordinate multijurisdictional investigations, and is not performing its de-confliction functions.

Ultimately, the Inspector General concluded that NGIC and GangTECC are ineffective as separate entities and recommended that the Department consider merging these two centers. The Inspector General made fourteen other recommendations to improve the Department's anti-gang efforts.

I look forward to hearing from our witnesses about each of these reports and what steps are underway to address the Inspector General's recommendations. I yield back the balance of my time.

Mr. SCOTT. We have one panel of witnesses with us today to discuss FBI oversight—the vote is just about to be called. So if someone is not here right now, don't worry about it. I don't think we will be able to start with witnesses. I will just introduce them, and then we will leave and come back in about 15 to 20 minutes.

We have one panel of distinguished witnesses with us today to discuss FBI oversight and recent reports issued by the Office of Inspector General and the Department of Justice. Our first witness will be Mr. Glenn Fine, who was confirmed by the United States Senate as inspector general of the Department of Justice on December 15, 2000. He has worked for the Department of Justice since 1995. His prior service with the Department includes special counsel to the inspector general, Director of the OIG's Special Investigations and Review Unit, and assistant U.S. attorney for—in Washington, D.C., where he prosecuted more than 35 criminal jury trials, and handled numerous grand jury investigations, and argued cases in the District of Columbia and the U.S. Court of Appeals.

He graduated magna cum laude from Harvard College in 1979 with an A.B. And degree in economics. He is a Rhodes scholar and earned a B.A. And M.A. Degrees from Oxford. He received his law degree from Harvard Law School in 1985.

Our second witness is Jennifer Shasky Calvery, senior counsel to the Deputy Attorney General, U.S. Department of Justice, with the responsibility for a range of criminal issues, including international organized crime, gangs and violent crime. She also serves as the Chair of the Attorney General's Anti-Gang Coordination Committee, is a member of the National Gang Intelligence and Coordination Governing Board.

She received her law degree from the University of Arizona Law School in 1997, her undergraduate degree in international affairs from the George Washington University in 1993.

And I understand that she is going to need a little additional time to complete her statement. And without objection, she will have that additional time.

Now, while she will not be making an opening statement, our third witness will be Ms. Margaret Gulotta, who is the Section Chief of the Language Services Division, Director of Intelligence of the FBI. She is the FBI's senior executive responsible for managing daily operations of the FBI's Foreign Language Program, and managing the deployment of linguists at the FBI, translation interpretation, quality assurance, language analyst career development and training matters. She has more than 25 years of hands-on experience in operational linguist deployment, as well as developing and managing the FBI's Foreign Language Program to keep pace with the rapidly growing demand.

Without the sound on, I can't quite tell what is going on on the floor. It doesn't look good. Well, let us proceed.

Each of your written statements will be made part of the record in its entirety, and so we will ask you to summarize your testimony. And we want to begin with Ms. Calvery. I think we will have—you have an 8-minute statement, give or take? Yeah, I think we will be able to get it in because when they start the vote, we will have time.

Ms. Calvery.

TESTIMONY OF JENNIFER SHASKY CALVERY, SENIOR COUNSEL TO THE DEPUTY ATTORNEY GENERAL, UNITED STATES DEPARTMENT OF JUSTICE; ACCOMPANIED BY MARGARET GULOTTA, SECTION CHIEF, LANGUAGE SERVICES SECTION, DIRECTORATE OF INTELLIGENCE, FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE

Ms. CALVERY. Wonderful. Good afternoon, Chairman Scott, Ranking Member Gohmert and Members of the Committee. Thank you for the opportunity to appear before the Committee today to discuss the Department's plans for responding to the management challenges identified by the inspector general in three separate reports on three distinct topics.

I am joined by my colleague from the FBI, Margaret Gulotta, who is the Chief of the FBI's Language Services Section, and an expert on its Foreign Language Translation Programs. After my opening statement, as mentioned by Chairman Scott, Ms. Gulotta will be prepared to answer any of the Committee's questions on the report concerning the FBI's Foreign Language Translation Program; whereas I am prepared to answer the Committee's questions concerning the report on explosive investigations between the FBI and ATF, as well as the report on the Department's anti-gang coordination centers.

Let me begin by emphasizing that the Department appreciates the important work of the inspector general in inspecting the three programs and preparing the three reports we will be discussing today. The time that the inspector general and his staff spent dissecting these programs and working with us to identify areas that need improvement has resulted in critical feedback for the Department's leadership. We are pleased to inform the Committee that we have already implemented many of the IG's recommendations and have consulted with his staff on how we anticipate responding to others.

In terms of specifics, please allow me to address each report in turn. First, there is the report on Explosives Investigation Coordination between the FBI and ATF. The Department of Justice is dedicated to keeping our Nation safe from those who seek to harm us with explosives, and we recognize that a well-coordinated and effective response to explosives incidents is a critical part of doing so.

In response to the report, the Deputy Attorney General personally convened a meeting with senior FBI and ATF leadership to map a way forward for defining the most efficient application and balance of the Bureau's respective explosives enforcement assets and responsibilities.

The Department has created four working groups, each focused on one of the four areas of recommendation in the report: jurisdiction, information sharing, training and laboratories. The groups include subject matter experts and representatives from senior leadership from both ATF and FBI, as well as a representative from the Deputy's office.

The instructions to the working group were fairly straightforward. Each group was directed to prepare an issue paper providing a background on the problem they were addressing, including a summary of any prior attempts to resolve the issue and why

they were unsuccessful. They were also directed to identify those areas where there was consensus on how to resolve the recommendations in the report and provide a timeline for resolving the issue with agreed-upon benchmarks for monitoring their progress. To the extent that there remains disagreement on an issue or recommendation, each was asked to provide options for resolving the recommendation and a roadmap for the Department to decide the issue.

To that end the parties have been successful in narrowing the areas still open for discussion and plan to present this information to the Acting Deputy Attorney General in March. Understanding the importance of reaching resolution, the Department will seek to resolve this issue as soon as possible thereafter.

Turning now to the report on the Department's Anti-Gang Intelligence and Coordination Centers. Keeping our communities safe remains a core mission of the Justice Department at a time when far too many neighborhoods across this country are confronting the destructive effect of drugs and violence associated with gangs. The Department is committed to building on the significant efforts already undertaken in the initial years of the National Gang Intelligence Center and the National Gang Targeting, Enforcement and Coordination Center. However, the work of the IG and his staff has also helped us recognize those areas where we need to improve.

The leadership of the Criminal Division of the FBI and the Office of the Deputy Attorney General has been actively engaged for several months in identifying possible structural changes that will enhance cooperation and coordination at NGIC and GangTECC, as they are known for short. One specific idea we are pursuing is the possibility of establishing a partnership with the Organized Crime Drug Enforcement Task Force, or OCDEF, Fusion Center that would allow NGIC and GangTECC to benefit from the OCDEF fusion centers, establish IT solutions, auditing capabilities and accepted information-sharing practices.

We are working aggressively to resolve whether such a partnership should go forward, the terms of any partnership, and the development and implementation plan. The goal is to have these three steps completed within approximately 6 months.

In addition, we are also pursuing a merger of the Gang Unit and GangTECC into a single Criminal Division component to ensure coordination. The Department also estimates being in a position to move forward on this merger in the next 6 months.

We believe the organizational changes we are pursuing will help us achieve the most effective response to the IG's critiques. And through a thoughtful, measured approach, we will develop a solution that will put both of the centers in the best possible position to succeed in addressing gangs and gang violence.

Finally, let me use my remaining time to discuss the Inspector General's review of the FBI's Foreign Language Program. This audit follows two earlier audits of the program in 2004 and 2005, and it documents significant improvements that have been made in the FBI's Foreign Language Program management. Nonetheless, the Department recognizes there is still room for improvement, and we are committed to undertaking the necessary steps to do so.

Over the past several years, the FBI's Linguist Training Program has undergone significant expansion. The FBI continues to recruit linguists as funding and personnel staffing levels permit. Yet while the FBI's policy is to review 100 percent of its counterterrorism audio materials, and the FBI does currently review more than 99 percent of those materials, the FBI does not have sufficient resources to review all the counterintelligence audio materials due to their sheer volume. The policy set by the FBI and the Intelligence Community prioritize what materials should be reviewed based on the collection that is most likely to contain intelligence information of value. Like other parts of the Intelligence Community, the FBI uses automated tools to efficiently prioritize which files should be reviewed. And it is important to note that all counterintelligence materials, as well as counterterrorism collections, are archived and can be reviewed at a later time as additional intelligence warrants.

Thank you for the opportunity to appear before the Committee. Section Chief Gulotta and I would be pleased to answer any questions the Committee Members may have. Thank you.

Mr. SCOTT. Thank you.

[The prepared statement of Ms. Calvery follows:]

PREPARED STATEMENT OF JENNIFER SHASKY CALVERY

Department of Justice

DEPARTMENT OF JUSTICE STATEMENT FOR THE RECORD

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

AT A HEARING ENTITLED

"OVERSIGHT HEARING
ON RECENT INSPECTOR GENERAL REPORTS CONCERNING THE FBI"

PRESENTED

FEBRUARY 24, 2010

Department of Justice Statement for the Record

Before the
Subcommittee on Crime, Terrorism, and Homeland Security
Committee on the Judiciary
United States House of Representatives

At a Hearing Entitled
"Oversight Hearing
On Recent Inspector General Reports Concerning the FBI"

Presented
February 24, 2010

Introduction

Chairman Scott, Ranking Member Gohmert, and Members of the Subcommittee: the Department of Justice appreciates the opportunity to discuss the important issues raised by the Office of the Inspector General (OIG) Reports concerning the Department and its components. In particular, this testimony will discuss the following three reports: 1. "Explosives Investigation Coordination between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives" (October 2009); 2. "A Review of the Department's Anti-Gang Intelligence and Coordinate Centers" (November 2009); and 3. "The Federal Bureau of Investigation's Foreign Language Translation Program" (October 2009), (hereinafter "the OIG Reports").

The Department appreciates the important work of the Office of the Inspector General in preparing the three reports discussed at today's Subcommittee hearing. We strive to increase our efficiency through cooperation and coordination among Departmental components and leadership, and we welcome suggestions from the Inspector General in that regard. Accordingly, with respect to the OIG Reports, both Department leadership and the relevant Departmental

components have been engaged and responsive to OIG. We are pleased to inform the Subcommittee that we have already implemented some of the OIG's recommendations and we anticipate working closely with OIG should we implement additional recommendations from the OIG Reports going forward. We intend to continue working with the Inspector General and his staff to address the OIG's suggestions, concerns, and recommendations contained in the OIG Reports.

OIG Review of "Explosives Investigation Coordination between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives"

The Department of Justice recognizes the critical importance of a well-coordinated and effective response to explosives incidents. We, the Department, the FBI and the ATF, are dedicated to keeping our nation safe from those who seek to use explosives to do us harm. We also recognize that it is equally important to adequately train our personnel and to ensure effective information sharing with all appropriate entities within the government and our State, local and tribal law enforcement partners.

We appreciate the constructive recommendations in the Office of the Inspector General audit, which documents the Department's challenges concerning the most efficient application and balance of its explosives enforcement assets and responsibilities and offers some remedies to those challenges. As with the OIG report on gangs, the Department agrees in concept with the recommendations contained in the OIG report on explosives.

After reviewing the issues raised in the OIG report, on December 14, 2009, the Deputy Attorney General convened a meeting with members of his staff and senior leadership from the

FBI and ATF to establish a process to address the OIG recommendations. The Deputy Attorney General directed the formation of four FBI/ATF working groups, each focused on one of the four areas of recommendations in the report: jurisdiction, information sharing, training, and laboratories. The groups included subject matter experts and representatives of senior leadership from both ATF and FBI, as well as a representative from the Deputy's office.

The instructions to the working groups were straightforward. Each group was directed to prepare an issue paper providing a background on the problem they were addressing, including a summary of any prior attempts to resolve the issue and why they were unsuccessful. They were also directed to identify those areas where there was consensus on how to resolve the recommendations in the report and to provide a timeline for resolving the issue with agreed-upon benchmarks for monitoring their progress. To the extent that there remained disagreement on an issue or recommendation, each was asked to provide options for resolving the recommendation and a roadmap for the Department to decide the issue.

After several meetings, the working groups prepared short issue papers, as directed. While the training and laboratories groups were able to achieve substantial consensus, the jurisdiction and information sharing groups continue to have areas of disagreement. These issues are scheduled to be presented to the Deputy Attorney General in March 2010. The Deputy's Office is committed to staying engaged with each of the four working groups and monitoring their progress in reaching the established benchmarks until the process is complete.

While the OIG audit focused on coordination challenges, it is also important to highlight some of the successes and joint efforts between the ATF and FBI. From 2003 through 2008, the ATF and FBI jointly investigated and recommended for prosecution 192 explosives-related cases

involving 397 defendants. In addition, prior to the audit period, the ATF had already undertaken efforts to improve information sharing through the use of the Bombing and Arson Tracking System (BATS). In the past year, over 3,000 bomb technician and investigators have received in-person BATS training, and the numbers of agencies and individual users registered in the BATS have increased significantly, thus facilitating greater information sharing.

Another example of joint coordination is the Terrorist Explosives Device Analytical Center (TEDAC), which is co-managed by the FBI and ATF. Through TEDAC, the leadership of the FBI and ATF meet regularly to address inter-component issues. Although the FBI and ATF each use their own platforms to manage their forensic reports, intelligence reports, and explosives reference material, the systems have been adapted so that both FBI and ATF information is available to TEDAC partners.

The challenges in aligning the explosives missions of ATF and the FBI predate the movement of ATF from the Department of the Treasury into the Department of Justice. And while significant progress has been made, we appreciate that more work needs to be done, requiring the full attention and commitment of departmental leadership. Despite the long-standing nature of the problem, the current leadership at the Department is confident that continued implementation of the OIG recommendations will further strengthen coordination between the FBI and ATF.

OIG Review of the Department's Anti-Gang Intelligence and Coordination Centers

As with the OIG Review of Explosives Investigation Coordination, we also recognize the importance of coordinating the Department of Justice's efforts – among its components and with our law enforcement partners – to address gang violence in the United States. Keeping our

communities safe remains a core mission of the Justice Department at a time when far too many neighborhoods across this country are confronting the destructive effects of drugs and violence associated with gangs. We are strengthening our efforts to identify and prosecute the most serious gang threats faced by our communities, building on the significant efforts already undertaken in the initial years of the National Gang Intelligence Center (NGIC) and the National Gang Targeting, Enforcement & Coordination Center's (GangTECC) existence.

We appreciate the constructive recommendations in the Office of the Inspector General audit, which are similar in concept to changes already under review. The leadership of the Criminal Division, FBI, and the Office of the Deputy Attorney General has been actively engaged for many months in identifying possible structural changes that will enhance cooperation and coordination at NGIC and GangTECC, and within our violent crime program overall. In the months since the report was issued, the Department has taken the following concrete steps to address the recommendations contained therein:

1. The managing components of NGIC and GangTECC agreed that establishing a partnership with the OCDETF Fusion Center and Special Operations Division could potentially alleviate many of their management challenges.
2. The Department initiated a process with the participating members of NGIC/GangTECC to solicit their input on whether such a partnership should go forward, the terms of any partnership, and the development of an implementation plan for any resulting partnership.
3. The Department initiated a process to actively consider merging the Gang Unit and GangTECC into a single Criminal Division Component to ensure better coordination.

4. The Attorney General's Anti-Gang Coordinating Committee convened a working group to develop a common definition for "gang."

We believe the organizational changes we are pursuing will help us achieve the most effective resolution to the matters under review and will substantially improve the effectiveness of NGIC and GangTECC. We are confident that this thoughtful, measured approach will help us develop a solution that will put both NGIC and GangTECC in the best possible position to succeed in addressing gangs and gang violence.

The work of NGIC and GangTECC, where law enforcement officers, analysts and prosecutors work side by side each day, will continue as we evaluate future steps. There is more to be done as we build upon the successes these groups have accomplished, including, for the first time, identifying regional and national gang threats nationwide, producing a National Gang Threat Assessment used widely by state and local law enforcement, increasing exposure for priority gang targets by having the first gang member added to the OCDETF CPOT program, and by actively promoting the search for violent gang fugitives in a nationwide Most Wanted gang member program through national media outlets.

Our goal is to build on the expertise and experience of prosecutors, law enforcement officers, and analysts at GangTECC and NGIC to create a more robust, dynamic and effective anti-gang intelligence and coordination program that responds to the needs of our state, local and federal partners and minimizes the growing threat posed by violent gangs.

OIG Audit of the Federal Bureau of Investigation's Foreign Language Translation Program

The Department of Justice appreciates the Inspector General's review of the FBI's Foreign Language Program. This audit follows similar audits in 2004 and 2005. While the report documents "significant improvements" in the FBI's Foreign Language Program management, it also identifies areas for improvement. As of the close of this current audit, the backlog in counterterrorism cases represents just over one-half of one percent of all of the counterterrorism audio collected since August, 2002. The audit also found that the FBI reviewed 100 percent of more than 4.8 million foreign language text pages collected from 2006 to 2008. The audit even noted that the management of the Foreign Language Program has improved with the establishment of the Foreign Language Program's Quality Control and Standards Unit and a new introductory training program for new linguists.

Nonetheless, the Department takes the OIG's concerns about this program very seriously, and it recognizes that there is room to improve the FBI's foreign language translation programs. The Department is fully committed to undertaking this effort. With regard to counterintelligence collections, the Department and the FBI will continue to carefully prioritize and monitor the most important material. The FBI recognizes that improvements can and should be made to the Foreign Language Program, and the FBI is committed to working with the IG to make the systems for handling foreign language translations more effective and efficient. In response to the audit, the FBI has implemented measures that resolved or closed all 24 recommendations identified by the IG.

The FBI remains concerned, however, that the IG audit overstates the backlog of foreign language materials to be reviewed. The IG's methodology for counting the backlog does not take into account that certain materials on FBI systems are duplicates of materials that have

already been reviewed. At times, materials to be translated are electronically transferred from one office to another or reloaded onto the FBI systems for additional analysis or other purposes. The IG audit counted these reloaded materials as unreviewed without considering whether they had previously been reviewed. As a result, the FBI calculates the unreviewed counterterrorism materials to be substantially less than the IG audit.

It is also important to consider the backlog for counterterrorism and counterintelligence materials separately, as the policies for reviewing these materials are significantly different While the FBI's policy is to review 100 percent of its counterterrorism audio materials (and the FBI currently reviews more than 99 percent of those materials), the FBI does not have sufficient resources to review all the counterintelligence audio materials due to their sheer volume. Counterintelligence materials make up more than 80 percent of all the FISA audio materials collected by the FBI, and nearly five times the volume of the counterterrorism materials to be reviewed. Therefore, the policies set by the FBI and the Intelligence Community prioritize what materials should be reviewed based on the collection which is most likely to contain intelligence information of value. Consistent with these policies, it is expected that a certain percentage of lower priority counterintelligence materials will not be reviewed. The FBI continues to recruit linguists as funding and personnel staffing levels permit, and has developed new tools and protocols in order to address more of these materials where possible. But given the range of languages at issue, the volume of materials to be reviewed, and the limited resources available to the FBI, not all counterintelligence materials that are collected can be reviewed. Regardless, all counterintelligence materials – as well as counterterrorism collections - are archived and can be reviewed at a later time, as additional intelligence warrants.

In addition, the IG report suggests that the FBI has millions of electronic files that it should review, but does not do so. In fact, the FBI uses automated tools to prioritize which files *should* be reviewed, and this allows the FBI to be far more efficient in allocating its limited resources to review and translate the electronic files that warrant it. It would be a waste of funds and resources to manually review and translate *every* electronic file.

Over the past several years, the FBI's linguist training program has undergone significant expansion. For example, in 2006, the FBI developed a two-week Language Analyst Specialized Training course, and since then, several hundred linguists have taken this course. The FBI also began the linguist quality control program in 2005. The program has rapidly developed and matured and is now providing valuable feedback to linguists and managers throughout the FBI. The Foreign Language Program has shifted the management of all routine quality control reviews from the field to headquarters to ensure proper and complete compliance with all quality control policies.

The FBI recognizes that it has not fully met its hiring goals for linguists and continues to work to improve its hiring programs. The FBI's rigorous foreign language proficiency testing, security vetting, and competition with other intelligence agencies and translation vendors explain some of the reasons why these goals have not been met. All contract linguists must go through a background check, which can be difficult because these linguists often have extensive foreign connections necessitating a thorough, complex evaluation. While efficiency is very important, security evaluation of any potential personnel must also be comprehensive and rigorous to prevent penetration into the FBI by a person with ties or allegiance to a foreign government or

terrorist group. Nevertheless, the Foreign Language Program is implementing innovative solutions to recruit applicants and to reduce the cycle time for processing new linguists.

Conclusion

Thank you for the opportunity to submit this written Statement for the Record on behalf of the U.S. Department of Justice.

Mr. SCOTT. Mr. Fine, if you can stay within 5 minutes, we can hear you now. If you are going to go over a little bit, we will come back.

Mr. FINE. Okay. I think I can do that.

Mr. SCOTT. Okay.

TESTIMONY OF GLENN A. FINE, OFFICE OF THE INSPECTOR GENERAL, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. FINE. Mr. Chairman, Ranking Member Gohmert and Members of the Subcommittee, thank you for inviting me to testify about several recent OIG reports related to the FBI. At the request of the Subcommittee, I will focus my testimony on three recent OIG reviews: first, the report examining coordination between the FBI and ATF in explosives investigations; second, the FBI's Foreign Language Translation Program; and third, the coordination of efforts to combat gang violence.

Our first report examining FBI and ATF explosives coordination found that the two agencies were not adequately coordinating their work, and that the Department's management of coordination was ineffective. For example, based on a survey of explosives specialists, managers, and State and local bomb squads, and over 100 interviews of ATF and FBI employees in the field, we found that conflicts continue to occur between the FBI and ATF throughout the country regarding which agency should lead Federal explosives investigations. In particular, we determined that FBI and ATF investigators sometimes race to be the first Federal agency on the scene of an explosives incident, and some agents candidly acknowledged to us that they operated under the assumption that possession is nine-tenths of the law, meaning that they believe their agency would have lead authority if they arrived first at the scene.

These disputes can have important consequences, such as delaying investigations, interviews and crime scene processing, and confusing State and local first responders about which agency is the Federal lead on an explosives investigation.

Our audit also found that the FBI and ATF each maintain distinct explosives reporting databases, training facilities and laboratories. Our audit made 15 recommendations to the Department, FBI and ATF, to improve coordination. The Department recently provided to us an updated response describing its plans to address the issues in our report, including the creation of four working groups to resolve the disputes between the FBI and ATF. The Department's updated response indicates to us that it is taking our recommendations seriously, and we plan to carefully monitor the Department's progress in addressing these important issues.

In our second report, on the FBI's Foreign Language Translation Program, we found that the FBI still cannot accurately determine the amount of foreign language material it collects and that remains unreviewed, because it still lacks an accurate, automated collection and statistical reporting system. However, our audit showed that the FBI continued to have significant amounts of unreviewed audio and electronic files on counterterrorism and counterintelligence investigations. The inability to translate and review these materials can increase the risk that the FBI will not detect important investigative and intelligence information. It is also important to note that we found that the FBI has made improvements in its quality control of translations.

We also analyzed the FBI's progress in hiring linguists. We found that the number of linguists performing translations for the FBI had decreased since our last audit, from 1,338 in March 2005 to

1,298 in September 2008, and the FBI did not achieve its linguist hiring goals for 2 of 14 critical languages. The FBI's failure to meet its hiring goals affects its ability to translate the materials it collects, including material for higher-priority cases.

In a third report, we examine the work of two anti-gang centers the Department established in 2006, the National Gang Intelligence Center and the National Gang Targeting, Enforcement and Coordination Center, known as GangTECC. We found that the two centers had not improved the coordination and execution of the Department's anti-gang initiatives and had not made a significant impact from the Department's anti-gang activities.

Recently the Department provided an updated response to the recommendations in our report describing changes the Department is considering to improve the effectiveness of NGIC and GangTECC. In our opinion, because of the importance of anti-gang efforts and the prevalence of gang violence, it is critical that the Department take swift action to improve the coordination of anti-gang initiatives.

In sum, our reviews have examined important FBI programs and provided specific recommendations for improvement. We appreciate the Subcommittee's focus on these issues, and we will continue to provide oversight in these critical areas.

That concludes my statement, and I would be pleased to answer any questions.

Mr. SCOTT. Thank you.

[The prepared statement of Mr. Fine follows:]

Office of the Inspector General
United States Department of Justice

Statement of Glenn A. Fine

Inspector General, U.S. Department of Justice

before the

House Committee on the Judiciary
Subcommittee on Crime, Terrorism,
and Homeland Security

concerning

Recent Inspector General Reports Concerning the
Federal Bureau of Investigation

February 24, 2010

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice,

before the
House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security

on
Recent Inspector General Reports Concerning
the Federal Bureau of Investigation
February 24, 2010

Mr. Chairman, Ranking Member Gohmert, and Members of the Subcommittee on Crime, Terrorism, and Homeland Security:

Thank you for inviting me to testify about recent Office of the Inspector General's (OIG) reports related to the Federal Bureau of Investigation (FBI).

The FBI faces significant challenges in handling its many critical duties. After the terrorist attacks of September 11, 2001, the FBI has reoriented its focus to make counterterrorism its top priority, but at the same time it must continue to address its many pressing traditional law enforcement responsibilities.

As part of the OIG's ongoing oversight work, we have reviewed a variety of important FBI programs. At the request of the subcommittee, I will mainly focus my testimony on three recent OIG reviews: (1) coordination between the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in explosives investigations; (2) the FBI's foreign language translation program; and (3) the FBI's and the Department of Justice's coordination of efforts to combat gang violence.

Within the past year we have also issued several other reports on important FBI programs. My testimony briefly summarizes the findings of some of these reviews. Finally, my testimony highlights several ongoing OIG reviews of FBI programs.

I. Explosives Investigation Coordination Between the FBI and ATF

In October 2009, the OIG issued an audit report that examined the coordination between the FBI and ATF in explosives investigations, and the Department of Justice's oversight of these coordination efforts.

Our audit found that FBI and ATF were not adequately coordinating explosives related operations, and the Department's management of the FBI

and ATF's coordination efforts was ineffective. We found that conflicts continued to occur throughout the country about whether the FBI or ATF would be the lead agency for federal explosives investigations and about their differing explosives-handling techniques.

Federal law gives the FBI and ATF concurrent jurisdiction over most federal explosives crimes. Yet, the FBI and ATF have developed separate and often conflicting approaches to explosives investigations and related activities such as explosives training, information sharing, and forensic analysis.

As discussed in our report, after ATF was transferred from the Department of the Treasury to the Department of Justice in 2003, the Attorney General issued a Memorandum (the 2004 Attorney General Memorandum) that attempted to define the roles of the FBI and ATF in explosives investigations and related activities. However, our audit found that the Department, the FBI, and ATF did not implement the 2004 Attorney General Memorandum's procedures for explosives information sharing, database consolidation, training, and coordination of laboratory resources.

In addition, the 2004 Attorney General Memorandum contained ambiguous directives for determining which agency had lead authority for explosives matters. We also found that a subsequent 2008 Memorandum of Understanding between the FBI and ATF did not adequately clarify investigative jurisdiction and instead reiterated many of the ambiguous elements of the 2004 Attorney General Memorandum.

Based on our survey of ATF and FBI explosives specialists, field managers, and state and local bomb squads, as well as over 100 interviews of ATF and FBI employees in the field, we found that conflicts continue to occur between the FBI and ATF throughout the country regarding which agency should lead federal explosives investigations and which techniques should be used to neutralize explosives. For example, 33 percent of ATF explosives specialists and 40 percent of FBI bomb technicians who responded to our survey reported having disputes with their counterparts at explosives incidents in fiscal years 2007 and 2008.

Our audit also found that the FBI and ATF explosives investigators sometimes raced to be the first federal agency on the scene of an explosives incident, and disputes have occurred when one agency arrived first and the other agency believed the explosives incident fell within its lead agency authority. Some FBI and ATF agents candidly acknowledged to us that they operated under the assumption that "possession is nine-tenths of the law," meaning that they believed their agency would have lead authority if they arrived first at the scene.

We found that these disputes can delay investigations, interviews, and crime scene processing; can confuse local first responders about which federal agency is the federal lead on explosives matters; and can undermine federal and local relationships. In fact, over three-quarters of explosives specialists at both ATF and the FBI who responded to our survey believed that the other agency had duplicated capabilities already at the explosives scene, resulting in delayed decision-making.

Our audit also found that the FBI and ATF each maintain distinct explosives-incident reporting databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence. In particular, although the 2004 Attorney General Memorandum required the FBI and ATF to consolidate their records of criminal explosives incidents reported by federal, state, and local agencies into ATF's Bombing and Arson Tracking System (BATS), the FBI only provided a one-time transfer of its explosives-incident data, and the FBI had not reported any subsequent explosives-incident information to BATS since 2004. The separate FBI and ATF explosives databases result in a duplication of effort and the inability to accurately determine trends in explosives incidents.

Further, the majority of state and local bomb squad commanders responding to our survey reported that they rarely or never entered incident information into BATS or queried BATS to obtain information. As a result, BATS is not the comprehensive resource envisioned for reliably determining trends and providing useful explosives-related statistics.

The 2004 Attorney General Memorandum also directed ATF to coordinate all DOJ post-blast explosives training. However, our audit found that the FBI and ATF did not implement this directive. Instead, the FBI and ATF continue to separately operate their respective explosives-training facilities and programs and run uncoordinated post blast training programs. In particular, the FBI and ATF have not worked together to establish joint explosive-training priorities, such as identifying what training is needed, who has the most pressing need for the training, and who can provide such training.

The FBI and ATF also continue to maintain separate laboratories that perform explosives-related analyses. The 2004 Attorney General Memorandum required a Laboratory Review Board to examine laboratory resources and workloads and make recommendations for the most productive allocation of DOJ laboratory resources. Yet, we found no evidence that the Board fulfilled this requirement, issued any report regarding potential consolidation, or developed any guidance on how resources and workloads should be allocated between the two agencies' laboratories.

We also found that ATF does not participate in the majority of Joint Terrorism Task Forces led by the FBI. Likewise, the FBI does not fully participate in ATF-led Arson and Explosives Taskforces.

In April 2009, in accord with the President's Homeland Security Presidential Directive (HSPD)-19, the Department of Justice established an inter-departmental Joint Program Office (JPO). This office, led by the FBI, was designed to bring resolution to issues among agencies not resolved by other mechanisms, and to serve as a resource for policy, planning, and decision support. When responding to our report, the FBI and the Department asserted that the JPO has recently been successful in resolving some of the issues identified in our report, specifically citing the development of community-wide consensus standards for training of explosive-detection canine teams, which will be published in a guidelines document for implementation nationwide.

Yet, as our audit report noted, the JPO was not designed to function as a deciding authority on roles and responsibilities for the FBI and ATF in handling explosives incidents, but instead was conceived to be a formalized inter-agency discussion forum. Moreover, the JPO cannot impose consensus on components with opposing policy positions, who continue to make decisions independently. We concluded that absent forceful leadership from the Department of Justice to resolve differences between the FBI and ATF, the long history of FBI and ATF competition over explosives-investigations activities is likely to persist.

Our audit made 15 recommendations to the Department, FBI, and ATF to improve explosives-related coordination, including considering establishing a Department directive that clearly defines jurisdiction between the agencies; establishing a formal procedure for the Department to resolve jurisdictional disputes; requiring reviews of the most efficient uses of Department explosives training programs and laboratory resources; and issuing new agency guidelines to promote explosives-incident reporting and information sharing by both agencies.

At the time our audit was issued, the Department said it agreed in concept with our recommendations, although it did not respond individually to each in its initial response to our report.

On January 29, 2010, the Department provided the OIG with an updated response which stated that the Department was committed to ensuring that the concerns raised in our report were resolved clearly and conclusively. This updated response also described the Department's plans for addressing the recommendations in our report. In particular, the response stated that the Department has established four working groups, composed of representatives from the Deputy Attorney General's Office, the FBI, and ATF, to address the

recommendations of our report. The response also described the steps the working groups were taking to either reach consensus on appropriate steps to resolve the recommendations, or options for a decision by the Department on actions that should be taken to resolve the recommendations.

We believe the Department's updated response indicates it is taking our recommendations seriously, and we plan to carefully monitor the Department's progress in addressing the important issues identified in our report. We also believe that it is critical for the Department to promptly address these issues, both to avoid confusion and duplication of effort, and also to ensure the best use of the Department's resources in explosives investigations.

II. The FBI's Foreign Language Translation Program

Over the past five years, the OIG has issued three audit reports on the FBI's Foreign Language Translation Program (FLP) – the first report in 2004, the second report in 2005, and the most recent report in October 2009.

Our first audit in 2004 found that significant amounts of audio material collected for FBI counterterrorism and counterintelligence operations were awaiting translation, including material collected for the FBI's highest priority cases. Our second audit in 2005 found that while the FBI had made some improvement in several areas of its foreign language translation program, significant deficiencies remained. For example, the 2005 audit determined that the FBI's backlog of audio material awaiting translation had increased since the 2004 audit, and that the FBI was not prioritizing the translation of high priority material in accordance with its national priorities and its overall mission. In addition, the FBI still did not have a comprehensive statistical collection and reporting system to accurately report backlog statistics. The 2005 audit also concluded that the FBI needed to improve the management of its linguist resources by developing linguist hiring goals.

In October 2009, we issued our third audit examining the FBI's foreign language program. The 2009 audit determined that the FBI still cannot accurately determine the amount of foreign language material it collects and the amount of material that remains unreviewed because the FBI still lacks a consolidated, accurate collection and statistical reporting and evaluation system. While the FBI is consolidating several of its systems, it still relies on its field offices to manually report workload data, which often results in inconsistent and inaccurate statistics.

Our 2009 audit also showed that the FBI continued to have significant amounts of unreviewed audio and electronic files that it collected for its counterterrorism, counterintelligence, and criminal investigations between fiscal years (FY) 2006 and 2008.

The exact volume of unreviewed materials is not precise because of deficiencies in the FBI's collection systems and its procedures for accounting for materials. However, the FBI's data shows that the amount of unreviewed material is large. For example, the number of unreviewed electronic files has increased significantly.

With regard to one area of unreviewed materials – audio material in counterterrorism cases – the FBI's raw data indicates that the amount of unreviewed counterterrorism audio material increased from about 8,600 hours in FY 2003 to nearly 47,000 hours through FY 2008. The FBI asserted in response to our report that there has been a 40 percent reduction in the FBI's counterterrorism audio backlog. The FBI based this assertion on its consideration of "refined" data from one collection system, which we call Collection System A in our report. The FBI believes that Collection System A contains almost all of the counterterrorism audio collections. By refining what it believes to be anomalies in Collection System A's backlog, such as duplicate audio recordings, audio associated with an expired court order and inactive cases, or audio with only English language recorded, the FBI calculated that its backlog of counterterrorism audio material awaiting translation was 4,770 hours as of September 2008.

However, while we agree with some of the FBI's reasons for deleting audio material from Collection System A's backlog totals, we have concerns about the refinement process, and the refined data has not been verified. Moreover, the FBI's calculation of 4,770 is limited only to manually refined data from one system, Collection System A. While our report acknowledged that the actual backlog of unreviewed counterterrorism audio is lower than the 47,000 raw number from the FBI's data system, we also believe that the true number is likely higher than the 4,770 refined figure advanced by the FBI.

In addition, it is important to note that this statistic relates to only one category of unreviewed materials – audio material in counterterrorism cases – and does not relate to the significant amounts of unreviewed counterintintelligence audio, and unreviewed counterterrorism and counterintelligence electronic files. We also found that the FBI did not have a strategy for guiding its foreign language translation program to keep pace with its growing collection of electronic files.

Our audit concluded that not translating or reviewing counterterrorism and counterintelligence materials can increase the risk that the FBI will not detect information that may be important to its counterterrorism and counterintelligence efforts.

Our audit analyzed the FBI's quality control over its foreign language translations. Our report determined that the FBI has made improvements in this area. For example, the FBI created a unit dedicated to quality control of

FBI translations and also established a tracking system capable of monitoring compliance with quality control guidelines. However, we identified some continued deficiencies in the management and oversight of the quality control process, such as the FBI's not ensuring that linguists who had Not Satisfactory ratings for their translations received follow-up assessments.

Our audit also analyzed the FBI's progress in hiring linguists. We found that the number of linguists performing translations for the FBI had decreased since our last audit, from 1,338 in March 2005 to 1,298 in September 2008. We also found that the FBI did not achieve the linguist hiring goals for languages it identified as critical to FBI operations. For example, in FY 2008 the FBI only met its hiring target for 2 of the 14 critical languages for which it set goals.

We concluded the FBI's inability to meet its hiring goals affects its ability to translate the materials it collects and to reduce the backlog of unreviewed material, including material for high priority cases.

The FBI's process to hire linguists remains slow. In our audit, we determined that from FYs 2005 through 2008 it took the FBI approximately 19 months to hire a contract linguist, an increase from the 16-month period we found in our 2005 audit. The security clearance adjudication processes and proficiency testing accounted for the longest periods of time in applicant processing.

In our audit report, we made 24 additional recommendations to help the FBI improve its management of its foreign language translation program. For example, we recommended that the FBI report accurate, comprehensive data on the backlog of unreviewed foreign language audio material from all audio collections, not solely from Collection System A, and we recommended that the FBI develop a proactive strategy for keeping pace with translating and reviewing its increasing collection of electronic files.

The FBI agreed with our recommendations and stated that it is taking steps to implement them. We will continue to monitor the FBI's performance in this important area.

III. Review of the Department's Intelligence and Anti-Gang Coordination Centers

In November 2009, the OIG issued a report that examined two anti-gang centers the Department established in 2006 to help combat gang-operated criminal networks in the United States: (1) the National Gang Intelligence Center (NGIC); and (2) the National Gang Targeting, Enforcement, and Coordination Center (GangTECC).

The FBI is responsible for administering NGIC, which is designed as a multi-agency center to develop and share gang-related information. The Department's Criminal Division is responsible for supervising GangTECC, which is intended to coordinate overlapping gang investigations, ensure that tactical and strategic gang intelligence is shared between law enforcement agencies, and serve as a central coordinating and deconfliction center for multi-jurisdictional gang investigations involving federal law enforcement agencies.

However, our report concluded that the two centers have not significantly improved the coordination and execution of the Department's anti-gang initiatives and have not made a significant impact on the Department's anti-gang activities.

For example, we found that NGIC has not established a centralized gang information database for collecting and disseminating gang intelligence because of technological limitations and operational problems. In addition, the communications infrastructure that would allow NGIC to access gang-related information from state databases has not progressed beyond the development phase. We also determined that NGIC has few regular users outside of the FBI and GangTECC, receives few requests for information, and produces reports that are of limited usefulness. State, local, and tribal law enforcement agencies averaged only 3 requests per year to NGIC, and submitted only 13 of the 213 total requests for information from NGIC's inception in 2006 to February 2009.

In our discussions with NGIC and GangTECC personnel and other law enforcement officials about why NGIC was not used more frequently by law enforcement agencies, we found that NGIC was not perceived as an independent, multi-agency center by many law enforcement personnel. Rather, it was repeatedly referred to as being "FBI-centric" in the products it generates and the intelligence analysis it provides.

With regard to GangTECC, our review found that GangTECC has a broad, multi-purpose mission but no operating budget. The lack of an operating budget has prevented GangTECC managers from taking actions essential to its operations, including hosting case coordination meetings and conducting effective outreach to the law enforcement community. In addition, GangTECC has not established itself as the central coordination and deconfliction entity as envisioned because GangTECC's member agencies and federal prosecutors are not required to inform GangTECC of their gang-related investigations and prosecutions.

Most important, in examining the relationship between NGIC and GangTECC, we found that the two entities have not worked together effectively. While the two centers share an office suite, their co-location has not led to the

anticipated partnership between NGIC and GangTECC, and communication between the two centers remained limited and ad hoc.

Our report made 15 recommendations to help improve the Department's anti-gang efforts, including that the Department consider whether to merge NGIC and GangTECC under common leadership. We believe that a merger could improve their ability to support and coordinate the Department's anti-gang initiatives on a national level. In response to the report, the Department stated that it concurred in concept with the 15 recommendations and was in the process of evaluating and formulating measures to respond to the recommendations.

On February 3, 2010, the Department provided us with an updated response to the recommendations in our report. This response described organizational changes the Department is considering implementing to improve the effectiveness of NGIC and GangTECC. In particular, the Department stated that it is considering establishing a partnership between NGIC, GangTECC and the Organized Crime Drug Enforcement Task Force Fusion Center and the Special Operations Division. The Department also stated that it has begun considering whether to merge GangTECC and the Criminal Division's Gang Unit into a single Criminal Division component to ensure better coordination, although it stated its belief that a partnership will likely effectively address the concerns underlying this recommendation.

In our opinion, because of the importance of anti-gang efforts, and the prevalence of gang violence, it is critical that the Department of Justice take swift action to improve the coordination of its anti-gang initiatives.

IV. Other Completed OIG Reports Regarding the FBI

In addition to the three reviews described above, the OIG has recently issued several other reports on significant issues concerning FBI operations. In this section of my testimony, I briefly discuss some of those recently completed reviews.

Oversight of the FBI's Sentinel Case Management Project

In November 2009, we issued the fifth in a series of OIG audit reports examining the FBI's ongoing development of its Sentinel case management project, which is intended to upgrade the FBI's information technology tools by providing the FBI a fully electronic case management system and an automated workflow process.

Our audit found that the FBI's development of Sentinel continues to progress. However, our November 2009 report identified several new areas of concern with the overall progress of Sentinel and, in particular, the

implementation of Phase 2 of the project. Phase 2 originally was intended to deliver to the FBI eight electronic forms, implement more efficient work processes, and begin the migration to Sentinel of administrative case data currently in the FBI's Automated Case Support (ACS) system. Our audit found the FBI and the contractor, Lockheed Martin, encountered considerable challenges in deploying the new electronic forms and has deferred deployment of the forms to later stages of the Sentinel project.

Moreover, our report found that while the FBI's estimate of Sentinel's overall cost had not increased from the initial $451 million, the overall project completion date was extended to September 2010, three months later than the FBI had estimated at the time of our last audit report and nine months later than originally planned.

Given our concerns at the completion of our fifth Sentinel report, we immediately initiated another review of the Sentinel project. This ongoing review has raised additional concerns about the progress of Sentinel, including the timing for its completion. Recently our auditors were briefed by FBI officials regarding the status of Sentinel's Phase 2 and the planning for the final phases of the project. We were informed that while Phase 2 of Sentinel was conditionally accepted by the FBI on December 2, 2009, it has yet to be deployed, and testing of Phase 2 products is ongoing because of performance and usability issues. Additionally, due to delays in deploying Phase 2 of Sentinel, the FBI acknowledges that its schedule for completion will have to be extended again and that the costs for the project as a whole are likely going to increase above Sentinel's budget of $451 million. The FBI has not received or determined a new estimated completion date.

Our reviews of Sentinel will continue, and we will continue to evaluate and report on the progress of this critical information technology upgrade.

Review of the FBI's Use of Exigent Letters and Other Informal Requests to Obtain Telephone Records

In January 2010, the OIG released a report examining in detail the FBI's improper use of exigent letters and other informal requests to obtain telephone records without legal process. For example, the report identified various informal methods the FBI used to obtain telephone records improperly, such as requests by e-mail, face-to-face requests, on post-it notes, or by telephone. In addition, the report examined the accountability of FBI employees, supervisors, and managers who were responsible for these flawed practices.

We understand that the findings in this report will likely be the subject of a separate hearing by a subcommittee of the House Committee on the Judiciary, and at suggestion of the Committee I do not address our findings

from that review in my testimony today. We look forward to discussing this report at that hearing.

The FBI's Terrorist Watchlist Nomination Practices

In May 2009, we issued an audit report that examined the FBI's practices for making nominations to the consolidated terrorist watchlist. This watchlist is used by frontline government screening personnel to determine how to respond when a known or suspected terrorist is encountered while seeking entry into the United States or is encountered by law enforcement officers inside the United States. The failure to place appropriate individuals on the watchlist, or the failure to place them on the watchlist in a timely manner, increases the risk that they are able to enter and move freely within the United States.

The OIG audit found that the FBI had failed to nominate many known or suspected terrorists to the consolidated terrorist watchlist in accordance with FBI policy, did not nominate many others in a timely manner, and did not update or remove terrorist watchlist records as required. The OIG made 16 recommendations to the FBI regarding nominations to, modifications of, and removal of identities from the consolidated terrorist watchlist, and the FBI agreed to implement these recommendations.

FBI Discipline

In May 2009, we issued a report examining whether the FBI's disciplinary system had imposed consistent, reasonable, and timely discipline on its employees who committed misconduct. We concluded the FBI's investigations of misconduct generally were thorough and were conducted in a consistent manner, and the timeliness of these investigations has improved.

However, we found that potential misconduct by FBI employees was not consistently reported, as required by FBI policy, to FBI headquarters or to the OIG. In addition, while FBI disciplinary decisions generally were reasonable, some of the decisions about which penalties to impose contained inconsistencies that could not be explained by the record in the case files. We also determined that the FBI did not ensure that employees who were suspended for misconduct actually served their suspensions. Moreover, with regard to allegations of a double standard of discipline in the FBI, we found that, although the number of substantiated cases on FBI Senior Executive Service (SES) employees that were appealed during our entire review period was small, the evidence indicated that SES employees were treated more leniently on appeal than non-SES employees, and that this more lenient treatment was not justified.

Our report made 16 recommendations to help the FBI improve its disciplinary system, including ensuring that FBI employees report misconduct to FBI headquarters or the OIG, requiring the FBI to better document in the case files the information it considers when making disciplinary decisions, documenting the consideration of precedent in disciplinary decisions, ensuring that FBI policies are applied consistently to all levels of employees at all stages of the disciplinary process, and reviewing the files of suspended employees to ensure that they served their suspensions. The FBI concurred with most of our recommendations and has stated that it has begun taking steps to address them.

The FBI's Weapons of Mass Destruction Coordinator Program

In September 2009, we issued a report evaluating the FBI's efforts to prepare for weapons of mass destruction (WMD) threats, including how the FBI ensures that WMD Coordinators in FBI field divisions identify WMD threats. The FBI has established a WMD Coordinator position in each of its field divisions to serve as the point-person on WMD matters. We concluded that the WMD Coordinators need to be more involved in the process used by each field office to identify and forecast WMD threats and vulnerabilities.

Our report made 13 recommendations for the FBI to enhance the responsibilities and training of its WMD Coordinators and to help improve field division WMD-related efforts. For example, we recommended that the FBI enhance day-to-day coordination between WMD Coordinators and field office Intelligence Analysts. Additionally, we recommended that the FBI develop qualification standards and training plans for field division personnel charged with preventing and detecting WMD threats. The FBI agreed with our recommendations and stated that it would implement them.

V. Ongoing OIG Reviews in the FBI

The OIG is conducting ongoing reviews on a variety of important FBI programs. The following are some examples of ongoing OIG reviews.

Follow-up Audit of the FBI's Casework and Resource Allocations. This review is the fourth in a series of OIG audits examining the FBI's management of its personnel resources and the FBI's reprioritization of these resources. In particular, the audit will describe how the FBI has allocated and utilized its personnel resources between FYs 2005 and 2009 and will also examine whether the FBI has improved its processes for assessing its investigative human resource needs and assigning resources to its national priority areas. Further, our audit examines trends in the types of cases the FBI is working.

Review of the FBI's Investigation of Certain Domestic Advocacy Groups. The OIG is examining allegations that the FBI targeted certain domestic advocacy groups for scrutiny based upon their exercise of rights guaranteed under the First Amendment. This review will include an examination of allegations regarding the FBI's investigation of these groups, and the predication for any such investigations.

Review of the FBI's Forensic DNA Sample Backlog. The OIG has initiated an audit of the FBI's forensic DNA sample backlog. Our audit is designed to determine the length of time the FBI takes to process and forward forensic DNA sample test results to FBI field offices and law enforcement partners, to identify the number of forensic DNA samples that remain unprocessed by the FBI Laboratory, and to evaluate the FBI's efforts to reduce any backlog of forensic DNA submission samples.

VI. Conclusion

In conclusion, the FBI faces challenges in addressing its wide-ranging responsibilities. Our reviews have examined many FBI programs and provided specific recommendations for improvement. We appreciate the Subcommittee's focus on these issues, and we will continue to provide oversight in these important areas.

That concludes my statement and I would be pleased to answer any questions.

Mr. SCOTT. We still have time. Let us see if we can get some questions in. Okay.

Mr. Fine, the ATF used to be in the Department of Treasury. Was there much confusion when they landed in the Department of Justice? Was the transition smooth or not smooth?

Mr. FINE. I think the transition was relatively smooth, particularly at the top levels. But I think that the Department did not ef-

fectively coordinate the overlapping jurisdictions of the ATF and the FBI. They did try to do so. They put together some committees and groups, and they actually had some important directives. Unfortunately those directives weren't followed and weren't followed through with, and I think that is what led us to the situation we are in today.

I think now the Department is taking action; it is establishing working groups. But it is important that they follow through with this. That is the critical issue.

Mr. SCOTT. You have 15 specific recommendations. Are there any questions that all 15 will be complied with?

Mr. FINE. Well, we always question whether they will be complied with. They have agreed with them; they have concurred with them. I think they are taking steps to implement them. We will follow through to make sure they do. We often get concurrence, but we need to see the follow-through as well.

Mr. SCOTT. Ms. Gulotta, it was represented that 2 of 14 critical languages, the hiring was not completed. Was that due to a lack of resources or a lack of ability to find people qualified for the positions?

Ms. GULOTTA. Well, frequently it is due to the lack of our ability to find people who are qualified for positions. Actually the IG reported in the most recent report that it takes about 18 applicants to put 1 person through the front door. It is very difficult for us to find certain languages. The people have to be U.S. citizens, they have to want to work for us, and they have to go through a language testing process. About 95 percent of our linguists are native speakers of the foreign language, so they usually pass the foreign language portion of our test, but sometimes they have some great difficulty with the English language portion of our test. And once we get through the testing, which eliminates probably about three-quarters of our applicants, they have to go through a polygraph examination, a background investigation, a security-risk assessment, and then they are hired.

Mr. SCOTT. Are there scholarships or anything available to try to increase the people who may be qualified?

Ms. GULOTTA. Not at the FBI currently, although we do have some intern programs that are geared toward hiring students that have capability in Middle Eastern languages. And we have a national security internship now that we bring students on board. We actually partner with the Homeland Security where we have each 10 interns, and they spend a half day studying at George Washington University and a half day working at the FBI and at the Department of Homeland Security.

Mr. SCOTT. Thank you.

Mr. Gohmert.

Mr. GOHMERT. Thank you, Chair.

Mr. Fine, in the 2004 report, we are finding that there were weaknesses in the FBI's ability to review and translate counterterrorism and counterintelligence audio material. Of the weaknesses, what still exists?

Mr. FINE. I think there are still issues that need to be addressed. One has to do with the hiring of linguists, as we just heard, includ-

ing the time it takes to hire linguists. It is taking longer now than before to hire linguists.

Mr. GOHMERT. How can that be sped up?

Mr. FINE. I think they need to provide more resources to this issue and also particularly——

Mr. GOHMERT. Resources meaning money, people, what?

Mr. FINE. People in terms of human resources to handle the applications and, more important, to do the security investigations, the background tests. They are now taking approximately 14 months for background investigations. That is a long time. There are some issues with background investigations, but it shouldn't take that long. I think that is the real delay in hiring linguists that we are seeing there. I also think——

Mr. GOHMERT. Don't you think terrorists would be willing to wait 14 months before they attack if they know we have got this problem? I am being sarcastic. I am being very sarcastic. That is a problem. It is a major problem.

Mr. FINE. Yes, indeed.

Mr. GOHMERT. The point being, they don't wait 14 months. They take advantage of our weaknesses. And we need to obviously pursue that. But I know it has got to be a nightmare trying to do an IG report, do all these inspections. Do you have a checklist of things you go down to review and to see what is being done properly, not properly, not done at all? Or do you just generally go in and start inspecting, looking around, talking to people?

Mr. FINE. I think each program is different. But with this one, we have done previous reviews of the Foreign Language Translation Program. We did one in 2004. We looked at the progress in 2005. And then again in 2009, we looked at the progress as well. So we are not starting from scratch each time on this one. We are looking to see what improvements they have made and what they still need to do.

Mr. GOHMERT. Ms. Gulotta, how much of the total counterterrorism audio collection has the FBI been able to review of the total collection?

Ms. GULOTTA. We have actually been counting the collection since August of 2002. And since that time we have reviewed 99 percent of all the collections.

Mr. GOHMERT. All right. Well, the audit suggests that the FBI is collecting millions of electronic files that are not being reviewed. Is there anything being done to review those files it is not reviewing?

Ms. GULOTTA. Well, to begin with, there isn't an expectation that we will review all those files because——

Mr. GOHMERT. Well, how do you know what not to review?

Ms. GULOTTA. Well, we have certain tools we can use to look at that, but then we also know that some of those just from the face of them are not going to be reviewed.

Let me give you an analogy. The last couple of days, I went to my mailbox and I pulled out a lot of mail, but most of it was junk mail.

Mr. GOHMERT. I understand the analogy, but I am wanting specific facts about the situation, what you are not reviewing. So I

know the analogy. I can go through my mailbox the same way very quickly, but——

Ms. GULOTTA. The point is that in order to have the systems, our current systems, reflect the materials as reviewed, the person who is reviewing those electronic files must open them up and read them. And so they don't need to read them. They can tell by the title, just like we can tell by the envelope——

Mr. GOHMERT. If you just went by the title of bills here that we pass as to what it means, you would make a major mistake. And that is a little perplexing, too. Say hypothetically I were a terrorist, would I be wise to put in my subject line, this is about the attack next Tuesday in New York, or might I have some less obvious title that you might not suspect?

Ms. GULOTTA. We definitely don't expect the terrorists to say, the bomb is in the trunk of the car, and it will go off at 2. We know that that is not going to happen. And if there is ever a doubt, of course we are going to review every single piece of material that is expected——

Mr. GOHMERT. But that is my question. How do you know? I know it is a terrible question, but how do you know unless you open it up and see if there is something that may relate?

Ms. GULOTTA. The same way I know that when I get a stack of mail in my mailbox, I know what is junk that I don't have to open up and read carefully, and I know those things that I have to read. And when there is doubt, I do open it up and take a look at it.

Mr. GOHMERT. Is there anybody that inspects to make sure that you are—because I am sure you are perfect. But just in case you were to ever make a mistake, is there anybody that looks over your decision of what not to open?

Ms. GULOTTA. Actually we do review the work of the linguists to make sure that when they do claim that there is no intelligence of value, that we do spot-check their work. So when they claim that there is no intelligence of value, and there is intelligence of value, we can detect that. But with the materials that we don't review, they are all archived, and we do review them according to priorities.

Mr. GOHMERT. So if somebody does attack, and we missed the message that they were going to attack, we can always go back and say, you should have caught this one. That helps.

And I am sorry. This is a serious issue. But it just seems that we need on something this serious belt and suspenders to make sure we don't miss a critical e-mail. And if it is taking 14 months to clear linguists, that is not helpful.

You need help. We need the resources to protect Americans. I appreciate your-all's effort, and I appreciate what you are trying to do to keep us safe. I am sorry, Ms. Calvery. I read your testimony, I read the information background, and I appreciate your work. And I can tell you from a personal standpoint, ATF and FBI work extremely well back in east Texas, and they were very helpful in wrapping up 10 church fires and working together. But thank you.

Mr. SCOTT. Thank you.

I also serve on the Education and Labor Committee, and it seems to me there may be something we can do to expand the number

of qualified applicants, because obviously if you have trouble recruiting people to do translating, that exposes us to problems.

I would like to thank our witnesses for their testimony today. We apologize for the confusion in starting, but we are going to have to bolt out of here in just a second. We will have additional written questions which we will forward to you and ask that you answer as promptly as you can in order that the answers can be made a part of the record. And without objection, the hearing record will remain open for 1 week for submission of additional materials.

[The information referred to follows:]

Questions From The House Judiciary Committee
Subcommittee on Crime, Terrorism, and Homeland Security
For Inspector General Glenn Fine

February 24, 2010 Hearing on "Recent Inspector General Reports Concerning the Federal Bureau of Investigation"

Explosives Investigation Coordination between the FBI and ATF:

1. The Office of the Deputy Attorney General (ODAG) has indicated that the FBI and ATF are taking steps to address the recommendations included in your audit of explosives investigation coordination. Specifically, ODAG has directed the formation of four working groups to address each of the main areas of improvement identified by your offices October 2009 audit: jurisdiction, information sharing, training, and laboratories. With respect to these issues:

A. What are the primary obstacles to reaching a clear jurisdictional arrangement for explosives investigations between FBI and ATF? What, in your opinion, are the key elements to such an arrangement?

The chief obstacles to reaching a clear jurisdictional arrangement were the competing views of the FBI and ATF's on each entity's appropriate jurisdiction, and the lack of clear direction from the Department on how to resolve this conflict. The overlapping jurisdiction has resulted in competition among the components, unnecessary duplication of efforts, and problematic responses to explosives incidents.

For example, our report found that a previous attempt to assign jurisdiction between the FBI and ATF, the 2004 Attorney General Memorandum, was unsuccessful because this memorandum is ambiguous in assigning jurisdiction among the components. The 2004 Memorandum assigns ATF jurisdiction over all explosives incidents, except for incidents related to terrorism and those within the FBI's "traditional" jurisdiction. As a result, each component can logically claim a right to respond to almost every incident, at least initially. While the purpose of a subsequent 2008 Memorandum of Understanding between the FBI and ATF was to clarify the roles and responsibilities of the FBI and ATF during explosives investigations, this memorandum did not change or clarify the criteria for determining "lead agency" jurisdiction. Moreover, the Department did not effectively follow through to clarify the ambiguities in the jurisdictional assignments and the differing interpretations by the FBI and ATF.

A workable arrangement must clearly define which agency has the lead agency authority for each category or type of explosives event. For example,

guidance could consider dividing explosives authorities by device type (incendiary incidents versus explosive devices), geography (rural versus urban incidents in a jurisdiction), or lead authority over technical services (render-safe procedures versus technical evidence collection or arson analysis). Further, the Department could consider establishing a clear and quick procedure for the FBI and ATF to use in seeking resolution of jurisdictional conflicts. The Department could also require the FBI and ATF to develop protocols on joint investigations for explosives incidents, consistent with any new Department directives. Moreover, it is critical for Department leadership to carefully monitor the implementation of on any new guidance, convene regular meetings to work out any disagreements or ambiguities in the application of the new guidance, and maintain close oversight of this important issue.

B. In your report, you indicate that separate FBI and ATF explosive databases resulted, not only in a duplication of effort, but also in an inability to accurately determine trends in explosives incidents. What are the advantages of maintaining a single explosives incident database?

A consolidated explosives incident database would provide various benefits. It would give investigators a single source to obtain comprehensive statistics on explosives incidents. It would achieve uniformity in the reporting process for explosives incidents. It would help law enforcement personnel identify trends in the use of explosives, such as the types of explosives most commonly used, the type of materials used in explosives incidents, and effective methods used for rendering explosives devices safe or in detecting the explosive before detonation.

The lack of accurate, comprehensive statistics in a consolidated explosives database can also adversely affect how federal resources are allocated. For example, the FBI uses statistics and trends generated from its FD-542 database for its assessment of the needs of its explosives programs. Yet, by relying only on FBI data, the FBI does not consider the information from other federal responders, including ATF, and from state and local responders. This additional data would provide a more complete assessment of where FBI resources are needed. Likewise, ATF does not have access to the FBI's incident data and consequently has a less than a complete picture of explosives incident activity in determining where to allocate ATF resources.

Further, a single database would promote better information sharing. With hundreds of federal, state, and local law enforcement agencies generating explosives information, a comprehensive database of explosives incidents would permit analysis of explosives threats and further advance the

information-sharing environment required by the Homeland Security Presidential Directive-19.

C. Your report shows that the FBI and ATF maintain separate training facilities, explosives laboratories, and post-incident training programs—despite a 2004 Attorney General Memorandum directing the consolidation of these efforts. Can you estimate the cost to the taxpayers of maintaining these facilities and programs separately?

It is difficult to accurately estimate the cost of overlapping FBI and ATF training facilities, explosives laboratories, and post-incident training programs, but we believe those costs are significant.

First, it is important to note that part of the intent of the 2004 Attorney General Memorandum was to review the feasibility for consolidating DOJ explosives training facilities. However, that review never occurred, and separate facilities have been maintained at significant cost.

As a result of the ineffective implementation of the 2004 Attorney General Memorandum, both components have expended or are proposing expending millions of dollars for building explosives-training facilities. For example, in 2004 the FBI opened a $23 million Hazardous Devices School which trains all civilian bomb technicians at the Redstone Arsenal in Huntsville, Alabama. The FBI also completed a Secure Training Facility for $4.8 million in October 2008 and has requested $13.1 million for a training facility at the Redstone Arsenal, which would focus on large-vehicle born explosives.

At the same time, ATF maintains the National Center for Explosives Training and Research (NCETR) in Fort A.P. Hill, Virginia, and the Canine Training and Operations Support Branch located in Front Royal, Virginia. In addition, ATF is constructing an NCETR facility at Redstone Arsenal. ATF has expended $28.5 million on construction of this facility and sought another $41.6 million of non-personnel funding for ranges, classrooms, and development costs at the facility. Between 2004 through 2007, ATF budgeted an average of $2.6 million for explosives training and the FBI allocated an average $5.9 million, not including training performed in its field divisions.

Despite their overlapping missions, the FBI and ATF also have not worked together to establish joint explosives-training priorities, such as identifying what training is needed, who has the most pressing need for the training, and who can best provide that training. As a result, the Department does not have a comprehensive approach for providing explosives-related

training to federal, state, and local investigators, and the costs of maintaining these separate facilities are significant.

To more effectively use overlapping training resources, we believe that the Department's Training Board should meet to consider consolidation of training programs and to develop a training plan for all DOJ explosives-related efforts. The plan needs to assess the training needs of federal, state, and local explosives specialists and assign priorities to those programs that most effectively meet those needs. In addition, the components must identify funding requirements and focus their training efforts in those priority areas.

With respect to explosives laboratory expenses, between 2005 through 2008, ATF has averaged $2.13 million in annual explosives-related laboratory expenses. For that same time period, the FBI has averaged $6.08 million for its Explosives Unit and contributions to the Terrorist Explosive Device Analytical Center, out of a total $76.18 million annual budget for the FBI's Laboratory Division.

2. **These working groups are expected to present short issue papers to the Deputy Attorney General sometime this month. Your report cites several previous attempts to resolve jurisdictional conflict between the FBI and ATF through memoranda of understanding and directives from the Attorney General. Why did these earlier attempts fail? In your opinion, what are the elements of a successful jurisdictional arrangement?**

We believe that the previous attempts to resolve jurisdictional disputes failed because of the lack of adequate follow through and oversight by Department leadership. We recognize that it is not an easy decision, or an easy task, to resolve this jurisdictional conflict. Yet, while the Department has previously attempted to provide guidance, the Department did not ensure the guidance was workable, that the components were implementing the guidance, and that ambiguities and continuing conflict over jurisdiction had been resolved.

The most critical element in a successful jurisdictional arrangement between the FBI and ATF is to clearly define which agency controls an explosives case under which circumstances. While the FBI argues that it should be given priority over all explosives investigations until a terrorism nexus has been ruled out, we repeatedly heard from ATF, FBI, and local officials that the vast majority of explosives cases in the country are not terrorist-related.

We believe that clear jurisdictional arrangements should be established, and that the components should be willing to defer to each other's area of expertise. We also believe that, as noted in response to question 1, the Department should consider establishing a clear and quick procedure for the FBI and ATF to use in seeking resolution of jurisdictional conflicts. The Department should also require the FBI and ATF to develop protocols on joint investigations for explosives incidents, consistent with new Department directives.

FBI's Foreign Language Translation Program:

3. **The FBI does not agree with the method by which your office calculated the backlog of material not reviewed by the Language Services Section. How did your office arrive at its estimate of the backlog? How do you respond to the FBI's criticism of the method? Is it correct to state that the backlog has increased in recent years?**

Our report presented an estimate of the backlog through the use of the FBI's data. The OIG reported in our 2004 and 2005 report that the FBI lacks a consolidated collection and statistical reporting and evaluation system to provide accurate numbers of the backlog. Unfortunately, that deficiency still exists today.

As a result, the FBI must manually consolidate and "refine" data from its systems to arrive at an estimate of the backlog. However, when presenting this "refined" data, the FBI uses only one of several FBI collection systems – referred to as Collection System A in the OIG report. Other FBI collection systems do not have an automated and centralized means of providing a comprehensive account of unreviewed material.

In the process, FBI headquarters requires field offices to submit data each month on material collected and reviewed outside Collection System A. The FBI's Language Services Section then consolidates data submitted by the field offices, adds data from Collection System A, and generates collected and reviewed totals for the FBI as whole.

In our report, we presented the FBI data from this monthly reporting process, which the FBI had provided to us. We also acknowledged in the report that the unreviewed amounts we included in our report may, because of FBI collection system limitations, include duplicate data or previously reviewed material reloaded on systems for further review. Nevertheless, the monthly reported figures are the only data maintained by the FBI that account for all collected material on all FBI collection systems.

In its response to our report, the FBI focused on "refined" data which related to only one category of material – untranslated counterterrorism audio. The FBI's unrefined monthly reporting data indicated that the FBI accrued 47,000 hours of unreviewed audio material between fiscal years 2003 and 2008. When the FBI refined its backlog total for counterterrorism audio by subtracting audio hours associated with collections that it does not believe should be included in its backlog computations, it arrived at a total figure of 4,770 hours of unreviewed counterterrorism audio.

While we agree with some of the FBI's reasons for deleting audio material from the backlog totals, the refined data has not been verified, and we have serious concerns about the refinement process. For example, as noted above, the FBI's refined data uses data from only one system, Collection System A, not from all its systems. Second, we have concerns about the accuracy of the method the FBI uses to refine its counterterrorism audio backlog data. As discussed in our report, FBI Language Services staff members identify what they believe to be duplicates or anomalies in the data from the field offices, send an e-mail to the field office, and if no response is received from the field subtract the data from the untranslated category. This process, in our view, is not likely to result in fully accurate data.

Additionally, we have concerns with the FBI subtracting from its backlog totals material collected that is entirely in English and material for which it cannot identify the language being spoken. In our opinion, the FBI must review this material and should not discount it from its backlog totals. Further, the FBI does not include in its backlog totals material that it has previously reviewed and that it must review again, such as material being admitted as evidence in a criminal prosecution. While this material may not be backlog in the sense that the material has previously been reviewed, it nevertheless is material that a linguist must review again and therefore will affect the FBI's ability to review newly collected material in the same language. All these concerns highlight our skepticism of the accuracy of the FBI's refinement process and its refined backlog totals.

In short, while we acknowledged in our report that we believe that the actual backlog of unreviewed counterterrorism audio is lower than the 47,000 raw number from the FBI's data system, we also explained why we believe the true number is higher than the 4,770 refined figure advanced by the FBI.

In addition, it is important to recognize that the FBI presents refined data in only one category of collections – counterterrorism audio – and that there are significant amounts of untranslated counterintelligence audio, counterintelligence electronic files, and counterterrorism electronic files, as our report described. For example, for counterintelligence audio, we presented in

our report data from the FBI's comprehensive monthly reporting process. This FBI data showed that between fiscal years 2003 and 2008 the FBI did not review over 1.1 million audio hours that it collected, and that this total represented 31 percent of the total counterintelligence audio collections according to the FBI's monthly reporting data.

As to whether we believe the backlog of untranslated materials is increasing, the data indicates that the backlog is increasing, particularly in the amount of untranslated electronic files. Moreover, some basic facts support this conclusion that the backlog is increasing. Over time the FBI is collecting much more material – in counterterrorism and counterintelligence audio and electronic files – but it has fewer translators to review this material. As our report noted, in 2005 the FBI had 1,338 linguists, and in 2008 that number declined to 1,298. With increasing amounts of materials collected and fewer linguists to translate these materials, we believe the backlog is increasing, as the numbers indicate.

Finally, it is important to reiterate that this issue only arises because, despite our recommendations in 2004, the FBI still lacks an accurate automated system to determine the amount of unreviewed material.

The Department's Anti-Gang Intelligence and Coordination Centers:

4. **GangTECC was created shortly after the National Gang Intelligence Center (NGIC), and was intended to work seamlessly with NGIC as part of the Department's overall anti-gang effort. Your report indicates that GangTECC has no operating budget. Can GangTECC fulfill its mission without funding? Should the Department preserve GangTECC, roll its components into another entity, or dissolve the unit altogether?**

We do not believe GangTECC, which is intended to coordinate gang investigations on a nationwide basis, can effectively fulfill its mission without an adequate, dedicated budget. Currently, GangTECC is dependent upon resources contributed by its member agencies. That dependency limits GangTECC's ability to manage its activities because member agencies will generally only fund those GangTECC projects directly related to investigations within their respective agencies.

For example, our report found that although GangTECC has successfully coordinated several gang cases, it has also missed coordination opportunities because one or more member agencies were not willing to provide funding for its representatives to attend coordination meetings. A dedicated budget would allow GangTECC to organize more meetings to assist law enforcement agencies with information sharing on gang targets. Also, a dedicated budget would

enable GangTECC to conduct investigative outreach to law enforcement agencies that may not be aware of the services that GangTECC can provide.

While we believe that GangTECC serves a valuable function, its lack of an adequate budget, along with the lack of coordination between GangTECC and NGIC, has undermined its effectiveness. We continue to believe the Department should consider merging GangTECC and NGIC. Yet, whether GangTECC and NGIC are merged or continue to function as partners, it is critical that their operations be coordinated and integrated better.

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Mr. SCOTT. Without objection, the Subcommittee stands adjourned. Thank you very much.

[Whereupon, at 3:37 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Arising from the February 24, 2010, Hearing Before the
House Committee on the Judiciary
Subcommittee on Crime, Terrorism, and Homeland Security
Regarding "Oversight Hearing on Recent
Inspector General Reports Concerning the FBI"**

1. How does the FBI prioritize its translation efforts? How does the FBI know that there is not important counterterrorism or counterintelligence information in lower priority materials that have not yet been translated?

Response:

The FBI prioritizes its translation efforts based on the potential threat (counterterrorism, counterintelligence, or criminal) represented by each target. The threat level is evaluated based upon classified Intelligence Community standards. Consistent with the FBI's top priority of preventing terrorist attacks, it is the FBI's policy that all counterterrorism materials will be reviewed, while the review of counterintelligence materials receives a lower priority consistent with the FBI's established priorities. While we recognize that there may be important information in these lower-priority counterintelligence materials, we believe our finite foreign language resources should be applied first to our highest priority collection, followed by our most recently collected materials in the lower priorities.

2. Please provide the percentage of counterintelligence audio, counterintelligence electronic files, and counterterrorism electronic files translated by the FBI's Foreign Language Program.

Response:

In Fiscal Year (FY) 2009, the FBI's review rate was 76.77% for counterintelligence audio, 59.32% for counterintelligence Electronic Data Files (EDFs), and 72.01% for counterterrorism EDFs. These numbers understate the percentage of EDFs reviewed because the current processing systems do not reflect an EDF as having been reviewed unless a specific workflow marking is manually selected for that product even though it may have been either reviewed in a "preview pane" or electronically scanned for potential intelligence content. In either of these two cases, the EDF would continue to be reflected as part of the unreviewed backlog even though it had been reviewed. The FBI is currently working on modifications to the processing systems to address this issue.

3. The Office of the Deputy Attorney General (ODAG) testified that, since August 2002, the FBI has reviewed 99 percent of all counterterrorism audio. How does ODAG know that the FBI has reviewed 99 percent of all counterterrorism audio files when the FBI does not have a comprehensive automated means to track the counterterrorism audio files it reviews?

Response:

While the FBI does not have a means of automatically tracking the processing of counterterrorism audio files, manual calculations based on collection and processing totals reflect a processing rate of 99%.

4. In audits of the Foreign Language Program in 2004 and 2005, the Office of the Inspector General (OIG) recommended that the FBI implement an automated collection system. At the time, the FBI agreed with that recommendation. The OIG indicated in its 2009 audit, however, that no such system yet exists. Why has the FBI not yet implemented an automated collection system, and when can the subcommittee expect such a system to be in place?

Response:

A contract has been awarded for a new Digital Collection System, with phased deployment scheduled to begin in the third quarter of FY 2010 and to be completed by the end of FY 2013. This new system will be a major improvement over the current one and will help implement the recommendation made by the Office of the Inspector General (OIG). However, for technological reasons, we may need to continue to collect some types of data (e.g., Voice-Over-Internet Protocol) on other systems in the near term. The FBI will continue to pursue additional efficiencies and capabilities in this critical area.

5. Please explain the difference between your calculation of the backlog of untranslated material and the estimate provided by the OIG in its 2009 audit.

Response:

The OIG developed its estimate of the accrued backlog for unaddressed counterintelligence and counterterrorism materials by examining monthly reports produced by the Foreign Language Program (FLP). These reports include total amounts collected and total amounts processed. The OIG subtracted "processed" from "collected" to determine "backlog." The FLP's method of computing backlog has evolved to account for materials that are included in "collection" but do not need to be reviewed for initial intelligence purposes. For example, the FBI is able to identify and discount large amounts of duplicate material produced

when audio is forwarded from one site to another (and not properly "backflowed" to the originating site to show that it has been reviewed), material that has been re-imported so a "Brady review" can be conducted, and other material that investigative personnel have determined does not require review but is still residing on collection systems. These issues have been well documented in this and previous OIG audits. Thus, the FBI believes the FLP's "refined" data reflects the backlog much more accurately.

All unaddressed materials relating to counterterrorism investigations must be initially reviewed for intelligence regardless of their age. All such materials are included in the backlog calculation, which is 4,770 hours (though subsequent examination of this backlog has revealed collection that should not have been included in this total, decreasing the true backlog). Over time, the "backlog" calculated by the OIG **without** accounting for the amounts "refined" by the FLP has grown to nearly 47,000 hours.

There is no accrual of unreviewed counterintelligence materials. Because the amount of counterintelligence material requiring review changes daily as older material is no longer considered part of the "backlog," the FLP does not subject the counterintelligence collection to the same refinement process as it does counterterrorism materials, with the exception of the FBI's highest priority counterintelligence collection. Nevertheless, the FLP has verified that many of the conditions warranting the "refinement" of the counterterrorism collection similarly apply to the counterintelligence collection, causing the raw numbers for any backlog of counterintelligence data to be inflated.

6. The subcommittee understands that the FBI removes unreviewed counterintelligence data from the backlog after a certain period of time because it is no longer deemed to be timely or relevant information. How does the FBI know that the data is no longer timely or relevant if it has not reviewed the information?

Response:

Counterintelligence materials are prioritized according to the potential threat they address. Over many years of collecting, processing, and reporting on these types of targets, the FBI has learned that this intelligence is highly "perishable," meaning this information loses value very quickly. We recognize, though, that a portion of the information may be relevant or useful at some point long after collection. Consequently, all of the collection is archived for later retrieval should subsequent reporting make that appropriate.

7. The OIG estimates that in FY 2008 the FBI collected but did not translate more than 150,000 hours of material in counterintelligence cases of the second highest priority. Although the FBI's method of calculating the backlog may differ from that of the OIG, there still appears to be a significant amount of potentially important information left untranslated in high priority cases. What can the FBI do to ensure that it translates all higher priority cases in a timely manner?

Response:

The FBI currently reviews all of the highest priority material it collects in a timely manner. In order to process all of the FBI's counterintelligence collection, regardless of priority, the FBI would require additional linguists.

8. What additional resources does the FBI require to review all collected material, including all audio material and electronic files, particularly in high priority cases?

Response:

The FLP has identified the need for an additional 605 language analysts and funding for an additional 56 contract linguists in order to meet a 100% processing goal for existing and anticipated collections and to address new foreign language requirements associated with recent FBI initiatives in cyber, organized, white collar, and violent crime and in foreign counterintelligence. Seventy-nine new positions would also be required to administer the work flow and to ensure quality control.

9. Differences in estimating the backlog notwithstanding, the OIG audit indicates (1) that the FBI has fewer linguists on staff since 2004, and (2) that the FBI is collecting an increasing amount of information every year. Giving the increasing need for translation services, what is the cause of the FBI's decline in the number of linguists on staff? How can the subcommittee and the Congress assist the Foreign Language Program in meeting its hiring goals?

Response:

The FBI actually has more linguists working today (and at the end of the most recent audit) than it did at the end of the 2004 audit. The apparent decline in the number of linguists is the result of an internal FBI audit of contractors who continue to appear on the FLP's roles even though they have not provided translation services for years. The removal of these names from the FBI's active linguist records created the illusion that fewer linguists work for the FBI now than in the past.

The personnel needed to process 100% of collection are identified in response to Question 8, above.

10. Although adequate background investigations are important, the OIG audit states that the FBI takes an average of 14 months to complete a background investigation for prospective linguists. Additionally, the time needed to hire linguists has risen since the 2005 report, from 16 months to 19 months. What is the cause of the increase? What can the FBI do to hire linguists in a more timely fashion?

Response:

The time frames for applicant hiring cited by the OIG include initial applicant processing, language testing, and the administration of the polygraph examination. The FBI is currently developing the capability to administer the battery of language tests in third-party testing centers. We anticipate that this capability will be operational by early 2012 and will reduce the time required to administer the series of language tests, which currently averages 130 business days, by more than half.

The FBI hires language analysts from its available pool of contract linguists, all of whom have Top Secret clearances. The FBI's Security Division is responsible for the background investigation and security adjudication of both the contract linguist applicants and the "employee conversions" drawn from their ranks to become language analysts. In addition to the thorough background investigation required for a Top Secret clearance, the security adjudication process involves a growing number of record checks (including checks of various Intelligence Community databases) and a security risk assessment by the appropriate FBI substantive division. The security adjudications of contract linguist applicants and employee conversions are time consuming because these candidates, most of whom are foreign born and/or have spent a significant amount of their adult lives overseas, are considered "high-risk." The FBI has recently added three positions to expedite the processing of contract linguist applicants through the background investigation and security adjudication processes.

11. Would the FBI benefit from a classified hearing to answer any of these questions?

Response:

The FBI would be able to explain the nuances of FISA collections, the backlog, and the prioritization system in greater detail during a closed hearing.

U.S. Department of Justice

Office of the Inspector General

November 13, 2009

MEMORANDUM FOR THE ATTORNEY GENERAL

THE DEPUTY ATTORNEY GENERAL

FROM: GLENN A. FINE
INSPECTOR GENERAL

SUBJECT: Top Management and Performance Challenges in the Department of Justice

Attached to this memorandum is the Office of the Inspector General's (OIG) 2009 list of top management and performance challenges facing the Department of Justice (Department). We have prepared similar lists since 1998. By statute, this list is required to be included in the Department's annual Performance and Accountability Report.

We hope that this document will assist Department managers in developing strategies to address the top management and performance challenges facing the Department. We look forward to continuing to work with the Department to address these important issues.

Attachment

Top Management and Performance Challenges in the Department of Justice – 2009

1. Counterterrorism: Counterterrorism remains the highest priority of the Department of Justice (Department or DOJ). While recent terrorism arrests demonstrate the Department's focus on and progress in its counterterrorism efforts, the Department in general and the Federal Bureau of Investigation (FBI) in particular still face significant challenges in fully performing this critical mission.

For example, in May 2009 the Office of the Inspector General (OIG) issued an audit that examined the FBI's practices for making nominations to the consolidated terrorist watchlist. The watchlist is used by frontline government screening personnel to determine how to respond when a known or suspected terrorist requests entry into the United States. The failure either to place appropriate individuals on the watchlist or to place them on the watchlist in a timely manner increases the risk that they are able to enter and move freely within the United States. However, the OIG audit concluded that the FBI did not consistently nominate known or suspected terrorists to the consolidated terrorist watchlist in accordance with FBI policy and did not update or remove watchlist records as required.

The deficiencies identified in this audit followed our findings in a March 2008 audit report that watchlist nominations from FBI field offices often were incomplete or contained inaccuracies, which caused delays in the nominations process. Although the FBI agreed with our March 2008 recommendations and began taking corrective actions, our May 2009 audit report identified continued internal control weaknesses that contributed to incomplete and inaccurate watchlist records. In the May 2009 report, the OIG made 16 new recommendations to the FBI regarding nominations to, modifications of, and removal of identities from the consolidated terrorist watchlist, and the FBI agreed to implement all of these recommendations.

In another follow-up review, the OIG examined the FBI's Foreign Language Translation Program. The FBI's ability to timely translate the large amount of foreign language materials it regularly collects is critical to national security. OIG audits in 2004 and 2005 found significant deficiencies in the FBI's Foreign Language Translation Program. The OIG's October 2009 audit found that many of these deficiencies have not been fully corrected. Specifically, we found that the FBI continued to have significant amounts of unreviewed foreign language materials in counterterrorism and counter intelligence, the FBI's highest priority investigative areas. Moreover, the FBI still does not have an automated means for assessing the amount of material it collects for translation. In addition, while the FBI has improved its compliance with quality control requirements and begun requiring experienced linguists to have a formal quality control review performed once every four quarters, we identified numerous linguists who have not had the quality of their work reviewed for over 3 years. Moreover, the FBI continues to fall short in meeting its linguist hiring goals, resulting in a decrease in the number of linguists since 2005 at the same time there has been an increase in the amount of material for translation. The OIG

made 24 new recommendations to assist the FBI in improving the management of its Foreign Language Translation Program.

As Attorney General Holder noted in his congressional testimony, communication and information sharing are critical to the Department's counterterrorism strategy. However, in a recent audit the OIG found that the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) are not adequately coordinating their explosives-related operations. The OIG audit found that jurisdictional disputes occur between the FBI and ATF, delaying explosives investigations and resulting in a disjointed federal response to explosives incidents, some of which involve terrorist incidents. Despite an Attorney General memorandum in August 2004 and a 2008 Memorandum of Understanding between the FBI and ATF, allocation of investigative authority between the two agencies is unclear, and disputes between the agencies have continued regarding lead agency authority for federal explosives investigations.

The FBI's development of an automated system to track terrorist threats and suspicious incidents was intended to disseminate immediate threat information to the FBI's law enforcement and intelligence partners. An OIG November 2008 report examining the FBI's Guardian Threat Tracking System (Guardian) revealed shortcomings in the accuracy, timeliness, and completeness of the information entered in Guardian. The deficiencies identified by this audit resulted in threat information not being made available to all Guardian users. The FBI has recently developed E-Guardian, a companion system to provide state and local law enforcement with the capability to share local terrorism incident information with the FBI and to receive nationwide unclassified terrorism incident information from the FBI. Following our review, the FBI officially launched E-Guardian in January 2009.

In accord with the *National Strategy for Combating Terrorist Use of Explosives in the United States*, the OIG evaluated the FBI's efforts to prepare for weapons of mass destruction (WMD) threats, including how the FBI ensures that WMD Coordinators in FBI field divisions identify WMD threats and attacks. Our audit found that although the FBI has established a WMD Coordinator position in each of its field divisions to serve as the point-person on WMD matters, the WMD Coordinators need to be more involved in the process used by each field office to identify and forecast WMD threats and vulnerabilities. We also recommended that the FBI enhance day-to-day coordination between WMD Coordinators and field office Intelligence Analysts. Additionally, we found that the FBI needs to develop qualification standards and training plans for field division personnel charged with preventing and detecting WMD threats. The OIG made 13 recommendations for the FBI to enhance the responsibilities and training of its WMD Coordinators and to help improve field division WMD-related efforts.

The OIG is currently evaluating the FBI's efforts to investigate national security cyber intrusion cases. We are assessing the efforts of the FBI National Cyber Investigative Task Force to address potential national security cyber intrusion threats. In addition, our audit is examining the FBI field offices' capabilities to investigate national security cyber intrusion cases.

Another recent OIG review determined that the Department had failed to appropriately perform its critical legal function during the early phases of a controversial intelligence gathering activity. In the weeks following the terrorist attacks of September 11, 2001, the President authorized the

National Security Agency (NSA) to conduct a classified program to detect and prevent further attacks in the United States. The program was reauthorized by the President every 45 days, with certain modifications. The activities carried out under these authorizations were referred to as the President's Surveillance Program (PSP). In July 2009, the OIG completed a 407-page classified report that examined the Department's controls over and use of information related to the PSP and the Department's compliance with legal requirements governing the PSP. The OIG report focused in particular on the Department's role in providing legal advice concerning the Program and on the FBI's role as a consumer of information from the Program. In conjunction with four other Intelligence Community OIGs, we also issued a 40-page summary of the unclassified material from the OIG reports.

In our review, we found that only one Office of Legal Counsel (OLC) attorney was read into the PSP during its first year and a half of operation. The OIG concluded that it was extraordinary and inappropriate that a single attorney was relied upon to conduct the initial legal assessment of the PSP, and that the lack of oversight and review of his work, as customarily is the practice of OLC, contributed to a legal analysis of the PSP that at a minimum was factually flawed. The OIG also concluded that the limited access to PSP information also undermined the Department's ability to perform its critical legal function during the PSP's early phase of operation.

The OIG also sought as part of its review to assess the role of PSP-derived information and its value to the FBI's overall counterterrorism efforts. Our interviews with FBI agents and analysts responsible for handling PSP information generally were supportive of the program as "one tool of many" in the FBI's anti-terrorism efforts that "could help move cases forward," although most PSP leads were determined not to have any connection to terrorism. The OIG concluded that although PSP-derived information had value in some counterterrorism investigations, it generally played a limited role in the FBI's overall counterterrorism efforts.

In sum, while the Department continues to make counterterrorism its top priority, recent OIG reviews have highlighted the continuing challenge for the Department in addressing this critical area.

2. Restoring Confidence in the Department of Justice: In the past several years, the Department of Justice has faced criticism for politicization in the hiring of career officials, dismissal of U.S. Attorneys, and alleged misconduct in several prosecutions. These issues involve a small number of the many important responsibilities the Department handles and also involve only a small percentage of the Department's dedicated work force. Yet, these issues can affect confidence in the objectivity and non-partisanship of the Department of Justice as a whole and can undermine the confidence in the many critical decisions the Department makes. Consequently, restoring confidence in the Department is an important and ongoing challenge.

In 2008, the OIG and the Department's Office of Professional Responsibility (OPR) issued two joint reports which substantiated serious allegations of improper politicized hiring practices in the hiring processes for career attorney positions in the Department's Honors Program and Summer Law Intern Program and in hiring for career positions by staff in the Office of the Attorney General.

Another joint OIG/OPR report issued in 2008 concluded that partisan political considerations played a part in the Department's removal of U.S. Attorneys in 2006. We concluded that the process used to select the U.S. Attorneys for removal was fundamentally flawed, and the oversight and implementation of the removal process by the Department's most senior leaders was significantly lacking. The Department's removal of the U.S. Attorneys and the controversy it created severely damaged the credibility of the Department and raised doubts about the integrity of Department prosecutorial decisions.

In January 2009, the OIG and OPR issued another joint report which found that Bradley Schlozman, the former Acting Assistant Attorney General (AAG) for the Civil Rights Division, had hired lawyers for career positions in the Division and had made personnel decisions based on attorneys' political or ideological affiliations. Our investigation concluded that in doing so Schlozman violated federal law (the *Civil Service Reform Act)* and Department policy, both of which prohibit discrimination in federal employment based on political affiliations.

As noted in our 2008 analysis of the Department's top management challenges, the Department has taken significant steps to correct problems we found in these four reviews. For example, the Department returned the responsibility for hiring career employees from politically appointed officials to career employees, and the Department provided training for these selecting officials. The Department also developed new briefing and training materials for Department political appointees that stresses that the process for hiring career employees must be merit based, and that ideological affiliations may not be used as a screening device for discriminating on the basis of political affiliations. In addition, the former Attorney General appointed a special counsel to investigate whether any crime was committed related to removal of the U.S. Attorneys, and that investigation is ongoing.

However, the Department has still not responded to the OIG's recommendation that the Department clarify its policies regarding the use of political or ideological affiliations to select career attorney candidates for temporary details within the Department. The Department's guidance on this issue is inconsistent, and we recommend that the Department clarify the circumstances under which political considerations may and may not be considered when assessing career candidates for details to various Department positions.

While the Department has taken important steps on the issues of politicized hiring and firing that we identified in our reports, the Department is also faced with significant issues arising from several recent prosecutions, including the prosecution of former Alaska Senator Ted Stevens. In April, after a jury trial, the Department moved to dismiss the indictment charging Stevens with violating government ethics laws. According to the Department, it dismissed the indictment after trial because it concluded that certain information should have been provided to the defense for use at trial. The Department's handling of this case created concern about the prosecutors' adherence to professional standards of conduct. Federal judges in other districts also have questioned whether the Department is adequately adhering to professional standards of conduct and addressing concerns of prosecutorial misconduct. For example, judges in the District of Massachusetts, the Northern District of Alabama, and elsewhere have questioned the professional conduct of Department prosecutors. The judges expressed concerns primarily about

prosecutors failing to disclose exculpatory or impeachment information to the defense and the manner in which prosecutors handled certain informants and witnesses.

Other issues regarding the professional responsibility of the Department's attorneys have also been reported on during the past year, including the OIG report about the President's Surveillance Program, which is discussed in the previous management challenge. In another matter involving national security issues, allegations have arisen concerning the role Department attorneys played in providing legal advice relating to enhanced interrogation techniques. A report by OPR on this issue is pending.

In response to these concerns about prosecutorial conduct, the Department has taken a variety of actions. For example, in August 2009 the Department created a working group to consider best practices for prosecutors in fulfilling their disclosure obligations. The Department also announced a new training program in which all United States Attorneys' Offices have been directed to appoint a Discovery Trainer who will be required to attend a training conference, which will focus on discovery issues, including Brady-Giglio, Rule 16, Jencks, informants, and agent and attorney notes. The Discovery Trainers will then present mandatory training to all Assistant U.S. Attorneys in their districts by the end of the year. In addition, the Department plans to hire an official to oversee this training process, assess the need for additional improvements, and ensure continued implementation of the reforms.

In short, we believe that restoring confidence in the professionalism of the Department is a continuing challenge. The Department needs to ensure that the diligence, hard work, and sound ethics of the overwhelming majority of Department employees are not undermined by the few but highly visible incidents of potential misconduct. While the Department's leadership, both at the end of the past Administration and during this Administration, has taken important steps to confront this challenge, it must remain focused on this critical issue.

3. Recovery Act Funding and Oversight: In addition to the traditional challenge the Department faces each year in managing more than $3 billion in grant funds, the Department has received additional grant funds from the *American Recovery and Reinvestment Act of 2009* (Recovery Act). The Recovery Act, which provides $787 billion in total funding intended to provide a stimulus to the economy, includes $4 billion in Department grant funding to enhance state, local, and tribal law enforcement; to combat violence against women; and to fight Internet crimes against children. The distribution of Recovery Act funding among the various Department grant programs is shown in the chart below.

RECOVERY ACT-FUNDED PROGRAMS

Appropriations Title	Department Component	Total Funding	Allocation to Component Programs and Purpose
State and Local Law Enforcement Assistance, Recovery Act	Office of Justice Programs (OJP)	$2.765 billion	**$2 billion** – Edward Byrne Memorial Justice Assistance Grant (JAG) Program funding for a broad range of activities to prevent and control crime and improve the criminal justice system.
			$225 million – Edward Byrne Competitive Grant Program funding to help communities address targeted needs.
			$225 million – Grant funding for construction/renovation of correctional facilities on tribal lands.
			$125 million – Grant funding for rural law enforcement activities related to preventing and combating drug-related crime.
			$40 million – Grant funding for law enforcement activities along the southern border and in high-intensity drug trafficking areas (includes $10 million of pass-through funding for ATF).
			$50 million – Grant funding for initiatives related to Internet crimes against children.
			$100 million – Grant funding for victim compensation and assistance.
Community Oriented Policing Services, Recovery Act	Office of Community Oriented Policing Services (COPS)	$1 billion	**$1 billion** – Grant funding for the COPS Hiring Recovery Program (CHRP) to hire and rehire additional career law enforcement officers.
Violence Against Women Prevention and Prosecution, Recovery Act	Office on Violence Against Women (OVW)	$225 million	**$175 million** – Grant funding to support the work of state, local, and tribal governments and domestic violence and sexual assault coalitions.
			$50 million – Transitional Housing Assistance Grant Program funding to provide victims of crimes against women with transitional housing services and to move such individuals into permanent housing.
Salaries and Expenses, Office of Justice Programs, Recovery Act	OJP	$10 million	**$10 million** – Administrative funding to OJP, further allocated as follows: OJP $7.0 million COPS $2.5 million OVW $ .5 million
Salaries and Expenses, Recovery Act	Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)	(Funding received through OJP)	**$10 million** – Funding to support Project Gunrunner for the Southwest Border Initiative to reduce cross-border drug and weapons trafficking and violence on the border.
Office of the Inspector General, Recovery Act	Office of the Inspector General (OIG)	$2 million	**$2 million** – Funding for oversight activities and functions related to Recovery Act funding.

Source: U.S. Department of Justice Draft Agency Plan for Management of Recovery Act Funds

The management and oversight of Recovery Act funds is a significant challenge for the Department because the Department must distribute this large amount of grant funding quickly, monitor the use of these funds, and continue to manage its annual grant programs at the same time. For example, the Department's Edward Byrne Memorial Grant Program Justice Assistance Grant Program (JAG Program) received $2 billion in Recovery Act funds to be awarded to state

and local governments to support a broad range of activities aimed at preventing and controlling crime and improving the criminal justice system. This money is approximately 4 to 18 times more than the annual funding that the Department awards through the JAG Program each year ($496 million in fiscal year (FY) 2005, $202 million in FY 2006, $305 million in FY 2007, and $108 million in FY 2008).

Yet, despite the significant influx of Recovery Act money that the Department must oversee, the number of grant administrators who award and oversee these grant programs has not significantly increased. Therefore, these same grant administrators who already were challenged to provide adequate oversight of annual JAG grant funds face additional challenges in overseeing the Recovery Act funding.

The Department plans to monitor grant recipients through a combination of oversight methods, including on-site program and financial reviews, desk reviews of recipient reports, and analyses of single audit results. Effective monitoring by each of the Department's three grant-making agencies is crucial to the early identification and correction of problems among the Recovery Act grant recipients. As discussed in more detail in the management challenge on grant management, the Office of Justice Programs (OJP) has taken steps to improve its monitoring efforts by strengthening its Office of Audit, Assessment, and Management (OAAM). The OIG will be assessing the effectiveness of these improvements as we audit the Department's oversight of Recovery Act awards.

In another example of the Recovery Act challenge, the Department's Office of Community Oriented Policing Services (COPS) received an additional $1 billion in Recovery Act funds in 2009 for the hiring of career law enforcement officers. This is approximately three times larger than the average annual appropriations for COPS grants over the past 5 years. In addition, the focus of COPS grants in recent years had shifted from hiring police officers to providing funds for law enforcement equipment and technology. The result is that COPS must now manage a $1 billion Recovery Act hiring program with staff that may need to be retrained and refocused in overseeing a significantly larger number of hiring grants. Yet, the COPS' staff to administer its grant programs has declined from 214 in 1999 to 116 in October 2009. While COPS has recently increased its staffing in response to the Recovery Act challenges, as of September 2009 only eight grant monitors were on board in the COPS Grant Monitoring Division. Consequently, we are concerned with COPS' ability to provide effective grant management over thousands of grants with such a limited number of staff.

To address the management challenges presented by the infusion of Recovery Act funding, the Department has taken important steps. These steps include:

- OJP has implemented a High Risk Grantee Designation program to assess a grantee's risk before awards are made and to strengthen its monitoring of these grantees.

- COPS created the 2009 COPS Hiring Recovery Program Grant Owner's Manual to assist grantees with the administrative and financial matters associated with the grants.

- COPS plans to offer free access to interactive online training courses and resources to help grantees manage their grants and implement their community policing plans under the Recovery Act.

- The Office on Violence Against Women (OVW) held several pre-award conference calls with potential applicants to clarify Recovery Act solicitation requirements, and OVW is developing a monitoring plan for Recovery Act awards.

At the same time, the OIG has taken proactive steps to help the Department in its oversight of Recovery Act money. For example, the OIG has provided Department officials and grant administrators with training on the grant management process in an effort to prevent fraud or misuse of the funds. Since enactment of the Recovery Act in February 2009, the OIG has trained over 800 Department grant officials in order to raise awareness of the specific fraud, waste, and misuse risks related to Recovery Act and other grant funding.

The OIG also has reviewed draft documents prepared by the Department, including both pre-award documents for grant applicants and post-award guidance for grant recipients, and provided advice to Department officials regarding these documents. We have also provided guidance to the Department regarding appropriate internal controls and best practices when awarding and overseeing Recovery Act funds.

In addition, the OIG prepared a document, entitled *Improving the Grant Management Process*, which contains recommendations and best practices that OIG auditors and investigators have identified which granting agencies should consider adopting to reduce waste, fraud, and abuse in grants. We distributed this document to Department grant managers and posted it on our website, and we also provided it to other Departments involved in grant activities.

The OIG also has initiated several reviews to examining DOJ's management of Recovery Act funds. For example, we have ongoing audits on the the Byrne formula and competitive grant programs; OJP's grants for correctional facilities on tribal lands; COPS Hiring Recovery Program; OVW's Recovery Act programs; and ATF's use of Recovery Act funds for Project Gunrunner, a national initiative to reduce firearms trafficking to Mexico. In our initial report on ATF's Project Gunrunner, we concluded that some of ATF's planned activities do not appear to represent the best use of Recovery Act resources to reduce firearms trafficking.

In addition to our reviews of the Department's management and oversight of Recovery Act funds, we also are auditing samples of individual grantees that received Recovery Act awards. Our audit work is being performed in phases, and we are providing grant administrators significant findings from our work as quickly as possible so that these issues can be promptly addressed.

Special agents from the OIG Investigations Division field offices and auditors from our regional audit offices have reached out to state administering and oversight agencies regarding DOJ Recovery Act funds. In these meetings, we discuss our work and encourage these officials to report to us any evidence of potential waste, fraud, or abuse in the use of Department funds.

In sum, grant management has been a long-standing challenge for the Department, and this year even more so when the Department must award and oversee an extra $4 billion in grant funds under the Recovery Act. While the Department has taken positive steps on oversight of Recovery Act funds, it must continue to focus on the challenge of protecting these funds from fraud, waste, and abuse.

4. Civil Rights and Civil Liberties: Meeting the Department's counterterrorism and law enforcement responsibilities presents a variety of substantial challenges, but the Department must protect individual civil rights and civil liberties while pursuing these responsibilities.

The need for an appropriate balance was highlighted by our reviews of the FBI's misuse of national security letters (NSL), which the OIG first reported on in March 2007. As a follow-up to our reviews of the FBI's use of NSLs and Section 215 orders for business records, the OIG is completing a review of the FBI's use of exigent letters and other improper requests to obtain telephone records. In our March 2007 NSL report, we discovered a practice by which the FBI used over 700 exigent letters rather than NSLs to obtain telephone toll billing records. We determined that by issuing exigent letters, the FBI circumvented the NSL statutes and violated the Attorney General's Guidelines and internal FBI policy. Our ongoing review is examining in greater detail the FBI's use of exigent letters and is assessing accountability for the FBI's improper use of these letters and other informal requests for telephone records.

The Department and the FBI have taken steps to improve their use and oversight of intelligence authorities such as national security letters. In the OIG's March 2008 follow-up report on NSLs, we found that the FBI and the Department had made significant progress in implementing the recommendations contained in our first report and in adopting additional corrective measures to address the serious problems in NSL usage and oversight we had identified. We also found that the FBI had devoted substantial time and resources to ensure that its field managers and agents understood the seriousness of the FBI's shortcomings in its use of NSLs and their responsibility for correcting these deficiencies.

Yet, while we found that the FBI and the Department have taken positive steps to address the issues that contributed to the serious misuse of NSL authorities, significant additional work remains to be done. First, it remains to be seen how effectively the FBI's Office of Integrity and Compliance – established after issuance of the OIG's March 2007 NSL report – will be able to detect and correct non-compliance with the rules governing the intrusive investigative techniques available to the FBI. In the coming year, the OIG will review the work of the FBI's Office of Integrity and Compliance to determine the effectiveness of this new office.

In addition, the Department has yet to issue final minimization procedures concerning the retention of NSL-derived information. A Department Working Group has developed recommendations for NSL minimization procedures, which are still being considered within the Department and have not yet been issued. We believe that the Department should promptly issue final minimization procedures for NSLs that address the collection of information through NSLs, how the FBI can upload NSL information into FBI databases, the dissemination of NSL information, the appropriate tagging and tracking of NSL-derived information in FBI databases and files, and the time period for retention of NSL-obtained information. At this point, more

than 2 years have elapsed since our first report was issued recommending such procedures, and final guidance is needed and overdue.

In addition, the *USA PATRIOT Reauthorization Act of 2005* (Reauthorization Act) required the Department to implement minimization procedures for business records obtained pursuant to Section 215 orders. The Reauthorization Act required that specific procedures be designed for Section 215 material that would minimize the retention and prohibit the dissemination of non-publicly available information concerning United States persons consistent with national security interests. The Reauthorization Act required that these procedures be adopted by September 5, 2006.

However, there was disagreement between the Department and the FBI regarding the definitions and scope of minimization procedures in general, including the time period for retention of Section 215 records, and whether to include procedures for addressing information received in response to but beyond the scope of a Section 215 order. To meet the statutory deadline, the Department adopted sections of the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection of October 31, 2003 (Guidelines) as "interim" minimization procedures for business records.

We concluded that these interim minimization procedures were deficient because the interim procedures were not specific to Section 215 records – in fact, compliance with the Guidelines was already a prerequisite to obtaining a Section 215 order. We therefore recommended again that the Department continue to work to develop appropriate standard minimization procedures for Section 215 records. According to the FBI, the Department has drafted new minimization procedures for business records. However, these procedures have not been issued.

Other OIG reports issued during the past year raise additional concerns about the need to balance aggressive law enforcement with protection of civil rights and civil liberties. As noted in the counterterrorism challenge, the OIG examined the FBI's management of the consolidated terrorist watchlist and raised a concern that while it is important to place names on the watchlist when appropriate, it is also important to remove names from the list when they no longer should be there. We found in our March 2008 audit that FBI case agents did not consistently update watchlist records when new information became known and that in many instances the FBI did not remove watchlist records when appropriate. In a follow-up audit issued in May 2009, the OIG similarly concluded that the internal controls over the processes used to nominate individuals to the terrorist watchlist are weak or nonexistent and that, similar to findings in our previous review, did not update or remove watchlist records as required.

In sum, while its counterterrorism responsibilities are its highest priority, the Department faces the ongoing challenge of balancing individual civil rights and civil liberties as it seeks to protect our nation's security.

5. Financial Crimes: While the Department has recognized the need to aggressively investigate and prosecute financial crimes, this challenge has been exacerbated recently. With the downturn in the economy, the Department is facing a significant increase in various types of economic crimes, including mortgage fraud, white collar crimes, health care fraud, and grant and

procurement fraud. The Department's challenge involves addressing these crimes with limited resources that are also focused on counterterrorism, violent crimes, and other pressing issues.

While many types of financial crimes have been increasing in recent years, mortgage fraud has seen a dramatic spike, with the FBI reporting more than double the number of criminal mortgage fraud investigations over the past 3 years. Congress recently passed the *Fraud Enforcement and Recovery Act of 2009,* which authorizes a significant increase in the FBI's mortgage and financial fraud investigative program. In addition, this Act gives the Department new authority to prosecute fraud occurring in private institutions that generated many of the subprime mortgages but were previously not covered under federal criminal bank fraud statutes.

The Department also has seen significant growth in corporate fraud and misconduct in the securities and commodities markets at the institutional, corporate, and private investor levels. The FBI reports that it is currently investigating over 189 major corporate frauds, 18 of which have losses over $1 billion. The most recent high-profile case that exemplifies this trend is the investigation in which Bernard L. Madoff pled guilty in March 2009 to 11 felony charges of securities fraud and related charges and was sentenced in June 2009 to 150 years in prison. In addition to prosecuting white collar criminals, a major challenge for the Department will be to aggressively pursue the recovery of the remaining assets through asset forfeiture laws to restore funds to the victims of financial crime.

The Department also recently announced its intention to combat health care fraud by joining with the Department of Health and Human Services (HHS) to create a task force called the Health Care Fraud Prevention and Enforcement Action Team. Health care fraud has been a long-standing challenge for the federal government, with the FBI estimating that losses in the United States exceed $50 billion annually. As health care spending continues to increase, the FBI estimates that health care fraud will show a corresponding increase.

The DOJ-HHS task force is intended to increase coordination, intelligence sharing, and training among HHS, DOJ, and other law enforcement agencies to address health care fraud. During the past year, the Department had one particularly notable success when it announced a $2.3 billion settlement with American pharmaceutical company, Pfizer Inc., to resolve criminal and civil liability arising from the illegal promotion of certain pharmaceutical products.

At the same time, the Department continues to focus on procurement and grant fraud. In 2006, the Department created the National Procurement Fraud Task Force to promote the prevention, early detection, and prosecution of procurement fraud. This task force focuses on civil and criminal enforcement of defective pricing, product substitution, misuse of classified and procurement-sensitive information, false claims, grant fraud, labor mischarging, fraud involving foreign military sales, ethics and conflict of interest violations, and public corruption associated with procurement fraud. As described above, the need to prevent, detect, and deter procurement and grant fraud became even more acute during this past year with enactment of the Recovery Act.

While the Department is investing increased resources in combating financial crime, one of its major challenges will be to ensure that its various components that address financial crimes –

including the Criminal Division, the Civil Division, the Antitrust Division, the U.S. Attorneys' Offices, and the FBI – effectively share information and collaborate on the investigation and prosecution of these offenses. In addition, the Department also needs to ensure effective collaboration with other federal agencies, with state and local law enforcement partners, with private industry, and with consumers.

In sum, deterring, investigating, and prosecuting financial crimes is a challenge that has grown significantly more complex. While the Department has undertaken initiatives to help address this problem, it must continue to focus its efforts on meeting this heightened challenge.

6. Sharing of Intelligence and Law Enforcement Information: The need to effectively share law enforcement and intelligence information remains a high priority for the Department in meeting many of its critical missions.

Over the past several years, the Department has made significant improvements in its sharing of information. For example, the FBI has improved the sharing of intelligence information with other members of the intelligence community and enhancing its role in joint operations and analytic centers. In addition, the National Security Division has played an important role in improving coordination between law enforcement and intelligence personnel within the Department.

However, the Department faces continuing and substantial challenges in this area. For example, a September 2009 OIG report evaluated the United States National Central Bureau (USNCB), the U.S. representative to the International Criminal Police Organization (INTERPOL). INTERPOL assists in the exchange of information among law enforcement agencies in the United States and throughout the world to detect and deter international crime and terrorism through a network of 187 member countries. Our audit found that the USNCB has not made critical international criminal information, such as information regarding some international fugitives and habitual criminals, available to law enforcement agencies in the United States. In addition, the USNCB has not implemented processes to ensure that the INTERPOL information it makes available to U.S. law enforcement agencies is current, accurate, complete, and timely. The OIG made 27 recommendations to the Department to improve the sharing of INTERPOL information among U.S. law enforcement agencies. The Department agreed with the recommendations and has begun taking actions to address them.

Domestically, participation by the FBI and other Department components in state "fusion centers" is a key element of the *National Strategy for Information Sharing* (Strategy), which established a framework for information sharing among federal, state, and local government agencies. In addition, the Department operates or participates in several intelligence centers designed to ensure broad dissemination of critical law enforcement and intelligence information.

In November 2009, the OIG issued a report that examined the operations of two such intelligence centers that are central to the Department's sharing of law enforcement information in support of its anti-gang effort: the National Gang Intelligence Center (NGIC) and the National Gang Targeting, Enforcement, and Coordination Center (GangTECC). In NGIC, intelligence analysts from the federal, state, and local law enforcement provide a centralized intelligence resource of

information for law enforcement agencies conducting gang investigations. GangTECC is intended to serve as a central coordinating and deconfliction center for multi-jurisdictional gang investigations involving federal law enforcement agencies.

However, our review found that NGIC and GangTECC have not been effective in meeting their fundamental mission of sharing information about gangs. For example, we found that, 3 years after its creation, NGIC still has not established a gang information database as directed by law. Such a database was mandated to ensure that law enforcement agencies nationwide had access to information about gangs. In addition, while GangTECC developed a list of high priority violent gangs, it did not disseminate this information widely in the law enforcement community. The OIG concluded that GangTECC has not established an effective program for coordinating gang investigations and prosecutions.

In an ongoing review, the OIG is examining the Drug Enforcement Administration's (DEA) El Paso Intelligence Center (EPIC), including its intelligence coordination role. EPIC has evolved from a drug intelligence center to an all-threats national tactical intelligence center that manages and provides information to a wide range of federal, state, and local law enforcement agencies. While EPIC's focus is along the Southwest border, EPIC provides information and services to a growing number of users (over 19,000 as of June 2009) across the United States and abroad.

Law enforcement agencies and the intelligence community increasingly rely upon common access to information systems within and across agencies. The capabilities of these systems and the ease of access to stored information are critical to the effectiveness of the information sharing systems. During the past year, the OIG assessed the status of various projects involving enhancement of information sharing systems within the Department and found their progress to be mixed. For example, our reviews of the FBI's efforts to upgrade its information technology (IT) systems determined that the FBI is making progress in addressing deficiencies in its information sharing capabilities. However, the successful completion of the FBI's Sentinel case management system remains a continuing challenge, with the most difficult phases of the project yet to come.

In addition, as noted in the counterterrorism challenge, in November 2008 the OIG reported on its review of the FBI's terrorist threat tracking system known as Guardian. Guardian provides the FBI with the ability to share investigative data about terrorist threats within the FBI, as well as with other government agencies to enhance analysis of the information, to better identify patterns and trends, and to inform development of proactive investigative activities. The OIG found that the Guardian system represents a significant improvement in how the FBI previously tracked and handled threat information. However, the Guardian system needs improvements to address shortcomings in the accuracy, timeliness, and completeness of its information. The FBI generally requires that all threat information obtained from ongoing counterterrorism investigations be entered in Guardian. Our audit found that in almost half of the cases tested, threat information was not entered in Guardian, thereby preventing such information from being readily available to all Guardian users, including the FBI's law enforcement and intelligence partners. The OIG made seven recommendations to improve the FBI's tracking of terrorist threats and suspicious incidents.

The OIG's September 2009 audit of the FBI's and ATF's coordination of explosives investigations, also described in greater detail in the counterterrorism challenge, found that the ongoing lack of coordination between these two components has impeded information sharing on explosives investigations. In particular, the agencies have failed to develop a single-search explosive-incident database and do not participate widely in interagency task forces as required by the Implementation Plan for the *National Strategy for Combating Terrorist Use of Explosives in the United States*.

In sum, while the Department has made progress on improving its ability to share a greater range of law enforcement and intelligence information, it continues to face a variety of operational, technical, and coordination challenges to fully address this critical need.

7. **Grant Management:** The OIG has identified grant management as a significant challenge for the Department since inception of this list, not only in terms of making timely awards of billions of dollars of grant funds but also in maintaining proper oversight over grantees to ensure the funds are used as intended. This challenge is particularly acute for the Department in 2009 because in addition to managing over $3 billion in grant funding from its regular fiscal year appropriation, the same grant administrators also must oversee disbursement and oversight of $4 billion in grants under the Recovery Act. The challenges the Department faces in ensuring the integrity of Recovery Act funds are described in a separate challenge, while this section focuses on the continuing challenge the Department faces in ensuring the overall efficiency and integrity of its grant programs.

Several OIG reviews completed during this past year demonstrate the significant difficulties the Department has faced in the past in ensuring proper management of its grant funds. For example, in September 2009 the OIG released a report that raised concerns about the fairness and openness of OJP's National Institute of Justice's (NIJ) practices for awarding tens of millions of dollars in grants and contracts in FY 2005 through FY 2007. Our audit, which was requested by Congress, found that the NIJ's process for reviewing grant applications – including initial program office reviews, peer reviews, documentation of program office recommendations, and documentation of NIJ Director selections – raised concerns about the fairness and openness of the competition process.

In addition, we found that several NIJ staff involved in the grant award process had potential conflicts of interest with grantees receiving awards but nevertheless participated in the approval process for the grants in question. We also found that the NIJ did not adequately justify the sole-source basis for some non-competitively awarded contracts and could not demonstrate that these contract awards were properly exempt from the competitive process required by government contracting regulations. The Department agreed with the nine recommendations we made in this report and has begun taking corrective actions to address each of the audit recommendations.

In April 2009, the OIG released a report which also found significant deficiencies in how OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP) awarded over $113 million in discretionary grants in FY 2007. Our review found that OJJDP allocated $74 million of the $113 million it awarded that year for non-competitive grants or "invitational awards" to 17

organizations after officials from the Office of the Attorney General, the White House, and Congress contacted OJP to lobby for non-competitive awards to certain organizations. Yet, the OJP Director stated that she could not remember who specifically had contacted OJP to request funding for specific applicants, nor could OJP provide us with any documents showing that it made merit-based assessments for these invitational grants. Because OJP lacked such evidence, we could not determine if the awarding of these invitational grants without competition was appropriate and whether it was the best allocation of OJJDP funds.

With respect to the competitive awards OJJDP made in FY 2007, we also found that OJJDP skipped several steps in its peer review process that are critical to ensuring that objective criteria are applied uniformly to all the applicants during the peer review process. In addition, our audit found that the OJJDP Director recommended, and the OJP Assistant Attorney General approved, awards to several organizations whose proposals received peer review scores that were lower than applications submitted by other organizations that did not receive award recommendations. We concluded that OJP and OJJDP decision makers should have justified and documented the rationale for award recommendations that deviated significantly from peer review results.

In March 2009, the OIG examined the Department's Convicted Offender DNA Backlog Reduction Program (Backlog Reduction Program), a grant program that provides funding to help states reduce the backlog of convicted offender DNA samples. We found that the Backlog Reduction Program has contributed to the decrease in the national backlog of convicted offender DNA samples awaiting analysis, although the overall nationwide backlog may continue to grow because of recent legislation that increases the number of offenses for which DNA samples of arrestees can be collected. However, we identified deficiencies in the Department's handling of the program, such as a failure to provide adequate guidance to the state laboratories on collecting and reporting performance information. We also found significant delays in starting several Backlog Reduction Program awards, which caused over 180,000 convicted offender DNA samples to not be uploaded in a timely manner to the Combined DNA Index System (CODIS), a national DNA-profile matching service maintained by the FBI. In addition, the Department continued to award funding to several state laboratories that had not utilized previous award funding.

Recent OIG audits and investigations of grant recipients have also resulted in civil or criminal actions, reflecting the continuing need for close grant oversight by the Department. For example, the National Training and Information Center, a national organizing, policy, research and training center for grassroots community organizations, agreed in June 2009 to repay $550,000 to settle a lawsuit alleging that it improperly used Department grant money to lobby Congress regarding the award of future grants. In another OIG investigation, a tribal leader pled guilty to falsely stating that she had hired three police officers after receiving $225,000 in grant funding from the Department's Office of Community Oriented Policing Services when in fact she spent the money on personal items and did not hire any officers.

Recognizing the important management challenge it faces, the Department has taken significant steps toward improving its grant management process during the past 18 months. In May 2008, the Associate Attorney General issued a memorandum directing the OJP Assistant Attorney General to document all discretionary funding recommendations and decisions. Under this

policy, future award recommendations must contain a list of all applications received that includes the lowest scoring application funded as well as every application scoring higher, regardless of whether it was selected for funding, and a brief explanation of why a listed application was not recommended for funding.

In addition, OJP has made progress in staffing its Office of Audit, Assessment, and Management (OAAM), a unit intended to improve internal controls and streamline and standardize grant management policies and procedures across OJP. OAAM also has worked more closely with the OIG during the past year to improve grant management processes, and it now meets with the OIG on a quarterly basis to discuss grant issues. OAAM also plans to strengthen its grant monitoring processes by ensuring it reviews a minimum of 10 percent of active awards, performs quality reviews of granting agencies' site visit reports, and conducts program assessments of grant programs. OAAM also implemented the OJP High Risk Grantee Designation program to identify high-risk grantees in order to impose special conditions on and increase its monitoring of those grantees.

The Department has taken other responsive measures during recent months in response to a document we issued entitled, "*Improving the Grant Management Process*." Shortly after passage of the Recovery Act, the OIG surveyed its staff and reviewed prior audit reports to identify significant grants management issues. Based on this review, we drafted a document that provides 43 recommendations and examples of best practices that granting agencies should consider adopting to minimize opportunities for fraud, waste, and abuse in awarding and overseeing both Recovery Act and non-Recovery Act grant funds. The Department has taken positive steps in response to the recommendations in this report. For example, OJP stated that it will now apply program –specific audit recommendations by the OIG to all applicable programs, rather than to just the specific program the OIG audited. OJP is also conducting OJP-wide assessments to improve internal controls and identify opportunities for improvement. In addition, OJP is more aggressively identifying and working to mitigate risks among individual grantees by assessing each potential grantee's risk during the grant-award process and imposing on high-risk grantees special conditions that provide a range of potential sanctions, including the withholding of funds.

We believe that through these recent actions and other planned improvements, the Department is demonstrating a commitment to improving the grant management process, and we have seen significant signs of improvement. However, considerable work remains before grant management of the billions of dollars awarded annually in Department grants is no longer considered a top Department challenge.

8. Detention and Incarceration: The Department continues to face a significant challenge in safely and economically managing the federal inmate and detainee populations, particularly in light of the rise in the number of inmates and detainees and the increasing costs needed for this purpose.

The federal inmate population has dramatically increased over the past 30 years, rising from fewer than 25,000 inmates in the Federal Bureau of Prisons' (BOP) custody in 1980 to more than 209,000 inmates in 2009. Approximately 83 percent of these inmates are confined in BOP-

operated facilities, with the balance housed in privately managed or community-based facilities and local jails. The majority of growth in recent years has been in the numbers of medium and high security inmates who cannot be housed in contract facilities. They therefore must be housed either by adding beds to existing BOP institutions or by building new institutions. System-wide overcrowding continues to be a serious issue with BOP facilities at 37 percent above rated capacity as of April 2009.

In addition to safety issues presented by overcrowding, the BOP also must address other threats to inmates' safety, including sexual abuse in prisons. The *Prison Rape Elimination Act of 2003* requires the Department to promulgate national standards for the detection, prevention, reduction, and punishment of sexual abuse in detention facilities by June 2010.

This year the OIG examined in-depth the Department's efforts to prevent sexual abuse of federal inmates by correctional staff. Our September 2009 report found that allegations of criminal sexual abuse and non-criminal sexual misconduct at BOP institutions more than doubled from FY 2001 through FY 2008. BOP officials told us they believe this increase is due to the BOP's efforts during this time period to educate and encourage staff and inmates to report abuse. However, our review found that while the Department's progress in implementing staff sexual abuse prevention programs has improved since 2001, the Department needs to take additional steps to effectively deter, detect, investigate, and prosecute staff sexual abuse of federal prisoners.

For example, we found that BOP officials at some prisons – in an effort to protect alleged inmate victims – automatically isolate and segregate the victims and subsequently transfer them to another federal prison without first considering less restrictive options for safeguarding them from further harm. Inmates often view such actions as punitive and may be reluctant to report their sexual abuse or cooperate with investigators if they are automatically isolated or moved to another institution. Additionally, BOP officials could not verify that alleged inmate victims had received appropriate victim services, such as psychological assessments and medical treatment. The OIG also identified improvements that should be made in staff training, inmate education, and oversight of the BOP's program to reduce staff sexual abuse of inmates.

We also analyzed the prosecution of staff sexual abuse of inmates. Since 2006 when the law changed sexual abuse of inmates from misdemeanor to felony crimes, the percentage of cases accepted for prosecution by Department prosecutors has increased from 37 percent under the old law to 49 percent under the new law. We also found that the prosecutors who accepted these cases had a very high success rate, with all but 7 of the 90 prosecutions resolved during the period of our review resulting in convictions. However, some prosecutors continued to express a general reluctance to prosecute these cases. We concluded that training federal prosecutors on the detrimental impact of staff sexual abuse on inmates, other prison staff, and prison security would improve the Department's effectiveness in prosecuting these cases.

The OIG is also reviewing other aspects of the BOP's efforts to handle its difficult mission of housing inmates in safe, secure, and cost-efficient facilities. One OIG review is currently examining the BOP's strategies and procedures for hiring correctional officers. In another review, we are investigating allegations that the BOP failed to adequately address concerns that

staff and inmates at several BOP institutions were exposed to unsafe levels of lead, cadmium, and other hazardous materials in computer recycling operations.

With approximately one-third of BOP's 115 institutions 50 years or older, the increasing prison population also exacerbates a challenge for the BOP in repairing failing infrastructure at these institutions. While the BOP prioritizes facilities that need the most attention, significant additional money is needed to address what can become, at its most serious, a safety and health-related issue.

In addition to the BOP's challenges, the Department must also provide adequate and economical housing for the increasing number of federal detainees taken into custody by the United States Marshals Service (USMS). Approximately 56,000 federal detainees awaiting trial or sentencing are housed each day by the USMS, primarily in jails under contract with the USMS. The Department's Office of the Federal Detention Trustee (OFDT) provides oversight of the USMS's detention activities and manages the budget for housing USMS detainees, a budget which in FY 2009 totaled more than $1.2 billion.

The USMS houses the majority of its federal detainees in space leased from state and local governments, with the remaining detainees housed in BOP facilities or in private correctional facilities. The USMS maintains contracts, known as Intergovernmental Agreements (IGA), with about 1,800 state and local facilities to house these detainees. Over the years we have found problems with the manner in which the per diem charges the Department pays for each detainee (also known as a jail-day rate) are determined and with the Department's monitoring of the charges. We are initiating another audit of the Department's process for identifying and negotiating fair and reasonable per diem rates.

In sum, the Department's detention and incarceration responsibilities continue to pose prisoner safety and financial challenges that have intensified in recent years due to rising federal prisoner and detainee populations.

9. Information Technology Systems Planning, Implementation, and Security: Like other government organizations and private corporations, the Department faces an ongoing challenge managing the more than $2 billion it annually spends on information technology (IT) systems – and ensuring that its decisions in IT planning, development, and security maximize the impact of these expenditures.

The Department has had mixed results in successfully meeting this challenge. Although the Department has made progress in planning for new IT systems, the Department still faces delayed implementation, deficient functionality, and cost overruns of some IT systems. In addition, while the Department has developed sound processes and procedures for identifying IT vulnerabilities, it has been slow to implement systems to address the vulnerabilities.

The OIG continues to be concerned that the Department does not exercise direct control over IT projects among Department components. Historically, the Department's components have resisted centralized control or oversight of major IT projects, and the Department's Chief Information Officer (CIO) does not have direct operational control of Department components'

IT management. We believe the Department should enhance the CIO's oversight of the development of high-risk IT systems throughout the Department.

Several of our audits have identified continuing concerns about the development of critical Department IT systems. For example, a March 2009 OIG audit report examined progress toward developing a Department-wide Litigation Case Management System (LCMS). The LCMS project was intended to develop an IT infrastructure for storing case information, managing it centrally, and making it available to the approximately 14,500 authorized users in the Department's seven litigating divisions. However, our audit found that the LCMS project, which the Department began in 2004, was more than 2 years behind schedule, approximately $20 million over budget, and at significant risk of not meeting the Department's requirements for litigation case management.

Our audit concluded that both the Department and its contractor shared responsibility for the significant delays and budget overruns in this project. We recommended that the Department reevaluate the viability of implementing the LCMS in litigating divisions other than the Executive Office for United States Attorneys and United States Attorneys' Offices, including an assessment of whether there is a commitment and adequate funding to continue development of the system. We also urged better oversight of this project to minimize or avoid further schedule and cost overruns.

In August 2009, subsequent to the issuance of our report, we met with senior Department managers to discuss the Department's response to our recommendations. The Department expressed a strong commitment to meeting the need for the LCMS and to fully implementing our recommendations. We agree with the need for such a system, and we believe that with adequate funding, commitment from the litigating divisions, improved planning and development, and better controls, the Department can complete the LCMS system successfully. However, the Department must be vigilant in its oversight of this project and should carefully monitor its progress.

Another example of the challenge the Department faces in this area is the FBI's ongoing effort to upgrade its case management system, known as the Sentinel project. In March 2006, the FBI awarded a contract to Lockheed Martin to develop Sentinel in four phases. At that time, the FBI estimated that Sentinel would cost a total of $425 million and be completed by December 2009.

In October 2009, the OIG completed its fifth report on the progress of Sentinel. Sentinel appears generally to be on track, but we identified several areas of concern. For example, we found that the newly delivered portions of Sentinel did not provide significant additional functionality to users as initially planned. We also determined that the FBI and Lockheed Martin agreed to delay the projected completion date until September 2010, 9 months later than originally planned. Moreover, the FBI and Lockheed Martin agreed that Lockheed Martin's costs to complete Phase 2 of the project have increased by $18 million. We also raised concerns that an increase in turnover and unfilled staff vacancies on the Sentinel project management team left it without enough staff with the appropriate skill level. We made six new recommendations to assist the FBI in addressing these and other issues.

As the Department develops new IT systems, it also must ensure the security of those systems and the information they contain. Specifically, the Department must balance the need to share intelligence and law enforcement information with the need to ensure that such information sharing meets appropriate security standards.

We have found that the Department has made significant progress in the area of IT security and has developed sound processes and procedures for identifying IT vulnerabilities. A December 2008 OIG audit found that the Department lacked effective methodologies for tracking the remediation of identified IT vulnerabilities. Our report made four recommendations to assist the Department in its efforts to address such vulnerabilities. Since the issuance of our report, the Department has established the Justice Security Operations Center (JSOC), which provides real-time monitoring of the Department's networks to detect vulnerabilities and threats. The JSOC mitigates threats and vulnerabilities by blocking known threats from accessing the Department's systems and creating real-time alerts to components for immediate remediation as issues arise. In addition, the Department has developed an inventory of all IT devices on the Department's networks, updated annually, to ensure that monthly scans adequately cover the Department's entire IT environment.

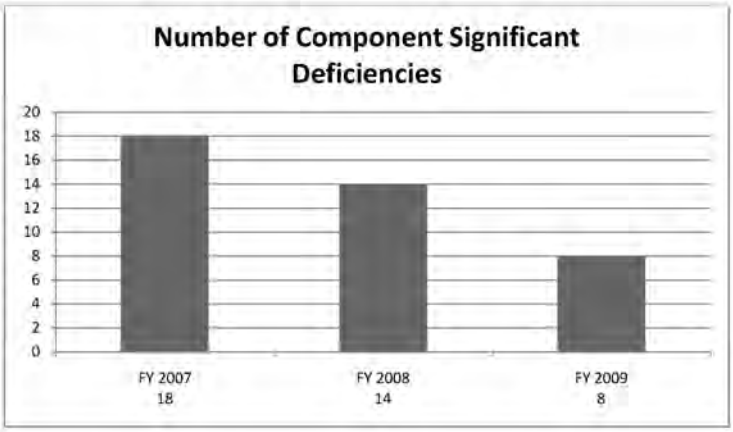
Portable IT media pose significant IT security risks in the Department and across government. As an initial step in assessing the Department's efforts to safeguard information stored on portable devices, the OIG reviewed the Civil Division's laptop computer encryption program and practices. In a report issued in July 2009, we found that all the Civil Division's laptops were encrypted and compliant with the Department's requirements, but we identified a serious vulnerability in that a large percentage of the laptops used by Civil Division contractors to process data on behalf of the Civil Division were not encrypted. The Civil Division relies on contractors for assistance in various aspects of sensitive litigation involving national security, banking, and insurance. We found that this information security lapse resulted from the Civil Division's failure to provide its contractors with security instructions for protecting Department data.

The OIG is now auditing the Criminal Division's laptop computer security programs and practices. In addition, we are evaluating whether the Department has communicated to all components the national strategy to combat identity theft, and whether it has developed the infrastructure to implement its responsibilities under the strategy.

In sum, if the Department is to build on the advances it has made in IT systems planning, implementation, and security, it must closely manage its IT projects to ensure the systems are cost-effective, well-run, secure, and able to achieve their objectives.

10. Financial Management and Systems: While financial management and systems has been identified as a top management challenge for the Department since 2003, the Department has made significant improvements in its financial reporting. At the same time, there has been an increasing demand for accountability and transparency throughout the federal government, and this need for accurate, near real-time financial information continues to present a significant management challenge for the Department.

For FY 2009, the Department again earned an unqualified opinion and improved its financial reporting. For the third straight year, the financial statement audit did not identify any material weaknesses at the Department consolidated level. Additionally, Department components reduced component significant deficiencies from 14 in FY 2008 to 8 in FY 2009.



Similar to past years, much of this success was achieved through heavy reliance on contractor assistance, manual processes, and protracted reconciliations done for quarterly and year-end statements. We remain concerned about the sustainability of these ad hoc and costly manual efforts.

The decentralized structure of the Department also presents a major challenge to obtaining current, detailed, and accurate financial information about the Department as a whole because there is no one single source for the data. The Department currently uses six major accounting systems that are not integrated with each other. In some cases, the components' outdated financial management systems are not integrated with all of their own subsidiary systems and therefore do not provide automated information necessary to support the need for timely and accurate financial information throughout the year. As a result, many financial tasks must be performed manually at interim periods and at year end. These costly and time-intensive efforts will continue to be necessary to produce financial statements and satisfy other financial requirements until automated, integrated systems are implemented that readily produce financial information throughout the year.

The Department has placed great reliance on the implementation of the Unified Financial Management System (UFMS), which is intended to replace the six major accounting systems currently used throughout the Department. This unified system is expected to solve many of the

Department's financial management automation issues. The UFMS is intended to standardize and integrate financial processes and systems to more efficiently support accounting operations, facilitate preparation of financial statements, and streamline audit processes. It also will enable the Department to exercise real-time, centralized financial management oversight. We support the Department's implementation of the UFMS and believe the system can help eliminate the weaknesses in the Department's current disparate financial management systems.

Yet, the Department's efforts over the past several years to implement the UFMS have been subject to fits and starts, primarily because of problems obtaining sufficient funding for the project, staff turnover, and other competing priorities. Despite the fact the Department selected the vendor 5 years ago for the unified system and selected an integrator to implement the unified system 3 years ago, full implementation of the UFMS has occurred at only one component, the DEA. While successfully implementing the UFMS at the DEA is a significant achievement, the DEA's legacy system was one of the most modern financial management systems within the Department. Thus, the central issue to this challenge remains largely unaddressed because the Department's other components continue to use five major, unintegrated and, in some cases, antiquated financial accounting systems.

Implementation of the UFMS is not projected to be completed in all Department components until FY 2013 at the earliest. Until that time, Department-wide accounting information will continue to be produced manually, a costly and time consuming process that undermines the Department's ability to prepare financial statements that are timely and in accordance with generally accepted accounting principles, as well as the ability to provide detailed financial information for newly emerging requirements.

However, the Department, by achieving another year of overall positive financial statement audit results, has made progress in its overall financial management. Nevertheless, we remain concerned that the Department has not yet been able to replace its legacy financial systems with a single integrated financial management system. Implementation of the UFMS is critical for the Department to meet the need for accurate, timely financial information.

U.S. Department of Justice
Office of the Inspector General
Evaluation and Inspections Division

A Review of the Department's Anti-Gang Intelligence and Coordination Centers

November 2009

I-2010-001

EXECUTIVE DIGEST

Gangs pose a serious threat to public safety throughout the United States. Gang membership and gang-related criminal activity has increased over the past 10 years, and gang violence is making increased demands on law enforcement resources in many communities. Experts predict that these trends will continue as gang-operated criminal networks expand. As of September 2008, there were an estimated 1 million gang members – an increase of 200,000 since 2005 – belonging to over 20,000 gangs that were criminally active within the United States.[1]

According to the 2009 National Gang Threat Assessment, criminal gangs commit as much as 80 percent of the crime in many communities.[2] In addition, a number of U.S.-based gangs are working with foreign-based gangs and criminal operations to facilitate transnational criminal activities. Typical gang-related activities include alien smuggling, armed robbery, assault, auto theft, drug trafficking, extortion, fraud, home invasions, identity theft, murder, and weapons trafficking.

The Department of Justice (Department) has stated that it is leading the effort to combat the public safety threat posed by national and international gangs. Its anti-gang strategy is intended to achieve "maximum impact at the national level against the most violent gangs in the United States."[3]

In January 2007, Attorney General Alberto Gonzales announced that the Department had taken several steps to address gang violence. Among those efforts were the establishment of three new entities: (1) the National Gang Intelligence Center (NGIC), which was established by statute in January 2006, integrates the gang intelligence assets of all DOJ agencies and other partner agencies; (2) the National Gang Targeting, Enforcement, and Coordination Center (GangTECC), established in June 2006 by the Attorney General, serves as a central coordinating center for multi-jurisdictional gang investigations; and (3) the Gang Unit, another Attorney General initiative created in September 2006, develops and implements strategies to attack the most significant gangs

[1] National Gang Intelligence Center and National Drug Intelligence Center, *2009 National Gang Threat Assessment*, November 2008, iii, 6.

[2] *2009 National Gang Threat Assessment*, iii.

[3] Department of Justice Fact Sheet: *The National Gang Intelligence Center and the National Gang Targeting, Enforcement, and Coordination Center*, November 28, 2007.

and serves as the prosecutorial arm of the Department's efforts against violent gangs.

The Office of the Inspector General (OIG) conducted this review to examine the intelligence and coordination activities of NGIC and GangTECC (the Centers), and to assess the effectiveness of their contributions to the Department's anti-gang initiatives.[4] Specifically, we examined whether the Centers provide comprehensive gang intelligence and coordination services to enhance gang investigations and prosecutions in the field. In addition, we assessed the effectiveness of the Department's management and co-location of the Centers.

National Gang Intelligence Center (NGIC)

NGIC was established by statute in January 2006 to "collect, analyze, and disseminate gang activity information" from various federal, state, and local law enforcement, prosecutorial, and corrections agencies.[5] The Federal Bureau of Investigation (FBI) used existing resources from its Criminal Intelligence Section to establish NGIC. The public law that established NGIC also charged the FBI with administering NGIC as a multi-agency center where intelligence analysts from federal, state, and local law enforcement work together to develop and share gang-related information. NGIC was to provide a centralized intelligence resource for gang information and analytical support to law enforcement agencies. For fiscal year (FY) 2008, NGIC's budget was $6.6 million and, as of June 2009 there were a total of 27 staff at the NGIC.

Gang Targeting, Enforcement, and Coordinating Center (GangTECC)

On February 15, 2006, Attorney General Gonzales announced plans to create a new national anti-gang task force as part of an initiative to combat gangs and gang violence. On June 26, 2006, GangTECC began operations under the leadership of the Department's Criminal Division. Its mission is to bring together the Department's operational law enforcement components and the Department of Homeland Security's Immigration and Customs Enforcement (ICE) to identify, prioritize, and target violent street gangs whose activities pose a significant multi-jurisdictional threat. According to its Concept of Operations, GangTECC is intended to coordinate overlapping investigations, ensure that tactical and strategic intelligence is shared between law enforcement agencies, and serve as a central coordinating and deconfliction center. Unlike NGIC, GangTECC is not authorized a separate

[4] We use the term "Centers" when referring to NGIC and GangTECC.

[5] 28 U.S.C. 534 note (2006).

budget by statute. Instead, costs are borne by the contributing agencies. As of early 2009, there were a total of 17 GangTECC staff members.

RESULTS IN BRIEF

Our review found that, after almost 3 years of operation, NGIC and GangTECC still have not made a significant impact on the Department's anti-gang activities. Despite being located in the same office suite, both NGIC and GangTECC are not effectively collaborating and are not sharing gang-related information.

Most importantly, NGIC has not established a gang information database for collecting and disseminating gang intelligence as directed by statute. NGIC is perceived as predominately an FBI organization, and it has not developed the capability to effectively share gang intelligence and information with other law enforcement organizations.

In contrast, we found that GangTECC has no budget and lacks the resources to carry out its mission. We also found that the Criminal Division has not filled an attorney position at GangTECC that is intended to enable it to provide guidance to law enforcement officials conducting gang investigations and prosecutions. In addition, because GangTECC's member agencies and the United States Attorneys' Offices (USAO) are not required to inform GangTECC of their investigations and prosecutions, GangTECC cannot effectively deconflict the Department's gang-related activities as directed by the Deputy Attorney General. Further, GangTECC's efforts to publicize its priority gang targets have lagged.

As a result of the above, NGIC and GangTECC are not effectively providing investigators and prosecutors with "one-stop shopping" for gang information and assistance, and they are not contributing significantly to the Department's anti-gang initiatives.

The following sections of this Executive Digest describe our findings in these areas.

NGIC has not developed a gang information database as directed by Congress.

In funding NGIC, Congress directed that NGIC was to, among other things, serve as an "information management mechanism for gang intelligence

on a national and international scope."[6] To accomplish this, NGIC planned to create and maintain a library of gang identification information and make that library available to investigators, prosecutors, and other law enforcement staff. In addition, NGIC planned to establish electronic bridges to federal, state, and local information technology systems to connect disparate federal and state databases containing gang information or intelligence.

However, technological limitations and operational problems have inhibited NGIC from deploying a gang information database. For example, NGIC has not developed the electronic bridges necessary to allow it to access information from states that have technologically disparate databases on gangs.[7] In addition, performance issues with a contractor contributed to the delay in the development of the gang library. As of July 2009, the information management system and electronic bridges have not progressed beyond the development phase. Unless NGIC can obtain a technical solution for bridging these databases, NGIC's ability to use existing gang information will be very limited.

We believe that development of a gang information management system is crucial to support the Department's anti-gang initiatives and must be achieved as soon as possible. Therefore, we recommend that:

1. NGIC establish a working group composed of representatives from its member agencies and state and local law enforcement to identify methods for sharing gang-related intelligence across the law enforcement community. This working group should address, among other issues: (a) a definition of "gang" and criteria for identifying gang membership; and (b) data standards for entering gang information into databases.

2. NGIC create an implementation plan that identifies functional requirements with milestone dates to procure a gang information management system.

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[6] Conference Report, *Making Appropriations for Foreign Operations, Export Financing, and Related Programs for the Fiscal Year Ending September 30, 2005, and For Other Purposes*, November 19, 2004, H. Rept. 108-792.

[7] For example, California, Colorado, Florida, Illinois, Minnesota, South Carolina, Texas, Washington, and Wisconsin are some of the states that have gang databases of varying types and sizes.

NGIC is not effectively sharing gang intelligence and information.

To effectively share gang intelligence and information, NGIC must know the needs of the law enforcement personnel who are its customers and ensure they are aware of the NGIC's capability to support their gang-related investigations and prosecutions. We analyzed NGIC's Request for Information workload to identify patterns or trends in the customers who are submitting requests and the types of assistance that they are requesting.[8] We found that from January 1, 2006, to February 19, 2009, NGIC received requests for assistance from 18 customer groups for 16 types of information.

We found that NGIC has few regular users outside of the FBI, GangTECC, and itself. These three organizations accounted for 64 percent of all requests received by NGIC. The remaining 36 percent of the requests were distributed among 15 other customer groups. With respect to the "state, local, and tribal law enforcement" customer group, our analysis showed that few requests came from these potential customers. This customer group encompasses the majority of law enforcement agencies and personnel in the United States – over 30,000 agencies and 700,000 sworn officers – and has the greatest interactions with criminally active gangs in the United States. Yet, despite its large size, this customer group made an average of only 3 requests per year and submitted only 13 of the 213 total requests for information received by NGIC from its inception in 2006 to February 2009.

The following table illustrates NGIC's top customers and the number of requests for information made by these customers.

[8] A Request for Information is NGIC's term for its customers' inquiries and requests for assistance from the Center's analysts. NGIC creates a Request for Information each time it receives a query from a customer by e-mail, telephone, or in person.

Table 1: NGIC Top Five Customers

Customer Group	Fiscal Year[a]					Total
	2006	2007	2008	2009	Unknown Date	
FBI	14	4	20	26	7	71
GangTECC	0	0	31	16	0	47
NGIC	0	0	0	18	0	18
State, Local, and Tribal Law Enforcement	3	0	7	3	0	13
El Paso Intelligence Center (EPIC)[b]	0	1	6	1	0	8
Total	17	5	64	64	7	157

[a] Two of the fiscal years in this table are partial years. FY 2006 covers the period January 1, 2006 to September 30, 2006, and FY 2009 covers the period October 1, 2008 to February 19, 2009.

[b] EPIC is a multi-agency intelligence center that collects and disseminates information related to drug, alien, and weapon smuggling in support of field enforcement entities throughout the southwest region of the United States.

Source: NGIC.

In discussions with the NGIC and GangTECC personnel and other law enforcement officials about why NGIC was not used more frequently by law enforcement agencies, we found that NGIC was not perceived as an independent, multi-agency center by many of the law enforcement personnel we interviewed. It was repeatedly referred to as being "FBI-centric" in the products it generates and the intelligence analysis that it provides.

We also found that, in the 38-month period we examined, NGIC responded to only about six requests a month. While this increased to about 17 requests a month in the first 5 months of FY 2009, that number is still small given NGIC's staffing of 20 intelligence analysts. NGIC management attributed the small number of requests to the law enforcement community's unfamiliarity with NGIC – despite the Center's attempts to advertise its presence – and to NGIC personnel not recording all the requests they received.

Although GangTECC's operational guidance states that it is intended to be a major user of NGIC's gang intelligence services, its use remains limited. We spoke with 12 GangTECC personnel about the kind of assistance they might need from NGIC. Six members stated that GangTECC needs case support for the investigations it coordinates, but they believe NGIC is more oriented toward providing intelligence products. Some NGIC personnel also

agreed that there was a benefit to NGIC analysts providing case support to GangTECC. We found that when NGIC analysts have provided case support to GangTECC, results have been favorable.

We also found that while customer satisfaction surveys are routinely distributed asking customers to rate NGIC intelligence products for quality and value factors and to provide comments, NGIC is not using the results from these surveys to assess its performance. By not analyzing these customer comments, NGIC is missing an opportunity to more appropriately tailor its products to meet the needs of its customers.

Finally, in our interviews, the OIG found that NGIC's intelligence products are of limited usefulness to GangTECC personnel for their work. Some GangTECC personnel expressed the opinion that NGIC intelligence products were written only by the FBI representatives at NGIC and that the products therefore reflected only the FBI's data. In addition, one NGIC analyst told the OIG that NGIC intelligence analysts were "writing history" rather than producing leads that can be acted on. Some NGIC personnel were also concerned about the length of time it took to disseminate their intelligence products.

We believe that the absence of a monitoring process to assess NGIC's customer satisfaction with products and services reduces NGIC's ability to share relevant gang-related information and provide useful support to law enforcement personnel who are conducting gang investigations and prosecutions. We recommend that:

3. NGIC analyze the responses to past customer surveys on intelligence products to identify improvements that would make its intelligence products more useful to customers.

4. NGIC expand its customer satisfaction surveys to include recipients of all of its products and services.

5. NGIC analyze the types of information being requested and the time spent responding to each request type to better allocate its resources.

6. NGIC track all requests for information that it receives.

GangTECC has insufficient resources to carry out its mission of coordinating gang investigations and prosecutions.

GangTECC has a broad, multi-purpose mission, but only 12 members and no operating budget. Participating components are required to contribute staff to GangTECC and pay their salaries out of their own budgets. The lack of an operating budget has prevented GangTECC managers from taking actions essential to its operations, including hosting case coordination meetings and conducting effective outreach to the law enforcement community. Almost all GangTECC members we interviewed, as well as the GangTECC Director and Criminal Division officials, stressed that the lack of an operating budget is the biggest hindrance for GangTECC, particularly when it prevents the GangTECC personnel from fully participating in case coordination meetings.

Coordination efforts. Organizing and participating in case coordination meetings is central to GangTECC's mission to identify common targets between law enforcement agencies. GangTECC identifies opportunities to coordinate gang investigations with multiple law enforcement agencies and attempts to organize case coordination meetings to bring together federal, state, and local investigators, analysts, and prosecutors to share information. Successfully coordinated cases may enable charges to be brought against large, geographically dispersed gang-related criminal enterprises.

GangTECC has coordinated 12 cases that involved multiple law enforcement agencies and jurisdictions, and these efforts resulted in better, stronger cases for prosecution. GangTECC has also facilitated cooperation and coordination in over 100 other cases in which investigators or agencies would not initially share information on common targets with one another. Law enforcement personnel we interviewed who used the GangTECC's services reported high levels of satisfaction and told us that case coordination was the most helpful service that GangTECC could provide to the field.

Notwithstanding the demonstrated value, the GangTECC Director told us there have been at least five occasions when GangTECC has been unable to host or even attend out-of-state case coordination meetings because it was unable to fund travel costs. For example, GangTECC could not host case coordination meetings for two cases involving the Latin Kings gang. As a result of the limitations on GangTECC's ability to execute its mission, opportunities to better coordinate the Department's efforts to combat gang crime have been lost.

Outreach. Despite GangTECC's efforts, the lack of a budget has prevented GangTECC from adequately advertising its services. Among other things, GangTECC is unable to sponsor field training, routinely attend conferences of gang investigators, or provide materials at those conferences.

Communications. Lack of a budget also hampers GangTECC's internal and external communications. GangTECC members cannot e-mail documents to each other or collectively store and track information on a shared drive. Rather, GangTECC members have been manually tracking the assistance they provide in logbooks. Also, without a dedicated server of its own, GangTECC cannot assign unique e-mail addresses for its members to use for customer contacts. Instead, members use the e-mail addresses from their parent agencies.

GangTECC lacks critical staff to provide guidance on gang investigations.

Another resource issue for GangTECC is that the Criminal Division has not assigned prosecutors to work with GangTECC. GangTECC's Concept of Operations states that, in addition to the Criminal Division attorneys initially assigned to GangTECC, "it is anticipated that the Gang Unit prosecutors will work closely with GangTECC." Although the GangTECC Director told the OIG that the Center's relationship with the Gang Unit has improved since the summer of 2008, we found that Gang Unit attorneys still do not typically spend time at GangTECC or attend any of GangTECC's working meetings. Furthermore, the two units occasionally have competing priorities with respect to gang investigations. We believe that establishing written protocols to mandate cooperation and coordination as envisioned for GangTECC and the Gang Unit would diminish conflict and increase cooperation between the two entities.

In addition, the Criminal Division has not assigned an attorney to serve as a liaison between GangTECC and the USAOs, which limits GangTECC's ability to coordinate with USAOs nationwide. Knowledge of USAO gang caseloads and strategies would assist GangTECC and, more importantly, the Department with case coordination and enhancement of gang-related investigations and prosecutions. In addition, without the presence of an attorney knowledgeable about gang investigations and prosecutions, it is more difficult for GangTECC to resolve conflicts between different jurisdictions and agencies.

We concluded that, if the Department continues to view national anti-gang efforts as a priority and GangTECC as the best way to coordinate multi-agency anti-gang investigations and prosecutions, it must dedicate sufficient resources to GangTECC to allow it to achieve its mission. Therefore, we recommend that:

7. The Department request a separate operating budget for GangTECC.

8. The Criminal Division assign and locate at GangTECC at least one full-time experienced prosecutor, as discussed in GangTECC's Concept of Operations.

9. The Criminal Division and Governing Board direct GangTECC and the Gang Unit to jointly develop written protocols addressing: (a) how often and under what conditions GangTECC and the Gang Unit should meet to share information on gang-related cases; (b) what gang-related information should be regularly shared between the two entities; (c) criteria for GangTECC to follow in referring gang cases to the Gang Unit; and (d) a method for determining which component will coordinate directly with the field office and district USAO.

Deconfliction by GangTECC is not occurring as directed by the Deputy Attorney General.

Over its 3-year existence, GangTECC has not established itself as the central coordination and deconfliction center envisioned by its Concept of Operations.[9] Although it was intended that GangTECC would "provide a strong, national deconfliction center for gang operations," neither GangTECC's own participating components nor USAOs are required to notify GangTECC of newly opened gang cases. Consequently, GangTECC cannot effectively deconflict the Department's anti-gang activities on a national level.

In the absence of a Department-wide requirement to notify GangTECC of anti-gang activities, GangTECC began a pilot project with NGIC in November 2008 to deconflict newly opened gang cases. GangTECC members used databases from their respective agencies to query newly opened gang cases and compiled a list of subject names related to each case. NGIC analysts then manually checked those names against the names of targets in four different member components' databases to identify potential overlapping investigations. For example, for the FBI the initial pilot project examined over 500 subjects identified in FBI-initiated cases and found 38 who were also under investigation by another component. However, the manual process proved to be too labor- intensive and the pilot project was suspended in April 2009.

Nonetheless, GangTECC's pilot deconfliction project demonstrated the need for deconflicting gang investigations. The OIG believes a process that requires newly opened gang-related investigations to be reported to GangTECC would require a minimum investment of resources while improving coordination of multi-jurisdictional gang investigations. We recommend that:

[9] The deconfliction process is intended to identify overlapping investigations to prevent resources being wasted on redundant activities.

10. The Department require all participating GangTECC members report every newly opened gang-related investigation to GangTECC at the time the component opens the case.

11. The Department direct that each USAO notify GangTECC of each newly opened gang case immediately upon opening the case.

GangTECC's efforts to publicize priority gang targets have lagged.

GangTECC is required to use information from NGIC and other sources to identify priority targets and propose strategies to neutralize the most violent and significant gang threats. According to the GangTECC Director, GangTECC and NGIC first identified 13 priority gang targets in 2006. However, we found little evidence during our review that the list was used outside the two Centers.

In September 2008, GangTECC began to develop its Targeting Prioritization Project in an effort to update the original list of 13 priority targets. Using information from the 2009 National Gang Threat Assessment, GangTECC completed its initial assessment in February 2009 which included the identification of 17 priority gang targets. That information could be used as a guide for law enforcement to focus resources, but, as of September 2009, GangTECC had not released that information to the field. While the GangTECC Director told us that he would like to identify priority targets on an annual basis, GangTECC does not have a method for collecting the necessary gang data from law enforcement agencies.

GangTECC has developed a strategy to use information from Federal Bureau of Prisons' (BOP) databases to better target individuals who communicate with federal inmates and may be involved in suspicious activity such as multiple inmates who are classified in a Security Threat Group that receive money from the same person.[10] If criminal activity is suspected, GangTECC investigators review the case and a formal referral package is sent to the agencies involved.

According to the GangTECC Director, this is significant because 4 of the 17 priority gang targets that GangTECC identified are prison gangs. However, GangTECC has yet to develop strategies to address the remaining 13 priority gang targets.

[10] Inmates classified in Security Threat Groups include individuals such as street gang members, suspected terrorists, and known bomb experts.

GangTECC's ability to accomplish its targeting mission is also hampered because it has no analytical staff, only investigators. Without analysts, GangTECC cannot independently conduct the analysis required to identify priority targets, detect patterns that may be exploited by investigators and prosecutors, or create strategic and tactical products for the field. NGIC's operational plans require it to provide this analytical assistance to GangTECC, but we found the assistance only occurred on a limited basis. We recommend that:

12. GangTECC and NGIC (a) immediately disseminate information on the 17 gangs that they have identified as posing the greatest threat, and (b) develop a plan for periodically updating and disseminating information on high-threat gangs.

13. GangTECC and NGIC develop law enforcement strategies and initiatives to address the additional identified priority targets.

14. GangTECC and NGIC increase the use of NGIC's analytical resources to support GangTECC's targeting mission.

NGIC and GangTECC are not effective as independent entities.

NGIC and GangTECC's operational plans required them to co-locate so that they would establish a relationship in which the resources of each Center would be integrated with and fully utilized by the other. An effective NGIC and GangTECC partnership would include deconfliction, identification of priority gang targets, and sharing of gang information. While the Centers are located in the same office suite in the same building, this co-location of NGIC and GangTECC did not lead to the anticipated partnership. Our discussions with NGIC and GangTECC personnel regarding their interactions found that communication between the two Centers remains limited and ad hoc.

In addition, while both NGIC and GangTECC advertise at conferences and in their pamphlets that they provide investigators and prosecutors with a "one-stop shopping" capability for gang information and assistance, this capability has not been achieved due to various impediments. NGIC is administered by the FBI while GangTECC is administered by the Criminal Division. We found that differing leadership and management philosophies, funding sources (dedicated funding versus funding through contributions by member agencies), and investigative priorities have limited the Centers' ability to work together effectively.

We believe that the Department should consider merging NGIC and GangTECC into a single unit under common leadership. Merging the Centers

could improve their ability to support and coordinate the Department's anti-gang initiatives at a national level by reducing incompatibilities that result from the current organizational alignment, creating a better joint operating environment, and providing for a more reliable resource stream to support the Centers' mission. Therefore, we recommend that:

15. The Department consider merging NGIC and GangTECC.

CONCLUSIONS

NGIC and GangTECC were created to be the Department's national intelligence and coordination mechanisms for gang-related investigations and prosecutions. However, we found that after more than 3 years, the Centers have not significantly improved the coordination and execution of the Department's anti-gang initiatives. Despite being co-located to facilitate interagency cooperation, they are not effectively working together, which has hindered their ability to make a significant impact on the Department's anti-gang activities.

Most importantly, because of performance issues with a contractor and technological challenges associated with establishing electronic bridges between disparate state and local databases, NGIC has not established a gang information database for collecting and disseminating gang intelligence as directed by Congress.

Furthermore, NGIC is perceived as predominately an FBI organization that does not effectively share gang intelligence and information with other law enforcement organizations. Overall, in the 38-month period we examined NGIC received only 213 requests for information - about 6 requests a month. Moreover, the preponderance of FBI and internal requests suggests that the NGIC remains primarily focused on FBI investigations and has not become the national resource on gang intelligence for federal, state, and local law enforcement as envisioned. Also, NGIC's customers report that NGIC's intelligence products have limited usefulness.

In addition, because components and USAOs are not required to inform GangTECC of their investigations and prosecutions, GangTECC cannot effectively deconflict the Department's gang-related activities as directed by the Deputy Attorney General. Also, the Criminal Division has not filled an attorney position intended to enable GangTECC to provide guidance to law enforcement officials conducting gang investigations and prosecutions. Although GangTECC has a broad, multi-purpose mission, it has no operating budget. This has prevented GangTECC managers from taking actions essential to

GangTECC operations, such as hosting case coordination meetings and conducting effective outreach to the law enforcement community.

We also found that, although the Centers were co-located to facilitate interagency cooperation and gang-related information sharing, NGIC and GangTECC have made only limited use of each other's resources. Furthermore, communication between the two Centers' personnel occurs only on an ad hoc basis.

Because co-location of the Centers has proven insufficient to ensure that collaboration between the Centers occurs, the OIG's primary recommendation is that the Department consider merging NGIC and GangTECC into a single unit under common leadership. This action could improve the Centers' ability to support and coordinate the Department's anti-gang initiatives at a national level. Merging the Centers could reduce incompatibilities that result from the current organizational alignment, create a better joint operating environment, and provide for a more reliable resource stream to support the Centers' missions.

While we believe that merging the Centers would improve their ability to assist gang investigations and prosecutions, merger alone is insufficient to support the Department's anti-gang initiatives. Major improvements are needed in the areas discussed in this report if the Centers are to effectively coordinate and support gang investigators and prosecutors nationwide. We therefore make 15 recommendations to help improve NGIC's and GangTECC's missions of assisting federal, state, and local law enforcement to address violent regional and national gangs.

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BACKGROUND

Introduction

Gangs pose a serious threat to public safety throughout the United States. Gang membership and gang-related criminal activity have increased over the past 10 years, and gang violence is requiring significant law enforcement attention in many communities. Experts predict that these trends will continue as gang-operated criminal networks expand. As of September 2008, there were an estimated 1 million gang members – an increase of 200,000 since 2005 – belonging to over 20,000 gangs that were criminally active within the United States.[11]

Neighborhood-based street gangs account for the majority of criminally active gangs in the United States, with approximately 900,000 gang members living in local communities nationwide and about 147,000 in prisons or jails. The 2009 National Gang Threat Assessment said that gang members are continuing to migrate from urban areas to suburban and rural communities, thus expanding the gangs' influence in those regions. According to the Assessment, the percentage of U.S. law enforcement agencies reporting gang activities within their jurisdictions increased from 45 percent in 2004 to 58 percent in 2008.

In addition, the Assessment stated that criminal gangs commit as much as 80 percent of the crime in many communities.[12] Typical gang-related activities include alien smuggling, armed robbery, assault, auto theft, drug trafficking, extortion, fraud, home invasion, identity theft, murder, and weapons trafficking. In addition, some U.S.-based gangs are working with foreign-based gangs to facilitate criminal activities.

The Department of Justice (Department) is combating the public safety threat posed by national and international gangs with an anti-gang strategy intended to achieve "maximum impact at the national level against the most violent gangs in this country."[13] In January 2007, the Attorney General announced that the Department had taken several steps to address gang violence, including the establishment of three new entities: (1) the National

[11] National Gang Intelligence Center and National Drug Intelligence Center, *2009 National Gang Threat Assessment*, November 2008, iii, 6.

[12] *2009 National Gang Threat Assessment*, iii.

[13] Department of Justice Fact Sheet: *The National Gang Intelligence Center and the National Gang Targeting, Enforcement and Coordination Center*, November 28, 2007.

Gang Intelligence Center (NGIC), established by statute, integrates the gang intelligence assets of all DOJ agencies and other partner agencies; (2) the National Gang Targeting, Enforcement, and Coordination Center (GangTECC), an Attorney General initiative, serves as a central coordinating center for multi-jurisdictional gang investigations; and (3) the Gang Unit, also an Attorney General initiative, develops and implements strategies to attack the most significant gangs and serves as the prosecutorial arm of the Department's efforts against violent gangs.[14]

According to the Department's Strategic Plan for fiscal years (FY) 2007 to 2012, the partnership between NGIC and GangTECC is one of the strategies intended to address the prevalence of gangs and gang violence. In addition, the Department co-located NGIC and GangTECC at a facility in Northern Virginia in an attempt to facilitate interagency cooperation and to enhance gang-related information sharing among federal, state, local, and tribal governments and law enforcement agencies.[15]

A joint NGIC and GangTECC publication described the partnership of the two Centers as a means to provide investigators and prosecutors with "one-stop shopping" for gang information and assistance. The combination of NGIC's intelligence capability with GangTECC's coordination and targeting function is also intended to provide federal, state, and local law enforcement with access to nationwide intelligence and coordination of gang crime investigations bringing together intelligence analysts, law enforcement agents, and prosecutors to "attack the problems caused by gangs and gang-related violence at all ends."[16] For example, investigators and prosecutors would be able to use the nationwide databases of participating agencies to get information on individual gang members, the relationships between gang members, gang structures, and criminal activities.

Purpose

The Office of the Inspector General (OIG) review examined the intelligence and coordination activities of NGIC and GangTECC, and assessed the

[14] We use the term "Centers" when referring to NGIC and GangTECC.

[15] The Gang Unit has designated workspace in the same office suite shared by NGIC and GangTECC in Northern Virginia but its staff primarily works at Criminal Division offices in Washington, D.C.

[16] Department of Justice Fact Sheet: *The National Gang Intelligence Center and the National Gang Targeting, Enforcement and Coordination Center*, November 28, 2007.

effectiveness of their contributions to the Department's anti-gang initiatives.[17] Specifically, we examined whether each organization provided comprehensive gang intelligence and coordination services to enhance gang investigations and prosecutions in the field. In addition, we assessed the effectiveness of the Department's management and co-location of the Centers.

Scope

We conducted our fieldwork from July 2008 through April 2009. We examined NGIC's operations from January 2006 through April 2009 (NGIC's establishment to the end of fieldwork) and GangTECC's programs and activities from June 2006 through April 2009 (GangTECC's establishment to the end of fieldwork).

A detailed description of our methodology is contained in Appendix I.

NGIC

NGIC was established by statute in January 2006 to "collect, analyze, and disseminate gang activity information" from various federal, state, and local law enforcement, prosecutorial, and corrections agencies.[18] NGIC initially was formed from an existing gang unit within the Criminal Intelligence Section at the Federal Bureau of Investigation (FBI).[19] NGIC's mission is to provide a centralized intelligence resource for gang information and analytical support to law enforcement organizations. The FBI administers NGIC as a multi-agency center where intelligence analysts from federal, state, and local law enforcement work together to develop and share gang-related information. As of June 2009, NGIC had 27 staff.

In FY 2005, the year NGIC was established, its budget was $1.7 million. In FYs 2006 through 2009, the NGIC budget ranged from $6.6 million to $6.8 million per year (Table 2).

[17] Our review does not examine the specific activities of the Criminal Division's Gang Unit.

[18] 28 U.S.C. 534 note (2006)

[19] The FBI converted existing resources from its Americas Criminal Enterprise/Violent Crimes Intelligence Unit to establish NGIC.

Table 2: NGIC Budget, FY 2005 Through FY 2009 (in Millions)

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
NGIC Budget	$1.7	$6.8	$6.8	$6.6	$6.6

Source: NGIC FY 2007 – FY 2014 Spend Plan.

According to its Concept of Operations (see Appendix III), NGIC's mission is to:

> support law enforcement agencies through timely and accurate information sharing and strategic/tactical analysis of federal, state, local, and tribal law enforcement intelligence focusing on the growth, migration, criminal activities, and associations of gangs that pose a significant threat to communities throughout the United States.

The NGIC Concept of Operations established the following specific goals for NGIC to accomplish its mission:

1. Establish and maintain an FBI-facilitated multi-agency NGIC.
2. Research, acquire, and implement technology to manage the exchange of gang information among federal, state, local, and tribal law enforcement agencies.
3. Provide the law enforcement community with a "one-stop shop" mechanism for quick-checks or data calls to support law enforcement requests for information regarding suspected or known gangs and/or gang members.
4. Conduct timely research and analysis which seeks to identify and neutralize emerging trends of the most violent gangs.
5. Provide analytic support to law enforcement investigations, operational/intelligence initiatives, and issues of immediate concern.
6. Provide intelligence support for GangTECC and other law enforcement agencies to deconflict and coordinate gang related investigations and prosecutions.
7. Develop and maintain strong partner and customer relations to maximize analytical and information exchange efforts.

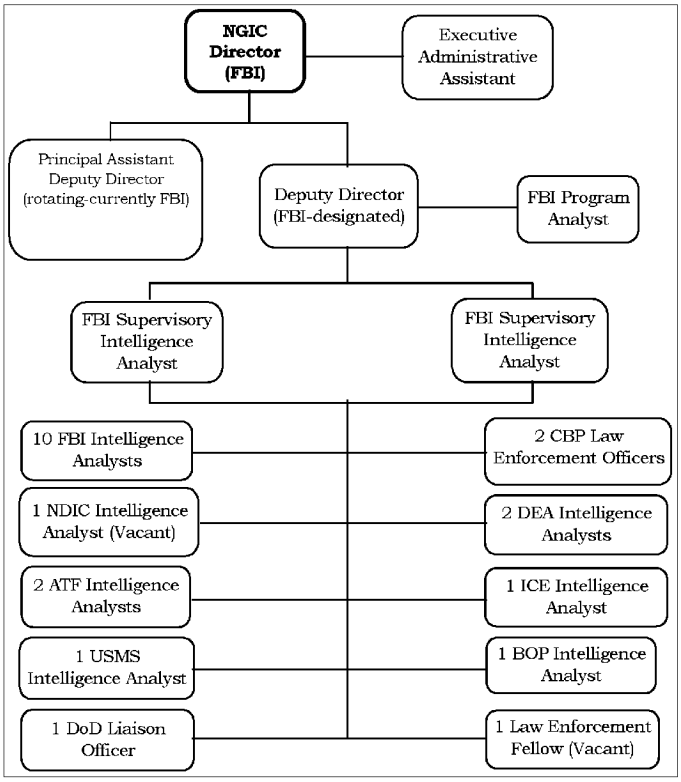
NGIC Organization

The NGIC Director position is designated as an FBI position and is filled by a Special Agent who reports to the Section Chief of the Gang/Criminal Enterprise Section at the FBI, which is within the FBI's Criminal Investigative Division. Of the two NGIC Deputy Director positions, one is permanently designated as an FBI intelligence analyst position, while the other is rotated among the agencies represented in the NGIC membership.[20]

Agencies that currently contribute staff members to NGIC include the FBI; Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Drug Enforcement Administration (DEA); Federal Bureau of Prisons (BOP); National Drug Intelligence Center (NDIC); United States Marshals Service (USMS); Immigration and Customs Enforcement (ICE) of the Department of Homeland Security; U.S. Customs and Border Protection (CBP) of the Department of Homeland Security; Department of Defense (DoD) National Guard; and state and local law enforcement. Figure 1 depicts the NGIC staffing and organization structure.

[20] The rotating NGIC Deputy Director position is currently filled by an FBI senior investigator whose time is spent at GangTECC, supporting GangTECC, and handling a GangTECC caseload. There has not been an NDIC representative to NGIC since January 2009, or a Law Enforcement Fellow since June 2008.

Figure 1: NGIC Organization



Source: NGIC.

Each intelligence analyst who works at NGIC is assigned specific gangs to research and analyze, with a total of 20 different gangs assigned among the 20 intelligence analysts. The duties performed by NGIC analysts and other personnel vary. NGIC employees may assist in investigations, respond to requests for information and assistance from the Center's customers, generate intelligence work products, perform outreach to the law enforcement community, deconflict investigations, serve as liaisons with other agencies,

work on special projects, work with the Law Enforcement Online (LEO) system, and perform administrative duties.[21]

The intelligence work products NGIC analysts produce include intelligence assessments, intelligence bulletins, regional and national threat assessments, information papers, link charts showing connections among individuals and organizations, timelines of activities, and related analytical products for operational support and intelligence purposes. The analysts also make presentations at state gang investigator training conferences and provide training to federal law enforcement agencies. In addition, NGIC responds to requests for information from federal, state, and local law enforcement officials on various gang topics.

GangTECC

On February 15, 2006, the Attorney General announced plans to create a new national anti-gang task force as part of his initiative to combat gangs and gang violence. On June 26, 2006, GangTECC began operations and combined the Department's operational law enforcement components and the Department of Homeland Security's ICE component to identify, prioritize, and target violent street gangs whose activities posed a significant multi-jurisdictional threat. According to its Concept of Operations (see Appendix IV), GangTECC is to coordinate overlapping investigations, ensure that tactical and strategic intelligence is shared between law enforcement agencies, and serve as a central coordinating and deconfliction center for law enforcement investigations of gangs.[22]

GangTECC personnel are contributed by participating Department components and are subject to approval by the Criminal Division's Assistant Attorney General. Unlike NGIC, GangTECC is not authorized a separate budget. Instead, costs are borne by the contributing agencies. As of April 2009, 17 GangTECC staff members worked at the Center full time.[23] In

[21] LEO is a secure website hosted by the FBI that makes information available to the federal, state, and local law enforcement entities that subscribe to it.

[22] GangTECC performs operational deconfliction, which involves determining whether cases are connected to one another, in order to avoid duplication.

[23] Our use of the term GangTECC "members" refers to the representatives from the participating agencies who are assigned to and working full time at the NGIC/GangTECC facility.

addition, three staff members were assigned to GangTECC on a detailed basis.[24]

In a July 2006 memorandum (see Appendix V), the Deputy Attorney General identified the following four goals for GangTECC:[25]

> Assist the initiation of gang-related investigations and enhance existing investigations and prosecutions.
>
> Aid in coordination, deconfliction, and effectiveness of gang-related initiatives, investigations and prosecutions.
>
> Develop an enhanced understanding of the national gang problem and propose strategies and targets to neutralize the most violent, and significant threats.
>
> Coordinate with and support the National Gang Intelligence Center.

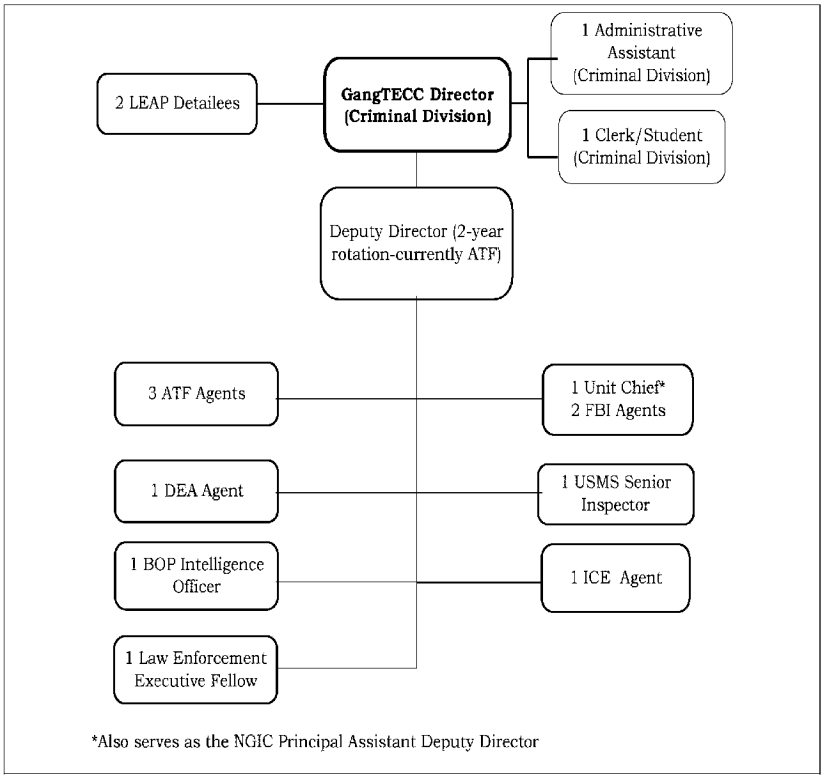
GangTECC Organization

The Criminal Division oversees GangTECC operations, and the Director's position is filled by a senior attorney from that Division. The Deputy Director position is a 2-year rotating position, to be filled by a participating component. The current Deputy Director is from ATF. Agencies that contribute staff and support to GangTECC include the Criminal Division, ATF, FBI, BOP, DEA, USMS, and ICE. Figure 2 shows GangTECC's organization.

[24] Two of the three detailees are individuals from the Department's Leadership Excellence and Achievement Program (LEAP), a part-time program that provides a series of developmental experiences for DOJ employees. The third detailee is a law enforcement Executive Fellow from a local police department.

[25] Paul J. McNulty, Deputy Attorney General, Memorandum for the Establishment of the National Gang Targeting, Enforcement & Coordination Center (GangTECC), and Governing Board of GangTECC and the National Gang Intelligence Center, July 25, 2006.

Figure 2: GangTECC Organization



Source: GangTECC.

GangTECC members identify potential targets for gang cases, deconflict gang investigations, link investigations with common targets, and provide cross-agency information to agents conducting gang investigations in the field. Unlike NGIC analysts, GangTECC investigators typically do not produce written products, as their work primarily focuses on coordinating gang-related investigations. However, the BOP representative at GangTECC is a gang intelligence officer who provides regular intelligence reports to support ongoing and potential gang investigations.

Access to Databases

Although the Centers are co-located, they do not share a database. NGIC and GangTECC members have network access only to the databases and systems of their home agencies. In addition, all NGIC analysts can also access the FBI's databases and systems. However, neither NGIC nor GangTECC members have independent access to the other member agencies' databases and systems. For example, an FBI member of NGIC who needs information found only in an ATF database or system must go to an ATF member at NGIC to obtain that information. The same is true at GangTECC. NGIC has established partnerships with other federal, state, and local law enforcement agencies that have gang-related information and, in some cases, has made arrangements to access those agencies' information.

GangTECC and NGIC Governing Board

The July 2006 memorandum from the Deputy Attorney General established a Governing Board to oversee the activities of the NGIC and GangTECC.[26] The Deputy Attorney General determined that the Governing Board would be chaired by the Directors of both GangTECC and NGIC and would meet, at a minimum, on a quarterly basis. According to GangTECC's Director, the Board has held quarterly meetings. Furthermore, until the April 9, 2009 meeting, no minutes were recorded for previous Governing Board meetings.

The Board is comprised primarily of high-level agency representatives from Department components that contribute personnel and support to NGIC and GangTECC. Other members include representatives from the Executive Office for United States Attorneys (EOUSA), the Department's Chief Information Officer, the Subcommittee on Violent and Organized Crime of the Attorney General's Advisory Committee, the Attorney General's Anti-Gang Coordination Committee (AGCC), NDIC, and the Regional Information Sharing Systems (RISS).[27]

The Governing Board approves policies and procedures for NGIC and GangTECC to ensure that they are consistent with the anti-gang policies

[26] On July 28, 2005, the Deputy Attorney General established a Governing Board only for NGIC. The Deputy Attorney General's July 2006 memorandum, which established GangTECC, expanded the Governing Board to oversee both NGIC and GangTECC because of the need for coordination between the entities.

[27] RISS is a national network comprised of six multistate centers operating on a regional basis. Its mission is to support law enforcement efforts nationwide to combat illegal drug trafficking, identity theft, human trafficking, violent crime, terrorist activity, and to promote officer safety.

established by the Attorney General, the Deputy Attorney General, and the AGCC. In the spring of 2007, the Governing Board approved the Concepts of Operations outlining NGIC's and GangTECC's goals and objectives.

Gang Unit

In September 2006, several months after GangTECC's creation, the Attorney General created the Gang Unit in the Criminal Division to develop strategies for prosecuting the most significant national and transnational gangs in the country. The Criminal Division's Gang Unit, originally called the Gang Squad, is a group of experienced federal prosecutors who are responsible for assisting local United States Attorneys' Offices (USAO) in prosecuting gang cases of national importance and coordinating with USAOs on legal issues and multidistrict gang cases. The Gang Unit is also responsible for providing legal expertise on federal domestic violent crime offenses and federal firearms and explosives violations. According to the Criminal Division's FY 2009 budget documents, Gang Unit prosecutors are to "work hand-in-hand" with GangTECC and NGIC in a "collective effort to target and dismantle the most serious gang related threats nationwide."[28]

[28] While the Gang Unit's work relates to our review of NGIC and GangTECC, we did not review whether the Gang Unit's activities are meeting its stated mission.

RESULTS OF THE REVIEW

NGIC AND GANGTECC ARE NOT FULLY MEETING THE ROLES FOR WHICH THEY WERE CREATED

Three years after the creation of NGIC, it still has not developed a gang information database as directed by law. Further, due to its limited outreach efforts and the perception that the NGIC is FBI-centric, NGIC had received only 213 requests for assistance from law enforcement agencies in 3 years, an average of only 6 requests per month. Moreover, some agencies that routinely encounter gang issues in their work were not frequent customers of NGIC.

Regarding GangTECC, we found that the lack of an independent budget has hindered it from implementing an effective program for coordinating gang investigations and prosecutions, or an effective outreach program. In addition, GangTECC did not implement a process to deconflict investigations until January 2009, 3 years after it was created. The manual deconfliction process it then implemented proved unworkable and was discontinued within several months. Also, GangTECC lacks sufficient attorneys to provide guidance on gang investigations. After updating its list of priority gang targets, GangTECC still has not disseminated the information widely.

NGIC has not developed a gang information database as directed by Congress.

In funding NGIC, Congress directed that NGIC was to, among other things, serve as an "information management mechanism for gang intelligence on a national and international scope."[29] To accomplish this, NGIC developed plans to create and maintain a library of gang identification information accessible through the FBI's LEO, an information sharing network. It also developed plans to establish "electronic bridges" to federal, state, and local information technology systems to connect disparate federal and state

[29] Conference Report, *Making Appropriations for Foreign Operations, Export Financing, and Related Programs for the Fiscal Year Ending September 30, 2005, and For Other Purposes*, November 19, 2004, H. Rept. 108-792.

databases containing gang information or intelligence.[30] As detailed below, because of technological and operational problems, the information management system and electronic bridges have not progressed beyond the development phase.

Past Action to Obtain a Gang Information System

On September 11, 2007, NGIC contracted with a technology provider to design, deliver, and deploy a database of information on gangs (gang library), software applications for searching and retrieving information in the library, and computer servers. However, a year later, NGIC determined that the contractor was unable to meet the contract's requirements for the library and other software applications. In addition, the contractor included software features that NGIC did not need or request. The contractor attempted to correct issues that NGIC identified in the software applications and the management of the project. For example, the contractor replaced a program manager in an effort to improve supervision of the project in order to meet its milestone dates. On October 1, 2008, the contract was not renewed, although some applications that were developed by the contractor may be able to be modified and used by a new contractor, such as the partially developed gang library. According to the FBI's Information Technology (IT) personnel working on this contract, approximately $2.7 million was paid out on this contract before the decision was made not to renew it.

Recent NGIC Action to Obtain a Gang Information System

On April 8, 2009, NGIC solicited input from IT companies for NGIC's intent to "design, develop, and implement an integrated NGIC Information System." The functional requirements specified by NGIC for its proposed information system are identical to those specified by Congress when NGIC was created: an "information management mechanism for gang intelligence on a national and international scope." NGIC officials said this solicitation is not intended to award a contract to actually build a gang information database. Rather, it is to determine whether IT companies thought there were technical limitations in satisfying the functional requirements of an NGIC information management system and answering any questions the companies might have about the project.[31]

[30] NGIC informed us it does not intend to create a national gang intelligence database. Instead, NGIC is developing an information system that will include its gang library and the electronic bridges to access various gang databases maintained by the states or other federal entities. For the purpose of this report, OIG is referring to NGIC's information system when we discuss the implementation of a gang information management database.

[31] Subsequently, a Request for Bids was offered to any contractor wanting to bid on the project and a contract was awarded on September 1, 2009.

Difficulties in creating electronic bridges to other gang databases

In addition to overcoming the technical obstacles to creating an information management system, establishing electronic bridges from NGIC's information management system to state or federal databases is complicated by differing configurations, systems, and security requirements.[32] These issues must be overcome if the NGIC is to develop a cost-effective gang information system accessible to stakeholders at the federal, state, and local law enforcement levels. However, more than four years after the Department's Office of the Chief Information Officer provided a report to the Deputy Attorney General, NGIC has still not addressed an important issue the report raised regarding electronic bridging:

> [An] integrated system for anti-gang information need not be a single monolithic data warehouse . . . existing systems should be connected together and enabled to interoperate.

Unless NGIC obtains a technical solution for bridging between federal and state databases, NGIC's ability to use existing gang information will be limited.

The FBI has stated that a major problem contributing to the technical solution is that there is no standard nationwide definition of what constitutes a "gang" or "gang member," making uniform entry into a database problematic. This issue also was recognized in the Office of the Chief Information Officer report to the Deputy Attorney General, which stated that:[33]

> In addition, the NGIC should help drive community-based development of policy standards, from the definition of categories of gangs to criteria for assertion of gang membership.

The lack of clarity in defining gangs and what constitutes gang membership has resulted in states creating their own gang definitions and disparate databases using various state standards of gang membership. For example, Colorado's standards for updating its database with a confirmed "gang member" requires satisfying one of several factors that range from admitting to gang membership, to committing a gang-motivated crime to exhibiting gang membership (clothing, tattoos, mannerisms, etc.). On the other

[32] Report to the Deputy Attorney General, *Feasibility Assessment of an Integrated Anti-Gang Network for the Department of Justice*, Office of the Chief Information Officer, July 15, 2005, 11-15.

[33] Report to the Deputy Attorney General, *Feasibility Assessment of an Integrated Anti-Gang Network for the Department of Justice*, Office of the Chief Information Officer, July 15, 2005, 11-15.

hand, Texas allows any state law enforcement agency to create its own gang database and include information on individuals who meet two of five criteria. The criteria are: (1) self-admission of criminal street gang membership; (2) identification as a criminal street gang member by a reliable informant or other individual; (3) corroborated identification as a criminal street gang member by an informant or other individual of unknown reliability; (4) evidence that the individual frequents a documented area of a criminal street gang, associates with known criminal street gang members, and uses criminal street gang dress, hand signals, tattoos, or symbols; or (5) evidence that the individual has been arrested or taken into custody with known criminal street gang members for an offense or conduct consistent with criminal street gang activity.

We believe that before NGIC creates a gang information system, it must resolve the issue of defining the term "gang" and establish standards for what constitutes gang membership. Without resolving these issues, NGIC runs the risk of establishing electronic bridges to databases with questionable gang information or generating incorrect gang intelligence based on information from these databases.

In summary, NGIC has yet to fulfill the requirement to create a comprehensive national gang information database to support the Department's anti-gang initiatives. Moreover, although several states have established databases containing gang intelligence information, the development of the NGIC system has not progressed sufficiently for us to evaluate whether it can resolve technological obstacles and build on these existing databases.

Recommendations

We recommend that:

1. NGIC establish a working group composed of representatives from its member agencies and state and local law enforcement to identify methods for sharing gang-related intelligence across the law enforcement community. This working group should address, among other issues: (a) a definition of "gang" and criteria for identifying gang membership; and (b) data standards for entering gang information into databases

2. NGIC create an implementation plan that identifies functional requirements with milestone dates to procure a gang information management system.

NGIC is not effectively sharing gang intelligence and information.

For the NGIC to effectively share gang intelligence and information, it must both know the needs of the law enforcement personnel who are its customers and ensure they are aware of the Center's capability to support their gang-related investigations and prosecutions. When it receives a query from a customer by e-mail, telephone, or in person, NGIC creates a Request for Information. We examined NGIC's Request for Information workload to identify patterns or trends in the customers who are submitting requests and the types of assistance that they request. In our review, we found that the NGIC received few requests for assistance, averaging less than six a month. We also found that some agencies that routinely encounter gang issues in their work – such as ATF – rarely used NGIC for gang-related intelligence products and services.

In addition, we found that NGIC did not have an adequate process in place to monitor customer satisfaction with its intelligence products and other types of assistance. Finally, we found that GangTECC customers who used NGIC's intelligence products considered them to have limited usefulness.

NGIC has few regular users outside of the FBI, GangTECC, and itself.

From January 1, 2006, to February 19, 2009, NGIC received requests for assistance from 18 customer groups for 16 types of information. We analyzed the customers and the information requests to identify trends. Because GangTECC was intended to be one of the major users of NGIC's services, we also analyzed GangTECC's requests. The results of our analysis follow.

Majority of NGIC customers consisted of three groups and some customer groups are underrepresented or not represented at all.

We analyzed the 18 customer groups that requested information from NGIC (see Table 3). We found that the majority of NGIC's work – 64 percent – came from just three organizations: the FBI, GangTECC, and NGIC itself. We also noted that GangTECC had submitted the second largest number of requests for information to NGIC, but only recently began requesting information on a regular basis from NGIC in FY 2008.[34] (We further discuss the interactions between NGIC and GangTECC later in the report.)

The remaining 36 percent of requests for information from NGIC were distributed among 15 other customer groups. The largest of these customer groups is the state, local, and tribal law enforcement.

[34] According to GangTECC members, they submitted requests to NGIC prior to this time, but the requests were not tracked GangTECC or NGIC.

According to NGIC management reports, NGIC personnel attempted to advertise NGIC's presence and establish points of contact among state and local law enforcement by attending over 30 conferences, including 14 that were specifically for state and local gang investigators. NGIC also serves as an advisor to the National Alliance of Gang Investigators Association Governing Board, which has allowed the Center to develop lines of communication to approximately 20,000 state and local gang investigators. However, despite NGIC's outreach efforts, this customer group made an average of only 3 requests per year, submitting only 13 of the 213 (6 percent) total requests for information received by NGIC from its inception in 2006 to February 2009. Moreover, NGIC has received no requests for gang-related information from tribal law enforcement officials, a group specifically identified by NGIC in its operational plan as one with which it would share gang intelligence.

NGIC management stated that there were two reasons for the small number of requests received by the Center. The first reason was due to the law enforcement community's lack of familiarity with NGIC, despite its attempts to advertise its presence. The second proffered reason was that some NGIC personnel may not have been recording all of the requests that they received. The NGIC Director stated that NGIC personnel receive many phone calls from state and local law enforcement contacts, but what they do in response to these phone calls may not be captured as a response to a request for information. While we could not verify the quantity of work not properly recorded, none of the NGIC analysts mentioned to us that this type of telephone inquiry was a significant part of their workload.

We also noted that the customers from whom NGIC has received few requests for gang information include several components of the Department that routinely address gang-related matters in their operations. For example, the USMS has submitted just five requests and ATF only one. Similarly, the High Intensity Drug Trafficking Areas (HIDTA), the National Drug Intelligence Center (NDIC), and the Office of National Drug Control Policy (ONDCP) have submitted one request each.[35] The reasons for this low usage rate are discussed below.

[35] The HIDTA program enhances and coordinates the drug control efforts of participating local, state, and federal law enforcement agencies by providing resources to combat drug trafficking in critical regions of the United States. HIDTAs are areas within the United States. that are designated by the ONDCP Director as exhibiting serious drug trafficking problems and harmfully impacting other areas of the country. NDIC is a Department component whose mission is to coordinate, consolidate, and disseminate drug intelligence from all national security and law enforcement agencies. ONDCP is a component of the Executive Office of the President that establishes policies, priorities, and objectives for the Nation's drug control program.

Table 3: NGIC Customer Requests for Information

Customer Group	Fiscal Year[a] 2006	2007	2008	2009	Unknown Date	Total
FBI	**14**	**4**	**20**	**26**	**7**	**71**
GangTECC	**0**	**0**	**31**	**16**	**0**	**47**
NGIC	**0**	**0**	**0**	**18**	**0**	**18**
State, Local, and Tribal Law Enforcement	3	0	7	3	0	13
El Paso Intelligence Center (EPIC)	0	1	6	1	0	8
Federal and State Prosecutors	0	0	2	5	0	7
Department of Homeland Security (DHS)	0	0	0	5	0	5
USMS	1	0	4	0	0	5
International Law Enforcement	2	0	0	1	0	3
BOP	0	0	0	1	1	2
ATF	0	1	0	0	0	1
GAO	0	0	0	1	0	1
HIDTA	0	0	0	1	0	1
Media	0	0	0	1	0	1
Military	0	0	1	0	0	1
NDIC	0	0	0	1	0	1
ONDCP	0	0	1	0	0	1
RISS	0	1	0	0	0	1
Unknown[b]	1	4	12	3	6	26
Total	**21**	**11**	**84**	**83**	**14**	**213**

[a] Two of the fiscal years in this table are partial years. FY 2006 covers the period January 1, 2006 to September 30, 2006 and FY 2009 covers the period October 1, 2008 to February 19, 2009.

[b] Records in which the requester name field was blank or there was insufficient information to identify the requester are grouped as "Unknown."

Source: NGIC.

NGIC is not perceived as an independent, multi-agency center.

In discussing why NGIC was not used more frequently by law enforcement agencies, we found that NGIC is perceived by many law enforcement personnel as being FBI-centric in the products it generates and the intelligence analysis that it provides. NGIC and GangTECC personnel also voiced their concerns about NGIC's FBI-centric image.

Of the 14 NGIC analysts we interviewed, 4 referred to the NGIC as "FBI-centric." One of the four analysts said that the "law enforcement community's fear is [NGIC] is still part of the FBI . . . ." In addition, four GangTECC personnel indicated the same perception. One of the four Gang TECC personnel stated that "people [are] reluctant to share information with NGIC because . . . [the] Center is essentially the FBI's own gang intelligence shop." Some concerns expressed by law enforcement officials included that the information sharing is not reciprocal and that intelligence products generated by NGIC reflect only FBI information and not information from other agencies.

Overall, we found that in the 38-month period we examined, NGIC received only about 6 requests for information a month. The rate of information requests increased to about 17 requests a month in the first 5 months of FY 2009. However, that number is still small given the NGIC's staffing of 20 intelligence analysts. Moreover, the preponderance of FBI and internal requests suggests that the NGIC remains primarily focused on FBI investigations and has not become the national resource on gang intelligence for federal, state, and local law enforcement as envisioned. Until state and local law enforcement agencies rely on the NGIC's services, NGIC's ability to assist gang investigations will be limited and the Center's resources will continue to be underutilized.

Information NGIC provides is broad, but sometimes of limited use.

We also examined the requests received by NGIC to identify the types of information requested and any trends in the requests over time. During the time period we examined, almost half of the 213 requests were for gang background information (40), queries for BOP targeting packages (33), or information on specific gang members (29).[36] These requests were mirrored in our interviews with NGIC customers, during which they stated that the types of services that would be helpful to them were gang background information (general and specific groups) and investigative analyses on specific groups and trends observed. Table 4 shows the 16 categories of requests NGIC received.

[36] The requests related to queries for BOP targeting packages are generated by GangTECC and is part of their priority targeting function by identifying inmates and their associates outside the prison system who assist them in committing crimes.

Table 4: Types of Information Requested From NGIC

Request Type	TOTAL	1/1/06-9/30/06	FY 2007	FY 2008	10/1/08 – 2/19/09	Unknown Date
Gang Background Information	**40**	5	3	11	20	1
BOP Targeting Information	**33**	0	0	24	9	0
Specific Individual Information	**29**	0	0	12	17	0
Case Support	**18**	3	3	0	11	1
Training/Presentation	**16**	1	0	4	10	1
Consolidated Priority Organization Target Validation	**14**	8	1	0	0	5
Product Reviews	**10**	0	1	5	4	0
EPIC Request	**7**	0	0	6	1	0
FBI Management Taskings	**7**	1	0	4	2	0
Miscellaneous	**4**	0	1	1	1	1
Briefings	**3**	0	0	0	3	0
Deconfliction	**3**	0	0	0	3	0
Graffiti Identification	**3**	0	0	1	2	0
Threat Assessment	**3**	0	1	1	0	1
Tattoo Identification	**2**	1	0	1	0	0
Gang-related Travel	**2**	0	0	0	0	2
Blank/ Unknown	**19**	2	1	14	0	2
Total	**213**	**21**	**11**	**84**	**83**	**14**

Note: EPIC requests are requests that are initially received by EPIC and subsequently forwarded to NGIC for further processing. FBI management taskings include providing briefing points or gang summaries to senior FBI managers.

Source: NGIC.

We also examined the types of information requested to identify trends in the services provided by NGIC and possibly help NGIC determine which services it should concentrate on or discontinue. We found instances in which NGIC no longer received or had only recently began to receive certain types of requests. For example, we noted that during its first two years of operation, NGIC received requests for Consolidated Priority Organization Target validations, a program which compiles a list of major international drug trafficking and money laundering organizations for the Department to target. During the first year (2006), this category accounted for 38 percent (8 of 21) of the requests for information received by NGIC. When asked about these requests, NGIC management stated that all of these requests are generated by FBI agents and are forwarded to NGIC which, in turn, forwards the requests to the Special Operations Division for processing because NGIC is not a drug

enforcement entity.[37] An NGIC analyst was designated as a contact person for Consolidated Priority Organization Target validations and was responsible for assisting the requestor with processing the request. However, NGIC analysts did not perform any analyses on these requests, and NGIC has not received any validation requests since 2007.

We also determined that during the 3 years we examined, over half of the information categories included less than 10 requests. However, we found no evidence that NGIC analyzed the requests it received and the amount of time required to process each request, evaluated shifting trends in information being requested, identified request types that merit the most attention, or realigned their resources to address the most important categories. We believe NGIC should examine the types of services that have been requested and the resources expended on each type to identify those most appropriate for the use of its limited resources.

Interaction between GangTECC and NGIC remains limited.

Although GangTECC's operational guidance states that it is intended to be a major user of NGIC's gang intelligence services, it only recently began to request information on a regular basis from NGIC in early 2008 and its use of NGIC information remains limited. Beginning on February 28, 2008, and through the remaining 8 months of FY 2008, GangTECC submitted 31 requests for information – the most for any customer in that fiscal year overall.[38] Of all the Requests for Information received by NGIC from January 1, 2006 to February 19, 2009, GangTECC accounts for 22 percent (47 of 213).

Although the number of requests submitted by GangTECC to NGIC has increased, most of GangTECC's requests (33 of 47, or 70 percent) were queries for information for inclusion in the "BOP targeting packages" it prepares which contain information on individuals outside of the BOP facility who communicate with federal inmates and may be involved in suspicious

[37] FBI stated that prior to the creation of NGIC, the FBI's Gang Unit processed Consolidated Priority Organization Target validations. Upon creation of the NGIC, FBI entities continued to forward these validations to NGIC even though NGIC was not a drug enforcement entity. Ultimately, these requests were stopped. FBI added that it was not known at the beginning, the number of requests that would be made, nor the requests that would become obsolete as missions and objectives changed.

[38] Both GangTECC and NGIC personnel stated that requests were submitted prior to this date but that neither Center tracked these requests. Using other information provided by NGIC, the OIG was able to identify another nine instances in which there were joint efforts by NGIC and GangTECC for the time period covering July 11, 2006 to July 15, 2008. These instances were identified as talking points, briefings, tactical analysis, and travel for meetings.

activity.[39] This type of request is handled between two NGIC and GangTECC staff members. The remaining 14 requests (30 percent) were spread among 6 categories of information (Table 5).

Table 5: Types of Information GangTECC Requested From NGIC

Type of Request	FY 2008	10/1/08 – 2/19/09	Total
BOP Targeting Packages	24	9	33
Specific Individual Information	4	1	5
Gang Background Information	1	0	1
Training Presentation	1	0	1
Case Support	0	2	2
Deconfliction	0	3	3
Graffiti Identification	0	1	1
Blank/Unknown	1	0	1
Total	**31**	**16**	**47**

Source: NGIC.

We spoke with GangTECC personnel about the kinds of assistance for which they look to NGIC. Six of 12 GangTECC employees stated that GangTECC needs intelligence case support from NGIC, but they also told us that they believed NGIC is more oriented to providing intelligence products that are not tailored to a particular case. For example, case support could require an analyst to review information gathered during the course of an investigation and then conduct analyses to show how multiple gang cases fit together. The GangTECC personnel we interviewed said they often do not find NGIC products useful for this purpose. As Table 5 illustrates, GangTECC requests for case support do not constitute a significant portion of GangTECC's requests to NGIC.

In the instances where GangTECC received case support from NGIC analysts, they said the results were favorable. The GangTECC Director stated that an NGIC analyst did "a phenomenal job" working with intelligence analysts from five or six other federal law enforcement agencies to obtain information on a case and then briefed the GangTECC agent about it. Some NGIC personnel also agreed that there was a benefit to NGIC analysts providing case support to

[39] The BOP representative to GangTECC requests information about those individuals from the NGIC analyst who is designated as the contact point for processing this type of request. The NGIC analyst queries databases and provides information found on the individuals to the GangTECC BOP representative. The GangTECC BOP representative adds information obtained from NGIC to the targeting package and is given to a GangTECC member to review. Some targeting packages may be referred to other agencies for further investigation.

GangTECC. For example, one analyst told the OIG that, as a result of what she learned from the analyses that she performed on several investigations, she plans to write an intelligence bulletin.

The Directors of GangTECC and NGIC also told us that they had regularly exchanged information since the inception of the Centers. However, our discussions with the staffs of both Centers did not elicit information indicating there was a significant direct exchange of information between the analysts and investigators during the first years of the Centers' operations. Our analysis of FY 2009 workload, and our follow up interviews with analysts and investigators, found that interactions had improved in FY 2009, although the interactions remain limited and ad hoc in nature.

Although GangTECC's use of NGIC has increased, the underrepresentation or absence of key law enforcement customers, and the overall small number of requests received, calls into question NGIC's effectiveness to share relevant gang-related information and provide useful support to law enforcement personnel who are conducting gang investigations and prosecutions.

NGIC's monitoring of customer satisfaction with its intelligence products is deficient.

We reviewed customer satisfaction surveys distributed by the FBI to identify whether the above concerns were reflected in customers' opinions about the services provided by NGIC. The OIG found that NGIC had no process for monitoring the survey responses to determine whether its intelligence products are meeting customer's needs. In addition, we found that the surveys NGIC administered only cover the intelligence products generated by NGIC and not the other services that it provides.

The FBI survey asks NGIC customers who have either requested an intelligence product or received an intelligence product generated by NGIC analysts to rate the product for quality. They rate such factors as whether the product was timely, relevant, clear, and reliable – on a scale of 1 (strongly disagree) to 5 (strongly agree). Customers also are asked to rate the value of the product, including whether the product (1) helped close an intelligence gap, (2) changed an investigative priority, (3) resulted in a more informed decision on an investigation, or (4) identified new information on a pending investigation.

NGIC did not use customer responses to assess its own performance.

Our analysis of 511 customer satisfaction surveys returned to NGIC found that customers expressed overall satisfaction with NGIC intelligence

products.[10] For the factors of quality and value, NGIC averaged a score of 3.5 out of 5 for the 511 surveys. However, we noted that 333 (65 percent) of the responses came from recipients in NGIC's parent agency, the FBI, while non-FBI customers accounted for only 41 or 8 percent of the customer surveys returned. The surveys did not identify the originating entity in 137 instances (27 percent).

We also found that NGIC does little with comments made on the customer satisfaction surveys. Specifically, the Deputy Director told us that NGIC has "followed up on several forms on occasion" but has not attempted to analyze the information customers have included in comments on the survey forms. For example, one survey on the topic of gang involvement in mortgage fraud schemes stated that the "intelligence assessment was very basic and lacked specific information for identifying mortgage/real estate transactions that may be gang related." We believe that NGIC could have issued a supplemental product to address the concerns of this FBI customer, but it did not. An NGIC official said they do not have adequate resources to analyze customer comments.

NGIC intelligence products have limited usefulness to GangTECC personnel.

Because GangTECC was intended to be a major user of NGIC's services, we asked GangTECC personnel which NGIC intelligence products they had used during the course of their work. Products provided by NGIC addressed a variety of issues such as prison gangs, identifying new gang tattoos, the methods gangs use to incorporate religion as part of the gang identity, conflicts between rival gangs, mortgage fraud schemes that a particular gang was involved in, and gang involvement in the sexual exploitation of women and children. Four GangTECC investigators stated that they were not familiar with any of NGIC's intelligence products. Of the remaining six investigators, two were aware of NGIC's products, but described them as too theoretical, broad, and historical to provide operational information. Only four investigators reported using NGIC's products to obtain background information about a particular gang.

One NGIC analyst told the OIG that NGIC intelligence analysts were "writing history" rather than producing leads that can be acted on. He said the analysts were telling the readers about previous cases rather than analyzing

[10] Surveys are included as part of each product and each person who obtains a copy of an NGIC intelligence product may submit a survey response. Therefore, there are more survey responses on file than there have been products issued. Further, because LEO did not provide us with information on the number of intelligence products downloaded, we do not know how many customers received them.

transactions that are occurring and recommending action, such as establishing a wiretap.

Some GangTECC personnel stated that NGIC intelligence products were written only by the FBI representatives at NGIC and that the products therefore would only reflect the FBI's data. A GangTECC member gave an example that if he asked NGIC for information about cases opened on the MS-13 gang, his experience was that NGIC might provide only those cases the FBI worked on. An FBI GangTECC member commented that since most of the NGIC products he receives come from the FBI analyst at NGIC, he is not sure if information from other agencies is included.

In addition to the usefulness of NGIC's intelligence products, some NGIC personnel we interviewed were also concerned about the time it took NGIC to disseminate its intelligence products. One of the NGIC members told us that "it is impossible for the FBI analysts to get a product out that's timely because there are so many review levels." He provided an example where it had taken NGIC 3 months to issue an assessment of a prison escape that involved gang members. An NGIC analyst from the FBI stated that while the NGIC analysts had been told intelligence products are important, their reports may sit on a reviewer's desk for weeks. She cited an example in which a product was held up because the "title didn't work." The analyst said that as a result, the report sat on a reviewer's desk for 6 weeks when the matter "could have been resolved in 10 minutes."

The FBI stated that, as mandated by the FBI's Directorate of Intelligence, NGIC managers must allow time for their analytical products to be reviewed and edited by entities within the Directorate of Intelligence, which can delay dissemination. However, we noted that this review process does not apply to the analytical products generated by personnel of other member agencies.

The absence of an effective process to assess customer satisfaction with NGIC products and services, to assess the usefulness of other services NGIC provides, or to assess other unmet customer needs reduces NGIC's ability to share relevant gang-related information and provide useful support to law enforcement personnel who are conducting gang investigations and prosecutions.

Recommendations

We recommend that:

3. NGIC analyze the responses to past customer surveys on intelligence products to identify improvements that would make its intelligence products more useful to customers.

4. NGIC expand its customer satisfaction surveys to include recipients of all of its products and services.

5. NGIC analyze the types of information being requested and the time spent responding to each request type to better allocate its resources.

6. NGIC track all requests for information that it receives.

GangTECC has insufficient resources to carry out its mission of coordinating gang investigations and prosecutions.

When it was established, GangTECC was provided with only eight members, no operating budget, and a broad, multi-purpose mission.[41] Because GangTECC does not have an operating budget, participating components are required to assign staff to GangTECC and pay their salaries out of their own budgets. The lack of an operating budget also has prevented GangTECC managers from taking actions essential to implementing the Center. For example, GangTECC cannot fund travel to case coordination meetings for its member nor representatives from state and law enforcement agencies working on the case. Also, GangTECC has been unable to implement electronic communication and tracking capabilities or fund its Executive Fellow program which provides opportunities for state and local law enforcement officers to enhance their skills by working with federal law enforcement agencies for a 6-month period.[42] Communicating with state and local agencies is vital to GangTECC's ability to coordinate cases, collect gang intelligence, and identify priority targets. Moreover, GangTECC's outreach and training efforts have been hindered due to a lack of funding. Officials in the Criminal Division and the Office of the Deputy Attorney General agreed that lack of an operating budget is GangTECC's biggest problem. The impact that the lack of funds has on GangTECC's ability to execute its broad mission is detailed below.

GangTECC's case coordination efforts are limited by the lack of an operating budget.

Organizing and participating in case coordination meetings is central to GangTECC's mission. Members of GangTECC identify opportunities to link local agency gang investigations by reviewing open cases to compare targets

[41] The Deputy Attorney General's July 26, 2006, memorandum specified that at least seven experienced agents from the Department's components be assigned to GangTECC. The eighth member was to be from ICE.

[42] In June 2009, ATF assigned one of its grant-funded Executive Fellows to work at GangTECC.

and to determine whether other components have initiated or begun building cases on the same targets. After linking related investigations, the Center attempts to organize case coordination meetings to bring together federal, state, and local investigators, analysts, and prosecutors to share information. If successful, the coordinated cases bring charges against large, geographically dispersed gang-related criminal enterprises.

For example, GangTECC identified that violent national street gang investigations being conducted by federal and local agencies from the east and west coasts were connected. GangTECC arranged for ATF to fund travel expenses for a federal agent and local law enforcement officers from the east coast to meet with the federal and local prosecutors, federal agents, and local officers on the west coast. As a result, the agents located the primary gang member who was directing the migration of the west coast gang to the east coast. According to an investigator involved in this case, GangTECC served an integral role in coordinating the exchange of information between investigators on both coasts in an investigation that subsequently resulted in almost 30 conspiracy indictments under the *Racketeer Influenced and Corrupt Organizations Act* (RICO).

During its 3-year existence, GangTECC has coordinated 12 cases involving multiple law enforcement agencies and jurisdictions. In addition, according to GangTECC's Director, GangTECC also has facilitated cooperation in over 100 cases where investigators or agencies would not initially share information on common targets with one another. Law enforcement personnel we interviewed who had used GangTECC's services reported high levels of satisfaction and told us that case coordination was the most helpful service that the Center could provide to the field. Ten of the customers we interviewed stated that they used the information provided by GangTECC to coordinate with other agencies. As a result, they identified instances in which the same individual was the subject of investigations in multiple jurisdictions.

Many customers commented that they did not previously know of the connections identified by GangTECC and would not have discovered them without GangTECC's assistance. As gang investigations expand into larger, cross-agency investigations and prosecutions, GangTECC's USMS representative told us that gang investigators in the field have received critical information about gang members who are wanted suspects, resulting in the apprehension of fugitive gang members.

However, GangTECC's efforts have been hindered by resource limitations. The GangTECC Director told us there have been at least five occasions when the Center has been unable to host, or even attend, case coordination meetings out of state because it was unable to fund travel costs. For example, GangTECC could not host case coordination meetings for two

cases involving a national gang. In other instances, GangTECC could not send representatives from all the components involved in a case against another national gang to a coordination meeting, nor could they send representatives from the state and local law enforcement agencies that were involved in the case. We were informed that videoconferencing or conference calls would not suffice for these meetings because the participants need case files available for review in order to share and exchange information about their investigations. Although some of the GangTECC representatives are allocated small budgets from their home components for gang-related cases, they are typically only permitted to use the funds for their home components' cases.

Almost all of the 12 GangTECC members we interviewed, as well as the GangTECC Director and Criminal Division officials, stressed that lack of an operating budget is the biggest hindrance for the Center, particularly when it prevents the Center's personnel from fully participating in case coordination meetings. The Criminal Division's FY 2009 congressional budget request recognized this problem, stating:

> Travel to various locations for investigative case coordination meetings, conferences and operational planning is a basic and essential need for the success of GangTECC. Currently, this travel is unfunded and being paid by each of the participating components when and if they can afford it.

As a result of the budgetary limitations on GangTECC's ability to execute its mission, opportunities to better coordinate the Department's efforts to combat gang crime have been missed.

Lack of technology hampers GangTECC's communications.

Although GangTECC members told us that cross-agency information sharing is relatively easy to accomplish given their proximity to each other, GangTECC members cannot e-mail documents to each other, use a uniform e-mail system to exchange information across components, or collectively store and track information on a shared drive. GangTECC members also cannot send Center-wide e-mails and electronic information to its customers because there is no common e-mail system. Instead, GangTECC members must use servers from their respective agencies to communicate electronically within GangTECC as well as to its customers.

The lack of a dedicated server inhibits GangTECC's ability to collectively store and track information. Rather, GangTECC members have been manually tracking the assistance they provide in hard copy logbooks. The GangTECC Director told us that having a common computer system or developing a method for existing system to communicate would greatly assist the Center in

its intelligence sharing and case coordination duties. In addition, almost every regional and national gang has a large presence on the Internet through social networking and private websites and GangTECC lacks funding for equipment to exploit this potential source of information on gangs.

GangTECC is unable to engage in needed outreach efforts.

We found that even though GangTECC has made some efforts, its services are not adequately advertised. GangTECC's operational plans state that its outreach efforts "will utilize various methods to inform federal, state, and local law enforcement and prosecutors of the resources available to them through GangTECC." The plans further specify that outreach "includes sponsoring domestic and international training, providing materials at national and regional conferences, and posting information on law enforcement websites and publications." In accordance with its operating plan, GangTECC has conducted several training sessions or presentations since its inception at a variety of venues, including the California Gang Investigators Association, the National District Attorneys Association, Project Safe Neighborhood conferences, the National Sheriffs' Association, the Virginia Department of Corrections, and the Los Angeles Sheriff's Department.

Nonetheless, field components generally remain unaware of GangTECC's services. Only 30 percent (7) of the GangTECC customers we interviewed told us that other agents or officers in their organization were aware of the Center. Four others said they believed that only those who worked gang investigations knew about GangTECC. At least two of the customers who received assistance from GangTECC (after the Center contacted their offices) still did not know what other types of services were provided by GangTECC. Another customer said "GangTECC is a good concept, but they need better communication with the field and better advertising as to what they can offer the field."

We found that GangTECC members are aware that the Center is not well known. Most GangTECC members we interviewed (8 of 12) also told us that only some in the law enforcement community were aware of the Center. Half of them (4 of 8) stated that those in the law enforcement community that were aware of GangTECC probably did not know what assistance GangTECC could provide. In fact, four believed the law enforcement community was not aware of GangTECC at all and that GangTECC needed to "advertise" more.

Forty percent of the GangTECC customers we interviewed stated that sending information via e-mail and making presentations at conferences and meetings is the best way for GangTECC to advertise its services. However, GangTECC's ability to sponsor training and produce conference materials to conduct outreach is hindered by the lack of an operating budget. Although GangTECC members have made presentations at approximately 60 meetings

and conferences, the Center has been unable to sponsor any "domestic and international training," as mandated by its Concept of Operation. Nor does GangTECC have money to produce materials for distribution at national and regional conferences.[43]

In late 2007, the Criminal Division agreed to make $25,000 available to GangTECC for outreach efforts in response to the Director's request for funds to cover training materials and related expenses for advertising at gang conferences. However, this small one-time disbursement is not sufficient to support GangTECC's long-term need to develop its training and outreach efforts.

In summary, the lack of an operating budget has hindered GangTECC's ability to function as the Department's anti-gang central coordination center. It has limited the Center's participation in case coordination meetings and prevented it from directly supporting field operational costs. Internally, the lack of its own budget has prevented GangTECC from funding its state and local law enforcement Executive Fellow program, limited its electronic communication and tracking capabilities, and limited its outreach efforts to other federal, state and local law enforcement agencies.

If GangTECC is to provide the services described in its operational plans, the Center will need a dedicated, annual operating budget. Other multi-agency enforcement centers, such as the Special Operations Division, EPIC, and OCDETF, have agency-sponsored funds made directly available to them that allow them to carry out their missions.[44] If the Department continues to view national anti-gang efforts as a priority and GangTECC as the best way to coordinate multi-agency anti-gang efforts, we believe it must seek more resources for the Center to allow it to fully achieve its mission.

[43] NGIC has included information about GangTECC in some of its pamphlets and brochures.

[44] EPIC is a multi-agency intelligence center that collects and disseminates information related to drug, alien, and weapon smuggling in support of field enforcement entities throughout the southwest region.

Recommendation

We recommend that:

7. The Department request a separate operating budget for GangTECC.

GangTECC lacks critical staff to provide guidance on gang investigations.

GangTECC's Concept of Operations states that, in addition to the Criminal Division attorneys initially assigned to GangTECC, "it is anticipated that the Gang Unit prosecutors will work closely with GangTECC." According to the Criminal Division's FY 2009 budget request, Gang Unit prosecutors are to "work hand-in-hand" with GangTECC and NGIC "to comprehensively target and coordinate multi-jurisdictional gang investigations and prosecutions and develop national strategies to disrupt and dismantle these dangerous organizations." However, we found that the Criminal Division has not assigned prosecutors to GangTECC and there are few instances in which GangTECC and the Gang Unit worked together.

The Criminal Division has not assigned prosecutors to GangTECC.

GangTECC's operational plan states that, in addition to providing a Director to GangTECC, the Criminal Division will assign one trial attorney on a full-time basis at the Center and that "additional prosecutors may be assigned to join GangTECC as the need arises." The trial attorney's duties were to (1) advise the agency representatives on legal matters, (2) assist the Director in his or her duties, and most importantly, (3) serve as an additional liaison between GangTECC and USAOs nationwide. The absence of an attorney to fulfill the liaison role between GangTECC and the USAOs has limited the Center's ability to coordinate with USAOs nationwide. A prosecutor's knowledge of USAO gang caseloads and strategies would assist GangTECC with case coordination and help GangTECC in resolving conflicts between different jurisdictions and agencies. The Criminal Division helped write and adopt the GangTECC operational plan. However, as of April 2009, the Criminal Division had not filled the trial attorney position or provided any other attorneys to GangTECC.

The presence of an attorney at GangTECC also would facilitate better interaction with the Criminal Division's Gang Unit. In the summer 2008, GangTECC members reported to OIG that it had very little interaction with Gang Unit attorneys. The Gang Unit Chief explained that interaction between Gang Unit prosecutors and GangTECC was hampered by the Gang Unit's shortage of prosecutors and a large caseload that requires Gang Unit attorneys to travel nationwide. As a result, Gang Unit prosecutors are not routinely available to work with GangTECC investigators. In May 2009, the GangTECC Director told the OIG that the Center's relationship with the Gang Unit had

improved from a year earlier. For example, he said Gang Unit attorneys are now working with GangTECC members to coordinate several cases. However, Gang Unit attorneys still do not typically spend time at GangTECC, attend any of GangTECC's staff meetings, and the two units occasionally have competing priorities.

According to the Gang Unit Chief, the Unit focuses on four particular gangs. In contrast, GangTECC investigates many different gangs, and GangTECC members told us that the Gang Unit may not always be interested in taking cases involving gangs other than the four it targets. We also found that there were no protocols that specify the nature of the coordination between GangTECC and the Gang Unit. GangTECC and the Gang Unit both have responsibilities related to the prosecution of gang cases and both entities receive requests for assistance with gang prosecutions from federal agents in the field. However, neither component has agreed on specific criteria to determine which gang cases should be referred to the Gang Unit. GangTECC personnel cited a problem in one case in February 2009 when GangTECC referred a national gang case to the Gang Unit for prosecution. Prior to accepting the case, the Gang Unit limited GangTECC's communication with the district's USAO staff that GangTECC found overly restrictive. We believe that GangTECC and the Gang Unit should develop written protocols that detail how the two groups will cooperate and coordinate their efforts.

In addition, four of the GangTECC customers (investigators) we interviewed said they needed guidance from prosecutors to get their cases prosecuted and suggested that GangTECC should facilitate their contact with an attorney. The Senior Counsel to the Criminal Division Assistant Attorney General told us the prosecutor's position in GangTECC had never been filled due to a lack of resources. The OIG believes that the addition of prosecutorial resources at GangTECC will enhance the Center's ability to assist with gang investigations and ultimately prosecutions.

Recommendations

We recommend that:

8. The Criminal Division assign and locate at GangTECC at least one full-time experienced prosecutor as discussed in GangTECC's Concept of Operations.

9. The Criminal Division and Governing Board direct GangTECC and the Gang Unit to jointly develop written protocols addressing: (a) how often and under what conditions GangTECC and the Gang Unit should meet to share information on gang-related cases; (b) what gang-related information should be regularly shared between the two

entities; (c) criteria for GangTECC to follow in referring gang cases to the Gang Unit; and (d) a method for determining which component will coordinate directly with the field office and district USAO.

Deconfliction by GangTECC is not occurring as directed by the Deputy Attorney General.

GangTECC is not serving as a national anti-gang deconfliction center as directed by the Deputy Attorney General. According to the GangTECC Director, effective deconfliction is required to avoid duplication of effort and to ensure resources are not wasted. Over its 3-year existence, however, GangTECC has not established itself as the central coordination center envisioned by its own Concept of Operations, which states that the Center will "provide a strong, national deconfliction center for gang operations." Moreover, the Department has not established policy to require that field component offices deconflict their gang cases through GangTECC, and few offices choose to do so. The following sections discuss GangTECC's attempts to implement an operational deconfliction process.

Participating GangTECC components and USAOs are not required to deconflict through GangTECC.

None of GangTECC's participating components require their field offices to notify GangTECC about newly opened gang cases. One component proposed an internal policy to require deconfliction with GangTECC. An FBI GangTECC member told us in March 2009 he drafted a policy that mandates FBI field offices use GangTECC to deconflict gang cases. The new policy would require field FBI investigators to notify GangTECC of new gang cases by including the FBI GangTECC representative in their electronic communications to FBI Headquarters. However, the proposed policy remains under review by FBI Headquarters officials. None of the other GangTECC components has implemented, or even proposed, a similar requirement.

We also noted that each of the 94 USAOs has designated an Anti-Gang Coordinator to provide leadership and focus to anti-gang efforts at the district level.[15] Although the Anti-Gang Coordinators work with local law enforcement and others to develop a comprehensive anti-gang strategy for their districts, they do not work with GangTECC – the Department entity created to develop that type of strategy. As a result, GangTECC is not notified when USAOs open or close gang cases.

[15] As part of the Department's anti-gang efforts, the Attorney General directed each United States Attorney to appoint an Anti-Gang Coordinator and to develop district-wide anti-gang strategies in January 2007. During 2008, the districts updated their anti-gang strategies and provided them to EOUSA.

Because neither the components' field offices nor the USAOs notify GangTECC about their gang investigations and cases, the Center cannot effectively deconflict the Department's anti-gang activities on a national level. We believe that requiring participating GangTECC components to notify GangTECC of newly opened gang cases in the field would be a significant step toward GangTECC addressing its deconfliction mission for the Department.

GangTECC suspended its pilot project to deconflict gang investigations.

In the absence of a Department requirement to notify GangTECC of anti-gang activities, in November 2008 GangTECC began a pilot project with NGIC to deconflict newly opened gang cases. The deconfliction process was intended to identify overlapping investigations and meet GangTECC's deconfliction responsibility. As described earlier, NGIC has not developed a gang database and therefore does not have the technology to query multiple data sources at once.

Instead, in the pilot project GangTECC members and NGIC analysts manually queried several databases. To accomplish this, GangTECC members generated lists every 30 days that contained the names and identifying information of targets of gang-related investigations opened in the prior 60 days. Each GangTECC member retrieved this information by querying their home agencies' databases. The lists of names generated were then provided to an NGIC analyst who ran the names through the databases of each participating component at NGIC.

GangTECC Deconfliction Efforts (FBI Cases Only)

221 hits:
- 94 from DEA
- 65 from USMS
- 50 from ATF
- 12 from ICE

38 significant names

The FBI was the first component to deconflict its gang targets for the pilot project. The initial FBI list contained over 500 names of individuals for whom the FBI had initiated investigations. When the NGIC analysts checked those names against the names of targets in four different member components' databases, the analysts obtained 221 "hits" (see text box). The analysts then informed the members of the respective components about the "hits." After a member from each component reviewed their respective component's cases, GangTECC began eliminating duplicates and aliases from the list. Through this exercise, GangTECC and NGIC analysts were able to identify that the FBI was investigating at least 38 gang targets who were also being investigated by another component or federal agency.

Although the manual deconfliction process identified some duplicate investigations, the GangTECC Director said it was too labor intensive. Consequently, he suspended the pilot project in April 2009. The GangTECC

Director told us that he met with the Special Operations Division and OCDETF in May 2009 to ask for assistance with deconfliction through analysis of communications data. OCDETF has a database that stores investigative information from multiple law enforcement agencies that could be used for deconfliction purposes, making the process less labor-intensive for NGIC analysts. As of June 2009, no agreement had been reached on OCEDTF's role in GangTECC's deconfliction process.

Early deconfliction of gang cases will maximize the use of resources and facilitate coordination of multi-jurisdictional gang investigations. The OIG believes the existence of a gang information management system is integral to GangTECC's meeting its deconfliction mission. Without a database and accurate knowledge of ongoing gang cases, GangTECC cannot effectively deconflict gang investigations.

Recommendations

We recommend that:

10. The Department require all participating GangTECC members report every newly opened gang-related investigation to GangTECC at the time the component opens the case.

11. The Department direct that each USAO notify GangTECC of each newly opened gang case immediately upon opening the case.

GangTECC's efforts to publicize its priority gang targets have lagged.

A primary GangTECC mission established in its operational plan is to develop an enhanced understanding of the national gang problem and propose strategies to neutralize the most violent and significant gang threats. In August 2006, GangTECC and NGIC identified 13 priority gang targets. During our interviews with GangTECC members in summer 2008, investigators stated that they were assigned specific gangs to monitor and had two on-going investigations involving priority targets.

Although GangTECC and NGIC shared the 13 priority targets with its Governing Board and the Department's Anti-Gang Coordinating Committee, it is unclear whether this information was shared with the rest of the law enforcement community, and we found little evidence regarding the use of this list beyond GangTECC and NGIC during our review.

In an effort to update the original list of 13 priority gang targets, GangTECC developed a new method to identify priority targets in the fall of 2008 which led to a new list of 17 priority gang targets. As of September 2009,

however, it had not shared the new list of 17 priority gang targets with the field. Separate from its effort to develop a list of priority gangs, in October 2007 GangTECC began to develop BOP targeting packages that identify inmates and their associates outside the prison system who engage in suspicious activities. The following sections describe GangTECC's efforts to identify the most serious gang threats.

GangTECC has developed a new method to identify priority targets.

GangTECC's operational plan calls for it to use information from NGIC and other sources to identify targets for investigations by field agents. Specifically, GangTECC's Concept of Operations states that the Center should "use the intelligence provided by NGIC and other sources to identify and recommend priority target groups, activities, geographic areas and individuals." The GangTECC Director said GangTECC's development of its Targeting Prioritization Project to update the existing list of 13 priority targets was delayed until September 2008 while NGIC worked with NDIC on the 2009 National Gang Threat Assessment, which was completed in November 2008.

GangTECC, with the assistance of NGIC, created a threat matrix that contained characteristics associated with each gang such as the gang's organization, its propensity for violent crime, the size of the gang, the types of weapons used by the gang, and whether the gang was involved in drug trafficking. The Centers then assigned point values to the characteristics in the matrix to develop a score corresponding to the relative threat posed by each gang, with a higher score indicating the gang was a greater threat relative to gangs with lower scores.

Once the Centers developed the threat matrix, GangTECC used information from the 2009 National Gang Threat Assessment as a source for information for its targeting project.[46] In February 2009, NGIC used the matrix to assign scores for the most reported gangs in the 2009 National Gang Threat Assessment. The gangs were assigned to one of two "tiers" based on their scores, with Tier 1 consisting of the two or three gangs that pose the greatest threat. According to the GangTECC Director, establishment of these tiers was intended to assist law enforcement agencies in each region with focusing their gang efforts on the most significant threats. Through its process, GangTECC identified 17 high priority gangs across the United States. Examples of high priority gangs identified by GangTECC include:

[46] In November 2008, NDIC and NGIC jointly completed the 2009 National Gang Threat Assessment. The Assessment provides an analysis of data collected from federal, state, and local law enforcement agencies about the nature of the gang problem in their areas. For the 2009 Assessment, the country was divided into seven regions and law enforcement personnel from each region identified the gangs they believed to be the most dangerous in their area.

- Gangster Disciples – This street gang is active in 110 cities and 31 states and has an estimated membership of 25,000 to 50,000. Their main source of income is the distribution of drugs, but the gang is also involved in other criminal activity, such as homicide, assault, auto theft, firearms violations, and money laundering.

- Sureños – This street gang is composed of members from various gangs who put aside former rivalries when they enter the prison system and unite under the name Sureños. Some members have direct links to Mexican drug trafficking organizations. Their main source of income is drug distribution within prison systems and in the community, as well as extortion of street-level drug distributors. They are also involved in other criminal activities such as assault, carjacking, home invasion, homicide, and robbery.

In April 2009, GangTECC shared the results of its prioritization assessment with its Governing Board, headquarters officials from its member agencies, EOUSA, and the Attorney General Anti-Gang Coordination Committee. However, as of September 2009, GangTECC had not shared the targeting results with the field. Although representatives from GangTECC's participating components received priority targeting results at the Board meeting, the information was not disseminated to their respective field offices.

In addition to these notifications, the GangTECC Director told the OIG that the priority target information will be disseminated to other law enforcement agencies through various presentations, including at Project Safe Neighborhood conferences. The Director stated that the information also will be distributed to state and local law enforcement in a tri-fold handout via mail, but he could not provide a timeframe on when this was to occur because GangTECC lacked the funds to design and print the brochure. According to the GangTECC Director, he would like to carry out the target prioritization process annually, but does not have an efficient method for collecting the requisite information on gang activity from law enforcement agencies.

Prior to identifying priority targets, GangTECC developed a strategy to identify outside targets that are potentially assisting criminal activity inside federal prisons. Specifically, GangTECC used information from BOP databases to develop "targeting packages" of information on gangs. The GangTECC/BOP Targeting Packages have successfully generated cases against gang members. According to the GangTECC Director, GangTECC is coordinating investigations on 5 of the 17 identified priority gangs.

GangTECC's lack of analytical support affects its ability to fully accomplish its targeting mission.

Because GangTECC does not have its own analytical capability, it is limited in its ability to independently identify priority targets and patterns that can be exploited by investigators. In addition, it cannot create strategic or tactical products for the field. The Deputy Attorney General's memorandum creating GangTECC required the participating member components to provide investigators, not analysts. Since investigators are not trained to perform the same type of work as analysts, the GangTECC Director told the OIG that the Center's targeting efforts were reliant upon NGIC's analytical resources.

This is consistent with the reason the two Centers were co-located - to facilitate interagency cooperation and gang-related information sharing. Despite the Centers collaborative efforts to identify priority targets, we found that gang information was rarely shared between GangTECC and NGIC. For example, in the summer 2008 several NGIC analysts and managers told the OIG that they were unfamiliar with GangTECC's mission. Also, half of GangTECC members stated they did not share any information with NGIC. We also believe that the efforts to inform the field of the priority targets could have occurred in a more timely fashion if the Centers had collaborated to do so.

We also note that unlike other multi-agency federal law enforcement centers, GangTECC does not have its own analytical resources. Other multi-agency entities such as the DEA's Special Operations Division and EPIC have analysts who are trained to provide strategic and operational support to the investigators. The Director of the Special Operations Division told the OIG that the Special Operations Division's investigators and analysts work in teams to facilitate better communication. The investigators direct the investigation and the analysts use databases, charts, and other information to show links between cases. In contrast, communication between NGIC analysts and GangTECC agents is disjointed when it occurs.

To assist Departmental anti-gang activities, GangTECC should develop a plan to improve how it identifies priority targets for the field and disseminate the information it develops in a timely manner. GangTECC has developed plans for targeting 4 priority targets, but must also develop additional strategies to address its remaining 13 priority targets. However, to carry out any such strategies or initiatives, GangTECC will need to address its lack of analytical support or develop a better working relationship with NGIC.

Recommendations

We recommend that:

12. GangTECC and NGIC (a) immediately disseminate information on the 17 gangs that they have identified as posing the greatest threat, and (b) develop a plan for periodically updating and disseminating information on high-threat gangs.

13. GangTECC and NGIC develop law enforcement strategies and initiatives to address the additional identified priority targets.

14. GangTECC and NGIC increase the use of NGIC's analytical resources to support GangTECC's targeting mission.

NGIC AND GANGTECC ARE NOT EFFECTIVE AS INDEPENDENT ENTITIES

NGIC and GangTECC are not operating effectively despite being co-located. We found that their separate management structures have hindered their ability to coordinate and communicate. As a result, the two centers do not provide a "one-stop shopping" capability that was envisioned and currently advertised.

The effectiveness of NGIC and GangTECC to contribute to the Department's anti-gang initiatives is dependent upon their working together to achieve common goals, which include deconflicting gang investigations, identifying priority targets, and sharing gang information. However, the OIG found that several factors, discussed in the sections above, impair their ability to achieve their common goals and contribute to the Department's anti-gang initiatives. We believe that the Department should consider merging the two organizations.

Both NGIC and GangTECC advertise at conferences and in their pamphlets that they provide investigators and prosecutors with a "one-stop shopping" capability for gang information and assistance. This capability has not been achieved, in part, because the Centers' separate management structures are not conducive to achieving these goals. These organizations have different approaches to funding, staffing requirements, and investigative priorities that prevent an effective partnership between the two Centers. Co-location of NGIC and GangTECC was not enough to overcome these differences in order for an effective partnership to occur.

Instead, NGIC and GangTECC communicate on an ad hoc and limited basis. For example, GangTECC members told the OIG that they did not communicate with NGIC analysts on a regular basis. In addition, some GangTECC personnel we interviewed were unfamiliar with NGIC's intelligence products, while other GangTECC personnel found NGIC intelligence products useful only for general background information for their investigations.

The lack of coordination between the Centers was recognized by some NGIC and GangTECC personnel we interviewed. For example, one NGIC staff member stated that the two organizations did not work together as much as he expected given their close proximity to one another and their similar goals and objectives. In addition, an NGIC analyst stated that the operations of the two organizations are not cohesive and that the Centers did not mesh together structurally. A GangTECC agent voiced similar thoughts, stating that GangTECC needed to find a direction in concert with NGIC, and that there was not enough coordination between the two entities.

Combining the two organizations under a single Department entity could facilitate a common vision for the two organizations and a more uniform approach to assisting gang investigations, create a better joint operating environment, and provide for a more reliable resource stream to support the Centers' missions. A merger also would enable the Centers to move closer to providing the "one-stop shopping" capability that was envisioned and is advertised. We therefore believe that the Department should consider merging NGIC and GangTECC into a single unit under common leadership.

While a merger of the Centers will provide a more uniform approach to assisting gang investigations and prosecutions, merger alone is insufficient to assure a major contribution to the Department's anti-gang initiatives. Major improvements are needed in the areas discussed in this report if the Centers are to effectively coordinate and support gang investigators and prosecutors nationwide.

Recommendation

We recommend that:

15. The Department consider merging NGIC and GangTECC.

CONCLUSION AND RECOMMENDATIONS

NGIC and GangTECC were created to be the Department's national intelligence and coordination mechanisms, respectively, for gang-related investigations and prosecutions. However, we found that after more than 3 years, the Centers have not significantly improved the coordination and execution of the Department's anti-gang initiatives. Although the Centers were co-located to facilitate interagency cooperation, collaboration, and gang-related information sharing, they are not effectively doing so. Many factors contributed to the Centers' inability to make a significant impact on the Department's anti-gang activities.

For example, we found that because of poor performance by a contractor and technological challenges associated with establishing electronic bridges between disparate state and local databases, NGIC has not established a gang information database for collecting and disseminating gang intelligence as directed by Congress. We believe that development of a gang information management system is crucial to support the Department's anti-gang initiatives and must be achieved as soon as possible.

Although the NGIC and GangTECC partnership was created to provide investigators and prosecutors with "one-stop shopping" for gang information and assistance, that has not occurred. For example, because GangTECC's member agencies and USAOs are not required to inform GangTECC of their investigations and prosecutions, GangTECC cannot effectively deconflict the Department's gang-related activities as directed by the Deputy Attorney General. Also, the Criminal Division has not filled an attorney position intended to enable GangTECC to provide guidance to law enforcement officials conducting gang investigations and prosecutions. GangTECC's efforts to publicize priority gang targets have lagged.

NGIC is perceived as predominately an FBI organization, and it does not effectively share gang intelligence and information with other law enforcement organizations. Overall, in the 38-month period we examined, NGIC received only 213 requests for information – about 6 requests a month. Moreover, the preponderance of FBI and internal requests suggests that the NGIC remains primarily focused on FBI investigations and has not become the national resource on gang intelligence for federal, state, and local law enforcement as envisioned. Also, NGIC's intelligence products have limited usefulness to its customers. We believe this is due in part to the Center's failure to monitor its customers' needs or satisfaction with its products and services.

We also found that, although the Centers were co-located to facilitate interagency cooperation, collaboration, and gang-related information sharing, NGIC and GangTECC have made only limited use of each others' resources.

Furthermore, services and communication between the two Centers' personnel occur only on an ad hoc basis.

Finally, although GangTECC was assigned a broad, multi-purpose mission, it has no operating budget. This has prevented GangTECC managers from taking actions essential to GangTECC's operations. Among other things, GangTECC has been limited in its ability to host case coordination meetings and conduct effective outreach to the law enforcement community.

Since co-location of the Centers has proven insufficient to ensure that their common goals are met, the OIG recommends that the Department consider merging NGIC and GangTECC into a single unit under common leadership. Merging the Centers could improve their ability to support and coordinate the Department's anti-gang initiatives at a national level by reducing incompatibilities that result from the current organizational alignment, creating a better joint operating environment, and providing for a more reliable resource stream to support the Centers' mission.

However, while we believe that merging the Centers could improve their ability to assist gang investigations and prosecutions, merger alone is insufficient to support the Department's anti-gang initiatives. Major improvements are needed in the areas discussed in this report if the Centers are to effectively coordinate and support gang investigators and prosecutors nationwide. We therefore make 15 recommendations to help improve the NGIC's and GangTECC's missions of assisting federal, state, and local law enforcement to address violent regional and national gangs.

Recommendations

We recommend that:

1. NGIC establish a working group composed of representatives from its member agencies and state and local law enforcement to identify methods for sharing gang-related intelligence across the law enforcement community. This working group should address, among other issues: (a) a definition of "gang" and criteria for identifying gang membership; and (b) data standards for entering gang information into databases.

2. NGIC create an implementation plan that identifies functional requirements with milestone dates to procure a gang information management system.

3. NGIC analyze the responses to past customer surveys on intelligence products to identify improvements that would make its intelligence products more useful to customers.

4. NGIC expand its customer satisfaction surveys to include recipients of all of its products and services.

5. NGIC analyze the types of information being requested and the time spent responding to each request type to better allocate its resources.

6. NGIC track all of requests for information that it receives.

7. The Department request a separate operating budget for GangTECC.

8. The Criminal Division assign and locate at GangTECC at least one full-time experienced prosecutor as discussed in GangTECC's Concept of Operations.

9. The Criminal Division and Governing Board direct GangTECC and the Gang Unit to jointly develop written protocols addressing: (a) how often and under what conditions GangTECC and the Gang Unit should meet to share information on gang-related cases; (b) what gang-related information should be regularly shared between the two entities; (c) criteria for GangTECC to follow in referring gang cases to the Gang Unit; and (d) a method for determining which component will coordinate directly with the field office and district USAO.

10. The Department require all participating GangTECC members report every newly opened gang-related investigation to GangTECC at the time the component opens the case.

11. The Department direct that each USAO notify GangTECC of each newly opened gang case immediately upon opening the case.

12. GangTECC and NGIC (a) immediately disseminate information on the 17 gangs that they have identified as posing the greatest threat, and (b) develop a plan for periodically updating and disseminating information on high-threat gangs.

13. GangTECC and NGIC develop law enforcement strategies and initiatives to address the additional identified priority targets.

14. GangTECC and NGIC increase the use of NGIC's analytical resources to support GangTECC's targeting mission.

15. The Department consider merging NGIC and GangTECC.

APPENDIX I: METHODOLOGY OF THE OIG REVIEW

We conducted in-person and telephone interviews, performed data analyses and document reviews, and observed information systems and database demonstrations. We also observed an NGIC criminal analytic training conference and visited the DEA's Special Operations Division facility. In addition, we coordinated with the U.S. Government Accountability Office (GAO), which was conducting both domestic and international gang reviews concurrently with this OIG review, to ensure that our review was not duplicative of GAO's.

Interviews

NGIC and GangTECC. We interviewed NGIC and GangTECC personnel to learn about their roles and responsibilities and how the two Centers interact with each other. At NGIC, we interviewed the Director, Deputy Director, 2 supervisory intelligence analysts, 14 intelligence analysts, 1 program analyst, and 1 former law enforcement fellow. We also interviewed three newly assigned NGIC personnel from CBP and DoD. In March 2009, we conducted follow-up interviews with six NGIC analysts to assess whether changes in operations had occurred since our initial interviews.

At GangTECC, we interviewed the Director, Deputy Director, and 12 GangTECC members (11 investigators and 1 intelligence officer). We also conducted follow-up interviews with six GangTECC members to assess whether changes had occurred since our initial interviews.

Department Components. We interviewed officials from the Department's federal law enforcement components listed below to discuss their programs and methods for investigating gang crime and how they interact with NGIC and GangTECC. We also interviewed personnel from the Criminal Division, Office of the Deputy Attorney General (ODAG), the Executive Office for the United States Attorneys (EOUSA), and the Justice Management Division (JMD) to gather information about the creation of both Centers, oversight mechanisms in place, prosecution of gang crime, and NGIC and GangTECC's budgets. The following is a list of the staff we interviewed at each component:

- ATF – We interviewed personnel from the Field Management Staff, the Office of Training and Professional Development, the Firearms Division, Field Intelligence, the Office of Strategic Intelligence and Information, and the Firearms Enforcement Branch. We also interviewed ATF field personnel who received assistance from GangTECC.

- DEA – We interviewed DEA field personnel who received assistance from GangTECC.

- FBI – We interviewed the former Section Chief of the Gang/Criminal Enterprise Section, the Chief of the MS-13 National Gang Task Force, FBI budget personnel to obtain an understanding of NGIC's budget, and FBI field personnel who received assistance from NGIC and GangTECC.

- USMS – We interviewed the Chief Inspector of Task Force Operations in the Investigative Services Division, a Senior Inspector located at the BOP's Sacramento Intelligence Unit, and a USMS field representative who received assistance from GangTECC.

- Criminal Division – We interviewed the former Deputy Assistant Attorney General, the former Senior Counsel to the Assistant Attorney General, the Gang Unit Chief, and the Acting Director of Resource Planning and Evaluation regarding budget requests made on behalf of GangTECC.

- ODAG – We spoke with the current and two former Chairs of the Attorney General's Anti-Gang Coordination Committee and a former Senior Counsel to the Deputy Attorney General.

- EOUSA – We interviewed the Counsel for Legal Initiatives and an attorney detailed to the National Anti-Gang Coordinator position.

- JMD – We obtained budget information about GangTECC from the Deputy Assistant Attorney General Controller in JMD and staff from the JMD's budget office.

- DEA's Special Operations Division - We gathered information about the DEA's Special Operations Division creation, structure, operation, and its interaction with the field and GangTECC. In addition, managers from the Special Operations Division and the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center explained to OIG evaluators how these two organizations interact with each other.[47] We compared the Special Operations Division organization (another multi-agency component) with that of the two Centers to determine if there were "lessons learned" that could be adopted by NGIC and GangTECC.

[47] OCDETF is a multi-agency center led by the DEA. OCDETF's primary mission is to identify, disrupt, and dismantle the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation's drug supply.

Non-Department Personnel. We conducted telephone interviews with personnel from the following state, local, and international law enforcement agencies who received assistance from NGIC and GangTECC from 2006 to 2008 in order to collect data on the services each Center provided to its customers: (1) Prince William County Police Department in Virginia, (2) Houston Police Department in Texas, (3) Bucks County Department of Corrections in Pennsylvania, (4) Wyandotte Police Department in Michigan, (5) Society Hill Police Department in South Carolina, (6) Royal Canadian Mounted Police in Canada, and (7) Europol office in Washington, D.C. We also conducted a telephone interview with a representative from the Chicago Legal Aid Office in Illinois who had requested assistance from NGIC.

Data Analyses

We analyzed NGIC's workload to identify any trends and patterns in the type of work being done at the Center. We also analyzed customer satisfaction surveys returned to NGIC. In addition, we reviewed logbooks in which some GangTECC members manually record work they performed. Finally, we performed analyses to identify trends and patterns in NGIC and GangTECC customer bases.

NGIC. We analyzed NGIC's Request for Information database for the period of January 1, 2006, to February 19, 2009, to determine the number and types of requests NGIC received by fiscal year, the entities that submitted the requests, the length of time NGIC took to process the requests, and which NGIC personnel processed the requests.

We analyzed interview responses for selected NGIC customers regarding customer opinions of the services or assistance received, how the services or assistance received was used by the customers, and what other NGIC services or assistance the customers would have found useful. We selected every fourth NGIC customer entered in the NGIC's database for interview. Of the 33 customer entries selected, we analyzed customer responses for 27 entries. We were unable to reach the customers for the remaining 6 entries.

We also reviewed customer satisfaction surveys returned to NGIC during the period January 2006 to March 2007. We reviewed the surveys to determine the average scores given by NGIC customers on the quality and value of NGIC intelligence products that they received. We analyzed additional comments given by NGIC customers regarding the intelligence products that were used to identify patterns and trends.

GangTECC. Some GangTECC members record the work they perform in one or more of the four logbooks that represent GangTECC's four goals described in the Background section of our report. Entries are made in the

corresponding logbook based on the task or service a member performed. We reviewed the 363 entries made in the logbooks from January 1, 2008, through July 31, 2008.

We selected the customer for every tenth logbook entry, which yielded 36 customers, whom we then attempted to contact. We analyzed customer responses for the 24 customers who completed our telephone interviews regarding the types of services or assistance received, how they used the services or assistance they received, what other services the customers would like from GangTECC, and their awareness of GangTECC services in the field.

Information Systems

NGIC and GangTECC personnel provided demonstrations of the various agency-specific information systems and databases they use in their daily work. In addition, we were given access to the FBI's LEO network where NGIC maintains a Special Interest Group for subscribers to share gang information and where NGIC posts its intelligence assessments, bulletins, and information papers.

Document Review

We reviewed Attorney General and Deputy Attorney General documents that established GangTECC. We also examined internal and congressional documents related to NGIC's budget authorization and appropriations and GangTECC's budget requests.

We reviewed the Concepts of Operations for both Centers and analyzed the Centers' effectiveness in meeting the goals and objectives established for them by the Governing Board. We also reviewed NGIC's organizational structure, examples of intelligence products, internal reports on the effectiveness and efficiency of NGIC operations, outreach efforts, and training material. We assessed GangTECC's communication policies and procedures; examples of GangTECC services, outreach efforts, and success stories; and the logbooks used to track customer requests and workload.

We also reviewed information provided by the participating Department's agencies and components pertaining to their respective gang-related law enforcement operations and initiatives, gang investigation tracking methods, and gang-related performance measurements so that we could assess the availability of gang data and refine our review plan.

APPENDIX II: NGIC PUBLIC LAW

SEC. 1107. NATIONAL GANG INTELLIGENCE CENTER. 28 USC 534 note.

(a) ESTABLISHMENT.—The Attorney General shall establish a National Gang Intelligence Center and gang information database to be housed at and administered by the Federal Bureau of Investigation to collect, analyze, and disseminate gang activity information from— Records

(1) the Federal Bureau of Investigation;
(2) the Bureau of Alcohol, Tobacco, Firearms, and Explosives;
(3) the Drug Enforcement Administration;
(4) the Bureau of Prisons;
(5) the United States Marshals Service;
(6) the Directorate of Border and Transportation Security of the Department of Homeland Security;
(7) the Department of Housing and Urban Development;

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(8) State and local law enforcement;
(9) Federal, State, and local prosecutors;
(10) Federal, State, and local probation and parole offices;
(11) Federal, State, and local prisons and jails; and
(12) any other entity as appropriate.

(b) INFORMATION.—The Center established under subsection (a) shall make available the information referred to in subsection (a) to—

(1) Federal, State, and local law enforcement agencies;
(2) Federal, State, and local corrections agencies and penal institutions;
(3) Federal, State, and local prosecutorial agencies; and
(4) any other entity as appropriate.

(c) ANNUAL REPORT.—The Center established under subsection (a) shall annually submit to Congress a report on gang activity.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $10,000,000 for fiscal year 2006 and for each fiscal year thereafter.

APPENDIX III: NGIC CONCEPT OF OPERATIONS (EXCERPT)

Goal 1: Establish and maintain an FBI-facilitated multi-agency NGIC.

- Objective: Establish cooperation and/or participation from the ATF, BOP, DEA, DOJ, ICE, NDIC, RISS, and USMS in staffing the NGIC through the assignment of Intelligence Analytical personnel and/or the provision of data or other support

- Objective: Develop a Memorandum of Understanding (MOU) with each participating agency.

- Objective: Coordinate with the Office of Congressional Affairs, or agency equivalent, to seek Congressional funding for federal agency support to the NGIC.

- Objective: Coordinate with RISS to promote effective information flow and information sharing between the NGIC and the federal, state, local, and tribal law enforcement community.

Goal 2: Research, acquire, and implement technology to manage the exchange of gang information among federal, state, local, and tribal law enforcement agencies.

- Objective: Coordinate with participating agencies to research and identify in-house or commercial technology available to the NGIC for the efficient collection, storage, and manipulation of federal, state, local, and tribal gang information.

- Objective: Establish an information exchange backbone and leverage existing networks.

- Objective: Through available technology, establish "electronic bridges" to federal, state, and local IT systems.

Goal 3: Provide the law enforcement community with a "one-stop-shop" mechanism for quick-checks or data calls to support law enforcement requests for information regarding suspected or known gangs and/or gang members.

- Objective: Develop and implement NGIC protocols to provide a timely and comprehensive response to requests for information, representing a coordinated integration of participating agencies' information.

- Objective: Create a centralized data management system within the NGIC for all relevant gang intelligence collected through normal operations of the NGIC, and public source information collected as permitted by statute and policy. NGIC does not intend to create a national gang database.

- Objective: Create and maintain a current, comprehensive library of gang identification symbols, clothing, signs, tattoos, codes, writings, graffiti, and philosophies through the collection of raw intelligence and investigative information voluntarily submitted by the law enforcement community.

- Objective: Consult with Counsel's offices of all participating agencies and the DOJ on legal issues regarding information sharing of intelligence and investigative information.

Goal 4: Conduct timely research and analysis which seeks to identify and neutralize emerging trends of the most violent gangs.

- Objective: Identify National Gang Collection Priorities (NGCP's) for the purposes of collecting intelligence on domestic and transnational gangs that pose a significant multi-jurisdiction threat and that adversely impact many communities through violence, drug distribution, and recruitment of local youth.

- Objective: Identify trends and patterns of both domestic and transnational gang activities as they relate to issues of national security, border protection, and public safety.

- Objective: Produce actionable coordinated tactical and/or strategic intelligence products (including, but not limited to: Intelligence Assessments, Intelligence Bulletins, both Regional and National Threat Assessments, Target Support Packages, and Information Papers), using sophisticated technical and analytical tools, to support the initiation and enhancement of gang investigative efforts.

- Objective: Implement biometrics to include facial recognition capabilities within the NGIC and interface with state, local, and tribal agencies.

Goal 5: Provide analytic support to law enforcement investigations, operational/intelligence initiatives, and issues of immediate concern.

- Objective: Assist the Gang Targeting Enforcement and Coordination Center (GangTECC) and law enforcement agencies in prioritizing targets

for investigation and prosecution, devising investigative strategies, and allocating resources to address gang problems.

Goal 6: Provide intelligence support for GangTECC and other law enforcement agencies to deconflict and coordinate gang related investigations and prosecutions.

- Objective: Establish a relationship between the NGIC and GangTECC, to include the co-location of the two entities.

- Objective: Through requests for information and relational analyses of pending and closed gang investigations reported to the NGIC, develop and implement procedures to identify conflict and report, as appropriate, to GangTECC.

Goal 7: Develop and maintain strong partner and customer relations to maximize analytical and information exchange efforts.

- Objective: Assist United States and foreign law enforcement, whenever possible, in identifying those gangs posing the greatest threat through information-sharing forums and dissemination of various intelligence products.

- Objective: Host workshops and in-service training focusing on specific priority groups, geographical regions, and/or specific gang issues.

- Objective: Establish a Law Enforcement Fellows Program allowing state and/or local sworn and analytical personnel to work in the NGIC for a six-month period of time, to foster state and local law enforcement ties.

APPENDIX IV: GANGTECC CONCEPT OF OPERATIONS (EXCERPT)

Goal 1: Assisting the initiation of gang-related investigations and enhancing existing investigations and prosecutions.

- Objective: GangTECC will proactively identify and disseminate case-specific intelligence to federal, state and local law enforcement that can be used to support gang-related investigations and prosecutions.
- Objective: GangTECC will facilitate the development of targeted strategic and tactical products designed specifically to support investigations and prosecutions.
- Objective: GangTECC will collect and share gang-related intelligence, analysis and targeting information, in cooperation with originating agencies and existing practices.
- Objective: GangTECC will provide additional assistance to law enforcement and prosecutors as requested and as appropriate, given resources and priorities.

Goal 2: Aiding in coordination, deconfliction, and effectiveness of gang-related initiatives, investigations and prosecutions.

- Objective: GangTECC will identify appropriate opportunities for inter-agency and inter-district coordination and will help link together local investigations and prosecutions into coordinated, strategic, inter-agency, inter- jurisdictional enforcement operations, consistent with existing authorities and practices of the Departments of Justice and Homeland Security.
- Objective: GangTECC will help to connect investigators and prosecutors to resources and intelligence outside their districts.
- Objective: To identify cross-district and cross-agency linkages, GangTECC will coordinate closely with, and will rely on the capabilities of, existing entities such as Special Operations Division (SOD) and ATF's National Tracing Center.

- Objective: GangTECC will assist in resolving conflicts between different jurisdictions and agencies when their investigations or prosecutions overlap.

Goal 3: Developing an enhanced understanding of the national gang problem and propose strategies to neutralize the most violent and significant threats.

- Objective: GangTECC will use the intelligence provided by the National Gang Intelligence Center (NGIC) and other sources to identify and recommend priority target groups, activities, geographic areas and individuals.

- Objective: GangTECC will use intelligence generated by the NGIC, as well as independent assessments of gang-related drug trafficking, firearms trafficking, and other interstate and international criminal activities, including the fugitive status of gang members, to help identify patterns that can be exploited by investigators and prosecutors.

- Objective: GangTECC will help develop strategies and initiatives that address those priority targets.

Goal 4: Coordinating with and supporting the NGIC.

- Objective: The interagency NGIC has as its core mission the collection, analysis and dissemination of gang-related intelligence. GangTECC will co-locate with the NGIC and will serve as a major customer of the intelligence products of the NGIC.

- Objective: GangTECC will share information with NGIC on its identified priority target recommendations, and will focus and prioritize intelligence collection and analysis through taskings and other guidance to the NGIC.

- Objective: GangTECC will help ensure that case-related intelligence in the field is being shared with the NGIC in a timely manner.

- Objective: GangTECC will work with the NGIC to address any problems inherent in the collection of gang-related intelligence from the field or other Centers.

APPENDIX V: DEPUTY ATTORNEY GENERAL MEMORANDUM

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

July 25, 2006

MEMORANDUM FOR ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES
ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION
DIRECTOR, FEDERAL BUREAU OF PRISONS
DIRECTOR, UNITED STATES MARSHALS SERVICE
DIRECTOR, NATIONAL GANG TARGETING, ENFORCEMENT, AND COORDINATION CENTER
DIRECTOR, NATIONAL GANG INTELLIGENCE CENTER
CHIEF INFORMATION OFFICER, DEPARTMENT OF JUSTICE
CHIEF INFORMATION OFFICER, FEDERAL BUREAU OF INVESTIGATION
CHAIR, ATTORNEY GENERAL'S ANTI-GANG COORDINATION COMMITTEE

FROM: Paul J. McNulty
Deputy Attorney General

SUBJECT: Establishment of the National Gang Targeting, Enforcement & Coordination Center (GangTECC) and Governing Board of GangTECC and the National Gang Intelligence Center

I. Establishment of the National Gang Targeting, Enforcement & Coordination Center

On February 15, 2006, the Attorney General announced plans to create a new national anti-gang task force as part of his initiative to combat gangs and gang violence across America. The Attorney General envisioned a task force that would create law enforcement strategies and facilitate operations across agency lines aimed at dismantling national and trans-national violent gangs. This task force would also coordinate overlapping investigations, ensure that tactical and strategic intelligence is shared between law enforcement agencies, and serve as a central coordinating center for multi-jurisdictional gang investigations involving federal law enforcement agencies.

On June 26, 2006, the National Gang Targeting, Enforcement & Coordination Center (GangTECC) began operations. In accordance with the Attorney General's direction, GangTECC is a multi-agency center that will serve as a critical catalyst in a unified federal effort to help disrupt and dismantle the most violent gangs in the United States. GangTECC will be co-located with the National Gang Intelligence Center (NGIC), which is temporarily housed in Washington, DC, at the FBI Headquarters. GangTECC will work in close coordination with the NGIC, and will be a primary consumer of NGIC intelligence. Specifically, GangTECC will:

- Assist the initiation of gang-related investigations and enhance existing investigations and prosecutions;
- Aid in coordination, deconfliction, and effectiveness of gang-related initiatives, investigations and prosecutions;
- Develop an enhanced understanding of the national gang problem and propose strategies and targets to neutralize the most violent and significant threats; and
- Coordinate with and support the National Gang Intelligence Center.

GangTECC is managed by a Director, selected by the Assistant Attorney General for the Criminal Division, and supported by an interagency team of Federal agents and prosecutors. The following agencies currently participate in GangTECC:

Bureau of Alcohol, Tobacco, Firearms and Explosives
Criminal Division
Drug Enforcement Administration
Federal Bureau of Investigation
Federal Bureau of Prisons
United States Marshals Service
Bureau of Immigration and Customs Enforcement, Department of Homeland Security

Given state and local law enforcement's critical expertise in combating gangs, I hereby direct the Director of GangTECC to explore all available options for ensuring state and local law enforcement representation in GangTECC. Additional participants may be added as appropriate.

To ensure consistent Department participation in GangTECC, I further direct the Bureau of Alcohol, Tobacco, Firearms and Explosives and the Federal Bureau of Investigation to assign at least two experienced agents full time to GangTECC, effective July 2006. The Drug Enforcement Administration and United States Marshals Service shall assign at least one experienced agent, and the Federal Bureau of Prisons shall assign at least one experienced representative, full time to GangTECC, effective July 2006. Agents assigned to GangTECC shall be subject to approval by the Assistant Attorney General for the Criminal Division.

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Combating the threat of violent criminal gangs is one of the Department's top priorities. I appreciate the work undertaken by Department agents and prosecutors, our interagency partners from the Department of Homeland Security, and representatives from various intelligence and investigative associations that has provided the platform from which this coordination center could be launched. These next few months are critical to ensuring successful operations of this center, and I ask that all Department components and agencies commit to supporting this effort.

II. Establishment of the Governing Board of GangTECC and the National Gang Intelligence Center

On July 28, 2005, Deputy Attorney General James B. Comey established the Governing Board of the National Gang Intelligence Center (NGIC). The close relationship and coordination between GangTECC and the NGIC now counsels for expansion of that Governing Board to oversee the activities of both entities.

Therefore, to ensure the most effective coordination of anti-gang efforts by the Department, there is hereby established the National Gang Intelligence and Coordination Center Governing Board ("Governing Board"). The Director, NGIC, and the Director, GangTECC, shall co-chair the Governing Board.

The Governing Board shall have the following members:

- Director, Federal Bureau of Investigation
- Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives
- Assistant Attorney General, Criminal Division
- Administrator, Drug Enforcement Administration
- Director, Executive Office for United States Attorneys
- Director, Federal Bureau of Prisons
- Director, United States Marshals Service
- Director, National Gang Intelligence Center
- Director, National Gang Targeting, Enforcement & Coordination Center
- Chief Information Officer, Department of Justice
- Chief Information Officer, Federal Bureau of Investigation
- Chair, Subcommittee on Violent and Organized Crime, Attorney General's Advisory Committee
- Chair, Attorney General's Anti-Gang Coordination Committee

A member of the Governing Board may designate any person who is part of the member's component or committee to perform the duties of the member on the Governing Board. The Board may add such other members, invitees, or participants as it deems appropriate.

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The Governing Board shall approve policies and procedures for the NGIC and GangTECC, including, but not limited to, the concept of operations and any necessary standard operating procedures for the two entities. The Governing Board shall ensure that all NGIC and GangTECC policies and procedures are consistent with the anti-gang policies established by the Attorney General, the Deputy Attorney General, and the Attorney General's Anti-Gang Coordination Committee (the Committee).

The Governing Board shall meet within 30 days of the date of this memorandum and thereafter at the call of the co-chairs, but not less than once quarterly.

No later than 90 days from the date of this memorandum, the Governing Board shall submit a written report to the Committee updating the progress on the governing documents for both the NGIC and GangTECC, and reporting on the activities of each. No later than 180 days from the date of this memorandum, the Governing Board shall submit a written report to the Committee outlining plans for relocating the NGIC and GangTECC to a new location recommended by the Governing Board. In reviewing potential locations, the Governing Board shall consider co-location with the Special Operations Division in Chantilly, Virginia. The relocation shall proceed with all deliberate speed, and shall occur no later than March 31, 2007. Thereafter the Governing Board shall submit an annual report to the Committee detailing the activities and successes of both the NGIC and GangTECC, no later than the last day of each fiscal year.

To the extent this memorandum conflicts with the July 28, 2005, Deputy Attorney General's memorandum establishing the Governing Board of the NGIC, this memorandum controls.

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APPENDIX VI: GLOSSARY

AGCC	Attorney General's Anti-Gang Coordination Committee
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BOP	Federal Bureau of Prisons
CBP	Customs and Border Protection (Department of Homeland Security)
DEA	Drug Enforcement Administration
DoD	Department of Defense
EOUSA	Executive Office for United States Attorneys
EPIC	El Paso Intelligence Center
FBI	Federal Bureau of Investigation
GangTECC	National Gang Targeting, Enforcement, and Coordination Center
GAO	Government Accountability Office
HIDTA	High Intensity Drug Trafficking Areas
ICE	Immigration and Customs Enforcement (Department of Homeland Security)
JMD	Justice Management Division
LEAP	Leadership Excellence and Achievement Program
LEO	Law Enforcement Online
NDIC	National Drug Intelligence Center
NGIC	National Gang Intelligence Center
OCDETF	Organized Crime Drug Enforcement Task Force
ODAG	Office of the Deputy Attorney General

ONDCP	Office of National Drug Control Policy
RICO	Racketeer Influenced and Corrupt Organizations Act
RISS	Regional Information Sharing Systems
USAO	United States Attorney's Office
USMS	U.S. Marshals Service

APPENDIX VII: DEPARTMENT'S RESPONSE

U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

November 10, 2009

MEMORANDUM

TO: Michael D. Gulledge
Assistant Inspector General for Evaluation and Inspection
Office of the Inspector General

FROM: Jennifer Shasky Calvery
Senior Counsel
Office of the Deputy Attorney General

SUBJECT: Joint Response to the OIG's Draft Report: "A Review of the Department's Anti-Gang Intelligence and Coordination Centers"

The Office of the Deputy Attorney General (ODAG) very much appreciates the opportunity to review and respond to the Office of the Inspector General's drat audit report entitled, "A Review of the Department's Anti-Gang Intelligence and Coordination Centers" (hereinafter, "Report"). This memorandum will serve as the joint response to the Report on behalf of the Criminal Division, the Federal Bureau of Investigation (FBI), and the ODAG.

The Department of Justice is highly committed to leading the effort to combat the public safety threat posed by national and international gangs. We are equally committed to providing effective and comprehensive gang intelligence and coordination services to support enhanced gang investigations and prosecutions nationwide.

The Report documents the Department's challenges in achieving the maximum impact at the national level against the most violent gangs in the United States, and providing investigators and prosecutors with one integrated source for gang information and assistance. The Department agrees with the concept of the recommendations that are reflected in the body of the Report and is taking steps to address each of those recommendations. At the same time, we recognize, and have discussed with OIG staff, that we are considering organizational changes that might modify how we implement those recommendations in order to achieve the most effective resolution to the matters under review.

Notwithstanding the challenges, it also bears noting that the Department's anti-gang intelligence and coordination centers have been working together and within two months of working together, the centers jointly identified 13 priority gang threats. Accordingly, they have certainly established a foundation upon which to build further success. Addressing the identified challenges will only serve to enhance their overall effectiveness and increase their impact on the gang problem in this country.

In conclusion, based upon a review of the Report, the ODAG agrees in concept with all 15 recommendations directed to the Criminal Division, FBI, and ODAG and is in the process of evaluating and formulating measures to resolve many of the identified issues. The ODAG appreciates the professionalism exhibited by your staff in working jointly with our combined representatives to complete this evaluation and inspection.

Please feel free to contact me should you have any questions.

APPENDIX VIII: OIG ANALYSIS OF THE DEPARTMENT'S RESPONSE

The Office of the Inspector General provided a draft of this report to the Office of the Deputy Attorney General (ODAG), the Criminal Division, and the FBI for their comments. The consolidated Department response prepared by the ODAG is included in Appendix VII of this report. The OIG's analysis of the Department's response and the actions necessary to close the recommendations are discussed below.

Recommendations 1 to 15. See pages 43 and 44 for the text of the recommendations.

Status. Unresolved – open.

Summary of the Department's response. The Department agreed in concept with all of the recommendations in the report. The Department also stated that it is in the process of evaluating and formulating measures to address the recommendations, which may include considering organizational changes. The Department also stated that the final form of the organizational changes might affect how it implements the measures to achieve the most effective resolution to identified issues.

OIG Analysis. Because the Department did not provide specific responses to the recommendations, or a discussion of any specific planned corrective actions or proposed completion dates, we consider all recommendations in this report to be "unresolved." To resolve the recommendations, the Department should provide specific responses to the recommendations, including proposed corrective actions and completion dates, by January 29, 2010.

EXPLOSIVES INVESTIGATION COORDINATION BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

U.S. Department of Justice
Office of the Inspector General
Audit Division

Audit Report 10-01
October 2009

EXPLOSIVES INVESTIGATION COORDINATION BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

EXECUTIVE SUMMARY

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI) share jurisdiction for investigating federal explosives crimes.[1] Despite attempts at coordination and division of jurisdiction, these components have historically developed separate and often conflicting approaches to explosives investigations and related activities such as explosives training, information sharing, and forensic analysis.

OIG Audit Approach

This Office of the Inspector General (OIG) audit examined the Department of Justice (DOJ) oversight and the FBI's and ATF's operations of explosives-related activities from fiscal year (FY) 2003 through April 2009. The objective of this review was to evaluate the level of coordination between the FBI and ATF in explosive investigations, including the effectiveness of explosive incident protocols to determine lead agency jurisdiction, the extent of information sharing and consolidation of explosives data, the degree of training coordination, and the use of laboratory resources for explosives analysis.[2]

We conducted interviews with over 100 ATF and FBI employees, including personnel from both components' headquarters and in 8 locations with both ATF and FBI field divisions or offices. Our FBI interviews included officials in the Counterterrorism Division, Criminal Investigative Division, Laboratory Division, and Critical Incident Response Group. ATF interviews included officials from the Office of Field Operations, National Center for Explosive Training and Research, Explosive Enforcement Division, U.S. Bomb

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[1] See Appendix III for a more detailed description of FBI and ATF explosives-investigation authorities.

[2] Explosives incidents include: actual or attempted bombings with improvised (i.e., homemade), misused commercial or military, or incendiary explosives devices (e.g., gasoline bombs); recovered explosives and explosives components; render-safe operations to dispose of or destroy recovered explosives; accidental detonations of commercial explosives; threats to bomb; and the use of hoax devices.

Data Center, and Laboratory. We also conducted interviews with staff in the Office of the Deputy Attorney General and the DOJ Office of the Chief Information Officer.

We reviewed policies and procedures for explosives investigations and interagency interactions, Special Agent training records, and explosives-related course curricula. Additionally, we analyzed case data for FY 2003 through mid-FY 2008 from both components' case management systems and the Bombing and Arson Tracking System (BATS).[3] We also developed and sent survey questionnaires to all ATF and FBI Field Division Special Agents-in-Charge, ATF and FBI Special Agent Bomb Technicians, ATF Certified Explosive Specialists, ATF Explosives Enforcement Officers, and the commanders of each accredited state and local bomb squad in the country.

Appendix I contains a more detailed description of our audit objectives, scope, and methodology.

Results in Brief

Our audit found that the FBI and ATF are not adequately coordinating explosives-related operations and have developed similar technical abilities to respond to explosives incidents. Conflicts continue to occur throughout the country regarding which agency is the lead agency for federal explosives investigations and their differing explosives-handling techniques. These disputes can cause confusion for local first responders about the roles of the FBI and ATF during explosives-incident responses and delays in conducting investigations. Disputes between ATF and FBI personnel have affected working relationships, and in some locations have resulted in their racing to crime scenes to determine which agency leads an investigation. The disputes have also resulted in the two agencies declining to work and train together.

In 2004, DOJ attempted to define the roles of the FBI and ATF in explosives investigations and related activities through an Attorney General Memorandum.[4] However, this 2004 memorandum contained ambiguous directives for determining lead agency authority for explosives matters. In addition, DOJ, the FBI, and ATF did not implement the memorandum's procedures for explosives information sharing and database consolidation, training, and laboratory resources.

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[3] BATS is ATF's automated incident reporting system developed to streamline the gathering, retrieving, reporting, and archiving of investigative information of fires and the criminal misuse of explosives.

[4] See Appendix IV for the 2004 Attorney General Memorandum.

A subsequent 2008 Memorandum of Understanding between the FBI and ATF also did not clarify investigative jurisdiction.[5] This memorandum reiterated many of the ambiguous elements of the 2004 Attorney General Memorandum and stated the FBI and ATF, in instances where the motive of an explosives incident (e.g., a criminal act or terrorist incident) is not readily apparent, will jointly investigate the incident pending a definitive determination of intent. However, we found during this review that each agency viewed the criteria articulated in the memorandum differently. In addition, we found that a significant percentage of the FBI and ATF field division managers and explosives specialists we interviewed or surveyed believe their own agency should lead an investigation when the motive of an incident is not readily apparent.[6]

Our audit also found that the FBI and ATF maintain separate explosives-related databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence. The 2004 Attorney General Memorandum directed the consolidation of DOJ's explosives-incident reporting systems within ATF and required DOJ's Chief Information Officer to perform a feasibility study for consolidating all of DOJ's explosives databases. ATF identified BATS to be the DOJ's consolidated explosives-incident reporting system. Although the FBI provided an initial data file of its explosives-incident information to ATF in 2004, it has not reported any subsequent explosives-incident information into BATS. Moreover, ATF did not consolidate its own incident reporting systems into BATS. DOJ's OCIO conducted a feasibility study in November 2004 and concluded that DOJ needs to develop a more coordinated program for access to arson and explosives information, resources, and technologies. However, we found that DOJ has not adequately addressed the proliferation of explosives related databases within the FBI and ATF. As a result, the agencies' separate databases cause a duplication of effort and the inability to accurately determine trends in explosives incidents.

The 2004 Attorney General Memorandum also directed ATF to coordinate all DOJ post-blast explosives training and certify all explosive detection canines deployed by DOJ components. However, the FBI and ATF have not implemented either directive.

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[5] See Appendix VI for the 2008 Memorandum of Understanding.

[6] Between 20 to 30 percent of FBI and ATF field division managers and about 40 percent of the FBI and ATF explosive specialists – Explosive Enforcement Officers, Special Agent Bomb Technicians, and Certified Explosive Specialists – responding to our survey believe their agency has initial lead agency jurisdiction when it is not clear whether an explosives incident is related to terrorism.

The 2004 Memorandum required that an Explosive Training Review Board assess possibilities for consolidating all DOJ explosives-related training and training facilities. DOJ did not convene the board and never examined the feasibility of consolidating all DOJ explosives-training programs and facilities. Instead, the FBI and ATF continue to operate separately their respective explosives-training facilities and programs and they disagree on certain aspects of training – for example, the guidelines for training explosives-detection canines.

The FBI and ATF each have laboratories that perform explosives-related analyses. The 2004 Attorney General Memorandum directed that a Laboratory Review Board be established to examine DOJ laboratory resources and workloads and to make recommendations to the Deputy Attorney General for the most productive allocation of DOJ laboratory resources. Although a Laboratory Review Board was formed in September 2004, it still has not provided a report or recommendations to the Deputy Attorney General.

The issues we found related to investigative jurisdictional disputes, database information consolidation and sharing, and the lack of coordination between the FBI and ATF in explosives-related operations also increase the risk that DOJ will not meet the requirements of Homeland Security Presidential Directive (HSPD)-19, which requires a united, multi-layered strategy to mitigate the threat and prevent the use of explosives by terrorists.

Our report makes 15 recommendations to DOJ, the FBI, and ATF to assist in improving coordination and reducing conflict between the FBI and ATF on explosives investigations and related activities. This audit report contains detailed information on the full results of our review of ATF and FBI coordination of explosives investigations and associated support activities. The remaining sections of this Executive Summary discuss our audit findings in more detail.

Background

Federal law provides the FBI and ATF with concurrent jurisdiction over most explosives incidents. After Congress merged ATF into DOJ, DOJ took steps to direct greater collaboration between the FBI and ATF on explosives-related matters. On March 4, 2004, Attorney General Ashcroft created the Explosives Review Group (ERG) to "identify options and develop recommendations" for the most effective coordination of explosives

investigations.[7] The ERG completed its review and reported its findings and recommendations to the Deputy Attorney General on May 3, 2004.

In the ERG report, the FBI and ATF disagreed on the roles and responsibilities of each agency for responding to and investigating explosives incidents. In the ERG report, the ATF Chairman of the ERG stated that the basis of the disagreement resulted from each component's belief that it would be best suited to coordinate DOJ assets at crime scenes involving explosives. ATF believed it should have primacy because explosives enforcement and related issues are inherent functions of its central mission; FBI considered it to be the lead agency because it should determine whether an explosives incident has a nexus to terrorism making it a matter exclusively for the FBI to investigate. The FBI and ATF recognized that few explosives incidents are terrorism-related.

In response to the ERG's recommendations, on August 11, 2004, DOJ issued an Attorney General Memorandum entitled Coordination of Explosives Investigations and Related Matters (2004 Memorandum) that directed:

- ATF to control the investigation of all explosive incidents, except in: (1) cases in which a Joint Terrorism Task Force (JTTF) determines the incident is related to terrorism, and (2) cases in which the FBI traditionally has exercised jurisdiction;[8]
- all DOJ arson and explosives incident databases to be consolidated into a single ATF-maintained system accessible to all DOJ law enforcement components;
- the DOJ Chief Information Officer to examine the potential for consolidating all DOJ arson and explosives databases;
- DOJ to form a Laboratory Review Board to examine laboratory resources and workloads and develop recommendations for the most productive allocation of DOJ laboratory resources;

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[7] As mandated by the Attorney General's March 4, 2004, Memorandum entitled Review Group Concerning Coordination of Explosives Investigations and Training, the Explosives Review Group (ERG) was comprised of senior officials from ATF (acting as Chair), the FBI, Office of the Deputy Attorney General, Office of Legal Policy, and the Criminal Division. The memorandum specifically identified as issues for ERG review: explosives-related training, explosives investigations, and the maintenance of databases related to explosives.

[8] Examples of crimes within the FBI's traditional jurisdiction that can involve explosives include bank robberies, hate crimes, and organized crime.

- the establishment of an Explosives Training Review Board to review potential consolidation of explosives training programs and facilities, and the FBI and ATF to consolidate all post-blast explosives training budget, curricula, teaching, and scheduling functions under ATF; and
- DOJ components to use only ATF-certified explosives-detection canines.

The 2004 Memorandum also directed the Deputy Attorney General to resolve all issues relating to: FBI-ATF jurisdiction over explosive investigations; consolidation of FBI and ATF post-blast explosives training; and consolidation of arson and explosives databases. The 2004 Memorandum also directed the Deputy Attorney General to oversee the allocation and use of laboratory resources.

Determining Lead Agency Investigative Jurisdiction

The ERG report made no recommendation regarding investigative jurisdiction. The 2004 Memorandum is ambiguous regarding investigative jurisdiction, which has contributed to conflict and ongoing coordination issues between the FBI and ATF. The 2004 Memorandum assigns ATF jurisdiction over all explosives incidents, except for incidents related to terrorism and those within the FBI's "traditional" jurisdiction. As a result, each component can logically claim a right to respond to almost every incident.

One incident identified during the audit highlights how the ambiguous language of the 2004 Memorandum is subject to interpretation and has left the issue of agency investigative jurisdiction unresolved. In September 2004, an FBI field division assumed it had the authority to lead an explosives investigation until it determined that there was no link to terrorism. When the ATF disagreed with this interpretation, the United States Attorney for that jurisdiction sought further clarification of the 2004 Memorandum from the Office of the Deputy Attorney General. According to the United States Attorney, the Office of the Deputy Attorney General responded:[9]

[9] See Appendix VII for the memorandum from the United States Attorney.

> It is more accurate to say that this [the 2004 Memorandum] means the ATF has jurisdiction unless and until it is determined that the explosives incident is related to terrorism; than it is to say that the FBI or the JTTF has jurisdiction unless and until it is determined that the incident is not related to terrorism . . . that "default" jurisdiction is with the ATF.

This response from the Deputy Attorney General's office provides significant guidance concerning which agency DOJ intended to exercise initial lead-investigative authority, at least in circumstances in which jurisdiction is unclear. Such a clarification, however, was never formally incorporated into any policy, protocol, or other written direction provided by the Office of the Deputy Attorney General to other United States Attorneys, the FBI, or ATF.

2004 Attorney General Memorandum Not Being Implemented

In 2006, Deputy Attorney General Paul McNulty reconvened the ERG to assess progress in implementing the 2004 Attorney General Memorandum and to identify specific ways to improve coordination. The ERG reported to Deputy Attorney General McNulty on January 12, 2007, that four of the seven directives had no issues requiring resolution by the Office of the Deputy Attorney General. The ERG report concluded that three of the seven directives within the 2004 Memorandum – those relating to information sharing, training, and explosives canines – either had not been implemented or remained highly contested between the two components.[10] Our audit found that the FBI and ATF are still not coordinating explosives-related operations and activities for these three areas and that the Office of the Deputy Attorney General did not resolve any of these conflicts. In addition, we determined that issues also remain unresolved for two additional directives in the 2004 Memorandum – investigative jurisdiction and laboratories.

Ambiguous 2008 Memorandum of Understanding

After informal prompting by the Office of the Deputy Attorney General, in July 2008 the FBI and ATF signed a Memorandum of Understanding that was issued through the Office of the Deputy Attorney General entitled

[10] The FBI and ATF developed white papers that they attached to the ERG report describing each component's competing position on the three contested issues.

*Protocols for Response to Explosives Related Incidents (*2008 Memorandum).[11] The purpose of the 2008 Memorandum was to clarify the roles and responsibilities of the FBI and ATF during explosives investigations and to encourage a more productive partnership. However, the 2008 Memorandum did not change the criteria for determining lead agency jurisdiction. As shown in the following table, both the 2004 and 2008 memoranda define jurisdiction according to the crime underlying the explosives incident.

Jurisdictional Definitions

2004 Memorandum	2008 Memorandum
ATF shall control the investigation of all explosives events except: • where the incident is terrorism, the JTTF is responsible • where the FBI has traditionally exercised jurisdiction	Coordination of a joint response will be the responsibility of the respective Special Agents-in-Charge: • the agency with responsibility for the underlying felony will assume investigative lead • where the incident is terrorism, the JTTF is responsible

Source: 2004 Memorandum and 2008 Memorandum

The 2008 Memorandum requires the FBI and ATF to undertake a *joint response* during the *initial* phase of an incident. ATF and FBI Special Agents-in-Charge are directed to coordinate such joint responses under the standard that "the agency with the responsibility for the underlying felony will assume investigative lead, as coordinated by the [Special Agents-in-Charge]." The 2008 Memorandum requires joint investigations pending a definitive determination because jurisdiction may not be readily apparent at the outset of a response.

As shown in the following table, however, the results of our survey questionnaires demonstrate that both components' explosives specialists and field management have widely divergent understandings of the 2008 Memorandum's guidance on investigative jurisdiction when a link to terrorism is unclear.

[11] According to the 2008 Memorandum, the Attorney General, Deputy Attorney General, and key representatives from the FBI and ATF developed the memorandum regarding the DOJ response to explosives-related incidents. See Appendix VI for the July 8, 2008, ATF-FBI Memorandum of Understanding.

Interpretations of 2008 Memorandum of Understanding

2008 Memorandum Lead Agency Interpretation	Management		Specialists	
	ATF	FBI	ATF	FBI
FBI leads for all explosives incidents unless and until it is clear no nexus to terrorism exists.	5%	30%	4%	46%
FBI leads unless or until it is clear that only ATF has jurisdiction.	0%	0%	1%	6%
FBI and ATF jointly lead the investigation unless or until a clear nexus to terrorism or another traditional FBI jurisdiction is established.	61%	42%	31%	24%
FBI and ATF Special Agents-in-Charge will determine which agency leads on a case-by-case basis.	17%	21%	20%	16%
ATF leads unless or until a clear nexus to terrorism or other traditional FBI jurisdiction is established.	17%	7%	40%	2%
Don't know	0%	0%	3%	4%
Did not Answer	0%	0%	1%	2%

Source: DOJ Survey Analysis of survey questionnaire responses

Because 17 to 30 percent of field division managers and about 40 percent of the explosives specialists in each agency responding to our survey have diametrically opposed interpretations of the 2008 Memorandum's lead jurisdiction language, we do not believe the memorandum sufficiently clarified the issue. Further, the agencies did not establish any protocols for joint responses as required by the 2008 Memorandum. In addition, the memorandum did not address the areas that the 2007 ERG report identified as needing resolution – information sharing, training, and canine matters.

Component Competition Rather Than Collaboration

Our audit found that explosives investigation coordination between the FBI and ATF is limited and that field divisions of both components sometimes race to be the first federal agency on scene. Disputes have occurred when one agency arrives first and the other agency believes the incident falls within its lead agency authority. These disputes can delay investigations, undermine federal and local relationships, and may project to local agency responders a disjointed federal response to explosives incidents in their area. We were told of incidents resulting in jurisdictional disputes in six of the eight locations we visited, as described below.

Summary of Identified Disputes

Location	Dispute Summary
Baltimore	July 2008 – The FBI encouraged a local bomb squad not to validate a render-safe technique by remaining on scene and later prohibited ATF bomb technicians from participating in FBI trainings.[12]
New York City	March 2008 – ATF attempted to refer a suspect for prosecution for a bombing in Times Square despite an existing FBI case against the suspect in another state.
Phoenix	Nov. 2007 – ATF protested that it was not notified about a pipe bomb found in a truck at the Palo Verde nuclear facility until several hours after the FBI began investigating the incident.
Seattle/Portland	Dec. 2008 – FBI protested a state's attorney's request that ATF conduct an investigation after a bomb blast killed a local bomb technician.
Los Angeles	June 2007 – ATF disputed late notification by the FBI in front of local first responders during an investigation of an explosives magazine blast in the Mojave Desert.
San Diego	September 2007 – ATF disputed an FBI claim that explosives found at a local bridge were consistent with terrorism in front of first responders.

Source: OIG analysis of interview testimony

To determine the extent of recent disputes between the FBI and ATF on explosives matters, we surveyed ATF and FBI management and explosives specialists regarding conflicts occurring in FYs 2007 and 2008. Approximately 20 percent of ATF and FBI management respondents were personally involved in resolving a dispute during this period. For ATF and FBI explosives specialists — personnel more likely to have contact with one another — more than 30 percent of ATF specialists and 40 percent of FBI specialists were involved in a dispute between the FBI and ATF. These disputes primarily involved whether an incident should be classified as terrorism-related and determining lead agency jurisdiction. Other disputes involved differences in evidence collection and handling techniques.

Both ATF and FBI explosives specialists responding to our survey questionnaire agree that disputes delay interviews, postpone investigations, and confuse state and local partners. We found the effect of a dispute may taint the relationship between the components in those field divisions for years afterwards. During our interviews of ATF and FBI specialists in several locations, we found that these personnel had continuing negative opinions of the other agency based on events that happened years earlier. For example, personnel from both components in Seattle described a dispute over an April 2005 fire-bombing of houses under construction in

[12] In render-safe procedures, specialists neutralize unexploded ordnance (including improvised explosive devices) to prevent an uncontrolled detonation.

Lake Sammamish, Washington, as the low point of their relationship, from which they still have not recovered. In this incident, ATF arrived at the scene first and later sent evidence, including a banner claiming responsibility on behalf of the Earth Liberation Front – an organization identified by the FBI as a domestic terrorism enterprise – to its laboratory in California. When the FBI arrived on the scene, it asserted that the banner clearly indicated the incident was domestic terrorism. The conflict over investigative authority ensued. FBI eventually assumed investigative responsibility and retrieved the banner so it could be processed in the FBI Laboratory rather than the ATF laboratory.

As shown below, surveys of ATF and FBI explosives specialists indicate the personnel most likely to interact have a poor opinion of the other agency's capabilities and contributions to explosives investigations.

Opinions of Counterparts by FBI and ATF Explosives Specialists

	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
Counterpart Assessment	ATF	FBI	ATF	FBI	ATF	FBI
Counterpart provides important explosives and post-blast expertise	9%	13%	82%	77%	9%	10%
Counterpart adds needed resources for obtaining evidence	18%	9%	72%	84%	10%	7%
Neither helps nor hinders	37%	28%	45%	50%	18%	22%
Counterpart duplicates capabilities already on scene	80%	89%	10%	5%	10%	6%
Counterpart differs in scene-investigation methods	65%	76%	15%	14%	20%	10%
Counterpart delays decision-making on scene	74%	80%	9%	8%	17%	12%
Other	2%	8%	0%	0%	98%	92%

Source: DOJ OIG analysis of ATF and FBI explosives specialists surveys

Information Sharing

Our audit also found that the FBI and ATF have not established adequate avenues for information sharing regarding explosives. The components did not effectively consolidate and maintain one distinct explosives-incident reporting database. In addition, although the DOJ's Chief Information Officer performed a feasibility study on consolidating other explosives databases, DOJ has not adequately addressed the proliferation of explosives related databases within the FBI and ATF.

Incident Reporting not Consolidated

The 2004 Memorandum directed the consolidation of all DOJ arson and explosives incident databases, including the FBI's Automated Incident Reporting System (AIRS) and ATF's BATS into a single ATF-maintained database.[13] In 2004 ATF designated BATS as DOJ's single database for the reporting and sharing of explosives incident information. Federal law mandates that all federal agencies report information concerning explosives incidents to DOJ, and by extension to BATS.[14] Reporting, however, is voluntary for state and local agencies.

Inconsistent Reporting

Although the FBI discontinued use of its AIRS database and transferred its AIRS data to the ATF's BATS database in 2004, the FBI has not reported any additional explosives incident information into BATS since this initial data transfer. Likewise, ATF has not consistently reported all its explosives incidents into BATS. Rather the FBI and, to a lesser extent, ATF rely on state and local agencies responding to the same explosives incidents to report information on the incidents to BATS. However, the FBI and ATF do not have processes to ensure that state and local agencies actually report to BATS. In fact, officials from both components told us they were aware of significant under-reporting by state and local bomb squads of their involvement in explosives incidents. By not reporting explosives incidents to BATS and not ensuring that state and local responders reported to BATS, the FBI and ATF have not complied with their reporting requirements and have thereby reduced the utility of BATS.

Instead of requiring explosives specialists to report explosive incidents to BATS, the FBI requires its explosives specialists to report explosives incidents and activities internally to its FD-542 database. From 2004 to 2008, we found 4,454 explosives incidents recorded in the FD-542

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[13] See U.S. Department of Justice Office of the Inspector General, *Bureau of Alcohol, Tobacco, Firearms and Explosives and Federal Bureau of Investigation's Arson and Explosives Intelligence Databases,* Audit Report Number 05-01 (October 2004). An earlier DOJ OIG audit found that DOJ had not efficiently and effectively collected and made available to the federal, state, and local law enforcement community information relating to arson and the criminal misuse of explosives. Specifically, the similar responsibilities of ATF and the FBI in compiling data have resulted in duplication of effort, duplicate reporting of incidents by state and local agencies, and a lack of uniformity in the reporting process.

[14] 18 U.S.C. § 846 (b).

database.[15] FBI managers contend that information in the FD-542 database is used only for internal resource allocation and personnel evaluations, not for statistical or data-mining purposes. Regardless of the FBI's objective in maintaining the FD-542 database, the FBI is not reporting explosives incidents to the single consolidated database maintained by ATF (i.e., BATS) as required by the 2004 Attorney General Memorandum. As a result, information about a significant number of explosives incidents may not be contained in BATS, thereby undermining the utility of this database.

In addition, an internal review by ATF concluded that the majority of its field divisions were not reporting explosives incidents to BATS as required by internal guidelines. ATF's review revealed that 819 explosives incidents were opened in its case management system from March through June 2008, but only 248 cases were reported to BATS.

Ineffective BATS Implementation

The audit found that ATF's efforts to maintain and promote BATS as DOJ's single explosives incident database also suffered due to ineffective efforts to encourage participation by the state and local explosives enforcement community. Our survey of 470 state and local bomb squad commanders revealed that a minority of the squads consistently reported explosives incidents to BATS, and more than half rarely or never report incidents in BATS for the reasons described in the following table.

Reasons for Not Using BATS

Reason	Number of Respondents	Percentage
BATS is difficult to use	55	41%
ATF has not provided any training	32	24%
Already reporting incidents to state database	13	10%
BATS requires too much detail and is time-consuming	36	27%
Not aware of BATS	3	2%
Other	62	47%

Source: OIG analysis of state and local Bomb Squad Commanders survey responses

[15] We were unable to determine the number of explosives cases in which the FBI was involved because the FBI's case management system does not track this data. While that system has a specific case classification code for explosives incidents that code does not account for cases opened as domestic terrorism, international terrorism, or violent crime violations involving explosives.

When asked about the reasons for not using BATS, half of the survey respondents who checked the choice "other" indicated that access issues such as difficulty in obtaining passwords or getting technical assistance prevented them from using BATS. In addition, 41 percent of the state and local bomb squad commanders who responded to our survey indicated that their lack of participation had more to do with the difficulty in using BATS. Further 24 percent indicated a need for BATS end-user training while 27 percent complained that BATS reports required too much information and took too much time to complete.

DOJ Review of Explosives Databases

In November 2004, the DOJ's Chief Information Officer conducted a feasibility study for consolidating all of DOJ's explosives databases, as required by the 2004 Memorandum. The assessment concluded that DOJ needs to develop a more coordinated program for access to arson and explosives information, resources, and technology. In addition to maintaining rival bomb data centers to provide technical information to explosives specialists, the DOJ components also each possess separate databases for managing laboratory forensic reports, incident reporting, and technical explosives-related information.

Explosives Training and Canines

The audit found that the FBI and ATF continue to expand their respective explosives training facilities, run uncoordinated post-blast training programs, and disagree on training guidelines for explosives-detection canines and on render-safe protocols. According to the ATF, it met with the FBI to discuss explosives training issues in the months following the issuance of the 2004 Memorandum as well as in December 2006 and May 2008. However, DOJ never convened the Explosives Training Review Board (Training Board), as required by the 2004 Attorney General Memorandum, and did not examine the feasibility of consolidating all DOJ explosives programs and facilities.

Explosives Training Facilities

One of the objectives of the 2004 Memorandum was to review the feasibility of consolidating DOJ explosives training facilities. However, since the issuance of the memorandum, both the FBI and ATF have expanded their explosives training facilities. The FBI opened a $23 million Hazardous Devices School in 2004 which trains all civilian bomb technicians at the Redstone Arsenal in Huntsville, Alabama. The FBI also completed a Secure Training Facility for $4.8 million in October 2008 and has proposed

$13.1 million for a large-vehicle-born explosives training facility at the Redstone Arsenal.

ATF currently maintains the National Center for Explosives Training and Research (NCETR) in Fort A.P. Hill, Virginia, and the Canine Training and Operations Support Branch located in Front Royal, Virginia. In addition, ATF is constructing an NCETR facility at Redstone Arsenal.[16] ATF has expended $28.5 million on construction of this facility and sought another $41.6 million of non-personnel funding for ranges, classrooms and development costs at the facility. Neither component has made any attempt to consolidate training or instruction in its explosives training facilities.

Explosives Training Programs

The components also have not worked together to establish joint explosives-training priorities – to identify what training is needed, who has the most pressing need for the training, and who can best provide that training. As a result, DOJ does not have a comprehensive approach for providing explosives-related training to federal, state, and local investigators. For example, both ATF and FBI have training requirements for their explosives specialists to re-certify their status at mandatory intervals, but as shown in the following table, both components are behind in re-certification.

Explosives Specialists Not Currently Recertified

Specialist	Total Number	Percent Not Current
ATF Certified Explosives Specialists	241	57%
ATF Explosives Enforcement Officers	26	12%
ATF Special Agent Bomb Technicians	5	0%
FBI Special Agent Bomb Technicians	174	12%

Source: ATF NCETR and FBI HDS as of March 2009

According to ATF, funding for NCETR training has been declining since FY 2004. In FY 2008, the NCETR was able to provide limited explosives training, including only one re-certification course for Certified Explosives Specialists, far fewer than the five or six courses necessary to keep all personnel up-to-date on training. The FBI indicated that scheduling conflicts

[16] In 2006, the conference committee report of Public Law 109-108 directed ATF to plan for the construction of a permanent facility co-located with other law enforcement and federal government entities that provide similar training and research. Plans to construct the new NCETR facility at Redstone were approved by Congress and ground was broken for the main building of the facility in November 2008.

prevented Special Agent Bomb Technicians from attending required re-certification training. However, these specialists are still responsible for explosives missions within their agencies, and public safety necessitates that they obtain adequate training for re-certification.

Explosives Training Disputes

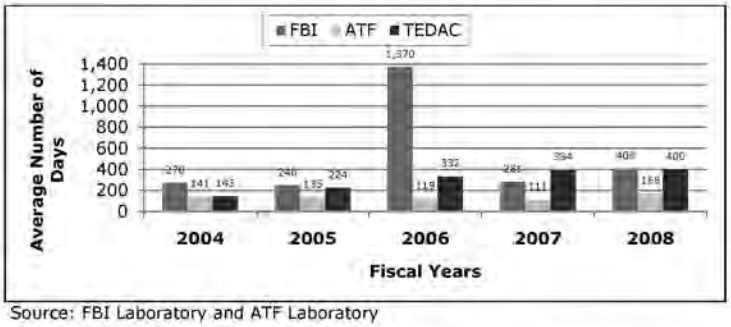
Even though our review of the agencies' training programs confirmed the 2004 ERG report finding that ATF's and FBI's post-blast training is essentially the same, our survey of ATF and FBI explosives personnel indicated that 92 percent of FBI specialists and 83 percent of ATF specialists rarely or never coordinated their post-blast training curricula. In addition, ATF is responsible for certification of all DOJ explosives-detection canines; however, the FBI continues to disagree with ATF on canine certification standards. We also found that DOJ sent conflicting signals to the components, directing that one standard for training canines be administered through ATF, but also funding a working group seeking to adopt a different standard through the FBI and DOJ's National Institute of Justice.

Laboratory Resources

The FBI and ATF each have laboratories that perform forensic analyses on various types of evidence, including explosives evidence. The FBI Laboratory is located in Quantico, Virginia. ATF has laboratories located in Ammendale, Maryland; Walnut Creek, California; and Atlanta, Georgia. Additionally, the FBI and ATF are part of the Terrorist Explosive Device Analytical Center (TEDAC), which is located within the FBI Laboratory in Quantico, Virginia. TEDAC is an FBI-led initiative organized in response to requests from the Department of Defense. It was created in December 2003 to coordinate and manage interagency efforts for gathering and forensically analyzing terrorist Improvised Explosive Devices (IEDs) from war zones in Iraq and Afghanistan. The Director of TEDAC is an FBI employee and the Deputy Director is an ATF employee. Although TEDAC has its own staff and forensic equipment, because they are housed within the FBI Laboratory, dedicated FBI Laboratory personnel and equipment have been used to conduct TEDAC analyses.

We found that the average number of days required to process a laboratory submission in ATF, FBI, and TEDAC laboratories varies significantly, as shown in the chart below.

Laboratory Explosives Submission Turnaround Times for Fiscal Years 2004 through 2008[17]



Source: FBI Laboratory and ATF Laboratory

The 2004 Attorney General Memorandum required a Laboratory Review Board to examine DOJ's laboratory resources and workloads, including the effect of TEDAC, and make recommendations to the Deputy Attorney General for the most productive allocation of DOJ laboratory resources. However, we found no evidence that the Board fulfilled this requirement. Further, because TEDAC and the FBI Laboratory share resources, the large number of TEDAC submissions may adversely affect the turnaround times in the FBI Laboratory.

Homeland Security Presidential Directive-19

Shortly after the ERG issued its report in January 2007, President Bush signed Homeland Security Presidential Directive-19 (HSPD-19) on February 12, 2007, which required executive branch agencies to develop, under the leadership of the Attorney General, a layered and unified approach to aggressively deter, prevent, detect, protect, and respond to terrorists' evolving efforts to employ explosives in the United States. The resulting approach was documented in the *National Strategy for Combating Terrorist Use of Explosives in the United States* (National Strategy), which the President signed on December 20, 2007.

To transform the National Strategy's 36 recommendations into specific and measurable actions, the Attorney General, in coordination with the heads of other agencies, developed the *HSPD-19 Implementation Plan*. One

[17] According to the FBI, FY 2006 average number of days significantly varied from the prior and following fiscal years due to the closure of the Pentagon bombing submissions.

key action outlined in the Implementation Plan was to identify and document the specific roles and responsibilities of departments and agencies through all phases of incident management for terrorist use of explosives.

Additionally, the HSPD-19 Implementation Plan established an HSPD-19 Implementation Joint Program Office (JPO) led by the FBI in partnership with other agencies.[18] According to the FBI, the JPO was designed specifically to bring resolution to issues not previously resolved through other mechanisms. For example, the FBI noted that the Department of Homeland Security (DHS) and DOJ will co-lead an interagency advisory board responsible for developing uniform standards for explosives-detection canine teams, including annual certification and recurring proficiency training. DHS and DOJ, building on the previous ATF National Canine Advisory Board, created the National Explosives Detection Canine Advisory Board, which includes participants from major professional canine associations. The FBI believes that as a result of the creation of this advisory board for the first time, there is consensus across the explosives-detection canine community that national training and performance standards are needed.

However, we found that the JPO was not designed to function as the deciding authority on roles and responsibilities for the FBI and ATF in handling explosives incidents, but instead was conceived to be a formalized, interagency discussion forum. Unless there is consensus among the agencies involved the JPO cannot force settlement between components. Therefore, while the JPO and its members may be used to assess and reflect community opinion and advise on priorities, individual agencies will continue to make programmatic and budgetary decisions independently.

In our judgment, if DOJ does not conclusively address the issue of the roles and responsibilities for the FBI and ATF in handling explosives incidents and related matters, competition between the components on fundamental issues involving explosives investigations and lead agency authority will likely continue and impede the progress of HSPD-19 implementation.

Recommendations

Our report makes 15 recommendations to DOJ, the FBI, and ATF to assist in improving coordination and reducing conflict between the FBI and ATF on explosives investigations and related activities. We believe it is critical that DOJ issue a new directive to clearly define lead investigative authority between the FBI and ATF and require coordination of investigative

[18] The JPO, which meets monthly, had its inaugural meeting on April 8, 2009.

actions when it is unclear at the outset as to which of the agencies has lead investigative authority. Additionally, these recommendations include developing protocols on joint investigations for explosives incidents, implementing new policies to ensure both federal reporting to the BATS and development of a more user-friendly system, as well as agreeing on standardized post-blast curricula, render-safe procedures, and canine training standards.

EXPLOSIVES INVESTIGATION COORDINATION BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

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CHAPTER I: INTRODUCTION

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI) share jurisdiction for investigating the criminal use of explosives. Since Congress specifically provided the FBI and ATF with concurrent jurisdiction to investigate explosives crimes, both agencies have developed similar, even parallel, operational and technical abilities, such as responding to and investigating explosives incidents, collecting and analyzing intelligence and forensic evidence, and training their employees and other law enforcement agency partners.[1] The framework for coordinating explosives-related activities between the FBI and ATF is set out in several agreements signed by the Directors of the FBI and ATF, by mandates from the Attorney General, and most recently in a February 2007 directive issued by President Bush.

Concurrent Legal Authority Over Explosives Crimes

The FBI has traditionally investigated several federal crimes that may be committed with explosives, such as bank robbery, hate crimes, and organized crime. In 1990, the Attorney General formally assigned the FBI lead responsibility for investigating all crimes for which it has primary or concurrent jurisdiction and which involve domestic terrorist activities.[2] By statute ATF, as part of the Department of the Treasury (Treasury), was assigned primary jurisdiction governing the importation, manufacture, distribution, and storage of explosive materials and enforcement of federal explosives laws. In 1982, ATF was also given expanded authority to

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[1] Explosives incidents include actual or attempted bombings with improvised (i.e., homemade), misused commercial or military, or incendiary) explosives devices (e.g., gasoline bombs); recovered explosives and explosives components; render-safe operations to dispose or destroy recovered explosives; accidental detonations of commercial explosives; and threats to bomb and the use of hoax devices.

[2] 18 U.S.C. § 2332b (f) and 28 C.F.R. § 0.85. Section (l). Prior to 1990, the FBI had already been investigating terrorist bombings under a series of Presidential directives, such as a September 6, 1939, directive on subversive activities and the 1982 National Security Decision Directive-30 entitled *U.S. Policy on Counterterrorism*. See Appendix III for a more detailed description of FBI and ATF explosives-investigation authorities.

investigate crimes of arson involving not only explosives but also accelerants such as gasoline and other flammable liquids.[3]

In 2002, the Homeland Security Act, among other things, transferred ATF enforcement functions from Treasury to the Department of Justice (DOJ).[4] The Homeland Security Act and the associated Safe Explosives Act of 2002 state that ATF is responsible for investigating criminal and regulatory violations of the federal firearms, explosives, arson, alcohol, and tobacco smuggling laws and any other investigation of violent crime or domestic terrorism that is delegated to ATF by the Attorney General.[5]

The FBI and ATF currently investigate very similar criminal activities involving explosives — differing mainly by the motive of the perpetrator or the location of the crime. The FBI views explosives use as one of many types of weapons criminals wield in furtherance of a terrorist act or another underlying crime, defining its jurisdiction by the criminal motive. ATF, on the other hand, views its explosives jurisdiction as covering any improper use of explosives regardless of motive, defining its jurisdiction based on the fact that an explosive is intended to be or has been used to commit a crime. The concurrent authorities and differing rationale over jurisdictional decisions have resulted in conflicts between the FBI and ATF concerning which agency has lead investigative authority over specific explosives incidents.

Agreements to Divide Concurrent Jurisdiction

To address their concurrent investigative authority over explosives crimes, the FBI and ATF have a history of attempting to establish exclusive areas of jurisdiction. Such divisions of labor have resulted in relatively fine distinctions justifying which agency will respond to similar explosives incidents. For instance, ATF's location within Treasury for much of the last

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[3] The Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. §§ 921 et seq. as amended in the Gun Control Act of 1968, 26 U.S.C. §§ 5841 et seq., prohibited unlicensed trade in firearms and explosives. The Organized Crime Act of 1970, at 18 U.S.C. §§ 842 and 844, covers unlawful acts and penalties. 18 U.S.C. § 843 regulates the explosives industry. 18 U.S.C. § 846(b) authorizes the establishment of a national repository of information on incidents involving arson and suspected criminal misuse of explosives. The National Firearms Act, Title 26 U.S.C. Chapter 53, includes criminal provisions for the unlawful manufacture, transfer, and possession of destructive devices, including explosives or incendiary bombs, grenades, and mines.

[4] 28 U.S.C. § 599A (2008).

[5] *The Homeland Security Act* is Pub. L. 107-296, and Subtitle C, Title XI, is the *Safe Explosives Act*.

37 years resulted in the FBI handling all explosives cases involving federal buildings except for Treasury facilities, which ATF handled.[6]

1973 Memorandum of Understanding

In 1973, the FBI, ATF, and United States Postal Service signed a Memorandum of Understanding (MOU) that attempted to divide enforcement activities for explosives-related crimes among these agencies. This memorandum divided jurisdiction based mainly on differences in the location of bombings but contained overarching exceptions based on the motives of perpetrators, such as terrorism.

According to the 1973 MOU, ATF would be the lead investigative agency over regulatory violations (such as loss or theft of commercial explosives), the interstate transportation of explosives with unlawful intent (other than through the mail), explosives use against property used in or affecting commerce (such as bombing stores or warehouses), explosives possession or use directed at Treasury buildings, and any use of explosives during the commission of another felony where ATF had jurisdiction of the underlying felony (such illegal gun dealers using explosives).

On the other hand, the 1973 MOU provided that the FBI would be the lead investigative agency for arson and bomb threats communicated by phone or mail, for the use or attempted use of explosives to damage property owned or used by the U.S. government (except Treasury facilities), for cases when explosives were used in the commission of another felony for which the FBI had primary jurisdiction (such as bank robbery), and for the unauthorized possession of explosives in a building used by the U.S. government (except Treasury facilities). The memorandum also permitted the FBI to assert the lead on any explosives use directed against diplomatic functions, college campuses, or which appeared at the outset to have been perpetrated by terrorist or revolutionary groups or individuals.

Fair Oaks Accords

In 2000, five ATF and five FBI Special Agents-in-Charge on a Joint Field Managers Working Group issued a report that recommended coordination actions be formalized into a joint investigation protocol for use

[6] Although the U.S. Postal Service also reserved lead agency jurisdiction for explosives incidents in its facilities under the 1973 MOU, this report refers only to ATF and FBI divisions of authority.

at the scene of an explosives incident.[7] The resulting report, also known as the "Fair Oaks Accords," was specific on when joint-lead agency cases should be used, which agency would be the lead agency in other instances, and in what types of bombings each agency's laboratory would be used. For example, the Fair Oaks Accords recommended a joint "50/50" approach for bombings related to women's reproductive health care providers, houses of worship, colleges and universities, and environmental and animal rights movements. For these four areas, the investigative strategies, search warrants, pursuit of leads, and media were to be jointly managed by ATF and FBI agents. In addition, the agreement recommended that evidence from explosives crime scenes involving women's reproductive health care providers and houses of worship would be sent to ATF laboratories, while evidence from colleges and universities and environmental and animal rights movements would be sent to the FBI Laboratory. However, the Fair Oaks Accords and its recommendations were not implemented.

Attorney General Forms the Explosives Review Group

In March 2003, about a month after joining DOJ, ATF officials proposed that the information and publication functions of the FBI's Bomb Data Center be merged into and managed by ATF. It also recommended that ATF be designated as DOJ's primary responding agency to all explosives scenes, and be allowed to coordinate DOJ assets for the entire on-scene investigation regardless of the motive, including terrorism. This proposal was not implemented, and DOJ took no formal steps to redefine responsibilities in explosives incidents for the subsequent year.

On March 4, 2004, the Attorney General Ashcroft created the Explosives Review Group (ERG) to develop recommendations regarding the most effective coordination of explosives investigations between the FBI and ATF.[8] The ERG completed its initial review and reported its findings and recommendations to the Deputy Attorney General on May 3, 2004. ATF chaired the ERG and reported that, with respect to jurisdiction, the majority of bombings in the United States have no link to terrorism, and that when

[7] The July 18, 2000, Working Group Report recommended joint response and common ownership of crime scenes, immediate joint notification, fellowship exchanges of laboratory personnel, joint crime scene processing standards, specific attributes of joint investigations, and delineation of applicable types of incidents.

[8] As mandated by the Attorney General's March 4, 2004, Memorandum entitled Review Group Concerning Coordination of Explosives Investigations and Training, the Explosives Review Group (ERG) was comprised of senior officials from ATF (acting as Chair), the FBI, Office of the Deputy Attorney General, Office of Legal Policy, and Criminal Division. The Memorandum identified as issues for ERG review explosives-related training, explosives investigations, and the maintenance of databases related to explosives.

terrorism was indicated all available resources necessary would be used to fully respond. However, the FBI and ATF did not reach agreement on many issues, such as the role each component should have in explosives investigations when the motive is not clear. Further, the FBI advised the chair of the ERG that it did not agree with the report as drafted and submitted an alternative report highlighting what it believed were the areas of agreement. Although the FBI did not explain in its report why the two agencies could not come to an agreement, the ERG Chairman described in the report the basis of the disagreement as follows:

- Each agency believes it is best suited to coordinate DOJ assets at the crime scene: ATF because explosives and fire investigation is an inherent function of its primary mission and because of the strengths of its specialized positions, and the FBI because of its mandate to detect and prevent terrorism.

- The FBI believes it is appropriate to treat all incidents or threats involving explosives, destructive devices, firearms, or arson as potential terrorism until the best available information determines otherwise and that only the FBI can determine if an incident is related to terrorism.

2004 Attorney General Memorandum

In response to the ERG's report, on August 11, 2004, Attorney General Ashcroft issued a memorandum entitled Coordination of Explosives Investigations and Related Matters (2004 Memorandum). This memorandum directed:

- ATF to control the investigation of all explosives incidents, except in: (1) cases in which a Joint Terrorism Task Force (JTTF) determines the incident is related to terrorism, and (2) cases in which the FBI traditionally has exercised jurisdiction;[9]

- all DOJ arson and explosives incident databases to be consolidated into a single ATF-maintained system and accessible to all DOJ law enforcement components;

- within 90 days, the DOJ Chief Information Officer to examine and report to the Deputy Attorney General on the feasibility of consolidating all DOJ arson and explosives databases;

[9] Examples of crimes within the FBI's traditional jurisdiction that can involve explosives include bank robberies, hate crimes, and organized crime.

- DOJ to form a Laboratory Review Board to examine laboratory resources and workloads and develop recommendations for the Deputy Attorney General;

- the FBI and ATF to consolidate all post-blast explosives training budget, curricula, teaching, and scheduling functions under ATF and, as soon as practicable, require that only ATF-certified explosives-detection canines be used;

- all DOJ personnel engaged in or related to post-blast explosives training to remain with their respective agencies and continue to provide training as they did prior to consolidation; and

- the FBI and ATF to organize an Explosives Training Review Board to report to the Deputy Attorney General on the feasibility of consolidating DOJ's explosives training programs and facilities.[10]

The 2004 Memorandum also stated that the Deputy Attorney General would resolve all issues relating to jurisdiction over explosives investigations, post-blast explosives training consolidation, and the consolidation of arson and explosives databases as well as direct the allocation and use of laboratory resources. The 2004 Memorandum did not reference the 1973 MOU to either incorporate or supersede this agreement.

2008 Memorandum of Understanding

Despite the direction provided in the Attorney General's 2004 Memorandum, the FBI and ATF continued to pursue separate investigations; develop uncoordinated strategies and priorities; and operate separate information systems for communication, reporting, and performance measurement. After informal prompting by the Office of the Deputy Attorney General, ATF and the FBI signed another MOU on July 8, 2008, entitled Protocols for Response to Explosives Related Incidents (2008 Memorandum).[11] According to the memorandum, ATF and FBI Special Agents-in-Charge are required to coordinate where the motive of an explosives incident (criminal act or terrorist incident) is not readily apparent. The 2008 Memorandum directs that the investigation proceed jointly and vigorously with key decisions made in a timely and collaborative manner, thereby encouraging joint investigations pending a definitive determination of intent. Additionally, the 2008 Memorandum states that the agency with

[10] See Appendix IV for the 2004 Attorney General Memorandum.

[11] See Appendix VI for the 2008 Memorandum of Understanding.

the responsibility for the underlying felony will assume the investigative lead and that FBI and ATF Special Agents-in-Charge will determine jurisdiction in the best interest of public safety and law enforcement.

Homeland Security Presidential Directive-19

A government-wide review of strategies to prevent terrorist bombings on American soil also affected the jurisdictional issues between the FBI and ATF. On February 12, 2007, President Bush signed Homeland Security Presidential Directive-19 (HSPD-19), which required executive branch agencies to develop, under the leadership of the Attorney General, a layered and united approach to aggressively deter, prevent, detect, protect, and respond to terrorists' evolving efforts to employ explosives in the United States. A united approach was contained in the *National Strategy for Combating Terrorist Use of Explosives in the United States* (National Strategy), which the President signed on December 20, 2007. The National Strategy contained 36 recommendations to improve federal efforts to combat potential terrorist attacks using explosives. To implement the National Strategy, the Attorney General, in coordination with the Secretaries of Defense and Homeland Security and the heads of other federal agencies, developed an *Implementation Plan*.

One key action outlined in the Implementation Plan was the identification and documentation of the specific roles and responsibilities of departments and agencies through all phases of incident management pertaining to terrorist use of explosives, from prevention and protection through response and recovery. Therefore, coordination of DOJ explosives-related operations, primarily those of the FBI and ATF, is required to comply with the HSPD-19 Implementation Plan.

Parallel Explosive Capabilities

A major function of the FBI and ATF explosives programs is to assist the 471 accredited state and local bomb squads located throughout the United States. These local bomb squads are usually the first responders to explosives incidents and are primarily responsible for the "render-safe procedures" on explosives.[12] The FBI and ATF provide training, equipment, and assistance to state and local bomb squads, when requested, through FBI

[12] In render-safe procedures, specialists neutralize unexploded ordnance (including improvised explosive devices) to prevent an uncontrolled detonation.

and ATF Special Agent Bomb Technicians (SABT), ATF Explosives Enforcement Officers (EEO), and ATF Certified Explosives Specialists (CES).[13]

SABTs are investigators trained at the FBI's Hazardous Devices School who can assist local bomb squads in render-safe procedures and provide training to state and local responders.[14] As of May 2009, ATF had 5 full-time SABTs and the FBI had 174 SABTs, of which 30 were dedicated full-time to this role. Explosive Enforcement Officers are generally former military explosives ordnance disposal specialists (not Special Agents) authorized to render-safe explosives or incendiary devices, conduct technical examinations to make destructive device determinations, and assist in training. Certified Explosive Specialists are ATF Special Agents trained in post-blast crime scene investigations and explosives handling, but they do not perform render-safe procedures.[15] ATF had approximately 241 CESs and 27 certified EEOs as of March 2009.

As shown in Exhibit 1-1, certified state and local bomb technicians are located in all 50 states, ATF EEOs in 11 states, and FBI SABTS in 42 states.

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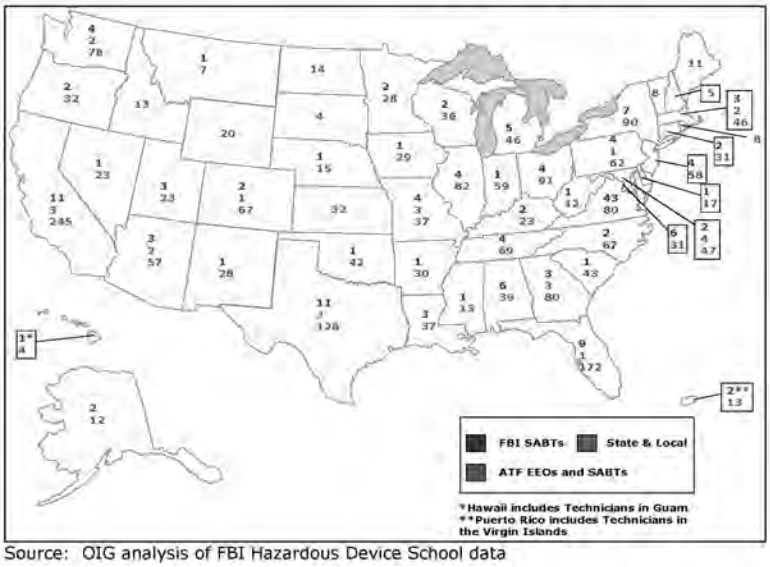
[13] Other specialists include explosives-detection canine handlers and forensic scientists such as chemists, metallurgists and technical experts who provide laboratory analysis of explosives, destructive devices, accelerants, and blast or arson debris submitted by investigators.

[14] The FBI manages the administration and funding for the Hazardous Devices School, the training academy for all civilian bomb technicians, which is operated by the U.S. Army Ordnance Munitions and Electronics Maintenance School at Redstone Arsenal in Huntsville, Alabama.

[15] In addition, each agency organizes special units, such as the FBI's Evidence Response Team and the ATF's National Response Team, which respond to major incidents.

Exhibit 1-1: Distribution of Civilian, ATF, and FBI Bomb Technicians as of May 1, 2009



Source: OIG analysis of FBI Hazardous Device School data

Since the 471 accredited state and local bomb squads throughout the country are the primary first responders to explosives incidents, much of the federal role assisting in post-blast evidence collection or evidence analysis does not require render-safe certification, except perhaps where local bomb squads are scarce.

OIG Audit Approach

This OIG audit reviewed the DOJ oversight and ATF and FBI coordination of explosives investigations and associated support activities including information technology, training, and laboratory analysis from October 2002 to April 2009. The objective of this audit was to evaluate the level of coordination between the FBI and ATF in explosives investigations and related activities, including:

1. the effectiveness of current protocols to determine lead agency jurisdiction on investigations;

2. the extent of database consolidation and information sharing;

3. the degree of coordinated training; and

4. the use of laboratory resources for explosives analysis.

To conduct this audit, we reviewed explosives case data from the FBI and ATF's case management systems from fiscal year (FY) 2003 through March 2008. We also reviewed relevant Special Agent training records, explosives-related course curricula, and policies or procedures regarding explosives investigations and interagency interaction. We conducted interviews of personnel in the Office of Deputy Attorney General and Office of the Chief Information Officer and with more than 100 ATF and FBI employees located at each agency's headquarters and selected field divisions.

As part of this audit, we sent surveys to all ATF and FBI field division Special Agents-in-Charge, FBI SABTs, ATF CESs, ATF EEOs, and the commanders of each accredited state and local bomb squad in the country.[16] As presented in Exhibit 1-2, we received responses to our survey questionnaire from over 60 percent of all DOJ personnel and over 50 percent of the state and local bomb squad commanders.

Exhibit 1-2: Response Rates to OIG Survey Questionnaire

Surveys	Number Surveyed	Number of Respondents	Response Rate
ATF Management	25	18	72%
FBI Management	69	47	68%
FBI Special Agent Bomb Technicians	194	121	62%
ATF Special Agent Bomb Technicians, Certified Explosives Specialists and Explosives Enforcement Officers	285	180	63%
State and Local Bomb Squad Commanders	470	239	51%

Source: Analysis of OIG survey data

[16] The FBI supplied the names and addresses for FBI management, SABTs, and state and local bomb commanders. ATF provided the names and addresses for ATF management and its CES and EEO personnel.

Appendix I contains a more detailed description of our audit objective, scope, and methodology. The following chapters provide our findings, conclusions, and recommendations.

CHAPTER II: DETERMINING LEAD AGENCY JURISDICTION

Since ATF's merger into DOJ in January 2003, the FBI and ATF have continued to carry out criminal explosives investigations independently of each other. DOJ issued in 2004 ambiguous directives regarding the division of labor for explosives and related activities without establishing a framework for resolving issues at the scene of the incident. Additionally, both ATF and the FBI have not conceded their initial positions of seeking lead authority in all explosives investigations, and consequently disputes between the components over leading investigations and different render-safe procedures continue to occur throughout the country. These disputes adversely affect the agencies' working relationships and can confuse local agency first responders. The absence of a coordinated federal approach can also hinder DOJ's ability to effectively respond, investigate, and prevent explosives crimes.

2004 Attorney General Memorandum Not Implemented

On November 14, 2006, more than 2 years after the 2004 Memorandum was issued, Deputy Attorney General Paul McNulty reconstituted the Explosives Review Group (ERG) to assess the need to establish or clarify operational protocols for improving the coordination of explosives incident investigations. The ERG reported to Deputy Attorney General McNulty on January 12, 2007, that three of the seven directives within the 2004 Memorandum – information sharing, training, and explosives canines – either had not been implemented or remained highly contested between the two components. In addition, the FBI and ATF developed white papers that they attached to the ERG report describing each component's position on these three issues.[17]

Our audit found that the FBI and ATF are still not coordinating explosives-related operations and activities for the three areas identified by the ERG report. In addition, as identified in Exhibit 2-1, we determined that issues also remain unresolved for two additional directives in the 2004 Memorandum – investigative jurisdiction and laboratories.

[17] See Appendix V for the ERG's January 12, 2007, memorandum.

Exhibit 2-1: 2004 Memorandum Requirements Issues Identified as Unresolved and Summary of ATF and FBI White Paper Positions

Topic	Unresolved Issues		White Paper Positions	
	ERG Report	OIG Audit	FBI	ATF
Investigative Jurisdiction		√	Not discussed in white paper	Not discussed in white paper
Information Sharing (See Chapter III)	√	√	Due to the FBI's counterterrorism mission, FBI Bomb Data Center should represent the U.S. internationally, and ATF should not use Bomb Data Center name.	ATF should be the sole Bomb Data Center.
Training (See Chapter IV)	√	√	The FBI should continue to teach explosives and post-blast training with a domestic and international terrorism perspective. The language and directions related to post-blast training in the Attorney General Memo should be amended.	ATF should serve as the primary DOJ component to develop and provide comprehensive training programs for fire and explosives investigation. ATF should administer the explosives portion of the Hazardous Device School currently administered by FBI at Redstone Arsenal in Huntsville, Alabama.
Canines (See Chapter IV)	√	√	DOJ components should use only canines that have met *Scientific Working Group on Dogs and Orthogonal Detection Guidelines* Certification. The FBI should continue its joint training initiative on peroxide explosives scent training.	All DOJ explosives detection canines will be procured, trained, and certified by ATF. Any training related to explosives-detection canines sponsored, coordinated, or presented by DOJ components shall be coordinated through ATF.
Laboratories (See Chapter V)		√	Not discussed in white paper	Not discussed in white paper

Source: 2007 Explosives Review Group report, OIG audit, and ATF and FBI white papers

Some of the most significant language of the 2004 Memorandum involves the conflict resolution authority of the Deputy Attorney General. However, we determined that over a 4-year period and despite the ERG report noting significant unresolved issues, the Office of the Deputy Attorney General did not exercise its authority to resolve the conflict, particularly in the five areas we identified in Exhibit 2-1.[18]

While the 2007 ERG report made no recommendations regarding investigative jurisdiction, we believe the 2004 Memorandum is ambiguous as to investigative jurisdiction, which has contributed to conflict and continuing coordination issues. The 2004 Memorandum states that ATF controls the investigation of all explosives incidents, except for incidents related to terrorism and "traditional" FBI jurisdiction.[19] As a result, each component can logically claim a right to respond to almost every incident. The ERG report noted that jurisdictional disagreements arose due to the difficulty in establishing the motive when an incident occurred, but disputes were worked out in the field. We found the ambiguity has resulted in disagreements that required ATF and FBI field division management and agency headquarters involvement to resolve.

One example identified during our audit highlights how the language used in the 2004 Memorandum is unclear and open for interpretation. In September 2004, an FBI field division assumed it had the authority to lead explosives investigations until it determined whether there was a link to terrorism. When the ATF disagreed with this interpretation, the United States Attorney for that jurisdiction sought further clarification of the 2004 Memorandum from the Office of the Deputy Attorney General. According to the United States Attorney, the Office of the Deputy Attorney General responded:[20]

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[18] Between 2004 and 2009, there have been four different confirmed Deputy Attorneys General. Several officials from the ATF and FBI stated that after Deputy Attorney General Comey left office in 2005, leadership from the Office of the Deputy Attorney General on ATF and FBI coordination diminished greatly.

[19] As discussed in Appendix III, the FBI has broad authority over many crimes that could involve explosives.

[20] See Appendix VII for the memorandum from the United States Attorney.

> It is more accurate to say that this [the 2004 Memorandum] means the ATF has jurisdiction unless and until it is determined that the explosives incident is related to terrorism; than it is to say that the FBI or the JTTF has jurisdiction unless and until it is determined that the incident is not related to terrorism . . . that "default" jurisdiction is with the ATF.

This response from the Deputy Attorney General's office provides significant guidance as to which agency DOJ intended to exercise initial lead-investigative authority, at least in circumstances where jurisdiction is unclear. Such a clarification, however, was never formally incorporated into any policy, protocol, or other written direction provided by the Office of the Deputy Attorney General to other United States Attorneys, the FBI, or ATF.

We believe that clear and specific direction is needed from DOJ to eliminate the ambiguity in the 2004 Memorandum and the continuing conflicts and non-cooperative practices between the FBI and ATF in areas where the two agencies have exhibited an inability to reach agreement. DOJ must also oversee ATF and FBI explosives-related efforts to ensure these agencies put a clarified policy into practice.

Ambiguous 2008 Memorandum of Understanding

In an effort to clarify roles and responsibilities and to facilitate a more productive partnership, in July 2008 the FBI and ATF signed a Memorandum of Understanding issued by the Office of the Deputy Attorney General entitled Protocols for Response to Explosives Related Incidents.[21] The 2008 Memorandum was issued 18 months after the 2007 ERG report and more than 4 years after the Attorney General's 2004 Memorandum. The purpose of the 2008 Memorandum was to resolve any operational concerns at the outset of an explosives incident. However, this agreement did not address the areas that the 2007 ERG report identified as needing resolution, including information sharing, training, and canine matters.[22]

The 2008 Memorandum, as noted in Exhibit 2-2, also does not resolve the dispute between the FBI and ATF over lead-agency authority and does not clarify related language in the 2004 Memorandum. Instead, the 2008 Memorandum of Understanding requires that during the *initial response* phase to an incident, the FBI and ATF Special Agents-in-Charge will

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[21] According to the 2008 Memorandum, the Attorney General, Deputy Attorney General, and key representatives from the ATF and FBI developed the memorandum regarding the DOJ response to explosives-related incidents.

[22] See Appendix VI for the July 8, 2008, ATF-FBI Memorandum of Understanding.

coordinate a *joint response* under the ambiguous standard that "the agency with the responsibility for the underlying felony will assume investigative lead, as coordinated by the [Special Agents-in-Charge]." The memorandum also notes jurisdiction may not be readily apparent at the outset and encourages joint investigations pending a definitive determination.

Exhibit 2-2: Jurisdiction Definitions

2004 Memorandum	2008 Memorandum
ATF shall control the investigation of all explosives events except: • where the incident is terrorism, JTTF is responsible • where FBI has traditionally exercised jurisdiction	Coordination of a joint response will be the responsibility of the respective Special Agents-in-Charge: • the agency with responsibility for the underlying felony will assume investigative lead • where the incident is terrorism, JTTF is responsible

Source: 2004 Memorandum and 2008 Memorandum

Both the 2004 and 2008 definitions of the components' lead authority are similar in that they define jurisdiction by the motive of the incident. However, in practice the motive underlying an explosives incident may not be readily apparent and it may take time to determine whether the incident is accidental or a criminal or terrorist act. Therefore, the 2008 Memorandum did not bring any clarity to the determination of jurisdiction; instead, by making Special Agents-in-Charge responsible for coordinating a joint response, the risk increased that DOJ will end up with different interpretations in many of the 25 ATF and 56 FBI field divisions rather than a unified DOJ position.

In fact, we found that the guidance in the 2008 Memorandum has been subject to wide differences in interpretation that undermine coordination between the FBI and ATF. As part of our survey of ATF and FBI explosives specialists and field management, we asked about their understanding of lead agency jurisdiction under the 2008 Memorandum. As shown in Exhibit 2-3, the ATF and FBI specialists and management interpret the memorandum differently. We found that 17 to 30 percent of field division managers and about 40 percent of the specialists in each agency responding to our survey have diametrically opposed interpretations, believing their agency has the initial, default jurisdiction.

Exhibit 2-3: Interpretations of 2008 Memorandum

2008 Memorandum Lead Agency Interpretation	Management		Specialists	
	ATF	FBI	ATF	FBI
FBI leads for all explosives incidents unless and until it is clear no nexus to terrorism exists.	5%	30%	4%	46%
FBI leads unless or until it is clear that only ATF has jurisdiction.	0%	0%	1%	6%
FBI and ATF jointly lead the investigation unless or until a clear nexus to terrorism or another traditional FBI jurisdiction is established.	61%	42%	31%	24%
FBI and ATF Special Agents-in-Charge will determine which agency leads on a case-by-case basis.	17%	21%	20%	16%
ATF leads unless or until a clear nexus to terrorism or other traditional FBI jurisdiction is established.	17%	7%	40%	2%
Don't know	0%	0%	3%	4%
Did not Answer	0%	0%	1%	2%

Source: DOJ Survey Analysis of survey questionnaire responses

Lack of a Coordinated Explosives Response Protocol

We also found that the FBI and ATF do not have investigative policies or a joint response protocol for coordinating responses to explosives threats and incidents as required by the 2008 Memorandum.[23]

The FBI Manual of Investigations Operations and Guidelines (MIOG) regarding bombing matters reiterates the jurisdiction language of the 1973 Memorandum of Understanding without mentioning the 2004 Memorandum or providing any standards for collaboration with ATF. Some examples of MIOG direction that may contribute to ineffective coordination with ATF are:[24]

- FBI MIOG recognizes that ATF has jurisdiction over the unlawful manufacture, possession, or transfer of destructive devices and the unlawful importation, manufacture, distribution, or storage of explosives, but it cautions that agents should be alert for such violations and investigative jurisdiction should be assumed by the FBI if they arise during any substantive FBI investigation.

[23] Although the components commissioned ATF and FBI Special Agents in Charge to draft more specific joint response protocols in 2000, called the Fair Oaks Accords, these procedures requiring joint management of certain explosives scenes were never adopted.

[24] The excerpts are from FBI MIOG; Part 1, 174-4,"Other Violations," and Part 1, Section 160-2, "Policy and Procedure," paragraph (5).

- According to DOJ investigative guidelines, ATF jurisdiction does not apply to instances where the FBI had investigative jurisdiction in a separate substantive area prior to the enactment of the Federal Bombing Statute.

- FBI policy requires notification to headquarters immediately by electronic communication of any attempts by ATF to infringe upon FBI jurisdiction under the Federal Train Wreck Statute.

The ATF's policy manual — the Order on Investigative Procedures — also does not address coordination of joint explosives investigations with the FBI. ATF is revising the order and plans to re-issue it in FY 2009.[25] The draft version of the new order specifies that the ATF investigative focus should be violations within ATF jurisdiction, but that "incidents in which ATF becomes involved initially may ultimately fall within the jurisdictional responsibility of other agencies." The new protocol will advise ATF personnel to "be alert to ATF jurisdictional responsibility" but seek to work jointly with agencies having primary jurisdiction following three guidelines:

- The primary ATF case agent must promptly report related violations to the duty agent for the agency having investigative jurisdiction and furnish all relevant information, "unless such action could or would jeopardize an ongoing investigation."

- Where the responsible agency wants to assume control of the investigation, ATF will offer assistance and cooperation.

- Special Agent-in-Charge approval is required before joint investigations.[26]

However, the revised ATF order does not provide specific guidance on situations where the issue of lead jurisdiction is initially unclear.

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[25] As of July 1, 2009, the revised ATF order has not been issued.

[26] The revised ATF Order also states, "[i]n many instances, ATF is involved in investigations that have the potential to overlap with other components' jurisdictions (e.g., the investigation of armed narcotics dealers with the Drug Enforcement Administration, terrorism investigations with the Federal Bureau of Investigation). The resident agent in charge (RAC)/group supervisor (GS) should ensure that appropriate local task forces and other Federal agencies have been contacted."

Deputy Attorney General Removed From Dispute Resolution Process

Unlike the 2004 Attorney General Memorandum, the 2008 Memorandum contains no reference to the role of the Deputy Attorney General and no provision for resolving disputes outside the components involved. Instead, it requires disputes to be resolved in the field by the Special Agents-in-Charge and only if an agreement is not reached should the matter be raised to the components' headquarters. Without such a formalized dispute resolution process, the history of ATF and FBI relations on explosives matters suggests that the components will remain entrenched in their positions, and conflicts will persist unresolved.

HSPD-19 Implementation Plans at Risk

The 2007 HSPD-19 National Strategy asserted the need for an entity to coordinate federal efforts against terrorists' use of explosives. In a finding covering all national efforts, and which our audit found particularly salient for the FBI and ATF relationship, the National Strategy stated, "expert stakeholders, many with decades of experience in explosives threat related fields, revealed that the coordination of ongoing efforts is a fundamental shortfall." The strategy also stated:

> The numerous programs throughout the country that maintain specific roles in this effort tend to be based on individual analysis and initiative rather than a coordinated process working to reach similar strategic goals. The absence of such a strategic process creates disparity between various activities, causing confusion among stakeholders and, sometimes, divisive competition among providers.

Without resolution of ATF and FBI explosives coordination issues by DOJ leadership, history suggests that the components will not succeed in meeting the goals of the HSPD-19 process for forging an interagency approach against terrorist use of improvised explosive devices (IEDs).[27] The clarification of roles and responsibilities of federal response and for law

[27] The HSPD-19 National Strategy recommended designation of DOJ, specifically the FBI in partnership with other federal organizations, to be the entity responsible for determining national priorities and implementing HSPD-19 recommendations. The 12 DOJ-led tasks under the plan include: Task 2.2.2 to develop a comprehensive knowledge management process regarding explosives and IED incidents; Task 2.2.3 to create an overarching, federated IED information sharing architecture; Task 2.2.7 to improve ongoing efforts to regulate explosives commerce and investigate diversion; and Task 3.2.7 to enhance standards and improve delivery for post-blast investigation training to federal, state, and local authorities.

enforcement agencies under the leadership of the Attorney General is a key recommendation of the HSPD-19 National Strategy. However, the HSPD-19 Implementation Plan gives the Department of Homeland Security the lead responsibility to identify and document specific roles and responsibilities of departments and agencies relating to all phases of explosives incident management. This task includes drafting a Strategic Plan and Concept Plan, as well as department and agency-specific Operations Plans. The relationship between DOJ components affects the likelihood of coordinating the priorities of DOJ and the Department of Homeland Security, which already funds much of the equipment needs of state and local bomb squads through its Office of Bombing Prevention.

Further, the HSPD-19 Implementation Plan establishes an HSPD-19 Implementation Joint Program Office (JPO) led by the FBI in partnership with other agencies.[28] According to the FBI, the JPO was designed specifically to bring resolution to issues not previously resolved through other mechanisms. However, we note that the JPO was not designed to function as an ultimate decision maker on roles and responsibilities for the FBI and ATF in handling explosives incidents, but instead was conceived to act as a formalized, interagency discussion forum. Unless there is consensus among the agencies involved the JPO cannot force settlement between feuding components. While the JPO and its members may be used to assess and reflect community opinion and advise on priorities, individual agencies will continue to make the programmatic and budgetary decisions independently. In our judgment, if DOJ does not conclusively address the issue of the roles and responsibilities for the FBI and ATF in addressing terrorists' use of explosives, and by extension, all explosives investigation activities, competition between the components on fundamental roles will likely continue and impede the progress of the entire HSPD-19 implementation process.

Component Competition Rather Than Collaboration

Our audit found that FBI and ATF field divisions tend to deploy their employees to the larger, more sensational explosives incidents, sometimes racing each other to be the first federal agency on the scene and disputing upon arrival which agency should lead the investigation. Additionally, we found that other disputes arise on scene regarding which agency's procedures should be followed when handling or preserving explosives evidence.

[28] The JPO, which meets monthly, had its inaugural meeting on April 8, 2009.

State and local law enforcement agencies' bomb squads are the first responders in most explosives incidents. To assess whether a federal nexus exists, federal agencies initially must rely on their relationships with the local bomb squads to receive notification of an incident. Both the FBI and ATF seek to establish good working relationships with these bomb squads by providing free training, paying for overtime associated with federal investigations, and detailing local officers serving on task forces to special events and high-profile assignments. However, many ATF and FBI field division explosives specialist personnel we spoke with said it was common for local bomb squads to fail to notify them about explosives incidents. Additionally, in several locations we visited we learned that some local bomb squads would inform either the FBI or ATF about an incident but not the other agency.

We also discovered that in certain places where local squads did notify both the FBI and ATF of an explosives incident, the FBI and ATF would "race" each other to the scene. Some squad managers admitted that they operated under the assumption that possession is nine-tenths of the law, meaning their agency would have lead authority if they arrived first to the scene.

We found that while joint deployment to an explosives scene could occur, the FBI and ATF rarely performed joint investigations or transferred explosives cases to the other component. Our surveys of ATF and FBI field management and explosives specialists revealed that when both components deployed to an explosives incident, over 50 percent of the management respondents and over 60 percent of the explosive specialists replied that they rarely or never performed a joint investigation. Survey respondents also reported that 58 percent of FBI and 67 percent of ATF field divisions never transferred cases to the other agency.[29]

ATF case management system records support the rarity of explosives cases being transferred between the FBI and ATF. According to ATF data for FYs 2003 to 2008, FBI transferred lead agency authority to ATF an average of about 26 cases out of an annual average of 830 ATF bombing cases. Conversely, ATF records demonstrate that it referred lead agency authority to the FBI an average of 7 explosives cases annually out of an estimated an annual average of 590 FBI explosives-related cases.[30] The relatively few

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[29] According to the ATF, for FYs 2003 through 2008 the FBI and ATF jointly investigated and recommended for prosecution 192 explosives-related cases.

[30] The FBI case management system does not record the total number of explosives incidents the FBI handles and could not account for the number of referrals the FBI made to or received from ATF.

joint investigations and explosives case transfers are another indication that coordination between the FBI and ATF occurs infrequently.

Conflicts Continue to Occur

Headquarters officials from both components stated to us that the FBI and ATF work well together and that significant conflicts no longer occur. Those officials stated that recent disputes were simply isolated incidents attributable to personality conflicts among the responding personnel and their supervisors. Several officials in both components cited a May 2008 bombing of a Federal Courthouse in San Diego as an example of good coordination. During this incident, the FBI took the undisputed lead because a federal building was targeted and ATF provided support. We confirmed that coordination between the components at this incident was exemplary, with ATF supporting the FBI's lead investigative role.

However, we determined that disputes between the FBI and ATF on explosives incidents continue to occur. We found explosives incident disputes between the FBI and ATF that were recent, significant, and attributable to more than personality conflicts.

In particular, at ATF and FBI field divisions that we visited and in responses to our survey, we were told of several recent explosives incident disputes. As detailed in Exhibit 2-4, ATF and FBI personnel described recent disputes occurring in six of the eight locations we visited that involved, jurisdictional questions and explosives-handling issues. Such conflicts can delay investigations, undermine federal and local relationships, and may project to local agency responders a disjointed federal response to explosives incidents in their area.

Exhibit 2-4: Summary of Identified Disputes

Location	Dispute Summary
Baltimore	July 2008 – Disputes arose over ATF explosives handling techniques in two separate Maryland incidents. During one render-safe operation of a pipe bomb cache, an ATF Explosives Enforcement Officer used disassembly tools to either cut apart or spin off the "end caps" of pipe bombs to preserve explosives evidence. The state bomb squad complained to the FBI and ATF that these techniques were not "approved" by the FBI's Hazardous Device School program. In a separate incident, the ATF bomb technician cut apart a pipe bomb. The FBI subsequently complained to the local bomb squad about validating such techniques by remaining on scene and later prohibited ATF bomb technicians from participating in FBI training.
New York City	March 2008 – The FBI JTTF and ATF deployed to the bombing near an armed forces recruiting station in Times Square. An FBI SABT deployed with the New York City Police Department (NYPD) Bomb Squad to the scene, and later an ATF Special Agent embedded within a different NYPD unit of detectives – the Arson and Explosives Unit – arrived on scene. In a "race to the courthouse," detectives in the NYPD Arson and Explosives Unit apparently pushed ATF to seek to have the likely suspect charged in federal court, while the FBI's JTTF was conducting a federal terrorism investigation of the incident and suspects. The U.S. Attorney decided to keep the case with the FBI.
Phoenix	November 2007 – A dispute over jurisdiction occurred at the Palo Verde Nuclear Facility in Palo Verde, Arizona, when an engineer with the facility had a pipe bomb in the bed of a truck. The FBI was notified first and deemed it a potential terrorist incident. ATF was notified several hours later and disputed the connection to terrorism. This dispute occurred publicly in front of state and local bomb squad personnel.
Seattle/Portland	December 2008 – A bombing occurred in Woodburn, Oregon, in which a local bomb technician and police chief were killed by a device found outside a bank. Local prosecutors specifically requested that the ATF Seattle Field Division perform the post-blast investigation. However, the FBI's Portland Field Division disputed ATF's investigative jurisdiction because the FBI had jurisdiction of the underlying federal violation and the technician killed had been trained by the HDS
Los Angeles	June 2007 – An explosives magazine blast occurred in the Mojave Desert and the FBI responded to the incident. ATF does not believe it was notified until it was too late for ATF to work the scene. The FBI, however, told us it merely assisted the local authorities and that ATF simply responded late and then wanted to take over the scene. Both characterized each other's scene processing as inadequate. The dispute occurred publicly in front of state and local bomb squad personnel.
San Diego	September 2007 – An explosives incident occurred at the Olive Lane Bridge in San Diego, California, where the FBI claimed an incendiary device was consistent with domestic terrorism. ATF disputed the terrorism assertion publicly in front of state and local bomb squad personnel. Agents from the FBI and ATF described their relationship as "strained and competitive."

Source: OIG analysis of interview testimony

To determine the extent of recent disputes between the FBI and ATF on explosives matters, we surveyed ATF and FBI management and explosives specialists. As shown in Exhibit 2-5, 31 percent of ATF and FBI management indicated that the relationship between their components was working well, 51 percent said they generally worked well together but with isolated problems, and 7 percent said they experienced significant problems.

Exhibit 2-5: Management Opinion on Working Relationship

ATF and FBI Management Opinion	Percentage	Number
We have worked very well together	31%	19
We generally have worked well together, but have had isolated problems	51%	31
We have experienced significant problems	7%	4
We generally do not work together	11%	7
Total Percentage and Respondents	100%	61

Source: OIG analysis of ATF and FBI management surveys

We solicited examples of ATF and FBI conflict occurring during FYs 2007 and 2008. Exhibit 2-6 shows that approximately 20 percent of ATF and FBI management were involved in resolving a dispute during this period. For ATF and FBI specialists — personnel more likely to come in contact with one another — more than 30 percent of ATF specialists and 40 percent of FBI specialists were involved in a dispute between the FBI and ATF.[31]

Exhibit 2-6: ATF and FBI Involved or Aware of a Dispute

Disputes in FY 2007-08	Management		Specialists	
	ATF	FBI	ATF	FBI
Yes, I was involved in or resolved the dispute(s)	22%	19%	33%	40%
Yes, I am aware of the dispute(s)	22%	16%	25%	27%
No	56%	65%	41%	32%
Did not answer	0%	0%	1%	1%

Source: OIG analysis of ATF and FBI management and explosives specialists surveys

For those specialists who indicated they were involved in or aware of a dispute, more than 75 percent indicated that they had between one and five disputes during FYs 2007 and 2008. Additionally, at least 8 percent had more than five disputes during this period.

[31] For this exhibit "involved" means respondents were a part of the dispute and "aware" means respondents heard about a dispute but were not personally involved.

Characteristics of Conflict

We interviewed 104 ATF and FBI management and explosives specialists in the 8 locations that we visited. We were generally told that the basis for disputes between the FBI and ATF was usually the absence of clear jurisdiction. According to explosives specialists and Supervisory Special Agents from both components, jurisdiction is often decided on scene, and state and local authorities are confused over whether the FBI or ATF should assume the lead in the investigation.

To determine the basis of the disputes, we surveyed explosives specialists from the FBI and ATF and made inquiries about the characteristics of the disputes. As shown in Exhibit 2-7, 80 to 90 percent of ATF and FBI specialists agreed that characteristics of disputes involved classifying an incident as terrorism-related and determining which agency should lead the investigation. Almost 60 percent of ATF specialists and nearly 40 percent of FBI specialists indicated personality conflict was a characteristic of disputes. Additionally, approximately 60 percent of FBI specialists noted that differences in evidence collection and handling techniques were characteristics of the disputes.

Exhibit 2-7: Explosive Specialists Characteristics of Disputes

Characteristics	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or Did Not Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Disagreement over classifying incident as terrorism-related	91%	82%	4%	4%	5%	14%
Conflict over which agency has investigative lead	93%	89%	4%	3%	3%	8%
Personality conflict among the federal agents involved	59%	38%	32%	45%	9%	17%
Differences in evidence collection standards	44%	68%	37%	17%	19%	15%
Conflict over the technique(s) used to handle explosives	54%	59%	28%	16%	18%	25%
Other	8%	8%	0%	0%	92%	92%

Source: OIG analysis of explosives specialists surveys

We also surveyed state and local bomb commanders on whether they had witnessed disputes between the FBI and ATF. In our survey, 34 of 239 (14 percent) bomb squad officials reported ATF and FBI disputes had occurred in explosives investigations during FYs 2007 and 2008. Of the 34 bomb squads reporting a dispute, 74 percent indicated that the number of disputes was between 1 and 2 incidents while 26 percent indicated between

3 and 10 incidents.[32] From our surveys, as shown in Exhibit 2-8, the state and local bomb squad commanders provided support for the proposition that the disputes were based largely on whether to classify an event as terrorism-related and on the conflict over which federal agency has the investigative lead authority. Additionally, the state and local officials indicated that in roughly one-third of the disputes the conflict centered on explosives-handling techniques.

Exhibit 2-8: State and Local Characteristics of Disputes

Characteristics	Strongly Agree or Agree	Strongly Disagree or Disagree	Not Applicable or Did Not Answer
Disagreement over classifying incident as terrorism-related	65%	15%	20%
Conflict over which agency has investigative lead	91%	0%	9%
Personality conflict among the federal agents involved	56%	29%	15%
Differences in evidence collection standards	21%	41%	38%
Conflict over the technique(s) used to handle explosives	35%	35%	30%
Other	6%	0%	94%

Source: DOJ OIG analysis of state and local bomb commander surveys

Explosives Handling Disputes

The techniques used to disarm or dispose of an explosive are critical to ensuring the safety of responding law enforcement personnel as well as the general public. Several FBI explosives specialists told us that conflicts sometimes involved explosives-handling techniques used by ATF personnel that the FBI believed were unsafe and not in accordance with procedures taught to all certified bomb technicians. When we asked ATF personnel about disputes over such techniques, an explosives specialist stated that the FBI's approach needlessly destroys a lot of evidence without meaningfully reducing the risk to the public. He also stated that he believed most of the

[32] In context, our survey indicated that state and local squad respondents reported deploying to 9,362 explosives incidents in 2008, whereas ATF specialist respondents indicated they covered 1,415 incidents (15 percent of the local agencies' total) and FBI respondents recorded deploying to 962 incidents (10 percent). However, neither component tracks joint deployments or numbers of disputes.

ATF's EEOs have more years of experience than FBI SABTs and therefore are not advocating unproven or reckless procedures.[33]

We surveyed state and local bomb commanders on how many times during FYs 2007 and 2008 their squads were on an explosives incident scene when ATF or FBI personnel proposed using techniques to handle explosives that were different from their training.[34] Only 6 percent of the bomb squads indicated that the FBI proposed using non-standard techniques, while 21 percent indicated that ATF proposed using what they deemed to be non-standard techniques. As shown in Exhibit 2-9, approximately 50 percent of the bomb squad commanders responded that the non-standard techniques raised concerns for the safety of on-scene personnel, and more than one third of the commanders indicated the techniques delayed the render-safe procedures. However, the commanders also indicated the intact evidence obtained by using the non-standard techniques benefitted the case.

Exhibit 2-9: Effect of Non-Standard Explosives Handling Technique

Effect	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Case benefitted from submitting intact evidence	54%	7%	30%	57%	16%	36%
Concern existed over the risk to the safety of on-scene personnel	54%	50%	32%	29%	14%	21%
Disagreement caused delays in render-safe procedures	38%	50%	44%	21%	18%	29%
Local bomb squad withdrew in protest	6%	7%	36%	21%	58%	72%
Other	12%	0%	2%	0%	86%	100%

Source: OIG analysis of state and local bomb commander surveys

[33] ATF identified an incident in Seattle where important evidence was preserved by advocating remote movement of a jar of possible peroxide explosive. By using this non-standard technique, the EEO was able to see paper that had the formula written on it which would otherwise have been destroyed.

[34] For example, from site visits we learned some disputes involve ATF specialists advocating spinning the end caps off pipe bombs rather than using a disrupter. In other cases ATF would advocate x-rays or photographs of devices before destruction to preserve evidence, and this step is contrary to the training of civilian bomb technicians.

Effects of Conflicts

Both ATF and FBI explosives specialists agree that disputes delay interviews, postpone the investigation, and confuse state and local partners, as shown in Exhibit 2-10.

Exhibit 2-10: Explosive Specialists Opinions on the Effect of Disputes

Effect	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or Did Not Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Delay in the conduct of interviews	64%	63%	25%	20%	11%	17%
Delay in the conduct of investigations	72%	70%	20%	20%	8%	10%
Confusion over which was the federal lead agency	83%	89%	10%	4%	7%	7%
Concern over what laboratory to send explosives-related evidence	71%	80%	17%	4%	12%	16%
Other	4%	15%	2%	0%	94%	85%

Source: OIG analysis of ATF and FBI explosives specialists surveys

During our interviews of ATF and FBI specialists in some locations, we found a continuing hostility between these personnel. The hostility was sometimes based on events that happened years earlier, and often did not involve the individuals we were interviewing. These events, although in the past, can adversely affect the working relationship between the FBI and ATF.[35] The following examples describe these events from various locations:

San Diego: From interviews of both ATF and FBI explosives specialists, we determined that relations between the components had been strained since August 2003 when an incendiary device caused $50 million in damage to a housing complex under construction. The FBI had asserted lead agency authority under its domestic terrorism jurisdiction because the fire was allegedly started by the Earth Liberation Front – an organization identified by the FBI as a domestic terrorism enterprise. We were told that the FBI resisted ATF's assertion that it should lead the processing of the scene based on its arson expertise.

Kansas City: Agents from both components indicated there was little to no relationship between the FBI and ATF on explosives matters because of

[35] Explosive specialists from both components repeatedly brought up disputes that occurred with their counterparts at major incidents such as the first World Trade Center bombing, Oklahoma City, and the September 11, 2001, terrorist attacks on the Pentagon.

different jurisdictional interpretations exemplified by a 2004 incident in Dodge City, Kansas. ATF specialists reported that FBI agents arrived on scene of a domestic dispute first and continued to investigate the bombing for several hours without notifying ATF. The FBI conducted interviews, obtained a confession, and discovered several pipe bombs. When asked why ATF was not notified earlier given that the case clearly was not terrorism-related, the FBI Resident Agent-in-Charge stated that the FBI Counterterrorism Assistant Director mandated that field offices should aggressively respond to anything that could possibly be terrorism. The issue was raised to the U.S. Attorney for the District of Kansas and ultimately resulted in a clarification of roles from the Office of the Deputy Attorney General.[36]

Seattle: Management and agents from both components pointed to an April 2005 arson of houses under construction in Lake Sammamish, Washington, as the low point of their relationship. The ATF arrived at the scene first and began processing evidence, including a banner purporting to claim responsibility for the arson on behalf of the Earth Liberation Front – an organization identified by the FBI as a domestic terrorism enterprise. ATF sent this evidence to its Walnut Creek Laboratory. When the FBI arrived, it asserted the banner clearly made the incident a case of domestic terrorism and a confrontation over investigative authority ensued. Although ATF contended it should maintain the investigative lead because the incident was an arson case, the FBI took over the investigation because of the potential domestic terrorism nexus. The FBI then flew a Special Agent to California to retrieve the banner. ATF remained on the scene and provided assistance in determining the cause and origin of the arson. However, ATF and FBI personnel stated that this confrontation severely damaged the relationship between the two agencies.

Washington, D.C.: Within the national capital region, the FBI and ATF have come to a jurisdictional accommodation given the greater likelihood of terrorist targeting. Before asserting jurisdiction, ATF will defer investigative authority to the FBI until terrorism is ruled out as the motive. Therefore, ATF does not deploy alongside the FBI frequently for explosives incidents inside the metropolitan area. Outside the metropolitan core, however, this practice is not followed and conflicts arise. For example, a 2008 conflict occurred over a suburban Virginia townhouse fire where the local fire department discovered a basement full of explosives precursor chemicals. The absent owners were active duty military and the FBI insisted on treating the case as potential militia or white supremacists' terrorist infiltration of the

[36] This guidance, however, was not published or distributed to other U.S. Attorneys' Offices, the FBI, or ATF.

military. However, ATF protested that the case was not terrorism. The ATF subsequently confirmed with the townhouse owners that they were constructing homemade fireworks, but FBI agents viewed the incident as emblematic of a rush to judgment by ATF that the incident had no link to terrorism.

Survey respondents from three additional locations disclosed significant conflicts had recently occurred between the FBI and ATF, as shown in Exhibit 2-11.

Exhibit 2-11: Summary of Disputes Identified in Surveys

Location	Dispute Summary
Southwest	October 2008 – A dispute arose over explosives handling techniques. The local bomb squad discovered a cache of explosives in a rural setting and decided to destroy the explosives on scene so as not to place undue risk to personnel. However, the ATF supervisor intervened, advocating retaining some components for evidence. The local squad protested to the local FBI SABT and then appealed to the National Bomb Squad Advisory Board that such techniques were not consistent with its training. ATF sent EEOs to assess the cache, who recommended destroying all but three bombs. The local bomb squad continued to have concerns for the safety of its officers.
Atlanta	October 2008 – A bombing occurred at a law firm in Dalton, Georgia. Although the FBI recognized that no terrorism was involved and that ATF would be the lead federal component if the bomber was not killed, the Georgia Bureau of Investigation supported the local police chief's request that the FBI, and not ATF, handle the post-blast evidence analysis. The ATF was insistent that the 2008 Memorandum meant its laboratory should be used. The Georgia Bureau of Investigation asked the United States Attorney to intercede, and the FBI continued to provide laboratory assistance.
Houston	July 2006 – A peroxide explosives incident led to a dispute in Texas City, Texas, when the FBI and ATF had a disagreement on whether an explosion was terrorism-related. ATF claimed that the FBI tried to exclude it from the investigation, even threatening to arrest an ATF explosives specialist for attempting to conduct an additional sweep of the crime scene. The local bomb squad sided with ATF against the FBI's assertion of potential terrorism. The dispute was escalated to ATF and FBI field division management, and each component's specialists remained uncooperative. The case later was determined not to be terrorism.

Source: OIG analysis of survey questionnaires

In addition, as shown in Exhibit 2-12, a majority of state and local respondents indicated that a dispute between the FBI and ATF delayed the conduct of an investigation and confused state and local responders as to which federal agency was responsible for leading the incident response or investigation. This result is in line with the results of the survey of ATF and

FBI explosives specialists and supports the importance of DOJ clearly defining jurisdictional authority for explosives matters.

Exhibit 2-12: Impact of ATF and FBI Disputes on Explosives Investigations

Effect	Strongly Agree or Agree	Strongly Disagree or Disagree	Not Applicable or Did Not Answer
Delay in conduct of interviews	35%	32%	33%
Delay in conduct of investigations	56%	23%	21%
Confusion over who was the federal lead agency	79%	6%	15%
Concern over what laboratory to send explosives-related evidence	44%	35%	21%
Other	3%	0%	97%

Source: OIG analysis of state and local bomb commander surveys

Opinion of Counterparts

Previous conflicts between the FBI and ATF appear to have fostered lingering negative attitudes regarding the other component's abilities. Results from our survey of ATF and FBI Special Agents-in-Charge, as shown in Exhibit 2-13, show that field division managers generally have a poor opinion of the other agency's explosives capabilities.

Exhibit 2-13: Opinions of FBI and ATF Management

Counterpart Assessment	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Counterpart provides important explosives and post-blast expertise	6%	47%	89%	44%	5%	9%
Counterpart adds needed resources for obtaining evidence	22%	35%	78%	60%	0%	5%
Counterpart neither helps nor hinders	44%	49%	33%	30%	23%	21%
Counterpart duplicates capabilities already on scene	89%	79%	11%	16%	0%	5%
Counterpart differs in scene investigation methods	78%	58%	11%	30%	11%	12%
Counterpart delays decision-making on scene	67%	49%	33%	35%	0%	16%
Other	0%	2%	0%	0%	100%	98%

Source: OIG analysis of ATF and FBI management and explosives specialists surveys

In addition, as shown in Exhibit 2-14, the survey responses of ATF and FBI explosives specialists mirror management opinions.

Exhibit 2-14: Opinions of FBI and ATF Explosive Specialists

Counterpart Assessment	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Counterpart provides important explosives and post-blast expertise	9%	13%	82%	77%	9%	10%
Counterpart adds needed resources for obtaining evidence	18%	9%	72%	84%	10%	7%
Counterpart neither helps nor hinders	37%	28%	45%	50%	18%	22%
Counterpart duplicates capabilities already on scene	80%	89%	10%	5%	10%	6%
Counterpart differs in scene investigation methods	65%	76%	15%	14%	20%	10%
Counterpart delays decision-making on scene	74%	80%	9%	8%	17%	12%
Other	2%	8%	0%	0%	98%	92%

Source: DOJ OIG analysis of ATF and FBI management and explosives specialists surveys

We also surveyed state and local bomb commanders to obtain their opinions of the assistance they received from the FBI and ATF. Contrary to ATF and FBI overall assessments of each other, the state and local bomb squads favorably assess the contributions of both components, as shown in Exhibit 2-15.

Exhibit 2-15: State and Local Assessment of FBI and ATF Assistance

Counterpart Assessment	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Provides important explosives and post-blast expertise	77%	72%	9%	13%	14%	15%
Adds needed resources for obtaining evidence	75%	67%	10%	16%	15%	17%
Neither helps nor hinders	23%	27%	41%	43%	36%	30%
Duplicates capabilities already on scene	19%	25%	60%	55%	21%	20%
Differs in scene investigation methods	20%	14%	58%	62%	22%	24%
Delays decision-making on scene	10%	13%	67%	65%	23%	22%
Other	2%	3%	0%	0%	98%	97%

Source: DOJ OIG analysis of state and local bomb commander surveys

However, we learned from our surveys and interviews with state and local bomb squads that some squads have become strongly anti-FBI and others anti-ATF because of prior negative experiences with these components. We were told by state and local bomb squad commanders that, in some instances, the FBI is perceived as the only federal presence in some larger, urban areas while ATF is perceived as more accessible in more rural areas. Some states have few bomb technicians and therefore rely on federal assistance. Other locations, such as New York City or Los Angeles, have adequate bomb technician resources on the state and local levels and therefore do not necessarily need federal assistance to address explosives incidents. State and local bomb squad commanders also commented about ATF's and FBI's working relationship and disparaging comments each component voiced to them about the other, raising the specter that one DOJ component's poor opinion of the other has negatively affected local law enforcement.

Conclusion

The overlap of jurisdiction and a lack of direction in the coordination of explosives investigations have promoted competition between the FBI and ATF, delayed render-safe operations and crime scene processing, confused local law enforcement partners, and may delay DOJ's implementation of its HSPD-19 responsibilities. We believe that a lack of supervision and mediation by DOJ officials, in particular the Office of the Deputy Attorney General, allows unhealthy component competition, unnecessary duplication of efforts, and problematic explosives incident responses.

Although we found ATF and FBI disputes over lead agency jurisdiction are relatively infrequent, these conflicts continue to occur throughout the country, with more than 30 percent of ATF specialists and 40 percent of FBI specialists responding to our survey that such disputes had occurred in their areas over the last 2 years. These disputes often adversely affect the working relationship of the components, as demonstrated by the low opinions each agency's explosives specialists have of their counterparts. Such negative opinions can make coordination between the FBI and ATF more difficult. Further, such strongly held opinions by federal agents may affect the opinions and actions of the state and local partners with whom they work.

Our surveys indicate local bomb squads may already prefer one agency – the FBI or ATF – over the other, potentially resulting in explosives investigations lacking important expertise from whichever federal agency is not included in the incident response. Additionally, state and local partners

told us that they are confused about which federal agency they should work with in explosives cases.

Since ATF and FBI exercise concurrent jurisdiction on certain explosives matters, we believe the DOJ should issue and enforce new guidance that delineates how the components will interact in explosives-related matters. This direction should replace prior agreements and MOUs and address the following issues: explosives program coordination and consolidation, whether to divide jurisdictions by device type (incendiary versus explosive), geography (rural versus urban), or by technical specialization (technical evidence collection and analysis versus render-safe authority). Further, DOJ should also consider whether to reassign explosives-related and domestic terrorism functions and personnel under the provisions of 28 U.S.C. § 599A.

Recommendations

We recommend that DOJ:

1. Implement new directives delineating lead authority for explosives investigations between the FBI and ATF. At a minimum, this guidance should: (1) assign responsibility to either the FBI or ATF to serve as the overall investigational "lead agency" for each specific type of explosives crime; (2) supersede all prior guidance on FBI-ATF explosives coordination; (3) detail actions required to coordinate jointly in circumstances when the motive is unclear. Consideration should be given to whether to divide jurisdiction between the components by device type, defined territories, technical specialization, or reassigning explosives functions and personnel under the provisions of 28 U.S.C. § 599A; and (4) establish a formal procedure for components to seek resolution of jurisdictional conflicts from the Department.

We recommend that the FBI and ATF:

2. Develop protocols on joint investigations for explosives incidents consistent with any new DOJ directives.

CHAPTER III: INFORMATION SHARING

The FBI and ATF separately maintain multiple explosives-related databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence. Contrary to the directive in the 2004 Attorney General Memorandum, ATF did not consolidate and maintain a distinct explosives-incident database. In addition, FBI and ATF conflict creates challenges for meeting HSPD-19 Implementation Plan goals of information sharing such as single search database compatibility and task force participation.

Incident Reporting not Consolidated

The 2004 Attorney General Memorandum directed the consolidation of all DOJ arson and explosives incident databases, including the FBI's Automated Incident Reporting System (AIRS) and ATF's Bombing and Arson Tracking System (BATS), into a single ATF-maintained database.[37] The 2004 Memorandum also required that no other DOJ component be permitted to maintain any database that contains arson or explosives incident information that would otherwise be maintained in the consolidated database. A consolidated explosives incident database would provide investigators with a single source to obtain comprehensive statistics and incident trends. On the other hand, separate databases result in duplication of effort, possible duplicate reporting of incidents by state and local agencies, a lack of uniformity in the reporting process, and the inability to accurately determine trends in explosives incidents.

In 2004, the FBI discontinued using AIRS and transferred the data in that system to ATF's BATS database. However, since the transfer of explosives incident information, the FBI has not reported any additional explosives incident information to BATS. Moreover, ATF has not consistently reported all its explosives incidents in BATS. Rather, both components have continued separate efforts to collect and disseminate explosives information.

We determined that ATF's effort to promote BATS as DOJ's single explosives incident database has suffered due to inconsistent reporting and ineffective efforts to encourage participation by the explosives community.

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[37] BATS is ATF's automated incident reporting system developed to streamline the gathering, retrieving, reporting, and archiving of investigative information of fires and the criminal misuse of explosives. After the consolidation of FBI AIRS data into BATS, ATF designated BATS as DOJ's single source for the reporting and sharing of explosives incident information.

As a result, BATS is not the comprehensive resource envisioned for reliably determining trends and providing useful explosives-related statistics.[18]

Inconsistent Reporting

18 U.S.C. § 846 (b) mandates all federal agencies to report information concerning explosives incidents to the Attorney General. Reporting is voluntary for state and local agencies. The FBI and ATF generally rely on state and local bomb squads to report incidents to BATS for explosives matters in which the FBI and ATF are involved. However, the FBI and ATF do not have processes to ensure that state and local agencies actually report explosives incidents. In fact, officials from both components told us they were aware of significant under-reporting by state and local bomb squads of their involvement in explosives incidents. By not reporting explosives incidents to BATS, and not ensuring that state and local responders reported to BATS, the FBI and ATF have not complied with their reporting requirements and have reduced the utility of BATS.

In examining the BATS data, we requested from ATF a listing of agencies that have reported explosives incidents to BATS. As shown in Exhibit 3-1, state and local agencies provided the bulk of explosives incident information from FYs 2003 through 2008.

Exhibit 3-1: Number of Reported Incidents by Agency (FYs 2003 – 2008)

Agency	Number of Reported Incidents
ATF	4,713
FBI	0
U.S. Army Criminal Investigation Command	7
U.S. Capitol Police	7
U.S. Secret Service	1
State and Local Organizations	21,132
Total	25,860

Source: ATF U.S. Bomb Data Center as of September 2008

[18] Officials from the National Association of Bomb Squad Commanders, FBI Hazardous Devices Operations Center, and ATF U.S. Bomb Data Center explained that comprehensive reporting by federal, state, and local authorities would improve BATS' abilities to accurately generate incident reports.

Other than the one-time transfer of explosives-incident data, the FBI reported no incidents to BATS during this period, and ATF inconsistently reported incidents in which it was involved. In addition, we noted that ATF has not implemented data validation procedures to ensure the accuracy of data entered into BATS. Each of these issues is discussed below.

FBI Not Reporting Explosives Incidents

We verified that in 2004 the FBI transferred explosives-incident information from AIRS to ATF's BATS and that ATF incorporated this data into BATS. However, the FBI did not subsequently report to BATS any explosives-incident information collected after its initial transfer of incident information in 2004. We surveyed FBI explosives specialists on the frequency of their reporting to BATS and found that more than 95 percent indicated that they never entered information into BATS. Sixty percent of the specialists stated that they relied on the state and local bomb squads to report incident information.[39]

While the FBI does not require its explosives specialists to report explosives incidents to BATS, it requires them to provide the FBI's Hazardous Devices Operation Center – formally the FBI Bomb Data Center – incident statistics and details related to various explosives-related activities on a data sheet known as FD-542. This data collection is used in determining SABT field office funding and evaluating SABT performance.[40] Even though the FD-542 database keeps track of explosives incidents responded to by FBI explosives specialists, FBI managers contend that it is not used for statistical or data mining purposes and that the FBI is not required to report the information in FD-542 to BATS.[41] According to FD-542 information, the FBI deployed to 4,454 explosives incidents from 2004 through 2008. However, because the FBI did not report any incident information to BATS during this 4-year period, BATS may be missing

[39] According to ATF, the FBI only has 13 active BATS user accounts. A majority of these accounts were maintained by FBI Headquarters personnel rather than agents in the field who actually perform investigations.

[40] In September 2001, the FBI instituted a policy to monitor and record individual SABTs activity by utilizing a point system that awards points to SABTs based on the types of activities a SABT performs.

[41] Unlike the specific data fields in BATS, FD-542 does not have a uniform reporting format and the level of detail in each entry may vary.

important information on many of these 4,454 explosives incidents unless they were reported by the state and local first responders involved.[42]

Regardless of the FBI's objective in maintaining the FD-542 database, the FBI is not reporting explosives incidents to a single, consolidated database maintained by ATF – BATS – as required by the 2004 Attorney General Memorandum. Moreover, we found that the FBI was relying on the state and local agencies to report explosives incidents, and we determined that state and local agencies did not consistently report to BATS. As a result, the information in BATS is significantly incomplete, thereby undermining its utility.

Unreported explosives incident information prevents accurate and reliable trend analysis and may affect the effective allocation of federal funding and resources. For example, the FBI uses statistics and trends generated from the FD-542 database for its explosives programs' needs assessments. However, by relying only on FBI data, the FBI does not capture all of the information from state, local, and other federal responders that could provide a more complete assessment of where its resources are actually needed. Likewise, ATF and other BATS users do not have access to the FBI's incident data and consequently have less than a complete picture of explosives incident activity. We believe the FBI must develop and implement processes to ensure explosives incident information is entered into BATS in a timely fashion.

ATF Inconsistently Reporting Explosives Incidents

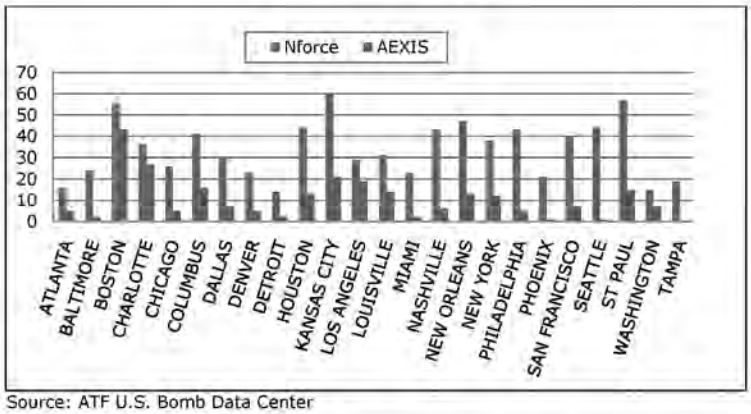
Officials from the ATF U.S. Bomb Data Center stated that prior to February 2009 ATF personnel generally reported explosives incident data to another of its databases called the Arson and Explosives Incident System (AEXIS) rather than to BATS. While the data was not originally entered into BATS, the data in AEXIS is accessible to BATS users through a software program that bridges the two databases. However, the bridge does not provide the capabilities to search or display images within AEXIS. Because ATF is responsible for maintaining BATS, it is troubling that ATF did not directly enter all its explosives incident information into BATS until early 2009. By continuing to maintain and report explosives incident information to AEXIS, for at least 5 years the ATF did not comply with the 2004

[42] We were unable to determine the number of explosives cases in which the FBI was involved because the FBI's case management system does not track this data. While the FBI case management system has a specific case classification code for explosives incidents, that code does not account for cases opened as domestic terrorism, international terrorism, or violent crime violations that involve explosives.

Memorandum requirement to consolidate all DOJ's arson and explosives incident databases.

Further, we determined that BATS, regardless of the link to AEXIS, does not contain all ATF explosives incidents and ATF does not have a reliable process for ensuring that all explosives incidents are reported. In FY 2008, prior to our audit, ATF attempted to reconcile AEXIS data to explosives incidents opened within Nforce – ATF's case management system. ATF concluded that the majority of its field divisions were not reporting explosives incidents to AEXIS as required by internal guidelines. The ATF reconciliation determined that from March through June 2008, 819 explosives incidents were opened in Nforce, but only 248 cases were reported through AEXIS to BATS (see Exhibit 3-2 for results by field division).

EXHIBIT 3-2: Explosives Cases in Nforce vs. AEXIS (March-June 2008)



Source: ATF U.S. Bomb Data Center

To determine the extent of ATF's reporting to BATS, we requested that ATF perform a more extensive reconciliation of explosives incidents recorded in Nforce to incidents reported in BATS during FYs 2003 through 2008. The ATF U.S. Bomb Data Center identified 5,870 unique explosives cases reported in Nforce for which 363 were not in BATS. However, we determined that ATF does not have an adequate process to reconcile cases in Nforce to incidents in BATS because: (1) ATF searched Nforce using explosives terms in case titles to determine if those cases should be reported

to BATS; however, not every explosives case was classified as an explosives incident; (2) ATF omitted several explosives-incident case categories, such as bomb threats, that should be reported to BATS; and (3) 846 cases were excluded from the reconciliation because their status as an explosives case could not be readily determined.[43] Overall, we found that the process ATF used to reconcile explosives cases between Nforce and BATS was incomplete and unreliable. Therefore, we could not verify the number of explosives cases in Nforce that were not reported to BATS.

We surveyed ATF management and explosives specialists to gauge their understanding of explosives-incident reporting requirements. Based on our survey results, ATF personnel are uncertain who is responsible for reporting explosives incidents. A majority of ATF managers (72 percent) responding to our survey indicated that staff report explosives incidents to BATS almost or most of the time, but 27 percent reported that staff sometimes, rarely, or never reported explosives incidents to BATS. Additionally, only 44 percent of ATF explosives specialists responding to our survey indicated that they report explosives incident information to BATS most or all of the time. Similar to the FBI, of the ATF explosives specialist respondents who indicated that they rarely or never input incidents into BATS, 30 percent responded that they relied on the state and local bomb squads to satisfy federal reporting guidelines. However, ATF has no process to verify whether state and local agencies input the information into BATS.

Our audit found that ATF revised its internal reporting protocols three times since 2004, each time changing the party responsible for reporting incidents. Originally, personnel from the U.S. Bomb Data Center performed a weekly reconciliation of explosives incidents reported between Nforce and AEXIS and entered the information into BATS. Then in January 2008 explosives specialists were directed to send a data form to a technician in each field division who would enter the information into BATS. As of February 2009, each agent is now required to directly input incident data into BATS.

Although BATS is intended to be the centralized source for sharing explosives incident information, we found ATF's own reporting inconsistent. We believe that ATF must reinforce guidance to their agents to ensure that data for all explosives incidents and cases is timely and accurately entered into BATS.

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[43] BATS should contain information on the following types of explosives incidents: Accidental Explosion; Bombing (Actual, Actual Incendiary, Attempted, Attempted Incendiary, and Premature Explosion); Fire Investigation (Accidental, Incendiary, Undetermined, and Under Investigation); Hoax Device; Recovered Explosives (Other, Search Warrant); Disposal or Destruct; and Threat (Arson, Bomb).

Data Validation

In October 2004, the OIG reviewed the explosives incident databases maintained by the FBI and ATF.[44] The review found data entry errors, and concluded that much of the data entered into BATS was unrelated to bombing and arson incidents, and therefore contrary to the purpose of BATS. Despite this finding and ATF's guidance requiring only arson and explosives information to be entered into BATS, ATF did not establish protocols to verify the accuracy of reported explosives incidents and prevent the entry of either duplicative or erroneous reports of explosives incidents.

ATF officials explained that quality control and data verification is performed by, and is the responsibility of, BATS users. However, the BATS operator's manual does not define any protocols for the verification of information reported to the system. Further, ATF told us that to prevent duplicative data entry, users are instructed during training to perform various queries using incident details to determine whether an incident had already been reported to the system. After reviewing BATS training documentation as well as ATF online BATS resources, we found no reference to procedures that specifically address entry of duplicative incidents or the verification of incident details.

Given that ATF has no protocols to verify explosives information entered in BATS and relies solely on the user to query for duplicative incidents, ATF cannot ensure the accuracy and reliability of BATS data or any analysis performed using the data. Consequently, we recommend that the ATF implement procedures to periodically test and verify explosives and arson information reported to BATS.

Ineffective BATS Implementation

As previously noted, state and local bomb squads are not required to report to BATS; however, the National Bomb Squad Commanders Advisory Board (NBSCAB) – the governing body which represents all certified state and local bomb squads – actively encourages state and local participation. However, NBSCAB representatives expressed concern that because BATS is

[44] U.S. Department of Justice Office of the Inspector General, *Bureau of Alcohol, Tobacco, Firearms and Explosives and Federal Bureau of Investigation's Arson and Explosives Intelligence Databases,* Report Number 05-01 (October 2004), pages 25 and 34.

not widely used, the statistical summaries of explosives incidents generated from the system are highly inaccurate.[45]

Our survey of 470 state and local bomb squad commanders revealed that only a minority of squads consistently report explosives incidents to BATS, and more than one-half of the responders indicated that they rarely or never query information in BATS, as shown in Exhibit 3-3.

Exhibit 3-3: Frequency of Input or Use of BATS Information By State and Local Bomb Squads

Task	Almost All the time	Most of the time	Sometimes	Rarely	Never or Did Not Answer
Report Incidents to BATS	29%	7%	8%	26%	30%
Query BATS for Information	7%	9%	25%	24%	35%

Source: OIG analysis of state and local bomb squad commanders survey responses

We interviewed three bomb squad commanders who told us that within larger metropolitan areas, bomb squads are often required to report information on explosives incidents to local databases. When such a reporting requirement exists, commanders commented that reporting to BATS is burdensome and duplicative. Of the 239 local bomb squad commanders responding to our survey, 133 reported that their squads rarely or never entered information into BATS, and 10 percent responded that they already entered explosives information into a state database, as shown in Exhibit 3-4.

Exhibit 3-4: State and Local Bomb Squads Reasons For Not Using BATS

Reason	Number of Respondents	Percentage
BATS is difficult to use	55	41%
ATF has not provided any training	32	24%
Already reporting incident information to state database	13	10%
BATS requires too much detail and is time consuming	36	27%
Not aware of BATS	3	2%
Other	62	47%

Source: OIG analysis of state and local bomb squad commanders survey responses

[45] The NBSCAB recognized that the bomb squads need for explosives incident reporting was so important that they recommended to the FBI that reporting be mandated for a bomb squad to receive accreditation. However, the FBI rejected this advice stating that 18 U.S.C. § 846(b) only requires federal, not state and local, reporting.

When asked about the reasons for not using BATS, 41 percent of the state and local bomb squad commanders who responded to our survey indicated that their lack of participation was due to the difficulty of using BATS and 24 percent indicated a lack of training. In addition, half of the 62 survey respondents who selected the choice "other," indicated that access issues such as difficulty in obtaining passwords or getting assistance prevented them from using BATS. Local bomb commanders we interviewed complained that BATS reports required too much information for each incident and took too much time to complete. For example, while reports to FBI AIRS required only a facsimile with basic incident information, the BATS process includes 12 separate web page screens with multiple menus and data fields.

Access Issues

To gain access to BATS and begin reporting explosives incidents, state and local bomb squads must sign a Memorandum of Understanding between their agency and ATF. The agreement outlines the operation and administration of BATS to ensure information within the system is kept secure. However, we were told by NBSCAB representatives that the extensive, nine-page agreement discourages reporting by some state and local bomb squads. For example, the agreement provides the granting to ATF of access to local systems, waivers of ATF responsibility for local system repairs required by subsequent ATF software enhancements, and local responsibility for ensuring access restrictions to BATS data.

In addition to issues related to the Memorandum of Understanding, state and local bomb squad commanders also commented that difficulties related to usernames and passwords have discouraged their reporting. According to the ATF U.S. Bomb Data Center, BATS passwords are only active if they are used every 60 days and thereafter must be reset by the BATS "help desk." We were told by state and local bomb squad commanders that due to the sometimes sporadic occurrence of explosives incidents, users often must go through a lengthy process of having their passwords reset when they expire. Our survey of state and local bomb squad commanders revealed that 18 of 62 bomb commanders who rarely or never use BATS reported lengthy wait times for obtaining BATS usernames and passwords. Further, the resetting of inactive passwords prevented them from logging into the system and reporting their explosives investigations.

Training

A lack of training by ATF has also hindered state and local bomb squads from using BATS. The BATS user manual and Memorandum of Understanding make user agencies ultimately responsible for the training of both current and any replacement personnel. In May 2008 ATF began hosting training seminars for state and local bomb squads. The presentation walks users through specific steps to document and enter example incidents into the system using a terminal connected to BATS. As of March 2009, ATF had provided BATS training to approximately 1,132 bomb technicians and investigators at 39 training seminars.

Based on our state and local bomb squad commander interviews and survey results, we determined that the extent of future BATS use by local first responders depends on ATF's ability to make BATS more user-friendly and to provide effective training. Several commanders indicated that ATF had already made revisions to BATS that improved its ease of use, although they said that the extent of the information required remains a hindrance.[46] To help enhance state and local bomb squads use of BATS, we recommend that ATF prioritize remedial and new user BATS training for federal, state, and local users. We also recommend that ATF review ways to more efficiently provide user names and passwords, and reassess the need to require the current extent of incident information.

DOJ Review of Explosives Databases

The 2004 Memorandum required the DOJ Office of the Chief Information Officer (OCIO) to examine and report to the Deputy Attorney General on the feasibility of consolidating DOJ's arson and explosives databases. DOJ's OCIO conducted a feasibility study in November 2004 and concluded that DOJ needs to develop a more coordinated program for access to arson and explosives information, resources, and technologies. However, DOJ has not adequately addressed the proliferation of explosives related databases within the FBI and ATF.

Competing Databases and Bomb Data Centers

The FBI and ATF maintain Bomb Data Centers that provide technical information to the domestic and international bomb technician community on explosives devices. Additionally, these centers maintain separate international explosives incident databases. The FBI Bomb Data Center

[46] Bomb Commanders indicated that revisions made it easier to enter incidents into BATS.

established the International Bomb Data Center Sub-Special Interest Group (IBDC) in 2006 as a clearinghouse for information on international bombing incidents and new render-safe technologies. Likewise, ATF's Bomb Data Center maintains an international explosives incident database called DFuze to collect, analyze, report, and share explosives device and explosives incident data with its international partners. But we found that operation of separate international databases can cause confusion. For example, a recent request by a foreign government for information on components typically used in certain types of IEDs resulted in the FBI and ATF sending separate and uncoordinated responses.

The 2007 ERG report to Deputy Attorney General McNulty highlighted the dispute between the FBI and ATF over the roles of their Bomb Data Centers and included white papers outlining each agency's position. ATF contended that its U.S. Bomb Data Center had all relevant bomb incident data and merited full DOJ support as the only Bomb Data Center maintained by the federal government. The FBI contended that its counterterrorism mission would be adversely affected if its explosives information-sharing responsibilities were transferred or diluted and argued that only the FBI should use the Bomb Data Center name and interact internationally on explosives matters. The Office of the Deputy Attorney General never resolved this dispute.

Moreover, in 2006 the ATF Laboratory began using an IED Component Database (IED DB) designed to assist laboratory technicians and investigators in the description, storage, and retrieval of IED components. However, other databases could potentially perform this function, including the FBI's Expert Reference Tool (EXPeRT) forensic laboratory database and possibly ATF's BATS.[47] As shown in Exhibit 3-5, the FBI and ATF each maintain disparate databases for managing laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence.

[47] Using the IED-DB, investigators can perform queries of specific explosives incidents using descriptive attributes of the components within an IED. However, we note that BATS already provides a forum for the description of simple components of an IED as well as events surrounding explosives incidents.

EXHIBIT 3-5: ATF and FBI Explosives Databases

EXPLOSIVES DATABASE	AGENCY	PURPOSE
BATS	ATF	Domestic Incident Reporting
Improvised Explosives Device Database (IED-DB)	ATF	Forensic reports and IED component information
Expert Reference Tool (EXPeRT)	FBI	Forensic reports and IED component information
Arson and Explosives Incident System (AEXIS)	ATF	Domestic incident reporting
FD-542 Database	FBI	SABT activity reporting, including incident reporting
DFuze	ATF	International incident reports
International Bomb Data Center Sub Special Interest Group Portal (IBDC)	FBI	International incident reports

Source: ATF and FBI

Challenges to HSPD-19 Implementation

The information-sharing practices of the FBI and ATF challenge DOJ's ability to meet the information-sharing goals of the HSPD-19 Implementation Plan. To combat the terrorist use of explosives, the Implementation Plan encourages two major types of information sharing – single search database compatibility and task force participation. Our audit found that the incompatibility between FBI and ATF databases and the ATF's low participation on counterterrorism task forces affects the DOJ's ability to meet these goals.

Database Search Compatibility

The HSPD-19 Implementation Plan requires that DOJ databases have a single sign-on for user authentication that could simultaneously access and query all DOJ explosives databases. This would eliminate the difficultly of maintaining multiple passwords and performing multiple queries for the same search and would substantially improve the overall flow of explosives-related information. However, the lack of a study for consolidating DOJ's multiple databases limits DOJ's ability to meet this requirement.

Despite an attempt to implement the "OneDOJ" data environment, the FBI and ATF have maintained separate databases (DFuze, EXPeRT, BATS, IED-DB, and IBDC) that require separate sign-ons and passwords. Further, a representative from the DOJ's OCIO characterized the proposed database consolidation and search capability recommended by HSPD-19 as "a fabulous idea that will never work," because the components will not want to lose physical control over their information. To overcome parochial attitudes and position DOJ to comply with HSPD-19 requirements, we recommend

that the Office of the Deputy Attorney General direct the OCIO to conduct a follow-up study examining the feasibility of consolidating all current DOJ arson and explosives databases, and to make specific recommendations to overcome the hurdles to implementing the "OneDOJ" data environment.

Joint Terrorism Task Forces

ATF is not participating in a majority of the Joint Terrorism Task Forces (JTTFs) run by the FBI, and the Memorandum of Understanding that governs its participation on JTTFs emphasizes only ATF's regulatory functions and not its explosives enforcement abilities. The HSPD-19 Implementation Plan specifically calls for increased participation by federal agencies on JTTFs. In particular, HSPD-19 Task 2.2.5 of the Implementation Plan is to encourage and expand interagency and intergovernmental participation on JTTFs, to include explosives and IED subject matter experts from federal, state, and local agencies.

As shown in Exhibit 3-6, as of April 2009 ATF detailed only 30 full-time and 14 part-time Special Agents to the 106 JTTFs.[48]

EXHIBIT 3-6: JTTF Staffing Contributions by Agency

Status	FBI	ATF	Other Federal	State & Local
Full-time	2,530	30	619	963
Part-time	73	14	249	206

Source: FBI

ATF management stated that it does not participate full-time on various JTTFs throughout the nation because ATF does not have the available resources. Additionally, several ATF Special Agents assigned to JTTFs stated that the overall communication between the FBI and ATF task force officers was deficient and they felt disconnected from JTTF investigations and from facilitating information flow between the components. The FBI, on the other hand, does not fully participate in local Arson and Explosives Task Forces supported by ATF. FBI officials indicated that so few of the cases these Task Forces handled were of interest to the

[48] The FBI classifies full-time JTTF members as those who work in FBI office space on terrorism investigations under the supervision of an FBI Supervisory Special Agent. The FBI accepts some part-time JTTF members if an agency cannot commit a representative on a full-time basis. ATF indicates they had approximately 50 JTTF liaisons. A liaison is a point of contact for an agency to the JTTF to share information and may attend JTTF meetings, but does not participate on a part-time or full-time basis on the JTTF.

FBI that the field divisions would not allocate a full-time representative to the ATF task force.

In addition to encouraging greater participation on the JTTFs, the HSPD-19 Implementation Plan also seeks to expand explosives and IED subject-matter expertise. ATF officials stated they have the capability to provide expertise for JTTF activities by supplying explosives detection canines to help with special events, hosting post-blast training courses, collecting and disbursing information from BATS, and responding to explosives incidents across the country. However, none of the seven ATF JTTF representatives we spoke to were currently assigned to explosives-related work, and six of the seven were not explosives specialists.[49]

One factor in the low level of ATF explosives expertise on JTTFs stems from an outdated Memorandum of Understanding between the two agencies. ATF and FBI signed a June 15, 2000, Joint Terrorism Task Forces Memorandum of Understanding to outline the nature and extent of ATF participation on the JTTFs. The memorandum was signed before the September 11 terrorist attacks made counterterrorism the highest law enforcement priority and before ATF was part of DOJ. The June 2000 MOU only references ATF's regulatory functions. According to the agreement, to the extent possible an ATF Special Agent would be assigned to or liaise with each JTTF. However, the memorandum does not specify that ATF will provide any explosives specialist personnel to JTTFs.

Given the emphasis by HSPD-19 on an interagency approach to preventing terrorist use of explosives, we recommend that the ATF and FBI revise the JTTF Memorandum of Understanding outlining ATF participation within the JTTFs to add language emphasizing ATF capabilities and jurisdiction within non-regulatory explosives investigations. We believe that JTTFs would benefit from an increased presence of ATF personnel, particularly Certified Explosives Specialists, who could share their explosives expertise and provide a conduit for ATF explosives-related information.

Conclusions

The FBI, ATF, and state and local bomb squads do not consistently report explosives incidents to BATS - the database that ATF identified as DOJ's consolidated explosives incident database. While the FBI and ATF are required by law to report explosives incidents, state and local bomb squads

[49] The ATF personnel assigned to JTTFs that we interviewed were generally assigned to obtain firearms-related information. An FBI supervisor stated that ATF personnel assigned to his particular JTTF are not assigned explosives-related cases because the ATF representatives are not at the JTTF office enough to warrant assigning them cases.

are encouraged but not required to report explosives incidents. Moreover, although the FBI transferred historical explosives information into BATS in November 2004, the FBI has not reported any explosives incident information to BATS since then. Additionally, until February 2009 ATF personnel reported incidents to AEXIS instead of BATS. Both the FBI, and to a lesser extent ATF, relied on state and local bomb squads to satisfy their federal requirement to report incidents without having any assurance that the state and local squads were submitting the incident reports.

For state and local bomb squads, a significant number are not reporting their incidents to BATS due to access issues and a lack of BATS training. As a result, ATF's efforts to maintain and promote BATS as DOJ's single explosives incident database suffered due to ineffective efforts to encourage participation by the state and local explosives enforcement community and this lack of consistent incident reporting has resulted in inaccurate and unreliable explosives-incident data.

Further, despite a feasibility study for consolidating DOJ's multiple databases, the FBI and ATF separately maintain multiple explosives-related databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence. The HSPD-19 Implementation Plan requires that DOJ databases have a single sign-on for user authentication that could simultaneously access and query all DOJ explosives databases.

The HSPD-19 Implementation Plan encourages increased federal, state, and local participation on JTTFs as well as the inclusion of explosives and IED subject matter experts. We found that ATF does not participate on the majority of JTTFs and that the current MOU between ATF and FBI regarding JTTF participation does not recognize ATF's explosives enforcement abilities. Likewise the FBI is not fully participating in ATF-led Arson and Explosives Taskforces. The FBI and ATF should increase their efforts to participate in task forces that respond to explosives crimes. Improving ATF's level of JTTF participation and updating operating protocols to recognize the contributions of ATF explosives specialists would help achieve the information sharing goals of the HSPD-19 Implementation Plan.

Recommendations

We recommend that DOJ:

3. Direct the OCIO to conduct a follow-up study examining the feasibility of consolidating all current DOJ arson and explosives databases, and making specific recommendations to overcome the hurdles to implementing the "OneDOJ" data environment.

We recommend that the FBI and ATF:

4. Develop and implement new guidance to ensure uniform, timely, and accurate data entry of explosives incidents and cases into BATS as required by the 2004 Memorandum and 18 U.S.C. § 846(b).

5. Update the Memorandum of Understanding outlining ATF participation on the JTTFs to contain language emphasizing ATF capabilities and jurisdiction within non-regulatory type investigations.

We recommend that ATF:

6. Reassess staffing requirements to prioritize increased participation by explosive experts on task forces that respond to explosives crimes.

7. Prioritize remedial and new-user BATS training for federal, state, and local users.

8. Review BATS for ways to make it more user-friendly, including ways for users to more efficiently obtain user names and passwords and reassess the extent of required incident information.

CHAPTER IV: EXPLOSIVES TRAINING AND CANINES

One of the central functions provided by the FBI and ATF explosives programs is training to federal, state and local explosives personnel. The 2004 Memorandum directed that all DOJ post-blast explosives training be consolidated under ATF, mandated that all DOJ components use ATF-certified canines, and required an Explosive Training Review Board (Training Board) to review consolidating all explosives training programs and facilities across DOJ's components. However, the DOJ never convened the Training Board, and therefore the Training Board did not examine the feasibility of consolidating all DOJ explosives programs and facilities. In addition, we saw no evidence that the FBI and ATF worked together to establish DOJ explosives training priorities, and the two agencies reached no consensus on the use of explosives detection canines. The FBI and ATF continue to expand their respective training facilities, run uncoordinated post-blast training programs, and disagree on the guidelines for training explosives-detection canines.

Explosives Training Facilities

Part of the intent of the 2004 Memorandum was to review the feasibility for consolidating DOJ explosives training facilities. However, that never occurred, and since issuance of the memorandum both components have expended or are proposing over $110 million in explosives-training facilities, as shown in Exhibit 4-1.

EXHIBIT 4-1: ATF and FBI Explosives Training Facilities

Facility[50]	Cost (in millions)
FBI Hazardous Devices School	$ 23.0
ATF National Center for Explosives Training and Research Construction Costs	28.5
ATF National Center for Explosives Training and Research Non-Personnel Costs (proposed)	41.6
FBI Secure Training Facility	4.8
FBI Vehicle Borne IED Training Facility and Non-Personnel Costs (proposed)	13.1
Total	$111.0

Source: FBI Bomb Data Center and ATF Explosive Training Branch

FBI Hazardous Devices School

In 2004, the FBI opened a $23 million Hazardous Devices School (HDS) at the Redstone Arsenal in Huntsville, Alabama. HDS provides federal, state and local personnel a 6-week basic bomb technician program, re-certification training, and a specialized course in executive management training for bomb squad managers. The basic bomb technician course includes bomb threats, demolition procedures, hazardous material operations, render-safe procedures, removal techniques, robotics deployment, weapons of mass destruction response devices, and x-ray equipment. HDS is the only training program nationally recognized to certify bomb technicians and to accredit civilian bomb squads. Although the FBI maintains an administrative role over the facility, a majority of the training is conducted by U.S. Army Ordnance Munitions and Electronics Maintenance School instructors.

In October 2008, the FBI opened a $4.8 million Secure Training Facility located at HDS and has sought an additional $13.1 million for a vehicle-borne IED training facility and non-personnel costs. The FBI stated that these facilities are needed to: (1) conduct sensitive emerging threat training for the public safety bomb squad community; (2) comply with the HSPD-19 requirement to conduct vehicle borne IED training course; and (3) allow for simultaneous training so that the HDS basic and re-certification courses are not in competition with existing classrooms and work space.

[50] The costs listed in Exhibit 4-1 include construction costs and non-personnel costs, such as equipment and vehicles. The figures do not include the costs of personnel.

ATF's Training Facilities

ATF currently maintains the National Center for Explosives Training and Research (NCETR) in Fort A.P. Hill, Virginia, and the Canine Training and Operations Support Branch (National Canine Training and Operations Center) located in Front Royal, Virginia. In addition, ATF is constructing a new NCETR facility at Redstone Arsenal in Huntsville, Alabama – the same location that currently houses HDS.[51] Congress provided $23.5 million for Phase One of the project (basic building construction), and ATF has furnished an additional $5 million.[52] For FY 2010 ATF sought an additional $41.6 million in non-personnel expenditures for explosives range construction, facility and classroom infrastructure, and research and development costs.

At these facilities, ATF teaches explosives courses to its own employees as well as state and local personnel. While NCETR offers advanced explosives training to specialists, the Front Royal facility develops explosives detection canines for federal, state and local agencies. NCETR also hosts courses required for training CESs, but it does not provide training on render-safe procedures. Instead, ATF EEOs and ATF and FBI SABTs are trained at HDS.

According to ATF, when its new NCETR facility is completed in FY 2010 it will promote efficiency by consolidating other DOJ and Department of Defense explosives training and research centers at one location. However, physical co-location of facilities does not constitute consolidation, and in fact ATF is not consolidating its own operations. Rather, it intends to continue classes at its Fort A. P. Hill location even after the Redstone location is fully operational. Rather than consolidating ATF training in a single location, the new facility expands ATF's existing training facilities.[53]

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[51] In 2006, the conference committee report of Public Law 109-108 directed ATF to plan for the construction of a permanent facility co-located with other law enforcement and federal government entities that provide similar training and research. Plans to construct the new NCETR facility at Redstone were approved by Congress and ground was broken for the main building of the new facility in November 2008.

[52] The construction plan calls for expected completion in FY 2010.

[53] The ATF Chief of the Explosive Training Branch said it was necessary to keep A.P. Hill for several reasons including: (1) A.P. Hill is an important resource for the ATF and other federal, state and local entities due to the limited availability of explosives ranges on the East Coast; (2) the ATF laboratory does evidentiary explosives work (the re-creation of devices) at the A.P. Hill site; (2) ATF will continue to use A.P. Hill for contracted training for the Department of State and Marine Corps personnel; and (4) Congressional officials might want to observe ATF explosives capabilities, and the A.P. Hill site would be more convenient and closer to Washington, D.C.

Explosives Training Programs

The 2004 Memorandum required the establishment of a Training Board to review consolidating all explosives-related training across DOJ's components. According to the ATF, it met with the FBI to discuss explosives training issues in the months following issuance of the 2004 memorandum and, in December 2006 and May 2008. However, the DOJ did not convene the Training Board and has not established a comprehensive approach for providing explosives-related training.

During our audit, we did not find evidence that the FBI and ATF had worked together to establish DOJ explosives training priorities, identify what training is needed, who has the most pressing need for the training, and who can best provide that training. Additionally, in January 2007 the ERG reported to the Deputy Attorney General that training related to post-blast, canines, and render-safe procedures either had not been implemented or remained highly contested.

We believe that coordinated training would be more efficient and help promote consistent, DOJ-wide investigation practices. As long as the FBI and ATF continue to independently operate their respective explosives training facilities without proper coordination, DOJ's ability to meet the recommendations of the HSPD-19 Implementation Plan are unlikely.[54]

Training Priorities

Both ATF and FBI have training requirements for their explosives specialists and require explosives specialists to re-certify at regular intervals. For ATF CES re-certification, candidates must attend a course hosted at NCETR every 2 years, while ATF EEOs and ATF and FBI SABT personnel must re-certify every 3 years at the HDS. As shown in Exhibit 4-2, the FBI and ATF are behind in the re-certification of their explosives specialists.

[54] HSPD-19 requires enhanced standards and improved delivery of post-blast training and uniform explosives-detection canine-team training and performance standards.

Exhibit 4-2: Explosives Specialists - Not Current Re-certification

Specialist	Total Number	Percent Not Current
ATF CES	241	57%
ATF EEO	26	12%
ATF SABT	5	0%
FBI SABT	174	12%

Source: ATF NCETR and FBI HDS as of March 2009

According to ATF, funding for NCETR training has been declining since FY 2004. In FY 2008, the NCETR was able to provide only limited explosives training, including only one CES re-certification course, far less than the five or six courses necessary to keep all personnel up-to-date. Therefore, an ATF official said the CES re-certification process has fallen behind schedule. ATF noted that those individuals who had not been re-certified due to the funding problems were granted an extension.

With respect to the re-certification status of those explosives specialists trained at the HDS, the FBI stated that the FBI SABTs not current on their re-certification have been precluded from training due to scheduling conflicts (such as deployment overseas, medical reasons, or involvement in a major case), or may no longer be active or eligible for the SABT program. Furthermore, the FBI stated that all ATF candidates for re-certification are processed similar to all other bomb technicians. As CESs, EEOs, and SABTs are responsible for all of the explosives missions within their respective agencies, the need to keep up-to-date on re-certification is critical.

We believe that to effectively and efficiently provide coordinated explosives training, the Training Board should meet to not only consider consolidation of training programs, but also to develop a training plan for all DOJ explosives-related efforts. The plan also needs to assess the training needs of federal, state, and local explosives specialists and assign priorities to those programs that most effectively meet those needs. In addition, the components must identify funding requirements and focus their training efforts in those priority areas.

Explosives Training Disputes

The 2007 ERG report included ATF and FBI white papers that outlined unresolved issues for resolution. Exhibit 4-3 summarizes the FBI and ATF positions on a variety of training issues:

Exhibit 4-3: Summaries of ATF and FBI Training Disputes

ATF White Paper	FBI White Paper
Post-Blast	**Post-Blast**
1) ATF should serve as the primary DOJ component to develop and provide comprehensive training programs for fire and explosives investigations.	1) The FBI should continue to teach explosives and post-blast training with a domestic and international terrorism perspective. ATF should only teach explosives and post-blast training from a non-terrorism explosives perspective.
2) FBI should develop and provide comprehensive training programs for nuclear, biological, chemical, and radiological investigations.	2) The language and directions related to post-blast training provided in the Attorney General Memo should be amended with language to be drafted by the ERG Training Working Group.
Canine	**Canine**
3) ATF recommends the language regarding canines be rewritten to require that all explosives-detection canines possessed or maintained by DOJ components be procured, trained, and certified by ATF.	3) FBI recommends the language regarding canines be rewritten to state that as soon as practicable, all DOJ components shall use only canines that have been certified using the Scientific Working Group on Dog and detector Orthogonal Guidelines (SWIGDOG).
4) DOJ components shall make every effort to use an ATF-trained and certified canine. If an ATF-certified canine is not available, the component may, in the interim, use a canine that has been trained and certified to Scientific Working Group on Dog and Orthogonal detector Guidelines.	4) The FBI should continue its joint training – the National Canine Peroxide Training Initiative - with the Department of Homeland Security.
Render-safe	**Render-safe**
5) ATF should administer the explosives portion of the Hazardous Devices School at Redstone Arsenal in Huntsville, Alabama.	5) The FBI identifies the Special Agent Bomb Technician program as components in its terrorism mission and does not specify that they would relinquish administration of the Hazardous Devices School.

Source: 2007 ERG Report, ATF and FBI White papers

According to the 2007 ERG report, ATF believed the language in the 2004 Memorandum was clear, while the FBI believed the text was ambiguous and in need of clarification. Although the ERG reported these disputes in 2007, DOJ did not resolve any of the issues. As a result, ATF and the FBI have not consolidated delivery of post-blast training, agreed on a standard for canine explosives detection certification, or standardized any explosives-related training programs.

Post-Blast Training Programs

The FBI and ATF conduct separate post-blast training courses that are offered locally to federal, state, and local explosives personnel. Post-blast training teaches methods and processes for investigating explosives scenes. Post-blast analysis of actual or suspected explosives attacks can help local law enforcement identify the components and functions of explosive devices, which can provide indicators and warnings of terrorist or criminal behavior. HSPD-19 specifies the need for uniform standards for post-blast training to improve joint response operations among bomb squads.

The 2004 ERG report indicated that both ATF and the FBI curricula are essentially the same. Our review of these curricula confirmed that they share common topics, including an introduction to explosives, lessons on IEDs, laboratory services, and bombing investigations. Furthermore, in our interviews with explosives personnel from both agencies, they noted no differences between the curricula. Considering the similarities, the two components could easily consolidate the post-blast curricula. However, our survey showed that 92 percent of FBI explosives specialists and 83 percent of ATF explosives specialists rarely or never coordinated their post-blast curricula.

We recommend the FBI and ATF standardize a DOJ-wide post-blast training curriculums. Further, we recommend that DOJ resolve any differences between the two components regarding post-blast curricula.

Canine Program and Peroxide Training

We found that DOJ has not provided clear direction regarding canine certification tests, and ATF and the FBI are currently providing independent, uncoordinated explosives detection canine training. The 2004 Memorandum required all DOJ components to use canines certified by ATF. However, explosives specialists from both ATF and FBI are providing peroxide-based explosives detection training to state and local bomb squad canine teams and both components disagree about the standards that should be used to certify explosives-detection canines. When the ERG reported the certification dispute in 2007, DOJ never resolved the issue.

Canine Certification. The 2004 Memorandum directed all DOJ components to use ATF-certified canines, but it did not preclude any component from procuring or training explosives detection canines independently. Our audit revealed that the FBI generally uses non-ATF

certified canines.[55] Our survey of FBI explosives specialists also revealed that more than 80 percent of respondents rarely or never use ATF-certified canines. Instead, FBI explosives specialists rely mainly on explosives-detection canines provided by state and local agencies that are often not ATF-certified.

Although the FBI and ATF agree that DOJ should have a single certification standard for canines, they disagree on the how the standard should be established. ATF developed the National Odor Recognition Training and Testing (NORT) program as a standardized method for assessing a canine's ability to recognize explosives odors. NORT is a test administered by ATF forensic chemists to federal, state, and local canine teams.

The FBI believes NORT may not actually assess the operational capabilities of the canine and that the certification standards should be determined by the Scientific Working Group on Dog and Orthogonal detector Guidelines (SWGDOG). SWGDOG is composed of members from federal, state, and local agencies, including both ATF and the FBI. While SWGDOG is a non-certifying body that provides best practice guidelines, it anticipates that these best practices will be incorporated into participating organizations' certification standards.

As shown in Exhibit 4-4, the FBI and National Institute of Justice (NIJ) have provided funding to SWGDOG during the past 5 years.

EXHIBIT 4-4: DOJ Funding of SWGDOG FYs 2004-2008

Component	2004	2005	2006	2007	2008	Total
NIJ	$ 0	$97,020	$95,134	$92,998	$85,672	$370,824
FBI	8,196	62,547	39,160	28,592	0	138,495
Total	$8,196	$159,567	$134,294	$121,590	$85,672	$509,319

Source: Office of Justice Program Grant Management System and FBI Forensic Canine Program

We believe that DOJ has not adequately communicated its policy for canine certification to its components, and instead has sent conflicting signals on what certification standard should be used. Although DOJ directed one standard to be administered through ATF, DOJ also funded a process to adopt another standard through the NIJ and FBI. Without a single standard for canine certification, deployments to special events or

[55] The FBI's uniformed police use ATF-certified canines; however, FBI field divisions generally rely on state and local canines or the four explosive detection canines owned by the FBI.

bombing scenes with multiple canine units may lack standard operating procedures and can impact the efficiency of bomb sweeps.

As part of the JPO, the Department of Homeland Security (DHS) and DOJ are co-leading an interagency advisory board responsible for developing uniform standards for explosives-detection canine teams, including annual certification and recurring proficiency training. DHS and DOJ, building on the previous ATF National Canine Advisory Board, created the National Explosives Detection Canine Advisory Board, which includes participants from the four major professional canine associations. The FBI believes that as a result of the creation of this advisory board for the first time, there is consensus across the explosives-detection canine community that national training and performance standards are needed. We recommend that DOJ select and enforce a single standard for the use of certified canines for DOJ components, consistent with the requirements of HSPD-19.

Peroxide-Based Explosives Training. According to ATF, it began training explosives detection canines on peroxide-based explosives in 2002 after the ATF Laboratory worked with British authorities to develop an effective method of producing explosives used for training purposes. In 2006, the National Explosives Detection Canine Training Program, which is part of the Transportation Security Administration of the Department of Homeland Security, worked with the FBI to train canine teams to detect various peroxide explosives.

FBI explosives specialists told us they provide bulk (15-30 grams) samples of peroxide-based explosives to state and local canine handlers to sensitize their animals to the peroxide scent. ATF also conducts similar training for state and local canine handlers with trace (5 milligrams) amounts of peroxide-based explosives. ATF officials argued that the FBI should not be providing such training, saying that ATF's method is superior because training with trace amounts of peroxides enhances the canines' ability to detect explosives. For example, because these explosives would generally be sealed in containers, the canine must be able to alert based on recognizing a trace amount of explosives left on a container lid or its scent on the potential bomber.

An FBI Explosives Unit official noted in a published FBI Bomb Data Center Investigators Bulletin that trace amounts, like those used by ATF, can be utilized to conduct training if suitable precautions are taken.[56] However, the official noted that any time trace amounts of material are utilized, they

[56] FBI Bomb Data Center Investigators Bulletin 2006-3 entitled *K-9 Detection of Peroxides*.

are susceptible to contamination. For example, if the handler using these aids handles any other type of explosive or has an explosive residue near these aids, it is possible to introduce interfering odors. In addition, the FBI official contended that trace amounts of peroxides dissipate rapidly, and once exposed, have a very short shelf life.

Despite these differing opinions, the differences between the FBI and ATF's peroxide-based explosives training programs do not appear to be irreconcilable, and consolidation of the training standards should be possible. Therefore, we recommend the FBI and ATF consolidate the training for peroxide-based explosives.

Render-safe Procedures

The Hazardous Devices School (HDS) has developed standardized protocols for disarming or destroying explosives and component parts - render-safe procedures - which are taught to all bomb squads to maximize public safety. However, according to our interviews and surveys, ATF Explosives Enforcement Officers (EEOs) sometimes use render-safe procedures that are not in compliance with those specified at HDS. The differing render-safe techniques and standards between the FBI and ATF can lead to confusion among FBI and some state and local responders, and present possible public safety problems. For example, first responders may disagree about the techniques that should be used to handle explosives or render-safe explosives on scene. In particular, during our site visits to both components we were told ATF uses two techniques that have caused concern among FBI and state and local personnel – the spinning of pipe bomb end caps and the use of "King County Cutters."[57]

These disputes may delay the render-safe procedures or endanger first responders. During our interviews, FBI explosives specialists told us of several incidents that created controversy at explosives scenes when the FBI believed that the techniques used by ATF, such as the spinning of pipe bomb end caps, were unsafe and not in accordance with HDS procedures. When we asked ATF explosives specialists about these disagreements, they told us that almost all of the ATF's EEOs have more years of experience than FBI's

[57] According to ATF, there are specially-designed instruments for safely spinning off the end caps of pipe bombs in order to disarm them while also preserving the evidence for use in court. King County Cutters are instruments used to 'slice' open and disarm a device.

SABTs and that they are not advocating unproven or reckless procedures.[58] One ATF EEO stated that the FBI's approach needlessly destroys considerable amounts of evidence without meaningfully reducing the risk to the public.

However, these ATF techniques conflict with HDS training, and FBI personnel stated that the ATF's technique of spinning off end caps caused unnecessary risk to bomb technicians on site and the general public. We surveyed state and local bomb squad commanders on how many times in FYs 2007 and 2008 their squads had been on an explosives incident scene when ATF or FBI personnel proposed techniques to handle explosives that were different from HDS training. Of the 239 bomb squad commanders that responded, 21 percent indicated ATF proposed non-standard techniques, while 6 percent indicated FBI proposed non-standard techniques. Approximately one-half of the bomb squad commanders also responded that the non-standard techniques raised concerns about the safety of on-scene personnel, and more than one-third of the commanders indicated the techniques delayed the render-safe procedures. However, as shown in Exhibit 4-5, 54 percent of bomb squad commanders responding also indicated the intact evidence obtained by using ATF techniques benefitted their cases.

Exhibit 4-5: State and Local Bomb Commander Perceptions of the Effect of Different Explosive Handling Techniques

Effect	Strongly Agree or Agree		Strongly Disagree or Disagree		Not Applicable or No Answer	
	ATF	FBI	ATF	FBI	ATF	FBI
Case benefitted from submitting intact evidence	54%	7%	30%	57%	16%	36%
Concern existed over the risk to the safety of on-scene personnel	54%	50%	32%	29%	14%	21%
Disagreement caused delays in render-safe procedures	38%	50%	44%	21%	18%	29%
Local bomb squad withdrew in protest	6%	7%	36%	21%	58%	72%
Other	12%	0%	2%	0%	86%	100%

Source: DOJ OIG Survey Analysis

[58] The ATF identified an incident in Seattle where important evidence was preserved by using a non-standard technique. By advocating remote movement of a jar of possible peroxide-based explosives, the ATF EEO was able to see that paper underneath the jar had the formula written on it that would otherwise have been destroyed.

The National Bomb Squad Commanders Advisory Board also believes that standardized and coordinated training will enable ATF and FBI bomb technicians to work safely and effectively together under a general operational philosophy that is compatible across the profession. Therefore, we recommend ATF and the FBI agree on standardized render-safe procedures. The curriculum taught at the HDS should include input from ATF EEOs and result in one set of render-safe procedures that are used by the FBI, ATF, and other public safety bomb technicians.

Conclusion

We found ATF and the FBI have not established a joint training plan, consolidated training facilities, or standardized post-blast, canine or render-safe curricula. Despite the requirement of the 2004 Attorney General Memorandum, the DOJ's Training Board has not been convened, and ATF and the FBI did not establish priorities for providing explosives-related training or for developing a comprehensive training plan. In addition, although ATF recently built a new explosives training headquarters adjacent to HDS, it has not consolidated operations or scheduling with the FBI.

Without coordination of schedules, curricula, and instruction, both ATF and the FBI will continue to provide inconsistent local training to bomb squads throughout the country, including locally conducted post-blast training, and peroxide-based explosives detection canine training. In addition, differing render-safe techniques and concerns over different explosives detection canine standards used by the FBI and ATF could endanger the safety of bomb squad personnel and the public.

Recommendations

We recommend that DOJ:

9. Resolve any differences between the FBI and ATF regarding post-blast curricula.

10. Select a single standard to certify canines for DOJ components, consistent with the requirements of HSPD-19.

11. Convene the Explosives Training Review Board to consider consolidation of training programs and to develop a training plan for all DOJ explosives-related efforts. The plan should assess the training needs of federal, state, and local explosives specialists and prioritize the provision of the training programs to most effectively meet those needs.

We recommend that both ATF and the FBI:

12. Consolidate and standardize a DOJ-wide curriculum for post-blast training.

13. Agree on standardized render-safe procedures for use in the HDS bomb technician curriculum.

14. Coordinate and consolidate canine training for peroxide-based explosives.

CHAPTER V: LABORATORY RESOURCES

The FBI and ATF each have laboratories that perform explosives-related analysis. The 2004 Memorandum directed that a Laboratory Review Board (Lab Board) be established to examine DOJ laboratory resources and workloads to make recommendations for the most productive allocation of DOJ laboratory resources. Although a Lab Board was formed in September 2004, it never provided a report or recommendations to the Deputy Attorney General.

DOJ Explosives Laboratories

The FBI and ATF each have laboratories that perform forensic analyses on various types of evidence, including explosives evidence. Additionally, the FBI and ATF are part of the multi-agency Terrorist Explosive Device Analytical Center (TEDAC) that runs its own forensic laboratory for explosives.

ATF Laboratories

The ATF's Office of Laboratory Services conducts forensic analysis of explosives, accelerants, destructive devices, and explosives debris. It also provides laboratory support to ATF's regulatory functions over the firearms and explosives industries, training and crime scene assistance to federal and local law enforcement, and expert witness testimony.[59] ATF laboratory personnel consist of forensic chemists, firearm and toolmark examiners, fingerprint specialists, and document examiners. Evidence collected at an explosives scene is sent to one of ATF's three regional laboratories for examination.

ATF's three forensic laboratories are located in Ammendale, Maryland; Walnut Creek, California; and Atlanta, Georgia. Each laboratory supports a specified geographic area, as shown in Exhibit 5-1.[60]

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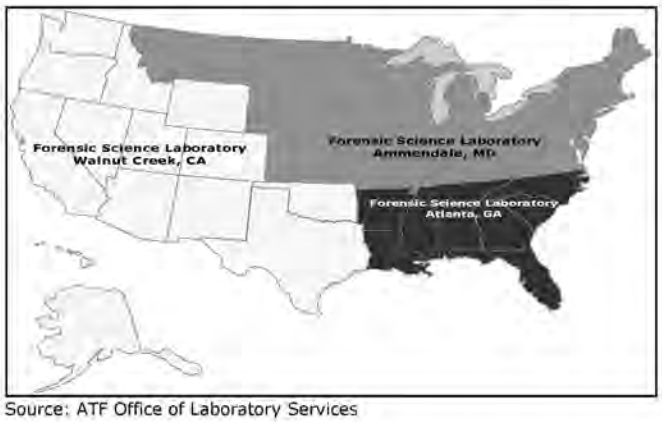
[59] The ATF's National Laboratory Center and the Treasury Department's Scientific Services Division are co-located in suburban Washington, D.C. The Scientific Services Division performs primarily regulatory functions related to alcohol and tobacco.

[60] The ATF's National Laboratory Center moved from Rockville, Maryland, to a new a $135 million facility in Ammendale, Maryland, that was dedicated on June 16, 2003.

Exhibit 5-1: ATF Laboratory Territories



Source: ATF Office of Laboratory Services

The FBI Laboratory

The FBI Laboratory, located in Quantico, Virginia, provides forensic and chemical analysis, technical support, expert witness testimony, and training for federal, state, and local law enforcement agencies on all types of cases. Explosive evidence is sent to the Explosives Unit, part of the Forensic Analysis Section. The Explosives Unit provides direct field support in explosives matters and investigations, including forensic examinations of explosives devices and evidence, searches of bomb factories and facilities or locations in which explosives may be encountered, and outreach with domestic and foreign manufacturers of explosives.[61] The Explosive Unit also maintains the Explosives Reference Tool (EXPeRT) database to support its forensic examinations.[62]

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[61] These examinations involve the identification and intended function of the components used to construct explosives devices, including detonators, initiators, explosives, wires, tapes, containers, electronic components, timing mechanisms, and power sources.

[62] EXPeRT is primarily a document management system that serves as a central repository for reports and images associated with terrorist IEDs. EXPeRT, developed by the FBI Laboratory in 2003, is based on the FBI Explosives Unit's database for reports, devices and components, and reference material. The TEDAC implemented EXPeRT in 2004.

Terrorist Explosive Device Analytical Center (TEDAC)

An FBI-led initiative organized in response to requests from the Department of Defense, TEDAC was created in December 2003 and expanded in 2004 to coordinate and manage interagency efforts for gathering and forensically analyzing terrorist IEDs from war zones in Iraq and Afghanistan. Although TEDAC performs explosives analysis, its main purpose is to gather and disseminate intelligence on IEDs being used in Iraq and Afghanistan. TEDAC-produced intelligence and analysis is shared throughout the law enforcement, intelligence, and military communities.

TEDAC is located within the FBI Laboratory in Quantico, Virginia. The FBI provides the TEDAC Director and approximately 30 percent of federal personnel assigned to the TEDAC laboratory. ATF staffs the TEDAC Deputy Director position and provides several technical experts. Although TEDAC has a dedicated staff and forensic equipment, because they are housed within the FBI Laboratory dedicated FBI Laboratory personnel and equipment have been used to conduct TEDAC analyses.

Explosives Forensic Analysis

The forensic capabilities of the FBI and ATF laboratories are similar, as shown in Exhibit 5-2.

Exhibit 5-2: Laboratory Capabilities

Capabilities	FBI	ATF
Latent Fingerprints	✓	✓
Trace Evidence	✓	✓
Document Examination	✓	✓
Toolmarks	✓	✓
Nuclear DNA	✓	✓
Mitochondrial DNA	✓	
Metallurgy	✓	

Source: ATF and FBI

Although both laboratories share similar capabilities and are accredited by the American Society of Crime Laboratory Directors, ATF and FBI employees strongly prefer to submit evidence to their own laboratories. According to our surveys, only 9 percent of FBI managers and 2 percent of FBI bomb technicians that responded reported that their field divisions had submitted evidence to ATF laboratories. No ATF managers and only 4 percent of ATF explosives specialists reported that they had submitted evidence to the FBI's laboratory.

Explosive Review Board Report

The 2004 Memorandum stated that a Lab Board should be established and chaired by the Deputy Attorney General (or his designee) with participation from the FBI, ATF, and Drug Enforcement Administration laboratories. The Lab Board was supposed to examine DOJ's available laboratory resources and workloads, analyze laboratory demands imposed by TEDAC, and make recommendations to the Deputy Attorney General on the most productive allocation of DOJ laboratory resources.

The 2007 ERG report indicated that a Lab Board had been established and had: (1) exchanged laboratory organization charts, (2) documented the need for each forensic discipline, (3) developed a standard special agent-to-lab employee staffing chart, and (4) investigated the possibility of sharing FBI research funding with ATF and the Drug Enforcement Administration. However, DOJ was unable to locate for us a copy of the required Lab Board report or any other evidence that the Lab Board reviewed laboratory resources and workloads, as required by the 2004 Attorney General Memorandum.

The volume of submissions received by TEDAC far exceeds the submissions received by the FBI and ATF laboratories, as shown in Exhibit 5-3.[63]

[63] The number of submissions requested is not the same as the number of cases requested. One case may contain multiple submissions (pieces of evidence), each requiring different examinations.

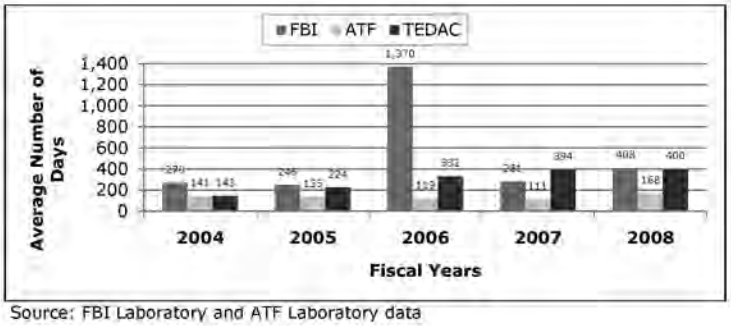
Exhibit 5-3: Status of Explosives Submissions at DOJ Laboratories

Submissions Status	2004	2005	2006	2007	2008*
ATF					
Received	564	486	493	453	301
Completed	557	510	507	435	313
Pending	195	171	157	175	163
FBI Explosives Unit					
Received	335	183	219	203	259
Completed	257	224	932	166	182
Pending	1,249	1,200	493	529	606
TEDAC					
Received	1,452	8,434	16,486	15,032	4,161
Completed	347	1,457	3,929	2,814	2,723
Pending	1,809	9,761	21,027	34,246	35,773

Source: ATF, FBI and TEDAC laboratories
* Only partial FY 2008 data available

In addition, we found that the average number of days for DOJ laboratories to process explosives submissions varies significantly, as shown in Exhibit 5-4. On average, the FBI Laboratory took over 2 years and TEDAC took almost 1 year to process explosives evidence submissions.

Exhibit 5-4: Laboratory Explosives Submission Turnaround Times for Fiscal Years 2004 through 2008[64]



Source: FBI Laboratory and ATF Laboratory data

[64] According to the FBI, FY 2006 average number of days significantly varied from the prior and following fiscal years due to the closure of the Pentagon bombing submissions.

Given the wide variation in the average number of days required to conduct analysis by ATF, FBI, and TEDAC laboratories and the large number of submissions left pending each year, DOJ needs to consider options for improving explosives submission turnaround times. Additionally, since TEDAC uses FBI Laboratory equipment and personnel, the large number of TEDAC submissions may adversely affect the timeliness of the FBI Laboratory's analyses. We recommend that DOJ require the Lab Board to report on all DOJ laboratory capabilities, including an assessment of TEDAC's effect on overall DOJ laboratory functions, and recommend options to improve productivity within all DOJ laboratories.

Conclusion

The FBI and ATF each have laboratories that perform forensic analyses of collected evidence, including explosives evidence. Additionally, the FBI and ATF are part of TEDAC, which operates its own forensic laboratory for explosives. The 2004 Memorandum required that a Lab Board be established to examine available DOJ laboratory resources and workloads in order to provide recommendations for the most productive allocation of DOJ laboratory resources. However, the Lab Board provided neither a report nor recommendations to the Deputy Attorney General.

We determined that in FYs 2004-2008, on average, it took the ATF laboratories more than 4 months to process explosives-evidence submissions and the FBI Laboratory took over 2 years and TEDAC almost 1 year. We recommend that DOJ review how to best use available resources to effectively and efficiently manage the workload of DOJ's laboratories.

Recommendation

We recommend that DOJ:

15. Direct the Lab Board to report on laboratory capabilities, including the effect of TEDAC and recommendations as to the allocation and use of DOJ's laboratory resources.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that ATF's and FBI's management complied with federal laws and regulations, and DOJ memoranda for which noncompliance, in our judgment, could have a material effect on the results of our audit. ATF's and FBI's management is responsible for ensuring compliance with federal laws and regulations and with DOJ memoranda applicable to explosives incidents and related activities. In planning our audit, we identified the following laws and regulations and requirements related to the operations of the auditees that were significant within the context of the audit objectives:

- 18 U.S.C. § 846 (b)
- Homeland Security Presidential Directive – 19 entitled *Combating Terrorist Use of Explosives in the United States*

Our audit included examining, on a test basis, ATF and FBI's compliance with the aforementioned laws and regulations that could have a material effect on ATF's and FBI's operations. Our testing included: interviewing ATF, FBI, Office of the Deputy Attorney General, and State and Local Bomb Commander personnel; reviewing reports, manuals, curricula, position papers; surveying personnel in ATF, FBI, and state and local bomb commanders; and analyzing ATF and FBI explosives case information. Neither the FBI nor ATF are in compliance with 18 U.S.C. § 846 (b), which requires all federal agencies to report their arson and explosives incidents to ATF. We determined that neither ATF nor the FBI explosives personnel are consistently reporting explosives incidents to BATS. In addition, if DOJ does not conclusively address the issue of the roles and responsibilities for the FBI and ATF in investigating terrorists' use of explosives, competition between the FBI and ATF in this area will likely continue and impede the progress of HSPD-19 implementation.

STATEMENT ON INTERNAL CONTROLS

As required by *Government Auditing Standards* we tested as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the FBI's and ATF's internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. ATF and FBI management is responsible for the establishment and maintenance of internal controls.

As noted in the Chapter III of this report, we identified deficiencies in the FBI's and ATF's internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe adversely affect DOJ's ability to accurately report the number of explosives incidents in the United States. 18 U.S.C. § 846 (b) mandates all federal agencies report information concerning explosives incidents to the Attorney General. Despite the federal mandate, ATF and FBI do not have a process in place to ensure that explosives incidents are reported to BATS. By not reporting explosives incidents to BATS, the FBI and ATF have not complied with their reporting requirements, marginalized the utility of BATS, and potentially misaligned limited resources.

Because we are not expressing an opinion on the FBI and ATF's internal control structure as a whole, this statement is intended solely for the information and use of the auditees. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

APPENDIX I

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of this audit was to assess how the FBI and ATF coordinate explosives investigations and related activities, including:

- the effectiveness of protocols employed to determine the lead agency jurisdiction over explosives incidents;
- the extent of database consolidation and information sharing;
- the level of coordination in post-blast, render-safe and canine training; and
- the use of laboratory resources by explosives units.

Scope and Methodology Section

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit generally covers, but is not limited to, DOJ oversight and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and Federal Bureau of Investigation (FBI) programs and activities relating to explosives investigations in FY 2003 - April 2009. We reviewed explosives case data from both components' case management systems from FY 2003 to March 2008, relevant Special Agent training records, explosives-related course curricula, documented policies or procedures regarding explosives

investigations or interagency interaction, and a prior OIG audit report.[83] We also conducted interviews with the Office of Deputy Attorney General, the Office of the Chief Information Officer, and more than 100 ATF and FBI employees, from each component's headquarters and 8 field divisions. We performed audit work at eight field sites: Baltimore, Maryland; Kansas City, Missouri; Los Angeles, California; New York, New York; Phoenix, Arizona; San Diego, California; Seattle, Washington; and the District of Columbia.[84] For our pilot sites we selected a smaller division (Baltimore) and a large division (New York); for the remaining six sites we judgmentally selected the field divisions based on the number of explosives incidents reported.

To assess the FBI's involvement in explosives investigations, we interviewed responsible headquarters officials at the Domestic Terrorism Operations Unit of the Counterterrorism Division, the Violent Crime Section of the Criminal Investigative Division, the Technical Operations Section, the Hazardous Devices Operations Center, and the Hazardous Devices School all from the Critical Incident Response Group, the Explosives Unit of the FBI Laboratory and the Terrorist Explosive Device Analytical Center, to determine: (1) their roles and responsibilities; (2) their units' participation in explosives investigation - related activities; and (3) interactions with ATF, if any.

To assess ATF's involvement in explosives investigations, we: interviewed responsible headquarter officials in the Office of the Director, the Office of Field Operations, the Office of Strategic Intelligence and Information including the U.S. Bomb Data Center, the Office of Laboratory Services, the Explosive Enforcement Division, and the National Center for Explosives Training, including the Explosives Detection Canine Training Center, to determine: (1) their roles and responsibilities; (2) their units' participation in explosives investigation related activities; and (3) interactions with the FBI, if any.

At each field division selected, we interviewed Special Agents-in-Charge, Assistant Special-Agents-in-Charge, FBI Special Agent Bomb

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[83] A DOJ OIG audit found that DOJ had not efficiently and effectively collected and made available to the federal, state, and local law enforcement community information relating to arson and the criminal misuse of explosives. Specifically, the similar responsibilities of the ATF and the FBI in compiling data have resulted in duplication of effort, duplicate reporting of incidents by state and local agencies, and a lack of uniformity in the reporting process. See U.S. Department of Justice Office of the Inspector General, *Bureau of Alcohol, Tobacco, Firearms and Explosives and Federal Bureau of Investigation's Arson and Explosives Intelligence Databases, Report Number 05-01 (October 2004).*

[84] During our audit, we also attended a BATS new-user training seminar in Boston Massachusetts, and reviewed BATS resources available at www.atf.gov.

Technicians, FBI Domestic Terrorism-Joint Terrorism Task Force Supervisory Special Agents, ATF Certified Explosive Specialists and Explosive Enforcement Officers (where available), and the Arson and Supervisory Special Agents for Arson and Explosive Groups and Field Intelligence Groups in each Field Division selected.

As part of our methodology, we sent written surveys to all ATF and FBI Field Division Special Agents-in-Charge, and every FBI Special Agent Bomb Technician, ATF Certified Explosive Specialist, and ATF Explosives Enforcement Officer, as well as to the commander of each accredited bomb squad in the country. We developed our survey and received input from our Applied Audit Techniques group, ATF and FBI Management, and select members of the bomb squad community. Additionally we pilot tested our survey at the Washington Field Office for the FBI and ATF.

We identified the survey recipients based on listings provided by ATF and FBI management. ATF provided us a listing of names and addresses for the Certified Explosive Specialists, Explosive Enforcement Officers, and ATF management personnel and the FBI provided us a listing of names, address for the Special Agent Bomb Technicians, FBI management, and the state and local bomb commander personnel. Our response rate was:

Survey Response Rate

Surveys	Number Surveyed	Number of Respondents	Response Rate
ATF Management	25	18	72%
FBI Management	69	47	68%
FBI Special Agent Bomb Technicians	194	121	62%
ATF Special Agent Bomb Technicians, Certified Explosives Specialists and Explosives Enforcement Officers	285	180	63%
State and Local Bomb Squad Commanders	470	239	51%

Source: OIG

APPENDIX II

ACRONYMS

AEXIS	Arson and Explosives Incident System
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BATS	Bomb Arson Tracking System
CES	Certified Explosives Specialist
DHS	U.S. Department of Homeland Security
DOJ	U.S. Department of Justice
EEO	Explosives Enforcement Officer
ERG	Explosives Review Group
EXPeRT	Explosives Reference Tool
FBI	Federal Bureau of Investigation
HDS	Hazardous Devices School
HSPD	Homeland Security Presidential Directive
IBDC	International Bomb Data Center Sub-Special Interest Group
IED	Improvised Explosive Device
JTTF	Joint Terrorism Task Force
MIOG	Manual of Investigations Operations Guidelines
NBSCAB	National Bomb Squad Commanders Advisory Board
NCETR	National Center for Explosives Training and Research
NIJ	National Institute of Justice
NORT	National Odor Recognition Training and Testing
OCIO	Office of the Chief Information Officer
OIG	Office of the Inspector General
SABT	Special Agent Bomb Technician
SWGDOG	Scientific Working Group on Dog and Orthogonal detector Guidelines
TEDAC	Terrorist Explosive Device Analytical Center
U.S.C.	United States Code
USBDC	United States Bomb Data Center

APPENDIX III

EXPLOSIVES AUTHORITIES

The FBI traditionally has investigated several types of federal crimes that may be committed with explosives, such as bank robbery and terrorism. However, ATF has primary jurisdiction under specific statutes to regulate the alcohol, tobacco, firearms and explosives industries, and enforce associated criminal violations. Recognizing their shared jurisdiction, 18 U.S.C. § 846 grants both ATF and the FBI concurrent authority to conduct investigations with respect to an extensive list of explosives incidents at 18 U.S.C. § 844(d)-(i).

Federal Bureau of Investigation

Congress gave the Attorney General broad authority to enforce the federal criminal laws and to appoint officials to detect and prosecute federal crimes under 28 U.S.C. § 533. The role and general functions of the FBI, as directed by the Attorney General, are set forth at 28 C.F.R. § 0.85. The Attorney General delegated to the FBI the conduct of much of the federal law enforcement mandate, except for those areas Congress specifically granted primary jurisdiction to different agencies.[85] Specifically, the FBI had enforced several federal criminal statutes that could be committed with explosives such as bank robbery, civil rights violations, and "injurious devices" on federal lands.[86]

The FBI obtained the formal responsibility for investigating terrorist groups in the United States and acts of terrorism directed against Americans through a series of Acts and Presidential Directives. In 1982, National Security Decision Directive-30 gave the FBI the responsibility of investigating terrorism in the United States. Several other statutes expanded the FBI's jurisdiction to include investigations of acts of terrorism directed against Americans overseas and to expand counterterrorism

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[85] For example, 18 U.S.C. § 3056 (counterfeiting crimes enforced by Secret Service) and 26 U.S.C. §§ 7801-7803 (internal revenue laws enforced by Internal Revenue Service).

[86] See 18 U.S.C. § 2113(d) (bank robbery, use of "dangerous device"); 18 U.S.C. § 242 (civil rights deprivation, use of explosives); 18 U.S.C. § 245(b)(5) (hate crimes, explosives enhancement); 18 U.S.C. § 247(d)(2)-(3) (damage to religious property, explosive enhancement); and 18 U.S.C. § 1864 (use of hazardous devices on federal lands).

operations.[87] Additional Presidential Directives reiterating and expanding FBI's terrorism responsibility includes but is not limited to:

- Presidential Decision Directive-39, entitled *U.S. Policy on Counterterrorism*, defined the roles of several U.S. counterterrorism agencies, including the FBI;

- Presidential Decision Directive-62 assigned lead agency responsibility to the FBI for countering overseas terrorism against American interests and for domestic terrorism crisis management, intelligence and hostage rescue;

- Homeland Security Presidential Directive-5 reaffirmed that the Attorney General has lead responsibility for criminal investigations of terrorist acts or threats as well as related intelligence collection activities within the United States. Additionally, it provided the FBI with the lead role for coordinating the activities of the other members of the law enforcement community to detect, prevent, preempt and disrupt terrorist attacks against the United States; and

- National Security Presidential Directive-46 / Homeland Security Presidential Directive-15 provides that the Attorney General, acting through the FBI and in cooperation with other federal departments and agencies engaged in activities to protect our national security, shall coordinate the activities of the law enforcement activities to detect, prevent, preempt, and disrupt terrorist attacks against the United States. In addition this directive rescinds Presidential Decision Directives 39 and 62.

Bureau of Alcohol, Tobacco, Firearms and Explosives

ATF has jurisdiction over several areas of federal law relative to explosives. Specifically, ATF is authorized to monitor and regulate

[87] See 18 U.S.C. §§ 1119 (murder and terrorist acts against U.S. Nationals overseas); the Antiterrorism and Effective Death Penalty Act of 1996, 18 U.S.C. § 2339A, (providing material support to terrorists abroad) and 28 U.S.C. § 538, specifically directs the FBI to investigate crimes and actions that threaten aircraft security in or entering the United States.

possession, storage, and transport of commercial explosives.[88] ATF's explosives jurisdiction also includes provisions of the National Firearms Act and Federal Firearms Act, which incorporate "destructive devices" as types of firearms subject to regulation.[89] Because accelerants used in arsons often cause incendiary explosions, ATF is also responsible for investigating commercial arson nationwide.[90]

The Homeland Security Act of 2002 and the associated Safe Explosives Act of 2002 transferred most enforcement functions of ATF to DOJ.[91] The Act at 28 U.S.C. § 599A, directs that, subject to the direction of the Attorney General, the ATF is responsible for investigating criminal and regulatory violations of the federal firearms, explosives, arson, alcohol, and tobacco smuggling laws and any other function related to the investigation of violent crime or domestic terrorism that is delegated to ATF by the Attorney General. The Attorney General's discretion under 28 U.S.C. § 599A includes the right to authorize the performance by any officer, employee, or agency of DOJ of any function of ATF. However, the law also requires that ATF be maintained as a distinct entity within DOJ.

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[88] The Omnibus Crime Control and Safe Street Act of 1968, 18 U.S.C. §§ 921 et seq. as amended in the Gun Control Act of 1968, 26 U.S.C. §§ 5841 et seq., prohibited unlicensed trade in firearms and explosives. The Organized Crime Act of 1970, at 18 U.S.C. §§ 842 and 844, covers unlawful acts and penalties. 18 U.S.C. § 843 regulates the explosives industry. 18 U.S.C. § 846(b) authorizes the establishment of a national repository of information on incidents involving arson and suspected criminal misuse of explosives. The National Firearms Act, Title 26 U.S.C. Chapter 53, includes criminal provisions for the unlawful manufacture, transfer, and possession of destructive devices, including explosives or incendiary bombs, grenades, and mines.

[89] 26 U.S.C. §§ 5801, et seq., *Machine Guns, Destructive Devices, and Certain Other Firearms* (reenacting the *National Firearms Act of 1934* that required "firearms" sellers to register with the Treasury Department, pay a special tax on firearms sales, and keep written order forms for sales); 18 U.S.C. §§ 921, et seq. (reincorporating the *Federal Firearms Act of 1938* that required firearms' manufacturers and dealers to obtain federal licenses and regulated interstate shipments).

[90] *Anti-Arson Act of 1982*, Pub. L. No. 97-298, § 2(c), amended 18 U.S.C. § 844, by specifically including arson as a federal crime, based in part on ATF determinations that accelerants met the definition of explosives.

[91] Pub. L. 107-296, the *Safe Explosives Act* amended 18 U.S.C. § 841 to require explosives license applicants to submit identifying information of all employees who will handle or transport explosives, expand the categories of prohibited persons and required manufacturers and importers to furnish samples of their explosives to ATF.

Federal Mandate to Share Information

In addition to specific statutory authorization to enforce particular laws, these components also have a statutory mandate outlined in the Homeland Security Act of 2002 to work together to share information. The Act defines Homeland Security Information as any information possessed by a federal, state, or local agency that (1) relates to the threat of terrorist activity; (2) relates to the ability to prevent, interdict or disrupt terrorist activity; (3) would improve the identification or investigation of a suspected terrorist or terrorist organization; or (4) would improve the response to a terrorist act.[92]

Although agencies should share information, some components are directly responsible for centralizing information on certain topics. In 1988, Congress passed the Uniform Federal Crime Reporting Act of 1988 that required law enforcement agencies to automatically report to the FBI monthly crime statistics under prescribed standardized specifications. The law also provides that the Attorney General shall acquire, collect, classify, and preserve national data on federal criminal offenses as part of the Uniform Crime Reports authorized under 28 U.S.C. § 534.[93]

However, on September 30, 1996, the Omnibus Consolidated Appropriations Act of 1997 was enacted. The Act amended the federal explosives laws in Title 18 U.S.C. § 846(b) and authorized the Secretary of the Treasury to establish a national repository of information on incidents involving arson and the suspected criminal misuse of explosives. This section also required all federal agencies having information concerning such incidents to report the information to the Secretary. This included information regarding arson and explosives incidents investigated by any federal agency, as well as state or local agencies and criminal dispositions, if any. The Secretary gave ATF the responsibility to establish the repository.

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[92] 6 U.S.C. § 482(f)(1).

[93] The Act further specifies that the Attorney General may designate the Federal Bureau of Investigation as the lead agency for purposes of performing the functions authorized by this section and requires that all departments and agencies within the federal government (including the Department of Defense) that routinely investigate complaints of criminal activity shall report details about crime within their respective jurisdiction to the Attorney General in a uniform manner and on a form prescribed by the Attorney General.

APPENDIX IV

2004 ATTORNEY GENERAL MEMORANDUM

Office of the Attorney General
Washington, D.C. 20530

August 11, 2004

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
ADMINISTRATOR, DRUG ENFORCEMENT ADMINISTRATION

FROM: THE ATTORNEY GENERAL

SUBJECT: Coordination of Explosives Investigations and Related Matters

To ensure effective coordination of explosives investigations by law enforcement components of the Department of Justice (the Department), I hereby direct as follows:

Jurisdiction

1. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) shall control the investigation of all explosives incidents, except as follows:

   a. In cases where a Joint Terrorism Task Force (JTTF) determines that the explosives incident is related to terrorism, then the JTTF shall control the investigation, and
   b. In cases where the Federal Bureau of Investigation (FBI) traditionally has exercised jurisdiction (including but not limited to bank robberies, civil rights violations, and organized crime), then the FBI shall control the investigation.

2. The Deputy Attorney General shall resolve all issues relating to jurisdiction over explosives investigations.

Information Sharing

3. The Department's Chief Information Officer (CIO) shall consolidate all of the Department's arson and explosives incident databases including, but not limited to, the FBI's Automated Incident Reporting System and ATF's Bomb and Arson Tracking System, into a single database.

4. All consolidated arson and explosives incident databases shall be maintained by ATF and shall be accessible to all Department law enforcement components. No Department component may maintain any database that contains arson or explosives incident information that would otherwise be maintained in the consolidated database.

5. Within 90 days, the CIO shall examine and report to the Deputy Attorney General on the feasibility of consolidating all of the Department's remaining arson and explosives databases.

6. The Deputy Attorney General shall resolve all issues relating to the consolidation of arson and explosives databases.

TEDAC

7. The CIO shall coordinate the development of a database for the Terrorist Explosives Device Analytical Center (TEDAC).

8. A senior FBI representative shall serve as Director of TEDAC; a senior ATF representative shall serve as a Deputy Director of TEDAC.

Laboratories

9. There shall be established a Laboratories Review Board (Lab Board). The Deputy Attorney General (or his designee) shall chair the Lab Board; representatives of ATF, the Drug Enforcement Administration, and the FBI shall serve as members of the Lab Board.

10. The Lab Board shall examine the Department's available resources and workloads and make recommendations to the Deputy Attorney General. Such recommendations shall include an analysis of laboratory demands imposed by TEDAC.

11. The Deputy Attorney General (or his designee) shall, as appropriate, direct the allocation and use of the Department's laboratory resources.

Training

12. All budget, curricula, teaching and scheduling functions relating to post-blast explosives training within the Department shall be consolidated under ATF.

13. All agents, officers, technicians, and other personnel who engage in or are related to post-blast explosives training shall remain with their respective agencies and continue to provide training as they did prior to consolidation.

14. The Deputy Attorney General shall resolve all issues relating to the consolidation of post-blast explosives training.

15. All explosives training provided by Department components shall be made available, when appropriate, to all federal law enforcement agencies.

16. There shall be established an Explosives Training Review Board (Explosives Board). The Deputy Attorney General (or his designee) shall chair the Explosives Board; representatives of ATF and the FBI shall serve as members of the Explosives Board.

17. Within 90 days, the Explosives Board shall examine and report to the Deputy Attorney General on the feasibility of consolidating the Department's remaining explosives training programs and facilities.

Special Events

18. The recommendations of the Explosives Review Group (ERG) regarding Special Events, as set forth in the Memorandum for the Deputy Attorney General of May 3, 2004, Attachment 2, shall be adopted and implemented.

19. No later than December 1, 2004, the ERG Chair shall report to the Deputy Attorney General in writing on the implementation of the ERG's recommendations regarding Special Events.

Canines

20. As soon as practicable, all Department components that use explosives detection canines shall use only canines certified by ATF.

APPENDIX V

2007 EXPLOSIVES REVIEW GROUP MEMORANDUM

U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Assistant Director

JAN 12 2007

Washington, DC 20226

700000:MRB
3200

MEMORANDUM TO: DEPUTY ATTORNEY GENERAL

THRU: Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

FROM: Chair, Explosives Review Group

SUBJECT: Improving Coordination of Explosives Investigations, and Related Matters

In August 2004, Attorney General Ashcroft issued a memorandum designed to foster the effective coordination of explosives investigations between the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Federal Bureau of Investigation (FBI). Additionally, the memorandum provided direction on the optimal use of DOJ's explosives resources. Among the additional topics covered by the Attorney General's directive were information sharing, the Terrorist Explosive Device Analytical Center (TEDAC), laboratories, explosives training, special events, and explosives-detection canines.

On November 14, 2006, you directed ATF and the FBI to "conduct a comprehensive evaluation of current efforts to implement the Attorney General's (AG's) directive, assess the need to establish or clarify operational protocol in order to give effect to the AG's directive, and identify specific ways to improve coordination of the Department's investigations of and preparation for explosives-related incidents."

On November 30, 2006, ATF, FBI, and various representatives from other DOJ components met to discuss the directive you issued. Subgroups were formed to discuss the issues, and each group reported to FBI Executive Assistant Director Michael Mason and me. EAD Mason and I discussed the matters after the subgroups met. This memorandum provides, for each topic in the Attorney General's August 2004 directive, a summary of the subgroup discussion, a list of unresolved issues, and recommended actions.

Jurisdiction

In the area of investigative jurisdiction, the Attorney General's memorandum directed that:

- ATF shall control the investigation of all explosives incidents, except:

  -When a Joint Terrorism Task Force (JTTF) determines that the explosives incident is related to terrorism, then the JTTF shall control the investigation.

  -In cases where the FBI has traditionally exercised jurisdiction (e.g. bank robberies, civil rights violations, and organized crime), the FBI shall control the investigation.

- The Deputy Attorney General shall resolve all issues relating to jurisdiction over explosives investigations.

Neither the FBI nor ATF are aware of jurisdictional issues relating to international terrorist incidents. There have been periodic disagreements between ATF and the FBI regarding incidents that may have "domestic terrorist" ties. Because it is difficult to establish motive when an incident occurs, disagreements continue to take place. However, Special Agents in Charge at ATF and FBI have worked out differences in each incident.

The subgroup will continue to meet quarterly to ensure that each agency continues to address issues as they arise. Also, the ATF Assistant Director of Field Operations and several FBI Executive Assistant Directors and Assistant Directors meet on a monthly basis to discuss ongoing issues.

Recommended Action: None. There are no issues requiring resolution by the ODAG.

Information Sharing

On information sharing, the Attorney General's memorandum directed that:

- The Department's Chief Information Officer (CIO) would consolidate all of the Department's arson and explosives incident databases into a single database. This consolidation would include the FBI's Automated Incident Reporting System and ATF's Bomb and Arson Tracking System.

- All consolidated arson and explosives incident databases are to be maintained by ATF and shall be accessible to all DOJ law enforcement components. No DOJ component may maintain any database that contains arson or explosives incident information that would otherwise be maintained in the consolidated database.

- Within 90 days, the CIO was to examine and report to the Deputy Attorney General on the feasibility of consolidating all of DOJ's remaining arson and explosives databases.

- The Deputy Attorney General is to resolve all issues relating to the consolidation of arson and explosives databases.

Following issuance of the Attorney General's memorandum, the Department's CIO undertook an assessment of ATF's and FBI's incident databases and, in a report issued in November 2004, recommended that the FBI's Automated Incident Reporting System (AIRS) and ATF's Bomb and Arson Tracking System (BATS) be consolidated, with AIRS data to be integrated into BATS. Accordingly, BATS is DOJ's Department-wide arson and explosives incident database, and it will be accessible to all DOJ law enforcement components, as well as to State, local, and tribal law enforcement agencies.

ATF subsequently combined the data and formed the United States Bomb Data Center, which exchanges information with 19 other bomb data centers around the world. Nine additional countries are finalizing an agreement to participate in the information exchange. All of this is done through the International Bomb Data Center Working Group. ATF and the FBI are partners in this Working Group, and all Working Group members openly exchange information through a common system. The United States Bomb Data Center data is available to Federal, State, and local agencies.

There is agreement that DOJ should maintain a single source for bomb data. ATF believes that the Attorney General's August 2004 directive made it clear that ATF would collect and manage this data. The FBI believes that the Attorney General's directive should be clarified and that the FBI should be the manager of the bomb data because of other issues relating to their mission.

The FBI has expressed concern that because the term "Bomb Data Center" was coined by their agency in 1972, their partners are confused as to whom they should send bomb data information. The FBI also stated that the term "arson or explosives incident information," as used in the Attorney General's 2004 directive, should be clarified.

Each agency has issued a white paper outlining why each should manage bomb data information as the single DOJ source. Both are attached for your review.

Recommended Action: DOJ should review the position papers of each agency and hold a meeting with both agencies to discuss and resolve the outstanding issues.

Terrorist Explosives Device Analytical Center (TEDAC)

At your direction, the Explosives Review Group did not address any issues relating to TEDAC

Laboratories

With regard to laboratories, the Attorney General's memorandum directed that:

- There shall be established a Laboratories Review Board chaired by the Deputy Attorney General (or his designee) with participation by representatives from ATF, DEA, and the FBI.

- The Laboratories Review Board is to examine the Department's available resources and workloads and make recommendations to the Deputy Attorney General. Such recommendations are to include an analysis of laboratory demands imposed by the Terrorist Explosives Device Analytical Center.

- The Deputy Attorney General (or his designee) shall, as appropriate, direct the allocation and use of the Department's laboratory resources.

Following issuance of the Attorney General's memorandum, in September 2004 the DOJ Laboratories Review Board held its first meeting, chaired by Science Advisor Vahid Majidi. The Directors of the ATF, FBI, and DEA laboratories attended, and the following were identified as action items:

1. Exchange laboratory organization charts.
2. Document the need for each forensic discipline in each laboratory.
3. Develop a standard special agent-to-lab employee-staffing chart.
4. Investigate possibilities for sharing FBI research funding with ATF and DEA.

The Laboratories Review Board subsequently formed the "Council of Federal Crime Laboratory Directors" which consists of directors of all DOJ labs and 12 other laboratories as founding entities. They meet three times per year to discuss ongoing issues.

Recommended Action: None. There are no pending issues that require resolution by the ODAG.

Training

The training portion of the Attorney General's memorandum directed that:

- All budgets, curricula, teaching, and scheduling functions relating to post-blast explosives training with the Department will be consolidated under ATF.

- All agents, officers, technicians, and other personnel who engage in or are related to post-blast explosives training shall remain with their respective agencies and continue to provide training as they did prior to consolidation.

- The Deputy Attorney General shall resolve all issues relating to the consolidation of post-blast explosives training.

- All explosives training provided by DOJ components shall be made available, when appropriate, to all Federal law enforcement agencies.

- There shall be established an Explosives Training Review Board (Explosives Board). The Deputy Attorney General (or his designee) shall chair the Explosives Board, and representatives of ATF and the FBI shall serve as members of the Explosives Board.

- Within 90 days, the Explosives Board shall examine and report to the Deputy Attorney General on the feasibility of consolidating the Department's remaining explosives training programs and facilities.

The subgroup met and agreed that:

- Both agencies have valuable post-blast and explosives related training.

- Both agencies will meet to discuss ongoing issues. They suggest forming an "Explosives Training Working Group" instead of the "Explosives Training Review Board." This group will meet quarterly and consider ways to exchange course schedules to reduce redundancy.

- Both agencies will strive to ensure that positions remain open in their training courses for other agency representatives.

There is, however, disagreement about the meaning of the following language in the Attorney General's directive:

> "All budgets, curricula, teaching, and scheduling functions relating to post-blast explosives training with the Department will be consolidated under ATF. All agents, officers, technicians, and other personnel who engage in or are related to post-blast explosives training shall remain with their respective agencies and continue to provide training as they did prior to consolidation."

ATF believes that the language in paragraph twelve is clear. The FBI believes it is ambiguous and needs clarification.

The group believes the issue is complex and requires discussion, negotiation, and collaboration. They also believe paragraphs twelve and thirteen conflict. One indicates all of the efforts should be consolidated under ATF, the other indicates they should stay with their respective agencies. The group believes that the language of the Attorney General's directive may need to be specified the specific items that should be

consolidated. If the language is clarified, the group believes a resolution may be possible with respect to consolidating curricula, training, and scheduling functions.

Recommended Action: Each agency prepared a white paper for your review. After reviewing the white papers, the ODAG should determine whether the language of the Attorney General's directive should be clarified.

Special Events

Regarding special events, the Attorney General's memorandum stated that:

- The recommendations of the Explosives Review Group regarding Special Events, as set forth in the memorandum for the Deputy Attorney General of May 3, 2004, Attachment 2, shall be adopted and implemented.

- No later than December 1, 2004, the Explosives Review Group Chair shall report to the Deputy Attorney General in writing on the implementation of the Group's recommendations regarding special events.

The Attorney General's memorandum directs ATF and the FBI to exchange copies of their special events policies and directs the FBI to add ATF email addresses to its special events databases. Additionally, it states that ATF will direct its field offices to coordinate requests from State and local law enforcement agencies for special events support with the FBI prior to committing resources. These tasks have been accomplished.

The subgroup met and agreed to continue this practice to ensure agency resources are used effectively. Although the agencies have had some differences about special events protocols at some venues, all such differences were resolved by the Special Agents in Charge.

Recommend Action: None. Because the issues have been resolved locally, and the subgroup has agreed to meet periodically to address any outstanding issues, there is no need for the ODAG to resolve any issues.

Canines

Regarding canines, the Attorney General's memorandum directed that:

- As soon as practicable, all Department components that use explosives-detection canines are to use only canines certified by ATF.

In response to this portion of the directive, ATF surveyed other DOJ components to determine their explosive-detection canine needs and has provided explosives detection canines and canine training to the FBI's Uniform Division and to the U.S. Marshals Service. Additionally, ATF's canine program has established protocols, policies, and

certifications, including the Odor Recognition Proficiency Standard, commonly known as the National Odor Recognition Test (NORT).

The subgroup met but was unable to agree on all aspects of the use of explosives-detection canines. ATF's position is that the language mentioned above is advantageous to DOJ and continues to provide this training when it is requested. The FBI believes the language is unclear and creates a liability for them because ATF-certified canines are not available to the FBI in every city. The FBI has acquired and deployed explosives-detection canines from outside sources. The FBI prefers to use dogs trained under the "Scientific Working Group on Dog and Orthogonal Detector Guidelines," a government-sponsored working group to enhance the performance of detector canines of all disciplines.

Recommended Action: Each agency has prepared a "white paper" outlining their position for DOJ review.

Conclusion

The Attorney General's August 2004 directive served to clarify some issues related to explosives cases. The directive opened the door for ongoing dialogue between the FBI and ATF and resulted in substantial progress and improved communication between the two agencies. However, as noted above, some issues remain unresolved. This memorandum and the accompanying position papers serve to outline those unresolved issues so that the Department can make a decision on them. The ATF and FBI agree that it is in the Department's and their agencies' best interests to bring resolution to these issues.

Michael R. Bouchard

APPENDIX VI

2008 ATF-FBI MEMORANDUM OF UNDERSTANDING

U.S. Department of Justice

Office of the Deputy Attorney General

July 8, 2008

Washington, D.C. 20530

MEMORANDUM TO: Attorney General
Deputy Attorney General

FROM: Director, Federal Bureau of Investigation
Acting Director, Bureau of Alcohol, Tobacco, Firearms and Explosives

SUBJECT: Memorandum of Understanding on ATF/FBI Protocols for Response to Explosives-related Incidents

On December 20, 2007, the President of the United States approved the National Strategy, submitted by the Attorney General, to combat terrorist use of explosives in the United States. In support of the requirements of the National Strategy to clarify roles and responsibilities and to facilitate a more productive partnership in the best interest of the American people, with the guidance and advice of the Attorney General and the Deputy Attorney General, key management representatives from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives developed the following protocols regarding the Department's response to explosives related incidents.

Recognizing that terrorism is the Department of Justice's top national priority and that the majority of explosives incidents are criminal in nature, these protocols are the product of a larger coordination process undertaken by the agencies to align the capabilities of the Department of Justice, including explosives databases, explosive detection canine training, and post -blast training. As part of that process, the Deputy Directors of each respective agency have engaged in detailed discussions to optimize the explosives response capability of the Department of Justice. The attached protocols are the product of this relationship and will be implemented forthwith. While the protocols specifically address explosives and bombing incidents, they also reflect our joint belief that partnership is better than competition and that mutual respect and teamwork should govern our approach to all incidents. *The purpose of the protocols is to memorialize and implement our joint determination to resolve any operational concerns at the outset of an incident. Our agencies will continue to move forward as a team in the best interest of the American people.* All agency personnel will be directed to adhere to these protocols and to respect their underlying intent in all matters in which both agencies are involved. A copy of the protocols is attached.

Robert S. Mueller III
Director
Federal Bureau of Investigation

Date: 7/8/08

Michael J. Sullivan
Acting Director
Bureau of Alcohol, Tobacco,
Firearms and Explosives

Date: 7/8/08

CC: All Executive Staff and Special Agents in Charge,
Federal Bureau of Investigation
All Executive Staff and Special Agents in Charge,
Bureau of Alcohol, Tobacco, Firearms and Explosives

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL BUREAU OF INVESTIGATION AND THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

PURPOSE: This Memorandum of Understanding (MOU) delineates the roles and responsibilities of the Federal Bureau of Investigation (FBI) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) when responding to bombings and explosives-related incidents.

AUTHORITIES: Authority to enter into this agreement can be found at 28 U.S.C. § 533; 42 U.S.C. § 3771; 28 U.S.C. § 599; 28 C.F.R. § 0.85; 28 C.F.R. §0.130 – 0.131; and applicable United States Attorney General Guidelines. All applicable Attorney General Guidelines for investigations will be strictly adhered to by both parties to this agreement.

NATIONAL PRIORITIES: In recognition of the increased capabilities of accredited public safety bomb squads positioned throughout the United States whose technicians are trained and certified to national standards, and the enhanced capabilities of investigative personnel assigned to those agencies, U.S. policy prioritizes the jurisdiction of federal agencies in bombing events as follows:

1) Terrorism
2) Violent crime
3) Other Federal crimes
4) Assistance to State and local authorities, upon request

Timely communication and firmly-established cooperative relationships are essential to protect public safety. The need also exists to develop joint protocols to ensure the optimal use of resources.

This memorandum will address the following areas of conduct:

1) **INITIAL RESPONSE**

A. First Responders
B. Joint Immediate Notification
C. Crime Scene Processing
D. Laboratory/Forensic Capabilities

2) **INCIDENT MANAGEMENT**

A. Jurisdiction
B. Investigation/Leads
C. Resources
D. Special Events Management

3) **PROSECUTION**

I) INITIAL RESPONSE

A. First Responders

Coordination of a joint response by ATF and FBI personnel to an explosive-related or bombing incident will be the responsibility of the respective Special Agents in Charge (SAC). In all cases, that joint response shall be closely coordinated based on prior established protocols. It is recognized that state/local/tribal or territorial law enforcement officers will likely be the first responders to bombing or explosives incidents. The Federal response should focus on the nexus to the federal priorities of terrorism, violent crime, and other federal crimes. If the event has a federal nexus, the agency with responsibility for the underlying felony will assume investigative lead, as coordinated by the SACs. In those cases where there is a terrorism nexus, the Joint Terrorism Task Forces (JTTFs), comprised of ATF and FBI personnel, as well as State and local authorities, will be responsible for the overall investigation. Whether the lead falls to the ATF or the FBI, the other agency will provide whatever assistance it can in support of the lead agency. (1973 MOU; AG Memo, 8/11/2004).

B. Joint Immediate Notification

Each ATF and FBI SAC will formally identify executive and investigative points of contact (POC) at the field office and resident agency level to facilitate the exchange of all information relative to explosives incidents immediately with the other agency and to appropriately disseminate the information within their respective agencies.

C. Crime Scene Processing

As part of the joint response protocol to an incident, the ATF and FBI SACs will have in place protocols for the initial joint management of the crime scene. Close coordination of the management of the scene will be required. The agency with jurisdiction for the primary violation will be designated as the lead agency, and will be responsible for overall processing of the crime scene. In furtherance of this objective, the FBI and ATF are in the process of developing a common training curriculum for processing post-blast crime scenes. As these procedures are developed and implemented, they will further reinforce the intent and capability to allow Department assets to work in a collaborative and consistent manner.

D. Laboratory/Forensic Capabilities

Any and all evidence collected will be sent to the laboratory of the agency having jurisdiction over the investigation. This does not, however, preclude the SAC from either agency from sending evidence to the other agency's laboratory to perform examinations unavailable at their own laboratory and/or reaching agreement on a division of the crime scene evidence in a manner that is effective and efficient. For example, the FBI could utilize the ATF Laboratory for terrorism related arson cases and the ATF could utilize the FBI Laboratory for metallurgical examinations. In such cases, the SACs will appoint an executive POC for coordination between laboratories. Absent any other agreements, and in the spirit of collaboration, the Special Agents in Charge (SAC) will be empowered to consult and reach a consensus as to where the evidence will be sent. Criteria for consideration are: resource availability and workload, issues affecting the timeliness of processing, examination capabilities, chain of custody, inter-association of cases, laboratory proximity to the crime scene and whether jurisdiction is clear or not at the point in which the evidence is ready for examination. In the rare instances where the field fails to reach an agreement it will be referred to, and promptly resolved by, ATF and FBI senior management, based on prior designation. No evidence, once examined by one laboratory, will be re-examined by another laboratory. In the unlikely event that the lead for the investigation changes, any evidence already examined, along with the examination reports will be transferred to the other agency. Success in enhancing national capabilities to defeat explosive attacks can best be achieved through cohesive, sound, and timely decisions that involve all agencies who have relevant authorities and responsibilities. The ATF and FBI will work together, utilizing the optimal forensic resources within the Department, to provide the each agency with the best quality of analysis possible. ATF and FBI will continue to participate in "Fellowship Exchange" programs and encourage the exchange of laboratory personnel.

2) INCIDENT MANAGEMENT

A. Jurisdiction

All of the key points discussed under the Initial Response above are applicable throughout the management of the incident. Jurisdiction may or may not be readily apparent at the immediate outset. There should be a reasonable amount of time to determine whether or not the incident is accidental, a criminal act or a terrorist incident. Notwithstanding, the investigation must proceed jointly and vigorously with key decisions being made in a timely and collaborative manner. These protocols establish a framework built upon the mutual benefit that each agency has experienced as a direct result of this historically collaborative partnership.

In the case that an explosives incident does not have a readily apparent motive, e.g. criminal act or terrorist incident, the SACs will coordinate regarding a

decision as to jurisdiction that is in the best interest of the public safety and law enforcement. Factors such as claims of responsibility, current intelligence information, patterns of criminal activity, and similarities to other cases should be considered as part of the decision making process.

B. Investigation/Leads

Investigations will be conducted in accordance with applicable AG Guidelines and managed in accordance with the policies and procedures of the agency having jurisdiction for the priority violation. Should there be a determination it is not a terrorist incident, but has a federal nexus, the agency with jurisdiction over the underlying felony will assume the lead agency status. (1973 MOU; AG Memo, 8/11/2004) Recognizing the need for joint investigative support, where applicable and agreed upon, SACs will designate joint co-case agents from the respective agencies. No parallel investigations will be undertaken, no duplicative witness interviews will be conducted and there will be no independent investigative follow-up by an agency without concurrence from the lead agency. In recognition of the unique requirements of 28 C.F.R. § 0.130 (a), explosives investigations that involve individuals or organizations licensed by the federal government will be coordinated with the co-case agent from ATF.

C. Resources

ATF and FBI will ensure adequate resources are made available for all aspects of this protocol document. SACs will ensure that joint participation in response exercises occurs. At both the field and headquarters levels, each agency will actively seek out opportunities for exchange of investigative, forensic, technical, and analytical personnel.

D. Special Events Management

The Special Events Management process was created to address those significant events that represent a potential terrorist target and to plan appropriate precautionary measures to prevent terrorism attacks or to ensure a proper Federal response if such an attack occurs. Many special events possess a national significance that provides a unique and highly symbolic target for terrorism. During a National Special Security Events (NSSE), the FBI will identify and coordinate as appropriate with other federal government components, to include ATF, to mitigate the consequences of an incident occurring at an NSSE. Consistent with the 2004 AG Memo concerning Special Events, both agencies agreed that advanced coordination of federal bomb management assets in response to local law enforcement requests will benefit all involved. The FBI will coordinate with the ATF during the early planning stages of a Special Event (both in the field and at Headquarters) to ensure the full capabilities of the Department are utilized during an event. Where possible, an exchange of personnel for events

will maximize efficiencies. Where an event is an NSSE, ATF has agreed to direct its field offices to coordinate requests from state and local law enforcement agencies for special events support with the FBI prior to committing any resources.

3) **PROSECUTION**

Criteria for prosecution should be whatever is in the best interest of the community. In joint investigations, one agency shall not move forward on prosecution without consulting the partner agency. In all federal cases, where joint, the co-case agents, in coordination with their executive management, will be responsible for making the determination to submit for prosecution. In the event there is a single lead agency, that agency will present the case to the AUSA for a prosecutive decision.

Robert S. Mueller III
Director
Federal Bureau of Investigation

Date: 7/8/08

Michael J. Sullivan
Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives

Date: 7/8/08

APPENDIX VII

MEMORANDUM FROM A UNITED STATES ATTORNEY

Memorandum U.S. DEPARTMENT OF JUSTICE

Eric F. Melgren
United States Attorney
District of Kansas

Subject	Date
Attorney General's Memorandum on Explosives Investigations	September 10, 2004

To	From
S.A.C. Mark James S.A.C. Kevin Stafford cc: Shawn Stroud Tom Atteberry	Eric F. Melgren

Because my meeting with Stroud and Attebury was less than successful in resolving misunderstandings between the agencies, pursuant to paragraph 6 of the memorandum I contacted Deputy Attorney General James Comey for guidance. Uttam Dhillon of his office, who had principal responsibility for implementing this memorandum, visited with me about these issues. His direction was as follows:

1. Pursuant to the memorandum, the ATF has jurisdiction over explosives issues unless one of the stated exceptions applies. It is more accurate to say that this means the ATF has jurisdiction unless and until it is determined that the explosives incident is related to terrorism; than it is to say that the FBI or the JTTF has jurisdiction unless and until it is determined that the incident is not related to terrorism. As Mr. Dhillon expressed it to me, the FBI must assert itself in order to acquire jurisdiction over the incident. My understanding, with which he agreed, is that "default" jurisdiction is with the ATF.

2. I inquired about the language in paragraph 1.a. stating that the "JTTF determines" the incident is related to terrorism. Practically speaking, I asked, doesn't this mean the FBI; since the FBI is the lead agency for the JTTFs? He responded that the JTTFs were selected to ensure that the decision was made by a joint task force with primary responsibility for investigation terrorism cases.

Prior to circulating this memo to you, I vetted it by Mr. Dhillon, who has agreed that it accurately represents his direction.

APPENDIX VIII

CONSOLIDATED DOJ RESPONSE TO AUDIT REPORT RECOMMENDATIONS

U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

October 9, 2009

MEMORANDUM

TO: Raymond J. Beaudet
Assistant Inspector General for Audit
Office of the Inspector General

FROM: Edward N. Siskel
Associate Deputy Attorney General
Office of the Deputy Attorney General

SUBJECT: Joint Response to the OIG's Draft Report: "Explosives Investigation Coordination between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives"

The Office of the Deputy Attorney General (ODAG) very much appreciates the opportunity to review and respond to the Office of Inspector General's draft audit report entitled, "Explosives Investigation Coordination between the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms, and Explosives" (hereinafter, "Report"). As per your office's request, this memorandum will serve as a joint response to the Report on behalf of the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), the Federal Bureau of Investigation (FBI), the Office of the Chief Information Officer (OCIO), and the ODAG.

The Department of Justice recognizes the critical importance of a well-coordinated and effective response to explosives incidents. Equally important is the need to adequately train our personnel and ensure effective information sharing with all appropriate components and law enforcement partners.

The Report documents the Department's challenges concerning the most efficient application and balance of its explosives enforcement assets and responsibilities and offers some remedies to those challenges. The Department agrees with the concept of the recommendations that are reflected in the body of the Report and is taking steps to address each of those recommendations. At the same time, we recognize, and have discussed with your staff, that we may have modifications to how we go about implementing those recommendations in order to achieve the most successful and efficient resolution to the matters under review.

While the Report addresses coordination challenges, it is important to recognize some of the successes and joint efforts between the ATF and FBI. From 2003 through 2008, ATF and FBI jointly investigated and recommended for prosecution 192 explosives related cases involving 397 defendants. In addition, prior to the audit period, the ATF recognized on its own some of the highlighted issues and began a process to improve the use and function of the Bombing and Arson Tracking System (BATS). In the past year, over 3,000 bomb technicians and investigators have received in person BATS training, and the numbers of agencies and individual users registered in BATS have increased significantly thus facilitating greater information sharing.

It is also important to note that the Joint Program Office (JPO), which is comprised of both the FBI and ATF, has been successful in resolving the types of issues raised in this Report. For example, the JPO coordinated the development of community-wide consensus standards for uniform training of explosive-detection canine teams, which will be published in a guidelines document for implementation nationwide. Another example of joint coordination is the Terrorist Explosive Device Analytical Center (TEDAC). Through TEDAC, the leadership of the FBI and ATF laboratories meets regularly to address inter-component issues. Although the FBI and ATF laboratories each use their own platforms to manage their laboratory's forensic reports and explosives reference material, the systems have been adapted so that both FBI and ATF laboratory information is available to TEDAC partners.

The Report suggests that the Department should create, or at least study further, the creation of a single "One DOJ" data environment to serve as the repository of all automated information about explosives. With regard to the issue of consolidated databases, it is important to point out that a "one size fits all" approach is not necessarily the best utilization of resources when it comes to how the Department carries out its explosives responsibilities. The decision to consolidate any database should be a business decision driven by the value such a consolidation will provide to the user community at large. If DOJ senior leadership, agents, analysts and other related users believe their law enforcement work is better supported by separate databases, improvements should be evaluated to make the existing databases accessible to all users and the information therein comprehensive.

In conclusion, based upon a review of the Report, the ODAG agrees in concept with all 15 recommendations directed to the ATF, FBI, ODAG and OCIO and is in the process of formulating measures to resolve many of the identified issues. The ODAG appreciated the professionalism exhibited by your staff in working jointly with our combined representatives to complete this audit.

Please feel free to contact me should you have any questions.

APPENDIX IX

OFFICE OF THE INSPECTOR GENERAL SUMMARY AND ANALYSIS OF ACTIONS NECESSARY TO CLOSE REPORT

The OIG provided a draft of this audit report to the Office of the Deputy Attorney General (ODAG), ATF, and FBI. The consolidated DOJ response prepared by the ODAG is incorporated in Appendix VIII. DOJ stated in its response that it agrees *in concept* with all 15 recommendations in the report. However, because the response did not contain any specific corrective actions that DOJ, ATF, or the FBI plan to take to address the recommendations, this report is issued "unresolved."

The DOJ response to our draft audit report also highlighted examples of successes and joint coordination efforts in explosives investigations between ATF and the FBI. We agree that it is important to recognize successes and acknowledged in the report such joint investigative efforts, the increase in BATS training, the Joint Program Office (JPO) consensus standards for uniform training of explosive-detection canine teams, and the Terrorist Explosive Devise Analytical Center (TEDAC).

However, it is important to put these actions in context. In its response, the DOJ stated that from 2003 through 2008 the FBI and ATF "jointly investigated and recommended for prosecution 192 explosives related cases involving 397 defendants." While, the OIG does not dispute that joint investigations occurred, 200 cases represents a small fraction of the several thousand explosives cases handled by the FBI and ATF between 2003 and 2008.

Moreover, overall the FBI and ATF lack a coordinated approach to jointly address explosives-related matters. The report provides descriptions of numerous disputes between the FBI and ATF during explosives investigations, and the results from our survey of FBI and ATF personnel demonstrate conflicting interpretations of DOJ directives and widespread discontent for the other agency's contributions to explosives investigations.

The Department's response stated that "prior to the audit period, the ATF recognized on its own some of the highlighted issues and began a process to improve the use and function of the Bomb and Arson Tracking System (BATS)." On page 44 of our report, the OIG discussed ATF's expanded BATS training for state and local personnel. However, we found through our survey of state and local bomb squad commanders and

interviews with local bomb technicians that this expansion of training had little effect on BATS usage. The results of our survey of state and local bomb squad commanders also demonstrated that only a minority of squads consistently reported explosives incidents to BATS, and more than one-half of the local responders (133 out of 239 respondents) indicated that they rarely or never query information in BATS. Further, over 40 percent of respondents complained that the system was too difficult to use; about 25 percent received no training; and others indicated difficulty in obtaining passwords or getting end-user assistance, which prevented them from using BATS.

The DOJ also stated in its response that the Joint Program Office (JPO) has had success in resolving issues identified in our report, specifically citing a consensus among JPO participants on standards for uniform training for explosive-detection canines. Our report notes that the JPO recently established a board that agreed to a single canine standard. However, we believe it is premature to describe the outcome of the JPO's work on canine standards as successfully completed. Although the JPO may have achieved a consensus that uniform training standards should be adopted, these standards have yet to be implemented.

The OIG also recognizes that the JPO set up under the Homeland Security Presidential Directive-19 (HSPD-19) process was designed to help clarify roles and responsibilities of agencies involved in preventing or responding to terrorist use of explosives. However, as we noted in the report, the JPO has yet to adopt a draft charter proposed at its first meeting in April 2009. Moreover, the JPO cannot impose consensus on components with opposing policy positions. Absent strong leadership from DOJ to resolve differences between the FBI and ATF, we believe the long history of ATF and FBI competition over explosives-investigation activities is likely to persist.

Further, in its response, DOJ identified the coordination efforts of the Terrorist Explosive Devise Analytical Center (TEDAC) as an example of joint coordination. We discuss TEDAC and contributions of the FBI and ATF to TEDAC operations in Chapter V of the report, although the OIG questions the applicability of the TEDAC experience because it has a unique, interdepartmental intelligence mission rather than a law enforcement role.

DOJ's response also stated that the "One DOJ" data environment is not necessarily the best use of resources when it comes to consolidating explosives databases. The OIG recognizes the opinions of the relevant user community are important to consider in a decision on whether to consolidate databases. However, we believe without evaluating the utility and feasibility

of consolidating explosives databases, DOJ cannot make an informed decision as to the best use of its resources. The HSPD-19 Implementation Plan has the specific goal of making all explosives information systems available on-line, including "developing the capability to share information across DOJ and DHS systems to make the greatest possible amount of information seamlessly available to users." The OIG views database consolidation as one possible outcome of the adoption of the "OneDOJ" data environment, which we were told during our audit was DOJ's response to the information-sharing requirements of HSPD-19. We also believe that DOJ should consider consolidation to the extent that it can improve the availability of database information.

Summary of Necessary Actions to Resolve the Report

As stated previously, we consider the 15 recommendations to be unresolved until we receive specific information from DOJ (and ATF and the FBI) of the specific measures that will be taken to address each recommendation. The following describes the actions necessary to resolve each recommendation.

1. **Unresolved.** This recommendation can be resolved when DOJ specifies how and when it intends to implement new directives delineating lead authority for explosives investigations between the FBI and ATF.

2. **Unresolved.** This recommendation can be resolved when the FBI and ATF confirm how and when they will issue protocols on joint investigations of explosives incidents consistent with any new DOJ directives.

3. **Unresolved.** This recommendation can be resolved when DOJ identifies when the Office of the Chief Information Officer will conduct a follow-up study of database consolidation and "OneDOJ" data environment challenges relevant to explosives-information sharing.

4. **Unresolved.** This recommendation can be resolved when the FBI and ATF specify when they will issue new guidance to appropriate personnel to help ensure uniform, timely, and accurate data entry of explosives incidents and cases into BATS.

5. **Unresolved.** This recommendation can be resolved when the FBI and ATF identify how and when they will update the Memorandum of Understanding outlining ATF participation, capabilities, and jurisdiction for non-regulatory-type investigations on Joint Terrorism Task Forces.

6. **Unresolved.** This recommendation can be resolved when ATF specifies how and when it will reassess its staffing requirements to prioritize increased participation of explosives experts on task forces that respond to explosive crimes.

7. **Unresolved**. This recommendation can be resolved when ATF identifies how and when it will prioritize remedial and new-user BATS training for federal, state, and local users.

8. **Unresolved**. This recommendation can be resolved when ATF identifies how it will reassess BATS and make BATS more user-friendly (including requirements for usernames and passwords as well as the extent of required explosives-incident information).

9. **Unresolved**. This recommendation can be resolved when DOJ identifies how and when it will resolve any differences in curricula for post-blast training provided by DOJ components.

10. **Unresolved**. This recommendation can be resolved when DOJ has selected a single Department standard to certify canines, which should be consistent with HSPD-19 requirements.

11. **Unresolved**. This recommendation can be resolved when DOJ identifies and confirms that the Explosives Training Review Board, or an equivalent group, will review the feasibility of consolidating ATF and FBI explosives-training programs; develop a coordinated training plan for all DOJ explosives-related efforts; assess the explosives-related training needs of federal, state, and local explosives specialists; and prioritize the provision of explosives training accordingly.

12. **Unresolved**. This recommendation can be resolved when the FBI and ATF identify when and how they will implement a consolidated and standardized DOJ-wide curriculum for post-blast training.

13. **Unresolved**. This recommendation can be resolved when the FBI and ATF identify how and when they will develop standardized render-safe procedures for use in the Hazardous Device School (HDS) bomb technician curriculum.

14. **Unresolved**. This recommendation can be resolved when the FBI and ATF identify how and when they will coordinate and consolidate canine training efforts for peroxide-based explosives.

15. **Unresolved**. This recommendation can be resolved when DOJ identifies when the Explosives Laboratory Review Board, or an equivalent group, will report on DOJ laboratory capabilities, including the effect of TEDAC, and recommend the best allocation and use of those resources.

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THE FEDERAL BUREAU OF INVESTIGATION'S FOREIGN LANGUAGE TRANSLATION PROGRAM

U.S. Department of Justice
Office of the Inspector General
Audit Division

Audit Report 10-02
October 2009

REDACTED – FOR PUBLIC RELEASE

THE FEDERAL BUREAU OF INVESTIGATION'S FOREIGN LANGUAGE TRANSLATION PROGRAM

EXECUTIVE SUMMARY*

The Federal Bureau of Investigation's (FBI) ability to translate foreign language material is critical to the FBI counterterrorism, counterintelligence, and criminal investigations. Without accurate and timely translations, the FBI's ability to effectively investigate terrorist and criminal enterprises that communicate in a foreign language is significantly hampered.

The FBI's Language Services Section (LSS) is responsible for overseeing the FBI's Foreign Language Program (FLP), including managing the FBI's translation efforts and the linguists who translate into English the vast amounts of foreign language material that the FBI collects. The LSS is also responsible for collecting and reporting data on the FBI's collection and review of material that is entirely in English. In fiscal year (FY) 2008 alone, the FBI collected 878,383 hours of foreign language and English only audio material, 1,610,091 pages of text, and 28,795,212 electronic files.

Previous OIG Audits

In 2004 and 2005, the Department of Justice (DOJ) Office of the Inspector General (OIG) completed audits of the FBI's foreign language translation operations. The 2004 audit found that the FBI had significant backlogs of unreviewed audio material awaiting translation that had been collected in its highest priority cases. Additionally, we found weaknesses within the FBI's FLP that hindered the FBI's ability to review and translate the counterterrorism and counterintelligence audio material it collected. In addition, the FBI did not consistently adhere to its standards for reviewing the work of its linguists.

The OIG's 2004 audit contained 18 recommendations to the FBI for corrective actions to improve its foreign translation operations, including expediting implementation of the FLP's automated statistical reporting system, ensuring Language Program managers were provided information on the relative priority of individual counterterrorism and counterintelligence cases requiring translation services, enhancing foreign language translation

* The full version of this report includes information that the FBI considered to be classified or law enforcement sensitive, and therefore could not be publicly released. To create this public version of the report, the OIG redacted the portions of the full report that the FBI considered classified or law enforcement sensitive, and indicated where those redactions were made.

quality control procedures, and improving the processes for hiring and screening prospective linguists.

The OIG's 2005 follow-up audit found that while the FBI made some improvement in several of these areas, significant deficiencies remained in the FBI's FLP. The 2005 audit determined that the FBI's backlog of audio material awaiting translation had increased since the 2004 audit, and that the FBI was not prioritizing the translation of high priority material in accordance with its national priorities and its overall mission. The 2005 audit also concluded that the FBI needed to improve the management of its linguist resources by developing linguist hiring goals and setting target staffing levels.

OIG Audit Approach

This audit again evaluated the FBI's FLP and the FBI's progress in improving its ability to timely translate foreign language material. The primary objectives of this audit were to:

(1) determine the extent of the FBI's foreign language translation backlog and the actions taken by the FBI to address the backlog of material awaiting translation;

(2) assess the FBI's efforts to ensure the quality of its translated material, particularly through compliance with FBI quality control standards; and

(3) review the FBI's linguist hiring process, as well as the FBI's efforts to ensure linguists timely receive the required security clearances, introductory training, and hearing assessments.

In this audit, we reviewed FBI documents, records, and data pertaining to its FLP since April 2005, including computer-processed data from the FBI's audio collection systems and information on translation workload statistics, quality control operations, and workforce planning. We interviewed FBI officials from the Directorate of Intelligence, Assistant Directors for Counterterrorism and Counterintelligence, and other management officials and linguists at FBI headquarters and within the Language Services Translation Center and FBI field offices in Miami, Florida; New York, New York; and Washington, D.C.

Appendix I contains further description of our audit objectives, scope, and methodology.

Results in Brief

Our audit found that the FBI reviewed 100 percent of the 4.8 million foreign language text pages it collected for its counterterrorism, counterintelligence, and criminal investigations between FYs 2006 and 2008. However, we found that the FBI did not review 14.2 million (31 percent) of the 46 million electronic files that it collected during this same period.[1] In addition, for counterterrorism and counterintelligence operations between FYs 2003 and 2008 and for criminal investigations between FYs 2005 and 2008, we found that the FBI did not review 1.2 million hours (25 percent) of the 4.8 million audio hours it collected. Of this unreviewed material, 1 percent of the total unreviewed audio and text material and 72 percent of the unreviewed electronic files was material entirely in English.

Significant portions of the FBI's unreviewed audio material were collected for cases in its two highest-priority counterterrorism and counterintelligence categories. Specifically, in FY 2008 the FBI reviewed the foreign language collections in its highest priority counterterrorism and counterintelligence cases. However, the FBI did not review 740 counterterrorism audio hours collected in English for its highest-priority translation category. Additionally, the FBI did not review 2,800 counterterrorism audio hours (including 300 English-only hours) and 150,000 counterintelligence hours (including 300 English-only hours) for cases in its second highest-priority category. The FBI also had significant unreviewed electronic file material for cases in the two highest-priority categories. Not reviewing such material increases the risk that the FBI will not detect information in its possession that may be important to its counterterrorism and counterintelligence efforts. The FBI stated that it was not able to review all high-priority material requiring translation due in part to limited linguistic resources with proficiency in certain languages.

We also determined during our testing that two FBI field offices each had one occasion where it potentially collected material for counterterrorism cases beyond the dates authorized by the Foreign Intelligence Surveillance Act (FISA) Court. The FBI determined that one of these matters was reportable to the President's Intelligence Oversight Board.

In our previous two audits we reported that the LSS refines the reporting of data on its backlog of unreviewed counterterrorism audio material. This refinement involves subtracting hours identified on its

[1] Text material primarily includes facsimile intercepts and hard copy documents.

collection systems as unreviewed material that the FBI does not believe should be considered part of its backlog, such as more than one office counting the same hours in its backlog totals, hours of unreviewed material for inactive cases that still exist on the collection systems, and hours for collections that are entirely in English and do not require translation. The LSS has used these "refined" backlog totals to report to FBI management and Congress on the FBI's backlog of unreviewed counterterrorism foreign language audio material.

We concluded that the FBI cannot accurately determine the amount of foreign language material it collects and reviews because it lacks a consolidated collection and statistical reporting system. Additionally, in our analysis of FLP monthly workload reporting that the LSS uses to obtain comprehensive data on collected and reviewed material, we found inconsistencies between collected and reviewed totals reported to the LSS by the field offices compared to the totals reported by the LSS. These inconsistencies prevent the LSS from accurately evaluating the FLP's ability to review collected foreign language material and affects its efforts to accurately assess the FLP's resource needs. The FBI stated that some of these inconsistencies are the result of field offices not resubmitting a corrected report. However, we also identified data entry errors made by LSS that resulted in incorrect monthly collected and reviewed figures. Until the FBI develops a reliable, automated means of tracking the amount of material collected and reviewed, we believe the LSS needs to improve its procedures for producing accurate data.

Quality control of translations is essential for the FBI to ensure that its linguists accurately translate collected counterterrorism, counterintelligence, and criminal investigative material. Following a recommendation in our 2004 audit, the FBI created the Quality Control Standards Unit, dedicated to managing the FLP's quality control efforts. We noted significant improvements in some aspects of quality control, but we also identified continued deficiencies in the management and oversight of the quality control process that can adversely affect the accuracy and reliability of FLP translated material. Specifically, we found that the FBI should improve its internal controls to ensure that its linguists only translate and its Certified Quality Control Reviewers only review material in languages and genres in which they were certified.[2] The FBI also did not regularly follow up Not Satisfactory quality control reviews with required follow-up reviews, and did not consistently perform quality control reviews of its experienced linguists

[2] Genres represent the type of translation performed by linguists. The five primary genres for translation are audio summary, audio verbatim, document summary, document verbatim, and no reportable intelligence.

in accordance with FBI policy. These deficiencies increase the potential for inaccurate translations and for useful intelligence to be overlooked during the translation of foreign language material.

Since our 2005 audit, the number of linguists has decreased from 1,338 in March 2005 to 1,298 in September 2008. As in our previous audits, we found that the FBI failed to achieve its linguist hiring goals for critical languages. In FY 2008, the FBI only met its hiring target for 2 of the 14 critical languages for which it set goals. Failure to meet its hiring goals affects the FBI's ability to translate all of its collected material and hampers its efforts to reduce the backlog of unreviewed material.

As we found in our previous audits, the significant time it takes the FBI to hire contract linguists and convert contract linguists to permanent FBI employees contributes to the FBI's hiring shortfalls. We determined that from FYs 2005 through 2008 it took the FBI about 19 months to hire a contract linguist, an increase from the 16 months we found in our 2005 audit. Similar to our previous audits, the longest periods of time in applicant processing were the security clearance adjudication processes and proficiency testing. On average, the security clearance vetting process for applicants took an average of 14 months to complete, while the language proficiency testing process took an additional 5 months.

We also determined that 70 percent of FBI linguists in the field offices we tested did not attend the FBI's required training course for new linguists within 1 year of the date they entered on duty, as required by FBI policy. Moreover, the FBI does not require contract linguists to attend this training, and therefore many contract linguists did not receive important instruction on translation standards, FBI operations, and other facets and functions intimate with FBI linguist duties.

In our report, we make 24 recommendations to assist the FBI in improving its management of the FLP and its ability to accurately and timely review materials collected for its counterterrorism, counterintelligence, and criminal investigative operations.

Our report contains detailed information on the full results of our review of the FBI's FLP and its ability to manage and review the material it collects. The remaining sections of this Executive Summary provide more detail on our audit findings.

Unreviewed Material

The FBI collects material for its counterterrorism, counterintelligence, and criminal investigative operations in audio (including video), text, and electronic formats. Our 2004 and 2005 audits found that the FBI had unreviewed foreign language material collected during FBI counterterrorism and counterintelligence operations. In this audit, we again analyzed the FBI's ability to review its collected counterterrorism and counterintelligence material. In addition, we added to this review an analysis of materials the FBI collected for its criminal investigations.

The LSS generates a consolidated monthly report on the total amount of material collected and reviewed in the three collection formats – audio, text, and electronic file. In the 4th quarter of FY 2005, the FBI started to separately track its collection and review of text and electronic material.[3] Consequently, we analyzed text and electronic file data for FYs 2006 through 2008. As shown in Exhibit 1, during our testing periods the FBI collected 4.8 million hours of audio material, 4.8 million text pages, and over 46 million electronic files. We determined that the FBI reviewed more than 100 percent of the text pages it collected.[4] However, it did not review 25 percent of the audio material and 31 percent of the electronic files it collected. We recognize that not all collected material yields valuable intelligence and that not all collected material may need to be reviewed.[5] However, without reviewing the material, the FBI cannot determine whether collected material represents critical intelligence information. In fact, FBI policy requires a review of all counterterrorism material and all its highest priority counterintelligence material.

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[3] Through quarter 3 FY 2005, the FBI tracked text and electronic file collections together in its text collection category.

[4] As discussed below, the reason for the FBI reviewing more text pages than it collected during this period could be attributable to the FBI reviewing a backlog of material from previous years or the FBI reviewing materials more than once.

[5] The FBI's collection systems cannot reliably filter our "white-noise" and unintelligible audio.

Exhibit 1
Unreviewed Audio, Text, and Electronic File Material Collected by the FBI

Type of Collection	Collected[6]	Reviewed[4]	Unreviewed[4]	Percent Unreviewed
Audio Hours FYs 2003 – 2008[7]	4,841,433	3,639,979	1,201,454	25%
Text Pages FYs 2006 – 2008	4,853,288	5,174,177	(320,889)	0%
Electronic Files FYs 2006 – 2008	46,017,672	31,838,691	14,178,981	31%

Source: OIG analysis of FBI Language Services Section data

According to the FBI, the review of collected material should be prioritized according to the FBI's national priorities and a five-category rating scale used to assign priority levels to counterterrorism and counterintelligence cases. FBI officials also said they consider other factors such as local threats and legal requirements when deciding which review category to assign its cases.

We found that the FBI had unreviewed material for counterterrorism and counterintelligence cases in its two highest-priority categories. We believe the FBI needs to improve its oversight of unreviewed material to ensure that high-priority collections are reviewed in a timely manner.

The LSS is responsible for ensuring the translation of foreign language material, and the FBI's operational components – primarily its field offices – are responsible for reviewing material entirely in English. We found that the FBI's unreviewed material included information entirely in English. We analyzed the FBI's monthly reporting data for FYs 2006 through 2008 to determine the amount of unreviewed English-only material and did not find any unreviewed English-only material for the FBI's criminal investigative

[6] Due to FBI collection system limitations the data on collected, reviewed, and unreviewed material may contain materials that were reloaded onto a collection system for further review, transferred collection files that may have resulted in duplicated copies and collection totals, and other factors related to system limitations.

[7] Our review included analyses of counterterrorism and counterintelligence audio material collected and reviewed between FYs 2003 and 2008 to account for data reported in previous audits. We analyzed audio material collected and reviewed between FYs 2005 and 2008 for FBI criminal investigations.

operations. But for its counterterrorism and counterintelligence operations, the FBI's unreviewed English-only material included a backlog of almost 5,000 audio hours, approximately 500 text pages, and nearly 10 million electronic files, including material for the FBI's 2 highest priority counterterrorism and counterintelligence cases. Overall, the unreviewed English-only material constituted 1 percent of the FBI's total unreviewed audio and text material and 72 percent of all unreviewed electronic files.

The FBI does not have a procedure for ensuring that its English-only counterterrorism and counterintelligence material was reviewed. We believe the FBI needs to develop a process for ensuring that its collection of English-only material is reviewed on an ongoing basis, especially for its high-priority counterterrorism and counterintelligence operations.

The following sections discuss the FBI's collection and review of material according to the type of material collected.

Audio Material

The FBI collects audio material primarily through wiretaps and other electronic surveillance techniques. As shown in Exhibit 2, from FYs 2003 through 2008 for counterterrorism and counterintelligence operations and from FYs 2005 through 2008 for criminal investigations the FBI collected over 4.8 million hours of audio material.[8] Approximately 3.8 million hours (78 percent) were collected for FBI counterintelligence operations, 780,000 hours (16 percent) for counterterrorism operations, and 260,000 for criminal investigations. In total, the FBI did not review 25 percent of the collected audio material, including almost 47,000 hours of counterterrorism material and over 1.1 million hours of counterintelligence collections.

[8] We incorporated in this review the FYs 2003 and 2004 counterterrorism and counterintelligence data from our previous report. We did not review criminal investigation data in our 2004 and 2005 audits, and therefore we reported only on FYs 2005 through 2008 criminal investigation data in this review.

Exhibit 2
Audio Material Collected and Reviewed

	Collected	Reviewed	Unreviewed	Percent Unreviewed
Counterterrorism (FYs 2003 - 2008)	782,692	735,717	46,975	6%
Counterintelligence (FYs 2003 - 2008)	3,797,493	2,637,991	1,159,502	31%
Criminal (FYs 2005 - 2008)	261,248	266,271	(5,023)	0%
TOTAL	**4,841,433**	**3,639,979**	**1,201,454**	**25%**

Source: OIG analysis of FBI Language Services Section data

Counterterrorism Audio Material

In our 2004 and 2005 audits, we reported that the FBI reviewed 93 percent of its counterterrorism collections. In this audit, our analysis of FBI monthly workload data showed that the FBI reviewed 94 percent of the counterterrorism audio material it collected between FYs 2003 and 2008, leaving 6 percent (46,975 hours) unreviewed. This unreviewed material is about 5.5 times the 8,600 unreviewed hours in FY 2003. For FY 2008 alone, the FBI collected 85,546 hours of counterterrorism audio and reviewed 77,375 hours, adding another 8,171 hours to the backlog of unreviewed counterterrorism audio material. LSS policy is to review 100 percent of the material it collects for its counterterrorism operations.

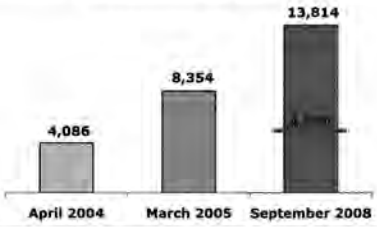
Our analysis of the FY 2008 monthly translation workload reporting data also shows that 45 percent of the 8,171 hours of FY 2008 unreviewed audio material was collected in cases in the FBI's 2 highest priority categories for national security investigations. Specifically, 740 hours of the FY 2008 unreviewed counterterrorism material pertained to the highest priority cases – the most significant of FBI national security investigations. We determined that this unreviewed high-priority material was entirely in English, and therefore the collecting field office, rather than the FLP, was responsible for ensuring the review of these collections. Additionally, even though the FBI had reviewed over 25,000 hours of lower priority counterterrorism audio material, the FBI had over 2,800 hours of unreviewed counterterrorism material in its second highest priority, of which fewer than 300 hours was English-only material. We were told by the FBI that it reviews material according to the priority of the case and that its limited linguist resources in certain languages can prevent it from reviewing high-priority material. Further, the FBI stated that within each language it

reviewed material for its higher priority cases before its lower priority cases. The FBI also provided workload data for two languages in which it has limited resources showing that higher priority material in these languages was reviewed while lower priority material was not. As discussed in Finding IV, the FBI's failure in meeting hiring goals in critical languages contributes to its inability to review collected material, including material collected for its second highest priority cases.

In our 2004 and 2005 audits, we discussed that the FBI reported "refined" amounts for its backlog of unreviewed audio material. This refinement process entails subtracting hours identified on its collection systems as "unreviewed" or "needs further review" that the FBI does not consider to be part of its backlog. For example, the FBI subtracts hours that it believes more than one office has counted in its backlog total, hours of unreviewed material for inactive cases that still exist on the collection systems, and hours for collections that are entirely in English and do not require translation. The FBI derives its refined totals using information from only one of its audio collection systems – Collection System A. The FBI does not include data on material contained on other collections systems.

As shown in Exhibit 3, we stated in our previous audits that the FBI's reported totals for its backlog of unreviewed counterterrorism audio material (derived from Collection System A) was 4,086 hours in April 2004 and 8,354 hours in March 2005. In this audit, we found that as of September 30, 2008, Collection System A data indicated that the backlog of unreviewed counterterrorism audio material was 13,814 hours. However, the LSS further refines the Collection System A backlog totals by subtracting audio hours that it believes are incorrectly included in backlog statistics. The FBI stated that the refined backlog of unreviewed counterterrorism audio material as of September 2008 was 4,770 hours, rather than the 13,814 hours identified in Collection System A. This refined figure is what the LSS reports to FBI senior managers and to Congress as the FLP backlog of unreviewed counterterrorism audio material.

Exhibit 3
Collection System A
Counterterrorism Audio Backlog
on September 30, 2008



Source: OIG analysis of Language Services Section data

An LSS Unit Chief told us that he prepares a spreadsheet detailing the Collection System A backlog numbers, and as part of the "refinement process," identifies audio collections that he believes fall within 10 anomaly categories and subtracts the associated hours from the Collection System A backlog total. He then maintains the documentation in electronic files that the management team at LSS can access. We reviewed the FBI's methodology for subtracting audio hours for each of these categories, and we agree that it is reasonable to eliminate certain collections from its foreign language audio backlog totals.

Counterintelligence Audio Material

We determined in our 2004 and 2005 audits that 34 and 33 percent, respectively, of the FBI's counterintelligence foreign language audio collections had not been reviewed.[9] During this audit, we found that the FBI's collection of counterintelligence audio continues to exceed the FBI's ability to review the material. Between FYs 2003 and 2008, the FBI reviewed 2.6 million hours of its nearly 3.7 million hours of collected counterintelligence audio material resulting in an accrued 1.1 million unreviewed audio hours or about 31 percent of its total collected material.

[9] In our prior audits, English-only audio was included in the counterintelligence foreign language audio data.

When we analyzed FY 2008 FLP monthly translation workload data, we found that the FBI translated all 1,200 hours of audio material collected for its highest priority counterintelligence cases. However, the FBI had about 150,000 hours of unreviewed audio material – including 300 hours of English-only material – for its second highest priority cases, which constituted 21 percent of the 700,000 counterintelligence audio hours it collected during FY 2008.[11] We found that as of September 2008 the amount of unreviewed counterintelligence audio material on Collection System A was 84,355 hours. The FBI told us that as of June 5, 2009, it determined the amount of unreviewed counterintelligence audio material on Collection System A was 25,258 audio hours.

Criminal Investigative Audio Material

We did not examine foreign language translation data for FBI criminal operations in our previous audits. We added this topic to the current audit to provide a more comprehensive perspective on the FBI's translation workload and performance.

According to FBI monthly translation workload reporting, from FYs 2005 through 2008 the FBI collected 261,248 hours of foreign language audio material for its criminal investigations. During this same period, FBI data shows that it reviewed 266,271 hours of criminal investigation audio material. The FBI offered explanations for why the data showed that it reviewed more material than it collected, including material collected before FY 2005 and reviewed in the last 3 fiscal years, and field offices potentially duplicating review totals for certain collections.

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[10]

[11] About 300 hours were unreviewed English-only material.

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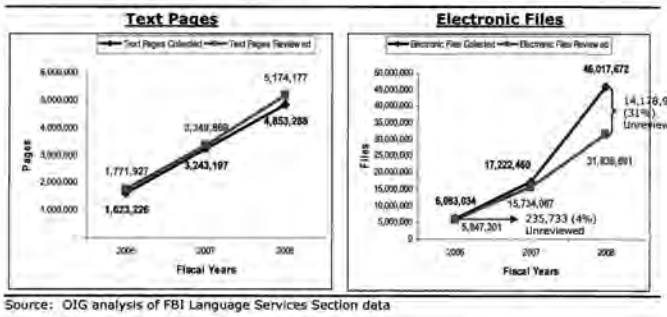
Text and Electronic Files Material

In addition to audio material, we also reviewed the FBI's collection of text and electronic files for its counterterrorism, counterintelligence, and criminal investigative operations. Beginning in July 2005, the FBI separated out its collections in these two categories.

We found that between FYs 2006 through 2008, the FBI collected over 4.8 million text pages and over 46 million electronic files. As shown in Exhibit 4, the FBI was able to review all its collected text pages and a majority of its electronic files collected during FYs 2006 and 2007. However, the FBI experienced a substantial increase in electronic files collections in FY 2008, and consequently was not able to review a significant portion of this material.

Exhibit 4
Accrued, Collected, and Reviewed
Text Pages and Electronic Files
Fiscal Years 2006 through 2008



Source: OIG analysis of FBI Language Services Section data

Counterterrorism Text and Electronic File Material

In counterterrorism cases, between FYs 2006 and 2008, the FBI reviewed over 7,500 more text pages than the 137,857 it collected, likely reviewing backlog material from previous years. However, the FBI was not able to review all of the electronic files material it collected during this same

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period. At the end of FY 2008, the FBI had reviewed 18.9 million of the 26 million electronic files it collected. This constituted a backlog of 7.2 million unreviewed electronic files for its counterterrorism cases. Over 6.7 million of these electronic files – 94 percent of the 7.2 million unreviewed counterterrorism electronic files – were added to this backlog during FY 2008 when the FBI experienced substantial increases in electronic file collections.

Exhibit 5
Counterterrorism Text Pages and Electronic Files Collected and Reviewed
Fiscal Years 2006 through 2008

Type of Collection	Collected	Reviewed	Unreviewed	Percent Unreviewed
Text Pages	137,857	145,413	0	0%
Electronic Files	26,083,300	18,909,041	7,174,259	28%

Source: OIG analysis of FBI Language Services Section data

From FY 2006 through 2008, the FBI reviewed all text page material for cases in its two highest priority counterterrorism categories. For electronic file counterterrorism collections, the FBI reviewed all of its nearly 115,000 electronic files in the highest priority, but only reviewed 1.8 million (60 percent) of the 3 million files in its second highest priority category. In FY 2008, 92 percent of the unreviewed electronic file material in the FBI's second highest priority was in a foreign language and required translation.

Counterintelligence Text and Electronic File Material

Overall, the FBI was able to keep pace in reviewing its collected counterintelligence text pages, but it was unable to review a significant portion of its electronic file collections. As shown in Exhibit 6, between FYs 2006 and 2008 the FBI did not review about 98,000 (3 percent) of the over 3.5 million text pages it collected for counterintelligence operations. In addition, the FBI did not review 6.7 million (36 percent) of the 18.7 million electronic files it collected for its counterintelligence operations. Nearly 85 percent of the FBI's backlog of unreviewed counterintelligence files was collected in FY 2008, demonstrating the FBI's inability to keep pace with the significant increase in electronic file collections during FY 2008.

Exhibit 6
Counterintelligence Text Pages and Electronic Files
Collected and Reviewed
Fiscal Years 2006 through 2008

Type of Collection	Collected	Reviewed	Unreviewed	Percent Unreviewed
Text Pages	3,539,145	3,440,828	98,317	3%
Electronic Files	18,753,411	12,032,050	6,721,361	36%

Source: OIG analysis of FBI Language Services Section data

In FY 2008, the FBI reviewed most text page material for its highest priority cases, but did not review some of its highest priority electronic file collections. Specifically, the FBI reviewed 57,000 (90 percent) of the almost 64,000 electronic files that it collected for its highest priority counterintelligence cases. Of the 10.1 million electronic files the FBI collected, the FBI did not review about 5.4 million files, including 3.5 million English-only files for its second highest priority cases in FY 2008.

Criminal Investigative Text and Electronic File Material

As it did with text file collections for its counterterrorism and counterintelligence operations, the FBI reviewed all text pages collected for its criminal investigations between FYs 2006 and 2008. However, the FBI did not review nearly 283,000 (23 percent) of the nearly 1.2 million electronic files it collected, as shown in Exhibit 7. This entire backlog of these unreviewed electronic files was accumulated in FY 2008.

Exhibit 7
Criminal Investigative Text Pages and Electronic Files
Collected and Reviewed
Fiscal Years 2006 through 2008

Type of Collection	Collected	Reviewed	Unreviewed	Percent Unreviewed
Text Pages	1,176,286	1,587,936	0	0%
Electronic Files	1,180,961	897,600	283,361	23%

Source: OIG analysis of FBI Language Services Section data

Foreign Intelligence Surveillance Act Overrun

In counterterrorism or counterintelligence investigations, the FBI can seek authorization from the FISA court to perform electronic surveillance. FISA court orders include surveillance expiration dates dictating when the

FBI must cease surveillance. Any collection beyond the expiration date of the FISA court order is a violation of the FISA order and is considered an "overrun."[12] Instances of potential overrun must be immediately reported to the FBI Office of the General Counsel, which decides whether the overrun should be reported to the President's Intelligence Oversight Board.[13]

During our audit, we reviewed a sample of 110 FLP files at FBI field offices in Miami, New York, and Washington, D.C. During this review, we found one instance of a potential FISA overrun at one field office and one instance of an overrun at another field office. In June 2009, the FBI's Office of the General Counsel determined that one field office's overrun should be reported to the Intelligence Oversight Board.

In September 2008, one of the field offices told us that it agreed with our assessment of a potential overrun. However, in June 2009 the FBI informed us that it no longer considered this an overrun. The FBI stated that it believes the calls that were collected were initiated by telemarketers who waived their privacy rights by making the call. However, the FBI collected several minutes of calls on lines on which a FISA court judge ordered it to cease collecting material and in which the FBI field office believed was an instance of a potential overrun. The FBI must ensure that it does not collect on lines for which it does not have active FISA authorization.

Workload Monitoring and Reporting

The FBI still does not have an automated means for assessing the amount of audio, text, and electronic file material that it collects and reviews. The FBI had Collection System B that was planned to replace the interim system called Work Flow Manager. Instead, the FBI decided that it would consolidate the following three systems due to their similar functionalities:

- Collection System B – This system supports the sharing and analysis of collected electronic files.

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[12] In our report we make a distinction between "overrun" and "over-collection." An "overrun" refers to investigative activity conducted outside the time period of the FISA court order or outside the authorized period of investigative activity, which may involve the collection of unauthorized information. An "over-collection" refers to information gathered within the authorized time period of the FISA court order but outside the scope or intent of the order.

[13] Executive Order 12863 designates the Intelligence Oversight Board as a standing committee of the President's Foreign Intelligence Advisory Board and directs the Intelligence Oversight Board to inform the President of any activities that may be unlawful or contrary to Executive Order or Presidential Directive.

- Collection System C – This system is a smaller version of Collection System B that supports the collection and analysis of electronic files. As noted below, Collection System B and Collection System C were consolidated in February 2009 to maintain identical data.

- Collection System D – The FBI uses this system for electronic media extraction.

As of February 2009, the FBI had consolidated Collection Systems B and C, and FBI officials said their long-term plan is to consolidate Collection System D, the third system. However, we determined this consolidated system will include Collection System A, which as mentioned previously contains 70 to 80 percent of the FBI's collected audio material.

In the absence of an automated statistical mechanism for determining its collection totals and performance in reviewing collected material, the FBI continues to collect data monthly from field offices on the amount of material it collected and reviewed. However, these workload monitoring practices do not produce comprehensive, accurate, and verifiable data on FLP collection totals and the backlog of unreviewed material. These practices also prevent the LSS from accurately evaluating the FLP's ability to review all collected foreign language material and hinder its efforts in determining the program's resource needs.

Quality Control Program Practices

Quality control practices are essential to ensuring the accuracy of the FBI's translations of collected foreign language material. In 2005, the LSS began monitoring nationwide compliance with the FBI's FLP quality control requirements through its quality control program. Additionally, that same year the LSS created the Quality Control Standards Unit (QCSU) as a dedicated unit to manage FLP quality control efforts. These changes helped formalize the FLP's quality control program and enhanced the oversight of the FLP quality control requirements by the LSS.

Linguist Assignments

FBI linguists should translate only in the genre – summary or verbatim – and the languages in which they have been formally tested and deemed proficient by the FBI's Language Testing and Assessment Unit. We analyzed FLP records and data for July 2005 through June 2008 to determine whether the FBI was assigning linguists to review only material in which they were certified. Of the 414 linguists within the four field offices we visited,

we found that 4 linguists performed 7 translations in languages in which they were not certified to translate. All seven of these translations received Satisfactory quality control ratings.[14]

In addition, monitors – linguists with lower proficiency scores – are only authorized to perform summary translations, except for in exigent circumstances requiring an immediate verbatim translation. In our analysis of the FLP's records and data for July 2005 through June 2008, of the 467 linguists classified as monitors, we found 69 occurrences where 43 monitors performed verbatim translations, which are not permissible according to FBI policies. Only 5 of these 69 occurrences resulted in Not Satisfactory quality control ratings. However, translations performed by ineligible linguists increase the potential that valuable intelligence will be overlooked during translations.

In October 2008, the LSS Section Chief told us that the FBI is developing a database that will assist the FBI in assigning translation work to linguists. She also stated that upon its implementation the database will limit the linguist assignments to the linguist's approved language proficiency. As of February 2009, the linguist tasking phase of the proposed database remained under development. Until this database is implemented, however, the FBI must ensure that linguists are only assigned tasks for which they are qualified to translate.

Certified Quality Control Reviewers

A Certified Quality Control Reviewer is a linguist approved to perform quality control reviews for other linguists' work. Before being approved as a Certified Quality Control Reviewer, linguists must attend a certification workshop, pass the workshop exam, and be satisfactorily reviewed in the genres of translation (summary and verbatim) that they will be reviewing. Since our 2005 audit, the number of Certified Quality Control Reviewers increased from 100 reviewers to 342 as of September 2008. We reviewed LSS records of quality control reviewers and found that all reviewers had attended the required certification workshop and passed the exam.

However, we found several instances where Certified Quality Control Reviewers performed reviews in languages and genres for which they were not certified. Specifically, when we tested FLP quality control records of all Certified Quality Control Reviewers between July 2005 and June 2008, we found 173 instances, including 55 instances (32 percent) in FY 2007 and

[14] In addition, we found 35 instances where 11 linguists were identified as translating in languages they were not authorized to translate.

26 instances (15 percent) in the first 3 quarters of FY 2008, where reviewers performed quality control reviews in languages they were not certified to review. Additionally, we found 14 instances where individuals other than Certified Quality Control Reviewers were performing quality control reviews.

In addition, we assessed whether Certified Quality Control Reviewers were certified to review the genres of translations they were assigned between July 2005 and June 2008. We found 612 instances where 341 reviewers reviewed translations for which they were not certified, such as a linguist certified to review only document summary translations that performed a quality control review of an audio verbatim translation. Of the 612 instances, Not Satisfactory ratings were assigned to linguists for 73 of the reviews.

Of the 414 linguists we tested in the 4 field offices we visited, we found that 71 Certified Quality Control Reviewers were approved to perform translations in genres for which they did not receive Satisfactory reviews, such as being approved to perform a quality control review in the audio verbatim genre without ever having been satisfactorily quality control reviewed in that genre themselves. Certified Quality Control Reviewers not being appropriately certified to review assigned translations detracts from the overall effectiveness of the quality control program and may diminish the LSS' understanding of the need for linguist training and mentoring. We recommend that the LSS improve its monitoring of the quality control program to ensure that supervisors are appropriately assigning quality control reviews to Certified Quality Control Reviewers.

Quality Control Program Reviews

The FLP's quality control program helps to ensure that linguists accurately translate collected material, which is essential to enhancing FBI counterterrorism, counterintelligence, and criminal operations. It is important that quality control reviews are performed in a timely fashion, and by linguists who are certified to assess the quality of the translations being reviewed. The FBI revised its 2004 FLP quality control policy in 2007 to more clearly define quality control requirements for ensuring that the quality control review process is a systematic method for monitoring translations rather than a purely subjective assessment by the reviewer.

According to the LSS quality control policy, the FBI performs quality control reviews of all translated material being disseminated outside the FBI, such as material being used in court proceedings. Additionally, the FBI's quality control program requires routine reviews of all its linguists.

We found that 167 experienced linguists had not received quality control reviews in FYs 2006 and 2007. While the FBI improved its compliance with quality control requirements over the last 3 fiscal years, we identified 33 linguists who were due to have quality control reviews during the first 3 quarters of FY 2008 who did not receive them. Moreover, we identified 19 linguists who never received a quality control review between FY 2006 and June 2008. While the QCSU does monitor quality control reviews, our findings for the four offices we visited indicate a need for the FBI to continue improving its management and monitoring of the quality control program. QCSU and field-level FLP supervisors must remain diligent in their efforts to monitor the need for quality control reviews of experienced linguists.

Not Satisfactory Ratings

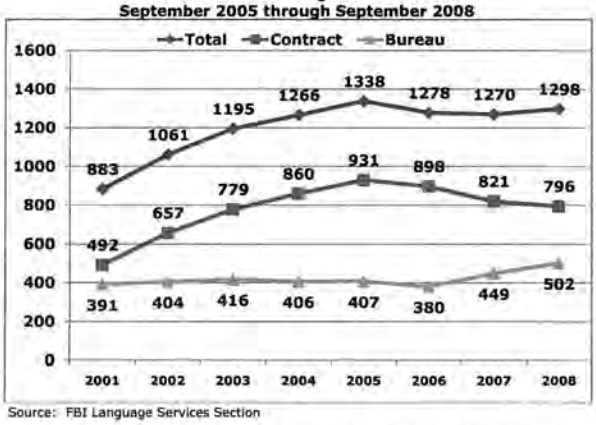
The quality control review process requires supervisors at field offices nationwide to coordinate with each other to ensure that quality control reviews of linguists are performed in a timely fashion. The objective of the review process is to determine whether linguists are performing translations at a satisfactory level. The FBI uses Not Satisfactory ratings for the purposes of taking corrective action to remedy errors in translations and ultimately improving the ability of linguists to perform accurate translations.

According to the Quality Control Quarterly Compliance reports, approximately 10 percent of the 8,244 quality control reviews performed between July 2005 and June 2008 resulted in Not Satisfactory ratings. Additionally, our review of FLP quality control records revealed that 47 (53 percent) of the 89 Not Satisfactory reviews were not followed up with subsequent reviews at the 4 field sites we visited, as required by FBI policy. Therefore, linguists whose work was determined to be below standard for translation were allowed to continue translating material.

Linguist Workforce

The FBI hires permanent employees as linguists and also hires contract linguists to provide foreign language services for FBI operations. In our 2004 and 2005 audits, the FBI had increased the number of full-time linguists – both permanent FBI employees and contract personnel – from 1,214 linguists in April 2004 to 1,338 linguists in March 2005, as shown in Exhibit 8. In this audit, we determined that despite a significant increase in collected material in the past several years, the FBI experienced a decrease of 40 linguists since 2005. As of September 2008, the FBI had 1,298 linguists assigned to the various FBI field offices worldwide, with contract personnel comprising 60 percent of the FY 2008 linguist workforce.

Exhibit 8
FBI and Contract Linguists On Board
September 2005 through September 2008



Source: FBI Language Services Section

The FBI categorizes its linguist personnel in four categories according to their language proficiency scores. Linguists with higher proficiency ratings – FBI Language Analysts and Contract Linguists – are authorized to perform both summary and verbatim translations of foreign language material. FBI FLP Monitor Analysts and Contract Language Monitors are only authorized to perform summary translations due to their lower language proficiency.

Linguist Hiring

The FBI establishes linguist hiring goals based on available funding and according to languages considered the most critical to the FBI's counterterrorism, counterintelligence, and criminal investigative operations. In our FY 2004 audit, we found that the FBI achieved its hiring goals for 11 of 26 languages for which goals were established. We found in our 2005 audit that as of March 30, 2005, the FBI had met its hiring goals in 14 of 43 languages for which goals were established.

We found during this audit that the FBI continued to fall short of most of the linguist hiring goals it established for critical languages. In FY 2006, the FBI only met 17 of 42 hiring goals for languages with established goals. In FY 2007, the FBI met its target for only 38 percent of the languages for which it set a goal. In FY 2008, the FBI set hiring goals for only 14 languages, and met the hiring targets for only 2 of these languages.

LSS officials said that its funding limitations prevented the FBI from implementing practices to improve its hiring process, such as technology improvements and the use of third-party testing centers. Further, LSS officials told us that rigorous foreign language proficiency testing and security vetting process, competition with other intelligence community agencies for linguist resources, and limited staffing resources to process applicants more efficiently contributed to their inability to meet hiring goals.

During our 2005 audit, we reported that it took the FBI about 16 months to hire a contract linguist. In this audit, we tested FBI contract linguist hiring data for October 1, 2004, through May 29, 2008, and found that the FBI's average time to hire a linguist had increased on average to 19 months. The language proficiency testing process took the FBI an average of 5 months to complete, while the FBI averaged 14 months to complete the background security adjudication process for linguist applicants.

In addition to long processing times for hiring contract linguists, we found that it took the FBI 9 months to convert contract linguists into permanent FBI employees.[15] In these cases, the background security adjudication process took an average of 7 months to complete.

Linguist Security Clearance Adjudication and Training

Because linguists are involved in translating sensitive material important to the FBI's counterterrorism, counterintelligence, and criminal investigative effort the FBI requires linguists to maintain Top Secret security clearances.[16] The FBI interprets current Intelligence Community Policy Guidance to give the FBI 7 years from the date of an individual's previous

[15] We did not review this conversion process during our previous audits and therefore did not determine whether this time period has also lengthened.

[16] However, not all contract linguists used by the FBI are vetted for security clearances. Contract linguists who provide periodic translations for criminal matters only are provided escorted access and no security clearance is required. These linguists do not have or require access to classified information.

security clearance adjudication to complete a reinvestigation in order to renew a security clearance. However, the DOJ's Security and Emergency Planning Staff – the DOJ authority for security matters – believes the FBI must comply with Executive Order 12968 and DOJ security policy, which require security clearance reinvestigations to be initiated every 5 years.

Since our 2005 audit, the FBI has replaced its 4-day Training for New Linguist course with a 2-week Language Analyst Specialized Training (LAST) course. According to the FBI policy, all new FBI linguists are required to take LAST training within 1 year of the date they entered on duty. FBI officials said they attempted to train as many contract linguists as possible, but does not require its contract linguists to attend LAST training. We examined training records for FBI and contract linguists assigned to the four field offices we visited who had worked at the FBI for more than 1 year. We found 125 (70 percent) of 178 FBI linguists and 115 (48 percent) of 238 contract linguists had not attended a Training for New Linguist or LAST training course. The FBI provided several reasons why both FBI and contract linguists had not taken one of the initial linguist training courses. For example, individuals who were experienced linguists upon hire were not subject to the requirements and some linguists were unable to travel due to operational responsibilities or personal obligations.

The LAST training benefits FBI and contract linguists by providing instruction on areas such as FBI translation standards, quality control policies, principles of translation and interpretation, and the FBI's collection and data systems. Linguists not trained in general translation standards and FBI processes and policies can affect the overall quality of translations and hinder the FBI's efforts to reduce the backlog of unreviewed foreign language material.

Conclusion and Recommendations

The FBI collects large amounts of foreign language audio, text, and electronic materials in the course of conducting its counterterrorism, counterintelligence, and criminal investigative operations. Its ability to timely review and accurately translate this material is critical for the FBI to perform its mission effectively.

We found that the FBI reviewed all of the text material it collected between FYs 2006 and 2008. By contrast, the FBI had a significant backlog of unreviewed electronic material and did not review 31 percent of the electronic files it collected during this same period. Additionally, the FBI did not review 25 percent of the audio material it collected for counterterrorism

and counterintelligence operations between FYs 2003 and 2008 and for criminal investigations between FYs 2005 and 2008.

Since the time of our first reviews of the FLP, the total amount of unreviewed audio material increased from 8,600 hours in FY 2003 to almost 47,000 hours by the end of FY 2008 for counterterrorism operations and from about 218,000 hours to nearly 1.2 million hours for counterintelligence operations. Moreover, we determined that the backlog of unreviewed material included collections in cases within the FBI's highest priority counterterrorism and counterintelligence investigations.

The FBI still lacks an accurate and comprehensive means of monitoring its collection workload and its performance in reviewing collected material. Without a consolidated collection and reporting system, the FBI must rely on monthly workload reporting from FBI field offices for determining the amount of material it has collected and reviewed. However, we found that data reported by the field to the LSS often does not match the figures reported by the LSS due to data entry errors and revisions made by the LSS. We believe the LSS needs to improve its procedures for producing and reporting accurate data on its foreign language translation program and backlog.

The FLP quality control program helps to ensure the accuracy of translated material. Our audit found that the FBI has improved its quality control over the FLP since our previous reviews by instituting a tracking system capable of monitoring nationwide compliance. However, we found that the FBI did not ensure that its linguists and Certified Quality Control Reviewers were performing translations and quality control reviews only in languages and genres in which they were certified. We also determined that the FBI did not consistently follow up Not Satisfactory quality control ratings with the required subsequent quality control reviews. We recommend that the FBI improve its monitoring of linguist and Certified Quality Control Reviewer assignments and its oversight of quality control review results and scheduling.

We found during this audit, as we did in our 2004 and 2005 reviews, that the FBI did not meet its critical-language linguist hiring goals for FYs 2005 through 2008. As a result, the number of linguists decreased from 1,338 to 1,298 between FYs 2005 and 2008. We also found the linguist hiring process to be slow, and the average time it took to hire a contract linguist increased from 16 months in our last audit to 19 months in this audit. Failing to hire an adequate number of linguists in a timely manner adversely affects the FBI's ability to manage the growing translation workload and reduce the current backlog of unreviewed material.

In this audit, we made 24 recommendations to assist the FBI in improving the management of its FLP and for ensuring the review of collected audio, text, and electronic file material. These recommendations include developing a reliable means of assessing its collection workload and backlog of unreviewed material; improving its oversight of the FLP quality control program; and implementing measures to help ensure that linguists and Certified Quality Control Reviewers are assigned to translate and review translations in languages and genres in which they are certified.

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INTRODUCTION

The translation of foreign language audio material, written information, and electronic material is crucial to the Federal Bureau of Investigation's (FBI) counterterrorism and counterintelligence missions, as well as to its criminal investigative operations. Without accurate and timely translations, the FBI's ability to effectively investigate terrorist and criminal enterprises that communicate in a foreign language is significantly hampered.

The Department of Justice (DOJ) Office of the Inspector General (OIG) previously completed two audits of the FBI's foreign language translation operations.[17] Our initial 2004 audit found weaknesses in the FBI's Foreign Language Program (FLP) that undermined the FBI's ability to review and translate counterterrorism and counterintelligence material it collected. In addition, we found that the FBI did not comply with its own standards for ensuring the quality of translations performed by its linguists.

The OIG conducted a follow-up audit in 2005 which found that the FBI had made some improvement in its foreign language translation program, but that deficiencies in the management of the program persisted. Specifically, the 2005 audit found that the FBI's backlog of material awaiting translation had increased from 2004 to 2005 and the FBI was not prioritizing the translation of collected foreign language material. We also concluded that the FBI needed to improve its linguist work force management, including developing hiring goals and setting target staffing levels.

The 2004 audit contained 18 recommendations to help the FBI improve its foreign language translation efforts; our 2005 audit made no additional recommendations to the FBI. The FBI stated that it agreed with our recommendations and would take action to address them.

Following these audits, the FBI provided information demonstrating actions it had taken to address our recommendations. Based on this written information, we closed the 18 recommendations as of October 13, 2006. However, we decided to conduct this follow-up audit to reassess the performance of the FBI's foreign language translation program.

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[17] U.S. Department of Justice Office of the Inspector General, *The Federal Bureau of Investigation's Foreign Language Program – Translation of Counterterrorism and Counterintelligence Foreign Language Material*, Audit Report 04-25 (July 2004) and OIG, *Federal Bureau of Investigation's Foreign Language Translation Program Follow-up*, Audit Report 05-33 (July 2005).

FBI Investigative Priorities

The FBI has established as its two highest investigative priorities the protection of the United States from terrorist attacks (counterterrorism) and against foreign intelligence operations and espionage (counterintelligence). Such investigations often involve foreign language materials that require linguists who can translate the material to English in a timely and accurate manner.

FBI INVESTIGATIVE PRIORITIES

1. Protect the United States from terrorist attack.
2. Protect the United States against foreign intelligence operations and espionage.
3. Protect the United States against cyber-based attacks and high-technology crimes.
4. Combat public corruption at all levels.
5. Protect civil rights.
6. Combat transnational and national criminal organizations and enterprises.
7. Combat major white-collar crime.
8. Combat significant violent crime.

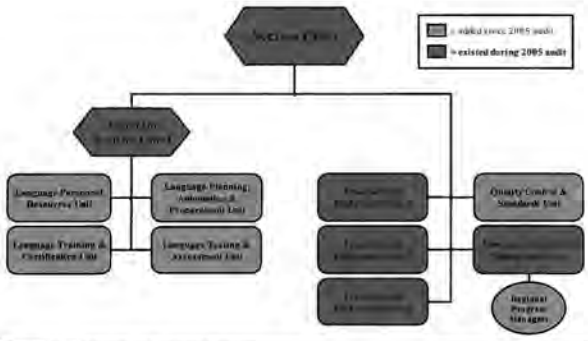
Source: FBI

Language Services Section

The FBI's Language Services Section (LSS) is responsible for overseeing FBI translation efforts and for managing linguists who translate foreign language material to English. Formed in January 1999 to help centralize FBI translation needs, the LSS became part of the FBI's Directorate of Intelligence in 2005. The LSS is responsible for managing the FLP; ensuring that the program's resources are utilized in accordance with the FBI's established priorities; and providing quality translation, interpretation, and language analysis services to the FBI and other members of the intelligence and law enforcement communities.

Since our 2005 audit, the LSS has expanded from four to nine units and placed in the field eight Regional Program Managers to help it monitor and coordinate with field offices on foreign language translation matters. Exhibit 1 illustrates the May 2009 organizational structure of the LSS.

Exhibit 1
Language Services Section
Organization Chart



Source: FBI Language Services Section

The nine units identified in Exhibit 1 and described below are managed by Unit Chiefs who report to the LSS Section Chief and Assistant Section Chief.

Translation and Deployment Units – These three units directly support the translation efforts of the FLP.[18] Each unit is responsible for managing resources and establishing national policy for designated languages. The Translation and Deployment Units work with field offices by deploying and directing linguist resources to translate material for priority matters.

Quality Control & Standards Unit – This component monitors the quality of FBI translations performed by FBI and contract linguists, as well as other personnel performing language-related work.

[18] The Translation and Deployment Units I, II, and III are collectively referred to as the Language Services Translation Center.

Language Operations Management Unit – This unit develops and implements FLP policies and procedures. Additionally, the unit is in charge of the Regional Program Mangers in the field.

Language Personnel Resources Unit – This unit manages the FLP's linguistic personnel resources and coordinates the recruitment, selection, and processing of candidates for FBI permanent and contract linguist positions.

Language Planning, Automation & Procurement Unit – This unit is responsible for human language technology, linguist space and equipment, and other field resources.

Language Testing and Assessment Unit – This unit develops and administers language proficiency testing for FBI employees and contract linguists.

Language Training & Certification Unit – This component develops requirements and content for all FBI language-related intelligence training.

The National Virtual Translation Center (NVTC), a multi-agency element of the intelligence community, was established by the *USA Patriot Act of 2001*.[19] Members of the NVTC include the FBI, Department of Defense, Central Intelligence Agency, and the National Security Agency. In addition to serving as a member of the NVTC, the FBI serves as the Executive Agent and provides administrative support in areas such as recruitment, testing, and procurement. Many linguists under contract with the FBI also do work for the NVTC.

Foreign Language Program Budget

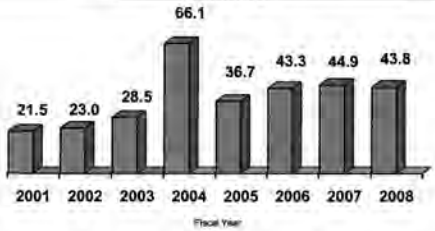
Though the FLP is centrally managed by the LSS, FBI field managers are also involved in managing program resources. For example, field managers are responsible for ensuring that FLP resources are applied to a field office's highest priority translations and operations.

The FBI receives funding specifically designated for the FLP. Program funding increased significantly after the September 11, 2001, terrorist attacks. As noted in our 2005 report, a dramatic increase in fiscal year (FY)

[19] The USA PATRIOT Act refers to *The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001*, 107th Congress, 1st session.

2004 funding included an additional $38.5 million from a supplemental appropriations bill. Since then, the FLP's budgets have remained relatively steady at the $43-$44 million level.

Exhibit 2
Foreign Language Program Funding
Fiscal Years 2001 Through 2008
(in millions)



Source: FBI Language Services Section

Foreign Language Program Field Personnel

The LSS centrally manages FLP personnel distributed across FBI headquarters and all FBI field offices, resident agencies, and Legal Attaché offices. In addition to personnel assigned to the LSS components, FLP personnel include:

- linguists who provide translation and interpretive services;
- local FLP managers and coordinators within each field office; and
- Regional Program Managers who serve as a liaison between the LSS and their local field offices.

Linguists

FLP linguists play a critical role in developing effective intelligence to detect and prevent terrorist acts, to support counterintelligence efforts, and as part of criminal investigations. A linguist is the first line of analysis for information collected in a language other than English. Linguists must use

their judgment when reading or listening to foreign language materials to identify information with potential intelligence value and provide that information to an agent or analyst responsible for the case.

Linguists listen or read thousands of hours of audio conversations and thousands of pages of documents in retrieving intelligence information in foreign languages. Although some intelligence is obvious, often information with intelligence value can be subtle because the parties to the conversation may suspect they are being monitored. In these cases in particular, linguists must have high standards of language proficiency and cultural knowledge to decipher coded messages.

Linguist Pool

The linguist pool consists of permanent FBI employees (Language Analysts and FLP Monitor Analysts) and contracted personnel (Contract Linguists and Contract Language Monitors). Collectively, these four categories of linguist personnel are responsible for the translations of collected foreign language material.

As reported in our July 2004 audit report, the number of permanent FBI employees and contract personnel working as linguists increased from 1,214 in April 2004 to 1,338 linguists in March 2005. As of September 2008, the FBI had 1,298 linguists (502 FBI employees and 796 contract personnel) assigned to FBI headquarters, field offices, and legats worldwide.

As shown in Exhibit 3, over 60 percent of the FBI's linguist workforce is contract personnel.

REDACTED – FOR PUBLIC RELEASE

Exhibit 3
FBI Linguist Pool
(as of September 2008)

Source: FBI Language Services Section

A linguist is assigned to one of the four linguist categories based on their employment type – FBI employee or contract personnel – and their language proficiency. Exhibit 4 provides a brief description of the four categories of FBI linguists.

In essence, FBI Language Analysts and Contract Linguists can perform verbatim and summary translations. FLP Monitor Analysts and Contract Language Monitors are limited to performing summary translations because of their lower scores on language translation proficiency tests. In addition to FBI-administered tests, language proficiency scores from the Central Intelligence Agency, Defense Language Institute, and Foreign Service Institute are accepted within 2 to 3 years depending on the type of test.

REDACTED – FOR PUBLIC RELEASE

Exhibit 4 FBI Linguist Personnel	
Job Title	Job Description
Language Analyst	- full-time FBI employee - can perform summary and verbatim translations of audio and documents - can testify in court - can perform translations of "live" monitoring
Foreign Language Program Monitor Analyst	- full-time FBI employee - can perform only summary translation of audio and documents - can perform summary translations of "live" monitoring - cannot perform verbatim translations - cannot testify in court
Contract Linguist	- independent contractor - can perform summary and verbatim translations of audio and documents - can testify in court
Contract Language Monitor	- independent contractor - can perform only summary translation of audio and documents - can perform summary translations of "live" monitoring - cannot do verbatim translations - cannot testify in court

Source: FBI Language Services Section

Language Proficiency

All applicants for FBI and contract linguist positions undergo language proficiency testing prior to employment. The tests are designed to measure foreign language proficiency in several skills:

- listening comprehension in the foreign language,
- reading comprehension in the foreign language,
- translation from the foreign language into English, and
- speaking in both English and the foreign language.

The FBI uses tests it has developed, as well as tests developed by the Defense Language Institute and other intelligence community agencies, to assess applicants' language proficiency. The FBI currently offers tests in

over 100 languages, a significant increase compared to the 40 language tests it administered in 2004.[20] Linguistic testing measures speaking proficiency according to a multi-level scale as shown in Exhibit 5.

Exhibit 5
Language Proficiency Rating Scale

0	NO PROFICIENCY
1	ELEMENTARY PROFICIENCY
2	LIMITED PROFICIENCY
3	GENERAL PROFESSIONAL PROFICIENCY
4	ADVANCED PROFESSIONAL PROFICIENCY
5	SUPERIOR PROFESSIONAL PROFICIENCY

Source: FBI Language Services Section

The LSS Language Testing and Assessment Unit develops and administers language testing for the FBI. Its standards require minimum proficiency levels on the Defense Language Proficiency Test, a test battery that assesses a linguist's reading and listening abilities in a foreign language and in English through the use of four tests. Linguists are assigned a pass or fail rating for each of the tests after a conversion factor is applied. The remaining tests to determine proficiency are translation (or, if not available, English composition), English speaking proficiency, and foreign language proficiency. For these tests, a proficiency level from 0 to 5 is assigned, with 5 designated as the highest proficiency. When the proficiency substantially exceeds one skill level but does not fully meet the criteria for the next level, a "plus" may be added to the whole-number rating, such as 1+ or 2+.[21] Of these remaining tests, more than one rating of a 2+ or lower disqualifies the applicant for the Language Analyst or Contract Linguist position. However, the applicant could qualify for the FLP Monitor Analyst or Contract Language Monitor position with a score of 2 on the English composition test and a score of 2+ in the foreign and speaking proficiency tests.

Field Managers and Coordinators

Depending on the size of the field office and the volume of the office's foreign translation needs, a FLP Supervisor or Coordinator manages the day-to-day operations of the program at the field level. Coordinators are designated at field offices that do not have FLP supervisors. The duties for these FLP field managers include:

[20] Appendix III contains a list of languages for which the FBI administers proficiency tests.

[21] See Appendix IV for more information regarding the proficiency level descriptions.

- assigning and tracking translation work,
- coordinating with the LSS,
- evaluating the performance of linguists, and
- reporting on workload and production.

Regional Program Managers

The eight Regional Program Managers report to the LSS Language Oversight Management Unit and serve as the liaison between the LSS and the field offices in their region. The managers offer field offices guidance on FLP administrative and operational issues, provide oversight of linguistic resource utilization, and monitor the field's compliance with FLP policies and standards. However, Regional Program Managers are not directly involved in the day-to-day assignments of linguists. Exhibit 6 illustrates the Regional Program Managers' regions of responsibility.

Exhibit 6
Regional Program Manager Geographic Jurisdictions[22]

Source: FBI Language Services Section

Audit Approach

The OIG conducted this audit to assess the status of the FBI's translation program and to assess the FBI's actions addressing weaknesses in the FBI's FLP that we found during our previous reviews. Our primary objectives were to determine the extent of the FBI's foreign language translation backlog and actions taken by the FBI to address the backlog. We also assessed the FBI's procedures for properly ensuring the accurate and timely translation of pertinent information and the appropriate prioritization of its translation workload. In addition, we assessed the FBI's efforts to ensure the quality of translated material, particularly through compliance with its quality control program requirements. Our audit also examined the FBI's linguist resource planning and hiring process. Further, we reviewed the FBI's efforts to train new linguists, to ensure linguists received required security clearances, and to monitor linguists' hearing ability.

[22] The eight regional office locations are: Northeast Region – New York City, New York; Mid-Atlantic Region – Washington, D.C.; Southeast Region – Miami, Florida; Gulf Region – Houston, Texas; North Central Region – Chicago, Illinois; Southwest Region – San Antonio, Texas; Southern California and Hawaii Region – Los Angeles, California; and Northwest and Alaska Region – Salt Lake City, Utah.

To accomplish our objectives, we conducted fieldwork at FBI headquarters and at FBI field offices in Miami, Florida; New York, New York; and Washington, D.C. We interviewed the Director of the FBI's Directorate of Intelligence, LSS Section Chief, LSS Unit Chiefs, field office management, and other FBI personnel and linguists involved in the FLP. We also reviewed program documents and analyzed records and collection system data. Our audit generally covered the period of April 2005 through September 2008, and where appropriate we analyzed the FBI's progress since our 2004 and 2005 audits.

To assess the FBI's progress in reducing its backlog of unreviewed foreign language material, we analyzed FLP counterterrorism, counterintelligence, and criminal workload data. Through these analyses we determined the amount of unreviewed audio, text, and electronic file material. Additionally, we assessed whether the FBI managed its FLP resources to address its highest priority matters. We also interviewed LSS and Operational Technology Division officials regarding current and future plans for enhancing collection systems used by the FLP. The results of these efforts are discussed in Findings I and II of this report.

Finding III contains our discussion of the FBI's efforts to ensure the quality of its foreign language translations. Specifically, we analyzed the FBI's practices for assigning linguists to translate material in languages in which they have tested proficiently. Additionally, we assessed the FBI's compliance with its quality control program policies and procedures, examining quality control reviews for the four field offices we visited, determining whether the FBI followed its quality control processes, and analyzing the eligibility of Certified Quality Control Reviewers to perform quality control reviews.

To meet its foreign language translation needs, the FBI must maintain a sufficient and qualified linguist workforce. In Findings IV and V, we analyze the FBI's efforts regarding workforce planning, training, security clearances, and hearing ability. We also assessed the FBI's ability to meet FLP hiring goals and staffing level targets. In addition, we analyzed FBI records to determine whether the FBI: (1) provided linguists with basic linguist training, (2) ensured linguist personnel maintained requisite security clearances, and (3) verified the hearing ability of its linguists.

A more detailed discussion of our scope and methodology can be found in Appendix I.

FINDINGS AND RECOMMENDATIONS

I. FBI'S TRANSLATION WORKLOAD

The FBI reviewed more than 100 percent of the text material it collected between FYs 2006 and 2008. However, it did not review 31 percent of its electronic files collections during this period, most of which was collected in FY 2008. Additionally, the FBI did not review 25 percent of the audio material it collected between FYs 2003 and 2008, including 6 percent of its counterterrorism collections and 31 percent of its counterintelligence material. These totals are similar to the amount of unreviewed materials we found in our 2004 and 2005 reviews of the FBI's foreign language translation program. We also determined that the FBI did not review significant amounts of material it collected for cases in its two highest-priority categories of counterterrorism and counterintelligence operations.

In our 2004 and 2005 audits, we found that the FBI did not translate significant amounts of the foreign language counterterrorism and counterintelligence material it collected. Among other things, we recommended that the FBI expedite the implementation of its automated statistical reporting system for analyzing foreign language material collected and reviewed, and that the FBI ensure that this system accurately reflects the accrued backlog of unreviewed material. We also recommended that the FBI ensure that accurate information was provided to the LSS regarding the priority of individual counterterrorism and counterintelligence cases to ensure that the LSS could effectively prioritize its work.

Similar to our previous audits, in this audit we analyzed FBI data on foreign language material collection and on the FBI's performance in translating the collected material. In addition to examining the FBI's translation efforts for its counterterrorism and counterintelligence operations, for this review we also analyzed the FBI's translation workload for its criminal investigations. We examined FBI data to determine the amount of unreviewed audio (including video), text, and electronic file material collected during counterterrorism, counterintelligence, and criminal investigative operations.

Translation Workload

Each month the LSS compiles data submitted by field offices on the amount of material the FBI collected and reviewed as part of its counterterrorism, counterintelligence, and criminal investigative operations. The LSS generates agency-wide statistics on collected and reviewed material according to the type of material: (1) audio (including video), (2) text, and (3) electronic files.[23]

Included in the monthly reporting are data for collections in a foreign language and for collected material entirely in English.[24] While the LSS is not responsible for reviewing English-only material, it is required to include English-only material in its reporting to FBI senior managers on the total amount of material collected and reviewed by the field offices. The LSS is responsible for the overall management of the FLP and the review and translation of foreign language material. The FBI's operational components, mainly its field offices, are responsible for reviewing collected material in English. Unless specifically noted, data presented throughout this report on the FBI's ability to review its collected material includes both foreign language and English-only material. However, we highlight in our discussion instances where portions of unreviewed material involved collections entirely in English.

In our previous audits, we found that the FBI's workload reporting process did not produce accurate statistics. As we discuss in Finding II, we found in this audit several inconsistencies between the figures reported from the field and the finalized translation workload statistics determined by the LSS.[25] However, we determined that the statistics developed by the LSS – while not completely accurate – are the most comprehensive data the FBI maintains on the material it collects and reviews. Despite its limitations, the FBI uses this data to develop FLP workforce plans, assess collection trends, and allocate FLP linguistic resources.

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[23] The FBI did not differentiate between text pages and electronic files in the 2004 and 2005 audits.

[24] The LSS tracks the FBI's efforts in collecting and reviewing all material, including collections entirely in a foreign language, in both a foreign language and English, and entirely in English.

[25] We discuss later in Finding II our testing of the FBI's monthly workload reporting.

Total Unreviewed Material

We analyzed the data from the FBI's monthly workload reporting to determine the FBI's backlog of unreviewed material for FBI counterterrorism and counterintelligence operations from FYs 2003 through 2008. Additionally, for this review we analyzed data on audio collected and reviewed for criminal investigations from FYs 2005 through 2008. In the 4th quarter of FY 2005, the FBI began tracking its collection of electronic files in a separate category; previously these collections were included in its text collection figures. Consequently, we focused our review of text and electronic file material for FYs 2006 through 2008.

As shown in Exhibit 7, our analysis of the FBI's monthly reporting data found that for all its operations the FBI collected 4.8 million hours of audio material, 4.8 million text pages, and over 46 million electronic files during our testing periods.

Overall, the FBI was able to review all of the text pages it collects, but it did not review all of the audio and electronic files. Specifically we found that the FBI reviewed more text pages than it collected from FYs 2006 to 2008, an outcome we attribute to its review of a backlog of material from previous years. However, we determined that the FBI did not review 25 percent of its collected audio material and 31 percent of its electronic files material during these periods. We recognize that not all collected material yields valuable intelligence and that not all collected material may need to be reviewed.[26] However, without reviewing the material, the FBI cannot determine whether collected material represents critical intelligence information. In fact, FBI policy requires that all counterterrorism material and all its highest priority counterintelligence material be reviewed.

Using the FBI's formula for estimating the number of hours required to review its collected material, we determined that it would require 1.4 million hours in order to review the unreviewed audio, text, and electronic file material shown in Exhibit 7.[27] This equates to 100 linguists and other personnel working 40 hours a week for over 7 years in order to review and translate the unreviewed material.

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[26] The FBI's collection systems cannot reliably filter our "white-noise" and unintelligible audio.

[27] The LSS Metrics Manual formula estimates 1 hour of linguist work to translate 50 pages of electronic files.

Exhibit 7
Audio, Text, and Electronic File Material Collected, Reviewed, and Unreviewed[28]

Type of Collection	Collected	Reviewed	Unreviewed	Percent Unreviewed
Audio Hours FYs 2003-2008[29]	4,841,433	3,639,979	1,201,454	25%
Text Pages FYs 2006-2008	4,853,288	5,174,177	(320,889)	0%
Electronic Files FYs 2006-2008	46,017,672	31,838,691	14,178,981	31%

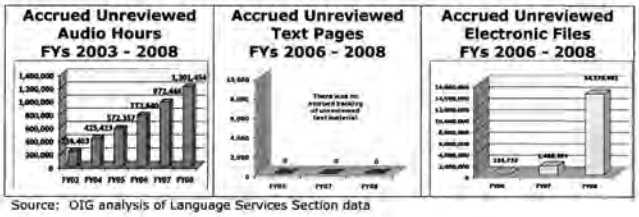
Source: OIG analysis of FBI Language Services Section data

Exhibit 8 illustrates the FBI's accrued amount of unreviewed material – material collected but not reviewed – over the last several fiscal years. As shown, the amount of unreviewed audio material accrued between FYs 2003 and 2008 has steadily increased each fiscal year. As stated previously, the FBI began separately tracking text and electronic files in FY 2006. As of the end of FY 2008, the FBI had no unreviewed text files. However, the amount of the FBI's unreviewed electronic files increased by over 12 million files between FYs 2007 and 2008. We discuss specifics of the unreviewed material in more detail throughout this finding.

[28] Due to FBI collection system limitations, the data on collected, reviewed, and unreviewed material may contain materials that were reloaded onto a collection system for further review, transferred collection files that may have resulted in duplicated copies and collection totals, and other factors related to system limitations.

[29] This exhibit includes data on counterterrorism and counterintelligence audio material collected and reviewed in FYs 2003 through 2008. We did not review material collected for criminal investigations in our previous audits; therefore, this exhibit includes audio material collected and reviewed for FBI criminal investigations during FYs 2005 through 2008.

Exhibit 8
Accrued Unreviewed Material
Audio Hours, Text Pages, and Electronic Files



Source: OIG analysis of Language Services Section data

Workload Prioritization

According to the FBI, while accounting for local threats the FBI FLP should use the FBI's national priorities when making decisions on the utilization of its linguist workforce. Therefore, counterterrorism and counterintelligence investigations should generally receive priority access to FBI linguistic services before criminal investigative operations. To further prioritize use of its translation resources, the FBI developed a priority rating system for its counterterrorism and counterintelligence investigations that dictates where the FBI should emphasize its translation efforts. The FBI assigns counterterrorism and counterintelligence cases to a tier (1 through 5) and a priority level (High, Medium, and Low), such as Tier 1 High, Tier 2 Low, or Tier 3 Medium. The following are the criteria the FBI uses to assign cases to a tier level.

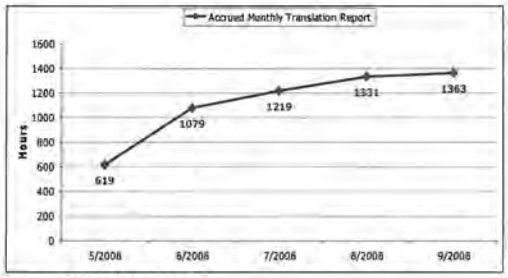
- [redacted].
- [redacted].
- [redacted].
- [redacted].
- [redacted].

During the period examined in our two previous audits, the FBI expected material for its highest priority counterterrorism cases to be translated within a 24-hour timeframe. The current policy – dated November 29, 2005 – states that the goal of the FLP is to translate Tier 1 counterterrorism material in a 24-hour timeframe, but if the translation cannot be performed within 24 hours, it should be completed when a linguist is available to translate the collected material. We believe the FBI should continue to ensure that its highest priority counterterrorism cases are being translated within 24 hours.

For all other counterterrorism and counterintelligence operations in any tier, the FBI's goal is to review material as soon as reasonably possible based on tier level and guided by FBI investigative priorities, U.S. intelligence priorities, and case priorities as directed by the investigative program managers.

During our 2004 and 2005 audits, we found that the FBI was not translating all of its highest priority material within 24 hours. In this review, we found that the FBI was still unable to translate all of its Tier 1 counterterrorism audio material within 24 hours. As shown in Exhibit 9, the Tier 1 High backlog of unreviewed audio material increased each month from May through September 2008, evidencing that the FBI was not reviewing all of its highest priority counterterrorism audio material within its goal of 24 hours.

Exhibit 9
Counterterrorism Tier 1 High
Accrued Unreviewed Audio Material
May through September 2008



Source: OIG analysis of LSS data

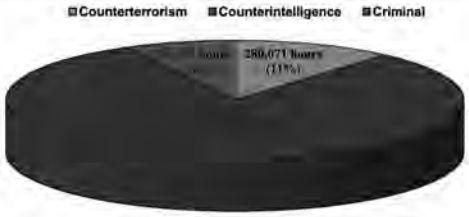
Our analysis of FBI monthly workload reporting data showed that the FBI had a significant backlog of unreviewed Tier 1 and Tier 2 counterterrorism and counterintelligence material in both foreign languages and English. For FY 2008, we found that the combined total of counterterrorism and counterintelligence material in the Tier 1 category included 737 audio hours and 6,801 electronic files, but no unreviewed text pages. We also found that the FBI had 152,563 audio hours, 19,526 text pages, and 6,526,240 electronic files unreviewed in its Tier 2 category. Moreover, we found that lower-priority material was often reviewed when Tier 1 and Tier 2 material remained unreviewed. We were told by the FBI that it reviews material according to the priority of the case and that its limited linguist resources in certain languages can prevent it from reviewing high-priority material. For example, the FBI stated that within each language it reviewed material for its higher priority cases before its lower priority cases. The FBI also provided workload data for two languages in which it has limited resources showing that higher priority material in these languages was reviewed while lower priority material was not. As discussed in Finding IV, the FBI's failure in meeting hiring goals in critical languages contributes to its inability to review collected material, including material collected for its second highest priority cases.

The remainder of this Finding discusses in greater detail the results of our review for each of the collection formats – audio, text, and electronic files – and according to the type of operation for which the FBI collected the material – counterterrorism, counterintelligence, and criminal investigative matters. In our discussion, we highlight areas where significant amounts of unreviewed, high-priority material exists. We also discuss the FBI's unreviewed English-only material and two cases where the FBI collected material beyond court-authorized collection periods.

Audio Material

The FBI collects audio material in the course of its investigations through telephonic wiretaps and other electronic surveillance techniques. From FYs 2006 through 2008, the FBI collected over 2.4 million hours of audio material. As shown in Exhibit 10, counterintelligence collection constituted over 80 percent of the total audio collections during this period, counterterrorism comprised 11 percent, and criminal investigations the remaining 8 percent.

Exhibit 10
Foreign Language Audio Collection
Fiscal Years 2006 through 2008



Source: OIG analysis of FBI Language Services Section data

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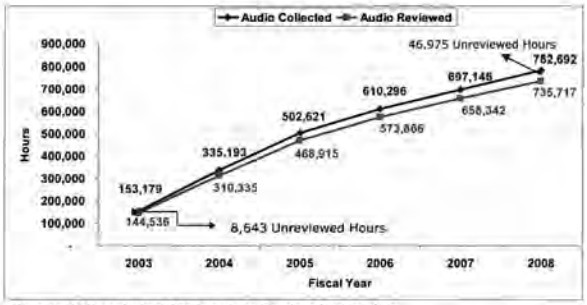
Counterterrorism Audio Material

Exhibit 11 illustrates the accrued amount of counterterrorism audio hours collected and reviewed using data from the FBI's monthly translation workload reports for FYs 2003 through 2008. The FBI collected almost 783,000 hours of counterterrorism audio material during this period and reviewed about 736,000 hours, or 94 percent. While the accrued amount of unreviewed audio material increased from 8,643 hours at the end of FY 2003 to 46,975 hours by the end of FY 2008, the percentage of unreviewed counterterrorism audio material remained steady at around 6 percent during the last 6 fiscal years. This is consistent with the ratio we reported in our 2005 audit when we determined that the FBI was unable to review 7 percent of the counterterrorism audio material it collected from FY 2002 through the 2nd quarter of FY 2005.

Exhibit 11
Accrued Counterterrorism Audio Hours
Collected and Reviewed
Fiscal Years 2003 through 2008



Source: OIG analysis of FBI Language Services Section data

We analyzed the collected and reviewed data specifically for FY 2008 to determine the amount of FY 2008 unreviewed material by FBI case priority. While the monthly totals are snapshots of each month's collection and review, the yearly total provides a more comprehensive picture of where the FBI focused its linguistic workforce to translate counterterrorism audio material.

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Our analysis of the FBI's monthly translation workload reports show that the FBI accrued over 8,100 hours of unreviewed counterterrorism audio hours in FY 2008. We determined that over 2,000 of the 8,100 hours were English-only material. As shown in Exhibit 12, 740 (9 percent) of these unreviewed hours were for Tier 1 High cases – the FBI's highest priority designation. However, all the unreviewed hours for the Tier 1 High cases involved English-only material. Additionally, the FBI had more than 2,800 hours of unreviewed audio for its Tier 2 counterterrorism cases, of which fewer than 300 (11 percent) involved English-only material. The unreviewed hours for Tier 1 and Tier 2 cases amounted to 45 percent of the FBI's FY 2008 unreviewed counterterrorism audio material. Again, the FBI stated and provided examples showing that it reviews material according to the priority of the case and that limited linguist resources in certain languages can prevent it from reviewing high-priority material. The FBI's failure in meeting hiring goals in critical languages contributes to its inability to review and translate collected foreign language material, including material collected for its second highest priority cases.

These findings indicate a need for the FBI to improve its monitoring of audio backlogs to ensure material for its highest-priority cases is reviewed in a timely fashion.

Exhibit 12
Unreviewed Counterterrorism Audio Hours
Foreign Language Program Monthly Reports
Fiscal Year 2008

Tier Levels	Priority	Audio Hours		
		Collected	Reviewed	Unreviewed
Tier 1	High	3,295	2,555	740
	Medium	0	3	-3
	Low	0	0	0
Tier 2	High	40,620	38,483	2,137
	Medium	9,756	8,962	794
	Low	0	0	0
Tier 3	High	12,596	11,106	1,490
	Medium	11,327	9,269	2,058
	Low	736	659	77
Tier 4	High	681	594	87
	Medium	6,216	5,410	806
	Low	0	0	0
Tier 5	High	296	311	-15
	Medium	23	23	0
	Low	0	0	0
Totals		85,546	77,375	8,171

Source: OIG analysis of FBI Language Services Section data

FBI Refined Workload Statistics

In our previous audits, we discussed the FBI's efforts to more accurately calculate or "refine" the amount of unreviewed audio material reported by the field. The FBI attempts to refine the numbers by subtracting out the audio hours for unreviewed material that it believes was incorrectly included in backlog totals, such as when more than one office counts the same material or when unreviewed material for inactive cases is resident on the collection systems. Using refined backlog totals, the FBI reported its amount of unreviewed counterterrorism audio material in April 2004 was 4,086 hours, and had risen to 8,354 hours as of March 2005. In January 2008, the LSS reported to senior FBI management that the backlog of unreviewed counterterrorism audio material stood at 3,812 hours.

We found during this review that the FBI's refined amount of its translation backlog is derived using information from only one of its audio collection systems, Collection System A. The FBI estimates that Collection System A contains 70 to 80 percent of the FBI's total collected audio material. According to the FBI, most of the 20 to 30 percent of audio material not captured on Collection System A can be attributed to its criminal investigations. However, the FBI also collects audio on other

systems discussed in more detail in Finding II. This material is reported by the field to the LSS on the monthly translation workload reports and is not included in Collection System A's collected and reviewed data.

For this review, Collection System A showed that the backlog of unreviewed audio material as of September 2008 was 13,814 hours. This is 33,000 fewer hours than the 46,975 hours of accrued unreviewed audio material reported on the monthly reports between FYs 2003 and 2008. Again, however, the FBI's Collection System A figures do not include collected audio contained on collection systems outside of Collection System A, [redacted].[30]

The FBI considers Collection System A to be its most accurate means of assessing the backlog of unreviewed audio material, and has only used data from this system when reporting the backlog of unreviewed audio material to FBI managers and Congress. The LSS uses data from the monthly reports in managing its linguistic resources and providing a comprehensive view of all the material the FBI collects and reviews.

LSS management stated that Collection System A provides the most accurate figures for the backlog of audio classified as "unreviewed" or "needs further review." However, in only reporting unreviewed totals from Collection System A, the FBI does not include material contained on other collections systems, as is further discussed in Finding II.

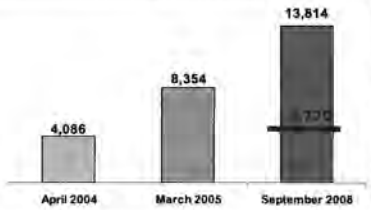
Collection System A Counterterrorism Material Backlog

Exhibit 13 illustrates the amount of counterterrorism audio material backlog on Collection System A during each of our audits. Again, these FBI-refined numbers only use data from Collection System A.

[30] [redacted]

Exhibit 13
Collection System A
Counterterrorism Audio Backlog
On September 30, 2008

System Backlog Totals



Backlog Hours by Tier

Tier	Hours	Percent
1	1,920	14%
2	4,623	33%
3	4,986	36%
4	1,353	10%
5	518	4%
Unknown	414	3%
Total	**13,814**	**100%**

Source: OIG analysis of Languages Services Section data and data from our 2004 and 2005 audit reports

The LSS attempts to further refine the amount of counterterrorism audio categorized on Collection System A as "unreviewed" or "needs further review." LSS officials told us they identified what they believe are several "anomalies" in the Collection System A data and therefore subtracted 9,044 hours from the Collection System A backlog figure, as detailed in the Exhibit 14. The LSS maintains documentation in electronic files supporting its refinement that can be accessed by members of the LSS management team. In removing the hours from the Collection System A backlog total, the FBI reported its counterterrorism audio backlog as 4,770 hours on September 30, 2008. However, the 9,000 hours the FBI removes are only 19 percent of the 47,000 accrued hours of unreviewed counterterrorism audio material as indicated by the FBI's monthly reporting.

Exhibit 14
FBI Language Services Section
Backlog Anomaly Categories and Associated Audio Hours

Backlog Anomaly Category (Reason for subtracting figures from backlog total)	**Hours**
Imported Audio	660
Expired Order	1,118
Forward Flow Failure	659
Back Flow Failure	1,711
Brady Review	1,009
Multiple Copies	7
Unidentified Language	7
Miscellaneous	608
Case Closed/No Interest	222
English Only	3,043
Total Backlog	**9,044**

Source: OIG analysis of FBI Language Services Section data

An LSS Unit Chief told us that he prepares a spreadsheet detailing the Collection System A backlog numbers, analyzes the spreadsheet, and identifies collections that he believes fall within one of the anomaly categories identified above. This Unit Chief sends e-mails to the case agents and their management for feedback and clarification on these anomalies, stating in the e-mails that he will consider no response to his inquiry to mean that the field agrees with his determination. This Unit Chief said that most of the time the field personnel do not respond to his inquiries. We do not agree with the LSS subtracting these backlog hours without the concurrence of field personnel in charge of the specific cases. In addition, if field personnel agree these hours should be subtracted, these hours should be permanently removed from Collection System A, not merely subtracted from the backlog report.

We agree with some of the FBI's reasons for subtracting audio hours from the Collection System A backlog total of unreviewed foreign language material for reasons such as "expired FISA order," "multiple copies," and "Case Closed/No Interest" collections.[31] Additionally, we believe that Imported Audio and Brady Review are examples of work that needs to be reviewed and will require the linguist to be taken from their current case assignments. However, when we questioned the Unit Chief of the Counterterrorism Division about this issue we were told that the Division

[31] Appendix V contains our assessment of the FBI's methodology for removing from backlog totals the hours associated with collections that the FBI places in its anomaly categories.

wants all material collected on a FISA tape reviewed 100 percent of the time. While we assessed the LSS's methodology for removing certain categories of hours from the backlog totals, we did not assess whether this methodology was correctly applied in all of the hours the FBI subtracted from the Collection System A backlog report. The LSS should work with the Operational Technology Division (OTD) to develop solutions for resolving what it terms anomalies in Collection System A. For instance, the LSS and OTD should implement procedures for communicating and correcting system errors and develop annotation fields within Collection System A to identify certain collections as previously reviewed, such as "Brady Review" and "Imported Audio."

Counterintelligence Audio Material

In our 2004 and 2005 audits, we reported that according to the field's workload reporting, the FBI's collection of counterintelligence audio material increased from approximately 1.3 to 2 million hours between December 31, 2003, and March 31, 2005. The total unreviewed counterintelligence audio collection reported in our 2004 and 2005 audits was 453,787 and 669,228 hours, respectively. These unreviewed amounts accounted for 34 and 33 percent of all counterintelligence collections in the respective fiscal years.

During this review, we found that the FBI's collection of counterintelligence audio material continued to outpace its ability to review and translate all the collected material. Exhibit 16 depicts the accrued amount of counterintelligence audio hours collected, reviewed, and unreviewed using data from the monthly translation workload reports for FYs 2003 through 2008. As the exhibit shows, the FBI collected more than 3.7 million hours of counterintelligence audio material during this period. It did not review nearly 1.2 million hours (31 percent) of the audio material collected for its counterintelligence operations. As Exhibit 15 illustrates, the FBI experienced continued increases in the amount of unreviewed counterintelligence audio material from FYs 2003 to 2008. Consequently, the total amount of accrued unreviewed counterintelligence audio material continued to grow during the past 6 fiscal years while the proportion of unreviewed material remained constant during this period at 30 to 33 percent of the total amount of collected material. Again, the FBI's viewpoint is that it reviews all higher priority material within a language before lower priority material.

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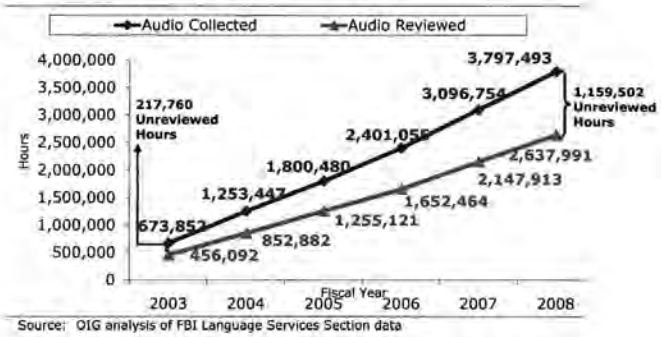
Exhibit 15
Accrued Counterintelligence Audio Hours Collected, Reviewed, and Unreviewed Fiscal Years 2003 and 2008



Source: OIG analysis of FBI Language Services Section data

For FY 2008, we analyzed by FBI priority level the amount of collected and reviewed counterintelligence audio material reported on the FLP monthly workload reports. Exhibit 16 displays by FBI tiers and priority level the FY 2008 totals of collected, reviewed, and unreviewed counterintelligence audio hours. We found all Tier 1 collections were translated, and, in fact, the FBI appears to have translated about 40 hours of Tier 1 backlog from previous years. For Tier 2, about 150,000 audio hours (21 percent) of the FY 2008 collected amount went unreviewed. Of these 150,000 Tier 2 hours, only about 300 hours consisted of English-only material. In Tier 3, 60,970 audio hours (9 percent) of the FY 2008 collected totals of audio hours were not reviewed, all of which was foreign language material. The significant amount of unreviewed material for these counterintelligence operations indicates a need for the FBI to improve its ability to translate material collected for these high priority national security operations.

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Exhibit 16
Unreviewed Counterintelligence Audio Hours
Foreign Language Monthly Reports
Fiscal Year 2008

Tier Levels	Priority	Audio Hours		
		Collected	Reviewed	Unreviewed
Tier 1	High	1,079	1,126	-47
	Medium	127	122	5
	Low	0	0	0
Tier 2	High	385,721	307,148	78,573
	Medium	164,264	93,205	71,059
	Low	66	66	0
Tier 3	High	46,702	29,021	17,681
	Medium	101,336	58,047	43,289
	Low	79	79	0
Tier 4	High	226	170	56
	Medium	53	23	30
	Low	0	0	0
Tier 5	High	0	6	-6
	Medium	1,086	1,065	21
	Low	0	0	0
Totals		**700,739**	**490,078**	**210,661**

Source: OIG analysis of Language Services Section data

Collection System A Backlog

In our 2004 audit, we recommended that the FBI establish controls to prevent audio from being deleted from its collection systems. We found in the 2005 audit instances of unreviewed counterintelligence audio material being deleted from the system and archived. In this current review, we found that the FBI continued its practice of archiving unreviewed counterintelligence material for potential future review.

As of September 2008, the amount of unreviewed counterintelligence audio material on Collection System A was 84,355 hours. [redacted]

[redacted]

We acknowledge the need to remove collections from the systems to enable adequate system performance. However, we believe the FBI should archive its material using a risk-based methodology and not simply use the amount of time since collection as its sole criteria for archiving. This policy would assist the FBI in ensuring that material for its higher priority cases is reviewed instead of being placed on optical disks for potential future review.

In determining backlog by identifying the amount of counterintelligence audio material on Collection System A only, the FBI does not include audio material that resides outside Collection System A that the FBI's field offices currently report to LSS through the monthly workload reporting process. Therefore, we do not believe that citing the Collection System A backlog statistics provides an accurate representation of the FBI's total backlog of counterintelligence audio. Rather, it is a snapshot of the counterintelligence "unreviewed" and "needs further review" audio material on Collection System A as of a certain date. For example, Exhibit 17 depicts how much unreviewed material was on Collection System A as of September 30, 2008, according to priority level. Following our audit close-out meeting, the FBI stated that as of June 5, 2009, its unrefined amount of counterintelligence material on Collection System A was 25,258 audio hours.

Exhibit 17
Collection System A Counterintelligence Backlog on September 30, 2008

Tier	Hours	Percentage of Backlog
1	143	0.2%
2	59,980	71.1%
3	22,377	26.5%
4	7	0.0%
5	11	0.0%
Unknown[32]	1,837	2.2%
Total	84,355	100.0%

Source: OIG analysis of the FBI Office of Technology Division's Collection System A backlog report

In response to findings in our 2005 audit about its counterintelligence audio backlog, the FBI stated that much of the unreviewed counterintelligence audio material was "white noise" (acoustical or electrical noise). However, we found that only 19 percent of the material was collected by means potentially attributable to "white noise." [redacted]

[32] The OIG could not determine the Tier levels associated with these "unreviewed" or "needs further review" hours.

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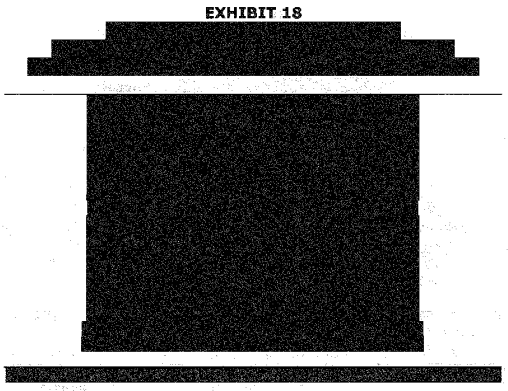
EXHIBIT 18



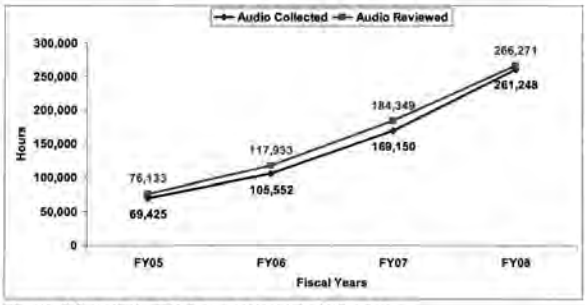
Criminal Investigation Audio Material

In our 2004 and 2005 audits, we did not examine the FBI's ability to review audio collected for its criminal investigations. In this audit, we analyzed audio material collected and reviewed from FYs 2006 through 2008 as reported on the FBI's monthly workload reports. For most criminal investigations' audio collections, federal law requires the FBI to obtain a court order authorizing the use of electronic surveillance, commonly referred to as Title III wiretaps.[33] The FBI noted that the law requires the FBI to monitor the audio collections for criminal investigations in real time (or "live") and within the geographic jurisdiction of the court issuing the order. According to the FBI, these requirements are cumbersome for the FLP because the FBI must ensure that linguists are available 24 hours a day to monitor subjects communicating in a foreign language. Additionally, if a field office does not have a linguist who can translate in the required language, it must request another office to temporarily provide a linguist with the requisite ability.

[33] Omnibus Crime Control and Safe Streets Act of 1968, Title III, Pub. L No. 90-351, 82 Stat. 197 (1968), codified at 18 U.S.C. § 2510 *et seq.*

As shown in Exhibit 19, our analysis of FBI monthly foreign language workload reports from FYs 2005 through 2008 indicate that the FBI reviewed about 5,000 more criminal investigation audio hours than the 261,248 hours it collected. FBI personnel stated that the reason the total reviewed hours exceeded the accrued collected hours was likely due to assignments crossing over fiscal years, where material was not reviewed in the same fiscal year in which it was collected.

Exhibit 19
Accrued Criminal Investigation Audio Hours
Collected and Reviewed
Fiscal Years 2005 through 2008



Source: OIG analysis of FBI Language Services Section data

Counterespionage Audio Material

[redacted]

Text and Electronic Files

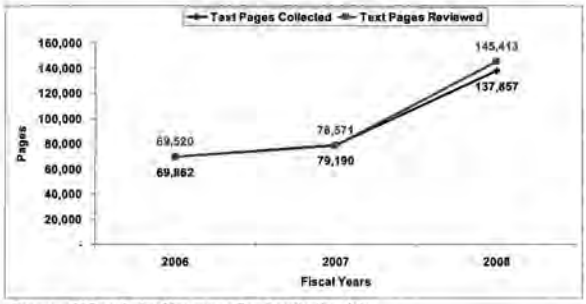
In addition to audio material, we also assessed the FBI's ability to review its text and electronic file collections. Before the end of FY 2005, the FBI tracked its text and electronic file collections as a single statistic. We did not review the FBI's ability to review this material in our 2004 and 2005 audits. However, we did find that between FYs 2003 and 2004 the FBI's collection of counterterrorism text and electronic file material increased by 52 percent and its counterintelligence collections decreased by 24 percent. In the 4th quarter of FY 2005, the FBI began tracking its collection of electronic files separately from its text collection figures. We found in this audit that the FBI was unable to keep pace translating its collection of electronic files. Between FYs 2006 and 2008, the FBI had no accrued backlog of unreviewed text pages. However, the FBI's increased collection of electronic file material during FY 2008 resulted in an inability to keep pace and review all this material. Consequently, at the end of FY 2008, the FBI had a total backlog of 14.2 million unreviewed electronic files.

Counterterrorism Text and Electronic Files Material

Field offices provide the LSS with monthly reports on collected and reviewed text pages and electronic files. We analyzed monthly reports for FYs 2006 through 2008 to determine the quantity of counterterrorism material collected and reviewed. During this period, the monthly reports indicate that the FBI reviewed approximately 8,000 more text pages than the 137,000 pages it collected in the past 3 fiscal years.[34] Exhibit 20 shows the accrual amount of collected and reviewed text pages for FYs 2006 through 2008. The FBI collected over 65,000 text pages in FY 2006 and 60,000 text pages in 2008, but it only collected about 9,000 pages in FY 2007. The bulk of text pages collected in FYs 2006 and 2008 were attributed to a few cases in each fiscal year that had significant text collections.

[34] In 2005, the FBI began tracking text pages and electronic files as separate collection categories. Therefore, we could not determine the accrued text pages backlog before FY 2006.

Exhibit 20
Accrued Counterterrorism Text Pages
Collected and Reviewed
Fiscal Years 2006 through 2008

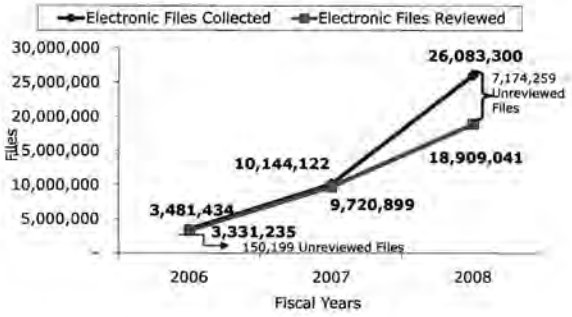


Source: OIG analysis of Language Services Section data

LSS monthly workload reports show that between FYs 2006 and 2008 the collection for electronic files increased each year, as shown in Exhibit 21. During this period, the FBI was not able to keep pace with its electronic file collections, and reviewed 72 percent of its collected material. In FY 2006, the FBI had over 150,000 electronic files that were unreviewed. However, we found that the number of unreviewed electronic files has grown to over 7.1 million over the course of 3 fiscal years. The FBI is not able to keep pace with the current collection trend for counterterrorism electronic files. FBI personnel told us that electronic files could be whole pages of text [redacted]. Using the LSS Metrics Unit formula that requires 1 hour of linguist work to translate 50 pages of electronic files, it would take 143,485 hours, or 69 full-time equivalent personnel 1 year, to review the unreviewed electronic files material.

REDACTED – FOR PUBLIC RELEASE

Exhibit 21
Accrued Counterterrorism Electronic Files
Collected and Reviewed
Fiscal Years 2006 through 2008



Source: OIG analysis of FBI Language Services Section data

Exhibit 22 shows the amounts of counterterrorism text and electronic files collected and reviewed during FY 2008 by tier level. According to monthly translation workload statistics, the FBI was able to review all text material for cases in its two highest tiers. For electronic file collections, the FBI reviewed all of its Tier 1 electronic files, but only reviewed 60 percent of its Tier 2 files. Of the 1,167,703 unreviewed Tier 2 electronic files, 92 percent involved foreign language material; about 98,000 files (8 percent) entailed English-only material. Again, this significant amount of unreviewed material for high priority cases illustrates the FBI's need to improve its ability to translate unreviewed high-priority material.

Exhibit 22
Counterterrorism Text Pages and Electronic Files
Collected and Reviewed by Tier Levels
Fiscal Year 2008

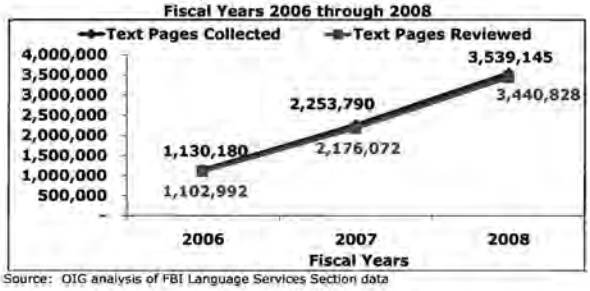
		Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
Text Pages	Collected	151	54,423	4,059	34	0
	Reviewed	151	63,801	3,856	34	0
Electronic Files	Collected	114,899	3,020,211	12,742,377	27,550	34,141
	Reviewed	115,254	1,852,508	7,167,359	33,172	19,849

Source: OIG analysis of FBI Language Services Section data

Counterintelligence Text Pages and Electronic Files

According to LSS monthly workload reporting data, the FBI collected 3,539,145 counterintelligence text pages from FYs 2006 through 2008 and reviewed 3,440,828 text pages, leaving 98,317 pages unreviewed. Using the LSS method to convert text pages to hours, we found that it would take the FBI approximately 1,966 hours to translate the unreviewed counterintelligence text pages, or 1 full-time equivalent personnel about 1 year. Exhibit 23 shows the amount of counterintelligence text pages collected and reviewed during FYs 2006 through 2008, as reported on the FBI's monthly foreign language workload reports.

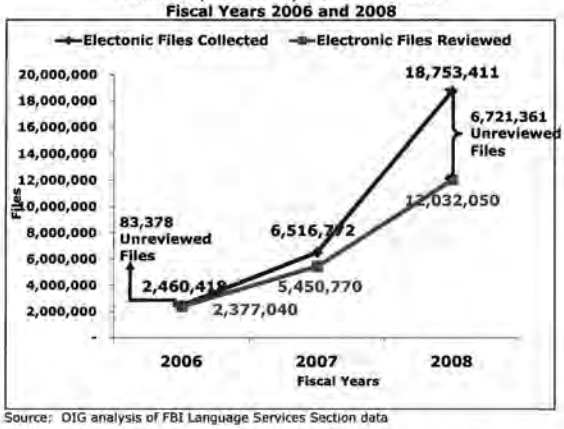
Exhibit 23
Accrued Counterintelligence Text Pages
Collected and Reviewed
Fiscal Years 2006 through 2008



Source: OIG analysis of FBI Language Services Section data

Exhibit 24 illustrates that between FYs 2006 and 2008 the FBI did not review 6,721,361 (36 percent) of the 18,753,411 electronic files it collected. Nearly 85 percent of the total unreviewed amount was collected in FY 2008. We found that the FBI did not have a strategy for guiding the FLP in keeping pace with its growing collection of electronic files. The FBI told us that it bases its hiring requests on the current collection totals and then asks for additional linguists if needed. However, this strategy is not enabling the FBI to keep pace with its growing collection of electronic files. If we use the LSS' Metrics Unit formula, it would take linguists approximately 134,427 hours to review these unreviewed electronic files, or the equivalent of 65 full-time personnel working 1 year to review the backlogged material.

Exhibit 24
Accrued Counterintelligence Electronic Files Collected, Reviewed, and Unreviewed Fiscal Years 2006 and 2008



Source: OIG analysis of FBI Language Services Section data

Exhibit 25 shows the amounts of counterintelligence text and electronic files collected and reviewed by FBI priority level in FY 2008. According to monthly translation workload reporting data, the FBI was able to review most text page material for its highest priority cases and almost 90 percent of its Tier 1 electronic files. Of the 5.4 million unreviewed Tier 2

electronic files, 3.5 million were English-only material. We also determined that the FBI collected more than 10.5 million electronic files in its second highest priority cases, but was able to review only half of this material.

Exhibit 25
Counterintelligence Text Pages and Electronic Files
Collected and Reviewed by Tier Levels
Fiscal Year 2008

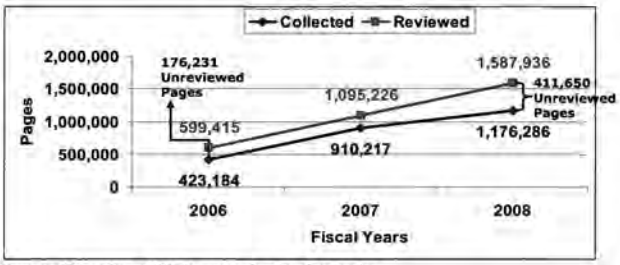
		Tier 1	Tier 2	Tier 3	Tier 4	Tier 5
Text Pages	**Collected**	900	993,688	290,712	0	55
	Reviewed	900	974,162	289,639	0	55
Electronic Files	**Collected**	63,954	10,790,598	1,368,410	13,677	0
	Reviewed	57,153	5,432,061	1,078,389	13,677	0

Source: OIG analysis of FBI Language Services Section data

Criminal Investigation Text Pages and Electronic Files

The FBI reported collecting 1,176,286 text pages during FYs 2006 through 2008 for its criminal investigative operations. As Exhibit 26 illustrates, the FBI reviewed 1,587,936 text pages during this timeframe. FBI personnel cited two reasons that the criminal collections on the monthly translation workload report would show more material reviewed than collected. First, material collected in one fiscal year may be reviewed in the subsequent fiscal year. Second, the LSS believed that the field offices were double counting collected and reviewed material and the FBI said that it revised its reporting procedures to correct these types of reporting errors in 2008.

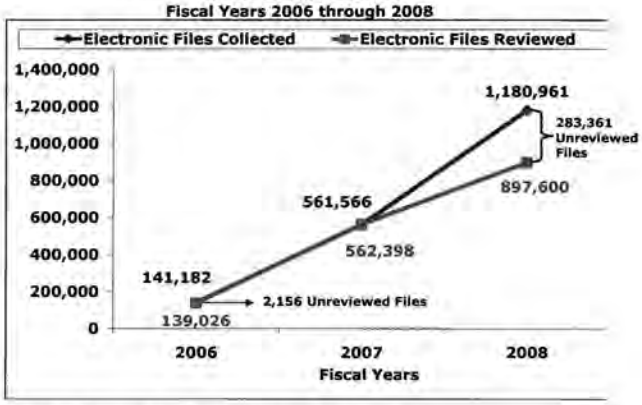
Exhibit 26
Accrued Criminal Investigation Text Pages
Collected and Reviewed
Fiscal Years 2006 through 2008



Source: OIG analysis of FBI Language Services Section data

For FYs 2006 through 2008, the FBI reported an accrued collected amount of 1,180,961 electronic files for criminal investigations. While the FBI kept pace in reviewing electronic file collections in FYs 2006 and 2007, Exhibit 27 demonstrates that at the end of FY 2008 the FBI had over 280,000 unreviewed electronic files for its criminal investigations. All the unreviewed collections were foreign language material requiring translation. Using the LSS formula, this backlog of unreviewed material would require linguists to spend 5,667 hours to translate the unreviewed electronic files or the equivalent of about 3 full-time personnel working 1 year to review the backlogged material.

Exhibit 27
Accrued Criminal Investigation Electronic Files Collected and Reviewed
Fiscal Years 2006 through 2008



Source: OIG analysis of FBI Language Services Section data

Unreviewed English-only Material

As stated at the beginning of the finding, field offices also collect audio, text, and electronic file material that are entirely in English. While the LSS reports to FBI executive management on material that is entirely in English, it is not the LSS's responsibility to review this material. Rather, the collecting field offices are responsible for reviewing their English-only material for information that is useful to the investigation or to FBI intelligence collection efforts.

In our discussions on specific collection formats, we identified instances where the FBI did not review FY 2008 English-only material collected for the FBI's highest priority counterterrorism and counterintelligence operations. We further analyzed FBI monthly reporting data for FYs 2006 through 2008 to determine the total amount of English-only material included in the backlog of unreviewed material. We did not

find any unreviewed English-only material for the FBI's criminal investigative operations. As shown in Exhibit 28, we determined that the FBI's unreviewed English-only material included an accrued backlog of almost 5,000 audio hours, about 500 text pages, and nearly 10 million electronic files. While the audio and text material constituted only 1 percent of the FBI's total unreviewed material in these formats, the unreviewed English-only electronic files comprised 72 percent of the FBI's total unreviewed electronic files accrued between FYs 2006 and 2008.

Exhibit 28
Counterterrorism and Counterintelligence
Unreviewed Material
in Foreign Languages and English
Fiscal Years 2006 through 2008

Type of Collection	Total Unreviewed Material	Unreviewed Foreign Language Material	Unreviewed English-only Material	Percent English-only Material
Audio Hours	627,412	622,423	4,989	1%
Text Pages	98,936	98,434	502	1%
Electronic Files	13,895,620	3,958,155	9,937,465	72%

Source: OIG analysis of FBI Language Services Section data

In October 2008, the FBI detailed 25 recently hired Intelligence Analysts to the LSS to review the English-only audio backlog. The LSS anticipated it would take 1 to 3 months for these analysts to complete their review of the English-only material on Collection System A. However, an LSS Unit Chief told us that there is concern that this is a one-time "fix" because the FBI will continue to accrue a backlog of English-only audio material on an ongoing basis. Additionally, the Assistant Director of the Counterintelligence Division told us that there is a need for transcription of English language material. We believe the FBI needs to develop a proactive solution for reviewing, on an ongoing and timely basis, its collection of English-only material. Further, the FBI must implement procedures for monitoring and ensuring the review of English-only material collected for high-priority national security investigations.

Foreign Intelligence Surveillance Act Overruns

The FBI can obtain court orders from the Foreign Intelligence Surveillance Act (FISA) court to conduct surveillance of subjects who are the target of FBI counterterrorism and counterintelligence investigations. The FISA court orders contain specific dates during which the FBI can monitor subjects. In our review of one FBI field office's FLP files, we found audio material on the FBI's collection system that was collected past the FISA court order's expiration date and associated with a counterterrorism case: a potential overrun.[35] Given this finding, we tested FLP files and data for any potential overruns at the other two field offices we visited for this review and found another potential overrun at one of these offices. We did not find any potential overruns at the third field office. Exhibit 29 provides more detail on our testing of 110 FLP files for expired FISA court orders.

Exhibit 29

[redacted]

At one field office we found an internal memorandum that stated a FISA court judge ordered the FBI to cease, for a certain counterterrorism case, its collection of audio material on over a dozen lines in late summer 2007, instead of the original expiration date (almost 1 month later), because of a lack of intelligence collected on these lines. However, we found that the number of lines associated with this case in the FBI's collection system did not decrease after late summer 2007. We discussed this matter with LSS, OTD, and field office personnel, and we reviewed records pertaining to the potential overruns. We determined that the field office had audio material on its system associated with lines on which it should no longer have been collecting. FBI policy requires any instance of an overrun to be reported to the FBI's Office of the General Counsel.

[35] In our report we make a distinction between "overrun" and "over-collection." An "overrun" refers to investigative activity conducted outside the time period of the FISA court order or outside the authorized period of investigative activity, which may involve the collection of unauthorized information. An "over-collection" refers to information gathered within the authorized time period of the FISA court order but outside the scope or intent of the order.

In September 2008, the field office told us that it agreed with our assessment and told us it would segregate the potential overrun audio material as well as inform the FBI Office of the General Counsel of the potential overrun.

However, in June 2009 following our audit close-out meeting, the FBI stated that it did not consider this an overrun and that this matter did not need to be reported to the Office of the General Counsel. The FBI stated that it believed the calls that were collected were initiated by telemarketers who waived their privacy rights by making the call. However, the FBI field office believed it collected and then did not report to the FBI Office of the General Counsel several minutes of calls on lines on which a FISA court judge ordered it to cease collecting material. We believe that the field office should have reported this potential overrun to the FBI Office of the General Counsel for appropriate adjudication.[36]

We also identified an overrun at another field office. This overrun occurred because technical personnel entered the wrong FISA court order expiration date into Collection System A when setting up the collection parameters. The order expired in late fall 2006 but the expiration date entered into Collection System A was 5 days later. However, the field office only collected information for 1 extra day because the investigative target cancelled the phone line the day after the order expired. The only collection on Collection System A was an electronic tone; no conversations were collected that day. In June 2009, the FBI Office of the General Counsel determined that this matter was reportable to the Intelligence Oversight Board.

[36] Executive Order 12863 designates the Intelligence Oversight Board (IOB) as a standing committee of the President's Foreign Intelligence Advisory Board and directs the IOB to inform the President of any activities that may be unlawful or contrary to Executive Order or Presidential Directive.

Conclusion

The FBI collects an immense amount of material in the course of conducting counterterrorism, counterintelligence, and criminal investigations. The FBI's ability to review and translate the collected audio material, text pages, and electronic files is critical to the FBI's operations. Without timely translation and review, the FBI could have valuable information in its possession that it does not use in its counterterrorism, counterintelligence, or criminal investigations.

We determined that during the last 3 years the FBI was able to review all the text pages that it collected for its counterterrorism, counterintelligence, and criminal investigative operations. However, the FBI collected a significant amount of audio and electronic file material that it did not review. For all its operations, the FBI reviewed 75 percent of the audio material and 69 percent of the electronic files it collected during our review period.

FBI data also showed that the FBI reviewed all audio material collected for its criminal investigations. However, as found in our previous audits, the FBI continued to have accrued unreviewed audio material for its counterterrorism and counterintelligence operations. In FYs 2003 through 2008, the ratio of unreviewed material to total collections remained relatively consistent at around 6 percent for counterterrorism collections and 31 percent of counterintelligence collections. Yet, because the amount of collections increased, the total amount of unreviewed audio material significantly increased during this period from 8,600 hours in FY 2003 to almost 47,000 hours by the end of FY 2008 for counterterrorism operations and from about 218,000 hours to nearly 1.2 million hours for counterintelligence operations.

Additionally, our analysis of FBI data found that while the FBI generally had kept pace in translating the collected electronic files in FY 2006, by FY 2008 the FBI had over 14 million unreviewed electronic files. Moreover, we found that the FBI did not have a strategy for guiding its FLP to keep pace with its growing collection of electronic files.

In addition, we found that significant amounts of unreviewed audio and electronic file material were collected for the FBI's highest-priority counterterrorism and counterintelligence investigations, increasing the risk that important information in the FBI's possession will not be timely reviewed. Specifically, we found that 45 percent of the FBI's FY 2008 unreviewed counterterrorism audio material was for Tier 1 and Tier 2 FBI cases, including 740 hours pertaining to Tier 1 High cases. The FBI stated

that resource limitations often prevent it from reviewing material collected for its highest priority cases. We also determined that portions of the FBI's unreviewed material were entirely in English, including material collected for high-priority cases. Additionally, 72 percent of the FBI's unreviewed electronic files were English-only material. By contrast, we determined that 99 percent of the unreviewed audio and text material was in a foreign language.

In our previous reports, we noted that the FBI reported "refined" backlog totals different from the monthly data reported by its field offices. However, the FBI's refined figures only account for information on Collection System A. We do not believe using only Collection System A data provides a comprehensive assessment of the FBI's total backlog of unreviewed material because it does not include material collected outside of Collection System A.

Recommendations

We recommend that the FBI:

1. Ensure the LSS is reporting accurate, comprehensive, and supported data on the backlog of unreviewed foreign language audio material from all audio collections, not solely Collection System A.

2. Develop a proactive long-term strategy for the FBI to keep pace with translating and reviewing its increasing collection of electronic files.

3. Develop protocols for monitoring and ensuring that unreviewed foreign language material collected for high-priority counterterrorism and counterintelligence cases is reviewed and translated in a timely manner.

4. Develop a strategy and implement protocols for reviewing English-only material in a timely manner, particularly material collected for high-priority counterterrorism and counterintelligence operations.

5. Develop and implement a risk-based policy beyond Tier 1 counterintelligence cases for removing audio material from the collection system.

6. Develop protocols to support the FBI policy requiring FBI operational components to work with the LSS and FLP personnel in determining linguistic resource availability before commencing counterterrorism, counterintelligence, and criminal collection techniques that will require foreign language translation.

7. Comply with its internal policy by reporting the potential field office FISA overrun to its Office of the General Counsel for appropriate adjudication.

II. WORKLOAD MONITORING

Similar to our findings in our previous audits, we determined that the FBI still does not have a reliable means of assessing the amount of foreign language audio, text, and electronic material it collects and reviews for its counterterrorism, counterintelligence, and criminal operations. While the FBI had made progress in consolidating its separate collection systems and plans to complete its consolidation when funding is made available, the lack of a consolidated system prevents the FBI from accurately determining its backlog of unreviewed material. Additionally, we found that the translation workload data the field offices report on monthly reports, which the FBI uses to assess its translation workload in the absence of a consolidated workload management system, are inconsistent with data finalized by the LSS.

Collection Systems

Our 2004 audit report noted that the FBI's ability to monitor translation workload was hampered because the FBI did not have a method to consistently accumulate and assess workload statistics. As a result, we recommended that the FBI expedite the implementation of an automated statistical reporting system.

The FBI still uses several systems to collate and track the review of collected foreign language material, including:

- Collection System A – [redacted]. The LSS Metrics Unit uses the collection system to report audio backlog for counterterrorism and counterintelligence cases.
- Work Flow Manager – Deployed in FY 2003, this is the FBI's interim automated statistical reporting system for all collection formats.
- Collection System B – This system integrates and consolidates ELSUR products from FBI field offices.[37] Collection System B affords agents, linguists, and analysts the ability to view and analyze collected data through a single system.

[37] ELSUR is an abbreviation for "electronic surveillance."

- Collection System C – This system, a smaller version of Collection System B, supports the collection and analysis of electronic files.

- Collection System D – The FBI uses this system to extract electronic media.

During our 2004 and 2005 audits, we reviewed the Work Flow Manager, and Collection Systems A and B and found that the FBI's ability to monitor translation workload was hampered because the FBI had no method to consistently develop accurate workload statistics. At the time, FBI officials said that Collection System B would replace Work Flow Manager by integrating the functions of these two systems. However, we found during this audit that the plan is to combine Collection Systems B, C and D into one consolidated system because the three systems have similar functions. Additionally, the Foreign Intelligence Surveillance Act (FISA) court requires, as part of its minimization procedures, that the FBI reduce the number of collection systems on which it stored information collected through FISA court orders.[38]

The FBI consolidated Collection Systems B and D in early 2009 and plans to consolidate Collection System D, the third system, as soon as funds are available. The consolidated system will include data from Collection System A, which the FBI estimates to contain 70 to 80 percent of its collected foreign language audio material. Collection System A currently uploads to Collection System B.

Without a consolidated system, the FBI does not have a reliable method for tracking and reporting its backlog of unreviewed foreign language material. As the FBI works on consolidating Collection Systems B, C, and D, the LSS now relies on Work Flow Manager and Collection System A to report on the backlog of unreviewed foreign language material. However, the LSS does not consider the data from Work Flow Manager to be reliable. Additionally, as we reported in Finding I, using only Collection System A data to report the backlog of unreviewed counterterrorism and counterintelligence audio material can potentially underreport the total because Collection System A does not include audio material from all other collection systems. Consequently, the FBI does not have a comprehensive and consolidated system for tracking audio, text pages, and electronic files collected and

[38] Minimization procedures apply to the acquisition, retention, and dissemination of non-publicly available communication and other information concerning unconsenting U.S. persons that is collected in the course of telephone, microphone, modem, facsimile, and other electronic surveillance. FBI officials said that as of November 1, 2008, Collection Systems B, C, and D are compliant with the FISA Court's mandated Standard Minimization Procedures.

reviewed material, and therefore the FBI does not have an automated means of identifying its workload and backlog, or for assessing its performance in reviewing collected foreign language material.

Foreign Language Program Monthly Reporting Process

Lacking an automated means of generating statistics on the amount of audio, text, and electronic file material collected and reviewed, the LSS developed a manual monthly report used for determining the collection workload and the backlog of unreviewed material. Every month, each FBI field office is required to submit a survey report to the LSS detailing the amount of foreign language material it collected and reviewed that month. This reporting tool is currently the FBI's primary method of assessing its collection workload and, as we reported in Finding I, we believe this is the most comprehensive data on the FBI's foreign language translation workload and performance.

However, this data is not reliable due to the inconsistencies between what the field reports and what LSS finalizes as the official totals. We reviewed the FBI's monthly reporting process to determine the accuracy of finalized monthly reports generated by the LSS. For the FBI field offices in Miami, New York, and Washington D.C., we compared monthly report totals submitted to the LSS by these three field offices to the final LSS monthly totals. The FBI's monthly translation workload report involved two major reporting categories - a counterterrorism/counterintelligence category and a criminal investigation category. The final LSS monthly reports contain fields for collected and reviewed totals of audio hours (including video), text pages, and electronic files by counterterrorism/counterintelligence and criminal investigative matters.[39] More detail on our testing methodology is contained in Appendix I.

[39] For FYs 2005 and 2006, criminal workload reports were submitted on a quarterly basis, so the summary fields tested are fewer than for a fiscal year with monthly reporting. For our counterterrorism and counterintelligence monthly reports testing, we tested only the 4th quarter for FY 2005.

Exhibit 30
Translation Workload Reports
Comparison of Field Submissions to LSS Final Figures

Field Offices	Fiscal Year	Counterterrorism and Counterintelligence Monthly Reports			Criminal Investigation Monthly Reports		
		Total Summary Fields Tested	Inconsistent Summary Fields Tested between Field Offices and LSS	Percentage of Inconsistent Totals	Total Summary Fields Tested	Inconsistent Summary Fields Tested between Field Offices and LSS	Percentage of Inconsistent Totals
Miami	2005	18	18	100%	24	24	100%
	2006	72	68	94%	36	23	64%
	2007	72	32	44%	72	13	18%
	2008	36	18	50%	36	0	0%
New York	2005	18	18	100%	24	24	100%
	2006	72	62	86%	36	31	86%
	2007	72	52	72%	72	62	86%
	2008	42	28	67%	42	36	86%
Washington	2005	18	17	94%	24	24	100%
	2006	72	69	96%	36	24	67%
	2007	72	15	21%	72	22	31%
	2008	36	4	11%	36	21	58%

Source: OIG analysis of FBI Language Services Section data

As shown in Exhibit 30, we found that monthly data submitted by the field offices frequently did not match the final LSS figures. Our testing showed some improvement over time in that the field and LSS summary field totals were generally more consistent in each successive fiscal year during our testing period. For instance, the Miami Field Office monthly report submissions related to criminal investigations matched the final LSS figures for the 3 months in FY 2008 that we performed testing.

The LSS Metrics Unit Chief told us that the discrepancies occur between the field and LSS because both groups refine the numbers to what they believe should be reported on the monthly translations report as material that has been collected and reviewed. Additionally, we found that some inconsistencies between the field and LSS totals were caused by data entry errors. We also determined that for 1 month during our test period the LSS had mistakenly reported the Washington Field Office's totals from the previous month.

Without a dependable system, the FBI cannot accurately determine the amount of unreviewed material, adversely affecting its ability to most appropriately assign its linguistic resources to address the type and amount of unreviewed material.

Metrics Unit officials told us they are visiting FBI field offices to train personnel on how to appropriately report on material collected and reviewed. Additionally, in 2007 the Metrics Unit developed and provided to the field a manual that contains instructions on what and how to report to the LSS on the monthly workload data reports.

Conclusion

The FBI still does not have an automated means for assessing the amount of audio, text, and electronic file material that it collects and reviews. Consequently, it cannot accurately identify the backlog of material awaiting translation, a key deficiency in reporting on the backlog and in effectively managing the FBI's foreign language translation program. We found during this audit that the FBI abandoned its original plan for consolidating the Work Flow Manager and Collection System B reporting systems. Instead, the FBI is moving to consolidate Collection Systems B, C, and D given their similar functionalities. As of February 2009, the FBI consolidated two of the three systems, and its long-term plan includes consolidating the third system as funds become available. The FBI stated that the new consolidated system will include Collection System A, which contains 70 to 80 percent of the FBI's collected audio material.

Lacking an accurate, automated means of assessing the amount of collected and unreviewed foreign language translation material, the FBI instead relies on a manual monthly reporting system that includes data reported by field offices we found to be significantly inconsistent with the monthly data reported by the LSS.

In short, current FBI practices do not produce comprehensive, accurate, and verifiable data of foreign language collection totals and the backlog of unreviewed material. Consequently, the FBI cannot accurately evaluate the FLP's ability to review the foreign language material collected, which in turn hinders its efforts to effectively allocate resources to address the backlog. The FBI must develop a reliable, automated means of evaluating the amount of material collected and reviewed. Until then, however, the FBI's flawed monthly reporting is the most comprehensive data it maintains on translation collections and backlogs of audio, text, and electronic files. Therefore, we recommend that the LSS develop procedures to improve its procedures for reporting comprehensive, accurate, and

verifiable data on the amount of material collected and the backlog of unreviewed material.

Recommendations

We recommend that the FBI:

8. Consolidate collection systems and develop an automated means of reliably reporting the amount of material collected and the backlog of unreviewed material.

9. Develop procedures for comprehensively monitoring the amount of unreviewed foreign language material and for accurately evaluating its ability to review audio, text, and electronic file material.

III. QUALITY CONTROL

During our 2004 audit, we found that the FBI's FLP lacked a tracking system capable of monitoring the results of quality control reviews of its linguists. We recommended that the FBI develop a system that would monitor compliance on a national level and in April 2005 the FBI implemented such a system. Since then, the FBI has made significant improvements in its quality control program. Specifically, the program increased compliance concerning its reviews of experienced linguists and established specific guidelines to ensure that all reviewers successfully complete certification workshops. In addition, the program's record keeping procedures have improved. However, we found during the current audit that the FBI did not comply with several requirements of its quality control policy, including: (1) reporting to the LSS all quality control reviews performed in the field, (2) assigning Certified Quality Control Reviewers to review translations within approved certifications, (3) assigning translations to linguists for which they are qualified to perform, and (4) following up on quality control reviews that resulted in ratings of "Not Satisfactory" for linguists' translation. These deficiencies can hinder the FBI's ability to ensure accurate translations, reduce the intelligence value of FLP translations, and prevent the LSS from effectively managing and monitoring nationwide compliance with quality control standards.

The FLP's quality control program is essential to ensuring the accuracy of translated material. To be effective, quality control reviews must be performed in a timely fashion and by linguists who are certified to assess the quality of specific translations.

Quality Control Categories for Translations

The FBI divides its quality control review requirements into five categories, which are displayed in Exhibit 31.

Exhibit 31
Quality Control Categories for Translations

Category	Description
I	English into the Foreign Language
II	Foreign Language into English for Public Dissemination
III	Translations Going to Court
IV	Translations by linguists who have 1 year or more of experience with the FBI
V	Translations by linguists who have less than 1 year of experience with the FBI

Source: FBI Language Services Section

Categories I, II, and III focus entirely on assessing the quality of a translation. These first three categories require that translations must be both quality-control reviewed and editorially reviewed to eliminate errors and ensure accuracy prior to dissemination outside the FBI.

Categories IV and V evaluate the ability of both contract and FBI linguists to perform accurate translations. These two categories are also designed to give supervisors a means of evaluating linguists' abilities and weaknesses. Under a Category IV review for individuals with more than 1 year experience with the FBI, linguists have samples of their work submitted for quality control review once every 4 quarters.[40] Furthermore, if a linguist's tasks include working in multiple genres or types of translations, then samples of each of those genres must be submitted.[41] Category V pertains to quality control reviews for individuals who have been employed less than 1 year. After an initial training period not to exceed 80 hours, a linguist's first 40 hours of independent translations are quality-control reviewed, and the next 80 hours are subjected to random reviews.

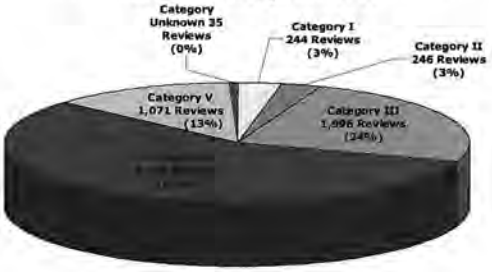
According to Quality Control Standards Unit (QCSU) officials, more than half of all FBI quality control reviews (57 percent or 4,652 reviews) conducted between July 2005 and June 2008 examined the accuracy of translations completed by FBI linguists with more than 1 year of experience (Category IV reviews). An additional 13 percent (1,071) of the reviews

[40] Previous FBI policy required Category IV linguists to be reviewed annually. The LSS told us that this resulted in some linguists not being reviewed for 6 quarters (1.5 years). For instance, some linguists were reviewed in the first quarter of the first year and then not reviewed again until the fourth quarter of the following year. The policy was revised to make it clear that linguists should be reviewed within 1 year from their previous review.

[41] Genres will be discussed in detail later in this Finding.

examined FBI linguists who had less than 1 year of experience (Category V). In addition, reviewing translations used in court proceedings (Category III) comprised 24 percent (1,996) of the total quality control reviews during this time period. Exhibit 32 depicts the breakdown of quality control reviews performed in each category during this 3-year period.[42] From July 2005 to June 2008, 70 percent of quality control reviews evaluated linguists' abilities to translate foreign language material. These evaluations provided insight into linguists' strengths and weaknesses and helped the LSS identify areas in which linguists needed additional training.

Exhibit 32
Quality Control Reviews Performed by Category
July 2005 through June 2008



Source: FBI Language Services Section

Translation Genres

Linguists perform several types of translations that the FBI refers to as translation genres. Linguists' authority to translate a specific genre depends on their proficiency scores. FLP Monitor Analysts and Contract Language Monitors are only eligible to perform summary translations, while Language Analysts and Contract Linguists may perform summary and verbatim translations. Field supervisors are responsible for conducting quality control reviews in both the languages and genres in which linguists regularly

[42] Category unknown represents the 35 reviews we found that failed to identify a defined category upon submission to QCSU.

perform translations. For example, if a supervisor has a Category IV linguist regularly translating in four genres, that linguist would need to be quality-control reviewed once every four quarters in each of those four genres. Exhibit 33 displays the FBI's five principal translation genres.[43]

Exhibit 33
Translation Genres

Genre	Definition
Audio Summary	A translation of key facts of audio collections, not a full translation
Document Summary	A translation of key facts of text and electronic file collections, not a full translation
Audio Verbatim	A full translation of facts within audio collections
Document Verbatim	A full translation of facts within text and electronic file collections
No Reportable Intelligence	Excerpts from an audio summary translation designated as not reportable intelligence to be assessed for accuracy

Source: FBI Language Services Section

Linguist Assignments

Due to the sensitive nature of the material being translated and the skill level required to accurately and efficiently perform translation work, linguists are required to translate only in the languages in which they have been formally tested and deemed proficient by the FBI's Language Testing and Assessment Unit.[44] In addition, according to the Supervisor's Manual, the FBI must ensure that linguists qualifying as monitors are only performing summary translations. Monitors cannot perform verbatim translations, testify in court, or act as subject matter experts.

We analyzed FBI records to assess whether the FBI ensured that linguists were proficient in the languages and genres they were translating. Assigning linguists to translate material in a language and at a level they are certified to perform is the FBI's first step to ensuring the quality of its translations.

[43] A sixth genre for "interpreting" comprised a nominal percentage of the FLP quality control reviews.

[44] This unit develops and administers language testing for the FBI; assesses language testing on behalf of the intelligence community; and trains and certifies language test administrators, language testers, and translation test raters.

Language Eligibility

We examined proficiency exam records from the LSS Language Testing and Assessment Unit for all current linguists within the four field offices we visited to test whether linguists were translating languages other than those in which they had tested proficient. Specifically, we compared the proficiency exam results to Quality Control Quarterly Compliance Reports maintained by the QCSU between July 1, 2005, and June 30, 2008. Of the 414 linguists within the 4 field offices we visited, we identified 4 linguists that performed 7 translations in languages they were not authorized to translate. All seven of these translations were quality control reviewed and received Satisfactory ratings. Although the 7 translations amount to less than 1 percent of the 2,449 translations performed by these 414 linguists, the FBI should consider implementing an internal control to prevent linguists from translating material in languages in which they are not certified. Exhibit 34 displays the results of this testing according to the fiscal year in which the translation occurred.

Exhibit 34
Translations Performed by Linguists in Languages in which They Were Not Certified

Fiscal Year	Number of Translations Quality Control Reviewed in Field Offices Visited (July 2005 – June 2008)	Number of Translations by Ineligible Linguists Quality Control Reviewed in the Field Offices Visited
2005[45]	150	1
2006	604	1
2007	906	2
2008[46]	789	3
TOTAL	**2,449**	**7**[47]

Source: OIG analysis of FBI Language Services Section data

According to the FBI's Supervisor's Manual, barring an immediate threat situation, linguists should only work in languages for which they have achieved minimum proficiency levels. When asked about linguists translating outside of their certified languages, the Unit Chief for the QCSU

[45] Figures for 2005 only include 4th quarter fiscal year data.

[46] Data for 2008 only includes statistics for the first three quarters of 2008.

[47] We also found 35 instances where 11 linguists were listed as eligible to translate in languages they were not authorized to translate.

said this was not a quality control issue and therefore not her responsibility. She stated that FLP field supervisors are responsible for ensuring that linguists only translate in languages for which they have been tested proficient. Additionally, this Unit Chief stated that the LSS Section Chief was notified. The LSS Section Chief said she believes oversight of the translation assignment process will improve upon implementation of a new database designed to ensure that linguists translation assignments are limited to the languages for which they have tested proficient.

Genre Eligibility

As previously stated, proficiency scores dictate what type of genres in which a linguist can translate. Barring an operational exigency demand requiring an immediate translation, monitors are not permitted to perform audio or document verbatim translations, testify in court, or to act as subject matter experts. To assess the FBI's adherence to these FLP policies, we tested the Quality Control Quarterly Compliance Reports from July 2005 to June 2008 to determine whether monitors were translating verbatim material. Of the 467 linguists classified as monitors on these compliance reports, we found 69 occurrences where 43 monitors improperly performed verbatim translations during our review period from July 2005 through June 2008. Although only five of these translations resulted in quality control ratings of "Not Satisfactory," monitors are assigned to perform summary translations because these linguists were found to have insufficient language skills necessary to perform accurate verbatim translations. We believe that permitting monitors to perform verbatim translations increases the potential for inaccurate translations and further highlights a weakness in the FBI's translation assignment process. To ensure the quality of its translations, the FBI should improve its controls and oversight of translation assignments.

Automated Linguist Assignments

According to the LSS Section Chief, the FBI is developing a new database that will assist supervisors in assigning translation work to linguists. She told us that upon implementation, the database will limit the type of task linguists can be assigned based on their proficiency qualifications. As of February 2009, the linguist tasking phase of the database remained under development and FBI officials said the entire system should be operational by the beginning of fiscal year 2010. Until this database is implemented, however, supervisors must continue to manually ensure that linguists are only assigned tasks in which they are qualified.

Certified Quality Control Reviewers

Certified Quality Control Reviewers are linguists who evaluate the translation work of their peers. Since our 2005 audit, the number of Certified Quality Control Reviewers increased from 100 reviewers to 342 as of September 2008. In FY 2008, 26 percent of all linguists were Certified Quality Control Reviewers, compared to 7 percent in FY 2005. To become a Certified Quality Control Reviewer, a linguist must attend a certification workshop, pass the workshop exam, and be satisfactorily reviewed in the genres they will be reviewing. We reviewed FBI records to verify that Certified Quality Control Reviewers met these requirements. While the QCSU records showed that all reviewers attended the workshop and passed the exam, we found 173 instances, including 55 instances (32 percent) in FY 2007 and 26 instances (15 percent) in the first three quarters of FY 2008, where reviewers performed quality control reviews in languages in which they were not certified and 71 linguists achieving reviewer status in genres in which they had not received Satisfactory ratings. Additionally, we identified 14 instances where linguists who were not certified reviewers performed quality control reviews.

Language Eligibility

We assessed whether Certified Quality Control Reviewers were performing reviews outside of their certified languages. Of the 8,244 quality control reviews submitted to QCSU between July 2005 to June 2008, incomplete records made it impossible for us to associate a specific reviewer to 590 of the reviews. Of the remaining 7,654 reviews, we found 173 instances where Certified Quality Control Reviewers performed quality control reviews in languages they were not certified to review. While this equates to approximately 2 percent of reviews completed, the assignment of quality control reviewers to evaluate translations for which they are not certified to review demonstrates a need for the FBI to improve controls over its quality control review assignment process.

Genre Eligibility

To determine whether Certified Quality Control Reviewers were qualified to conduct reviews in particular genres, for the four field offices we visited we analyzed QCSU Quality Control Quarterly Compliance Reports from July 2005 through June 2008. Of the 414 linguists tested, we found that 71 linguists designated as Certified Quality Control Reviewers did not receive Satisfactory reviews in genres in which they were certified to review. For example, we identified a linguist who has been a Certified Quality

Control Reviewer in four genres since the third quarter of 2006 but who lacks a quality control review in any genre within that language.

In addition, we found instances of individuals other than linguists listed as Certified Quality Control Reviewers. For example, the Unit Chief of the QCSU is currently listed as a certified reviewer although she has not undergone a formal quality control review since July 2005.

We assessed whether Certified Quality Control Reviewers assigned to review translations were certified to review in the genres associated with those translations. We found 612 instances where 341 reviewers were ineligible to review the translation work assigned to them because they were not certified in the respective genre of the translation. For example, a reviewer certified to review only audio summaries reviewed an audio verbatim translation. Of the 612 instances, Not Satisfactory ratings were assigned to linguists for 73 of the reviews. Collectively, these occurrences can hinder the QCSU from accurately identifying the need for linguist training and mentoring, and can result in linguists not receiving an accurate evaluation of their work.

In our view, our finding of Certified Quality Control Reviewers not being appropriately certified to review assigned translations can affect the effectiveness and reliability of the quality control program. We recommend that the QCSU improve its monitoring of the quality control program to ensure that supervisors are assigning quality control reviews only to individuals who are appropriately certified to review particular languages and genres.

Quality Control Program

During our last two audits, we found that the LSS, as an adjunct duty, monitored compliance with FLP quality control policies and standards. In April 2005, the FBI implemented a nationwide tracking system to monitor and track its quality control efforts. This tracking system assesses field offices' adherence to required reviews through spreadsheets called Quality Control Quarterly Compliance Reports submitted by supervisors. In 2005, the LSS created the Quality Control Standards Unit, composed of a Unit Chief and four staff to manage the FLP's quality control program.

Quality Control Policy

The FLP's quality control policy, updated in November 2007, sought to establish a systematic method of monitoring translations. The revised policy includes the following elements:

- The policy established anonymity in the quality control process, requiring linguists with more than 1 year of service to have quality control reviews conducted by reviewers located in another field office.
- The revised policy requires linguists with more than 1 year of service to be reviewed once every four quarters, instead of once annually as required by the FBI's previous policy. Under the old policy, FBI personnel interpreted "annually" to allow a linguist to work as many as 6 quarters without a quality control review.[48]
- The FBI established requirements for becoming a Certified Quality Control Reviewer. As discussed previously, these requirements include attending a certification workshop, passing the workshop exam, and being satisfactorily reviewed in the genres they will be reviewing.
- The policy clarified quality control procedures and designated specific forms for Certified Quality Control Reviewers to use when performing reviews. Supervisors must use the Quality Control Review Form to request a quality control review and Certified Quality Control Reviewers must provide feedback on the Quality Control Feedback Form.

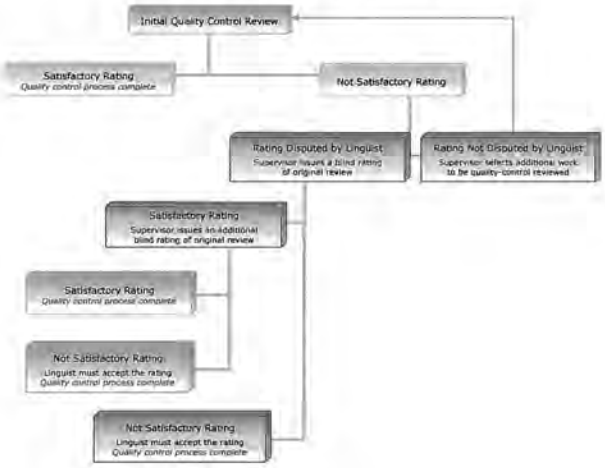
Quality Control Review Process

The quality control review process requires supervisors at field offices nationwide to coordinate with each other to ensure quality control reviews are performed by certified personnel and in accordance with FLP quality control review requirements. The objective of the review process is to identify errors, to take corrective action to remedy the errors, and to

[48] For example, the previous policy required that a linguist reviewed in the first quarter of a year have another review performed by the fourth quarter of the following year. The 2007 policy revision requires a linguist reviewed in the first quarter of a year to be reviewed again by the first quarter of the following year.

ultimately improve the ability of linguists to perform accurate translations. Exhibit 35 presents an overview of the quality control process.[49]

Exhibit 35
Quality Control Review Process



Source: FBI Language Services Section

During the review process, a supervisor randomly selects material translated by a linguist and has a Certified Quality Control Reviewer assess the translation for accuracy and expression errors.[50] In addition to providing feedback concerning the translation, reviewers issue a Satisfactory or Not

[49] Appendices VI and VII include flow charts illustrating Category IV and Category V quality control review processes.

[50] Expression errors pertain to grammar, punctuation, capitalization, and spelling errors.

Satisfactory rating. If the review receives a Satisfactory rating, the supervisor discusses the review feedback with the linguist and no additional action is required. If a Not Satisfactory rating occurs, supervisors must immediately report the rating to the QCSU and address the Not Satisfactory rating with the linguist by discussing the feedback and deficiencies noted by the reviewer. If the linguist accepts the Not Satisfactory rating, training that directly addresses the identified deficiencies is provided to the linguist and additional quality control reviews are conducted. If the linguist disputes the Not Satisfactory rating, the same material is submitted for review to another Certified Quality Control Reviewer. If the material is again deemed Not Satisfactory, the Not Satisfactory rating stands. If, however, the second Certified Quality Control Reviewer assigns a Satisfactory rating, then a third reviewer will conduct a review and concurrence by two of the three reviewers determines the outcome of the rating. The LSS is required to take corrective action when a linguist receives three final Not Satisfactory ratings within a specific genre over the course of a year. For permanent FBI linguists, corrective action includes written notification of the linguist's deficiencies outlined in a Performance Improvement Plan. The linguist has 90 days to improve their performance, and if successful, the linguist will then be placed on probationary status for 1 year. If the quality of work diminishes during the probationary period, management can request that the linguist be demoted or removed from the FBI. For contract linguists, corrective action includes suspension or termination.

Like other linguists, Certified Quality Control Reviewers receive reviews of their translation-specific work. We found that of the 1,994 quality control reviews of Certified Quality Control Reviewers, 126 (6 percent) resulted in Not Satisfactory ratings. Certified Quality Control Reviewers who receive a Not Satisfactory rating are no longer eligible to perform quality control reviews in that particular genre. These individuals may recommence quality control review duties after achieving a Satisfactory rating in the particular genre in which they received the Not Satisfactory rating.

Quality Control Error Notation Key

FBI policy requires Certified Quality Control Reviewers to ensure translations adhere to the FBI's Manual of Standards for Translation.[51] In performing their reviews, Certified Quality Control Reviewers use the Quality Control Error Notation Key, a standardized review tool. For each translation,

[51] The Manual of Standards for Translation is a manual used by linguists for guidance when performing verbatim and summary translations.

reviewers use this key to identify eight types of errors pertaining to translation accuracy and expression:

- Distortions
- Key mistranslations
- Grammar
- Capitalization
- Punctuation
- Spelling
- Mistranslations
- Wrong context

The error notation key attempts to provide balance within the quality control process and eliminate the subjectivity that presents itself when more than 300 different people perform quality control reviews. Using the eight types of errors allows reviewers to identify evidence within a translation that devalues intelligence and also reduces the chances a reviewer will find the translation Not Satisfactory merely for editorial differences. However, at a FLP quality control refresher workshop we attended we observed that linguists provided with the same material inherently translate the material differently. The QCSU Chief directing the refresher workshop used this example to stress the importance of accepting equivalencies during quality control reviews. While the Error Notation Key attempts to provide balance within the quality control process by limiting and categorizing key types of translation errors, an individual reviewer's life experiences, cultural background, and personal preferences will continue to affect the translation process. Therefore, the FBI should ensure that its Certified Quality Control Reviewers are well trained in using the Error Notation Key to ensure objectivity and standardization during the quality control review process.

Not Satisfactory Ratings

The FLP performed 8,244 quality control reviews from July 2005 through June 2008. Of those, QCSU reported that 9.8 percent of the reviews resulted in Not Satisfactory ratings. During our fieldwork, we reviewed all of the Not Satisfactory quality control reviews identified at the four field offices we visited. We tested the quality control reviews to determine: (1) the primary causes for the Not Satisfactory ratings, (2) whether Not Satisfactory ratings were reported by the field offices to the QCSU in a timely manner, and (3) whether Not Satisfactory ratings were followed up with additional reviews in accordance with the QCSU policy.

In our review of quality control files for Not Satisfactory ratings, we found that reviewers frequently cited accuracy errors including incorrect dates and places, distortions, omissions, and additions as reasons for issuing Not Satisfactory ratings. Additionally, reviewer feedback repeatedly indicated that these types of translation errors caused a devaluation of intelligence and altered the overall meaning of the translations.

FBI policy requires field supervisors to submit to the QCSU quarterly reports on quality control reviews performed within 15 days after the end of each quarter. To assess the timeliness of supervisors reporting Not Satisfactory ratings to the QCSU, we analyzed whether the Not Satisfactory ratings were reported within the same quarter in which the rating was issued. For the period July 1, 2005, to June 30, 2008, 34 (or 38 percent) of the 89 Not Satisfactory reviews we identified at the 4 field offices we visited were not reported to the QCSU within the quarter that the review occurred.

Additionally, we tested to determine if the Not Satisfactory quality control reviews identified in the field were reported to the QCSU. Current FLP quality control policy only requires supervisors to maintain records of reviews for 1 year or until a linguist's next annual performance appraisal, so we confined our testing to the first three quarters of FY 2008. During this period, we found 40 Not Satisfactory quality control reviews in the 4 field offices we visited. Of these, 10 reviews (or 25 percent) were not reported to the QCSU. In our view, the failure of supervisors to consistently report Not Satisfactory ratings hinders the QCSU from monitoring field compliance and providing appropriate oversight and training to the FBI linguist workforce. In addition, we found that the FBI's quality control program lacks an internal control system to ensure that supervisors comply with quality control reporting requirements. We recommend that the QCSU implement an internal control system that will ensure field supervisors comply with the reporting policy. Exhibit 36 shows, for the field offices we visited, our testing results concerning the reporting of Not Satisfactory reviews to the QCSU.

Exhibit 36
Not Satisfactory Field Office Reporting Results
July 1, 2005, through June 30, 2008

Field Office	Reported to the QCSU within the Quarter of Review	Not Reported to the QCSU within the Quarter of Review	Number of Not Satisfactory Reviews
Language Services Translation Center	4	2	6
Miami	3	11	14
New York	34	13	47
Washington, D.C.	14	8	22
Total	**55**	**34**	**89**

Source: OIG analysis of FBI Language Services Section data

We also examined whether linguists who received Not Satisfactory ratings for their translations had a follow-up assessment. We found that 53 percent of the Not Satisfactory reviews we examined at the four field offices we visited were not followed up with subsequent reviews. Therefore, linguists whose translation work was determined to be deficient were allowed to continue translating material without additional reviews, thereby raising questions about the quality of their translations. In addition, the FBI missed an important opportunity to provide additional training through the analysis of the errors identified during the quality control review. Exhibit 37 provides a breakdown of Not Satisfactory follow-up results for the field offices we visited.

Exhibit 37
Not Satisfactory Review Follow-Up Results
July 1, 2005, through June 30, 2008

Field Office	Follow-Up Review Performed	Follow-up Review Pending[52]	Follow-up Not Tracked[53]	No Evidence of a Follow-up Review	Total Number of Not Satisfactory Reviews
Language Services Translation Center	1		1	4	**6**
Miami	1	2		11	**14**
New York	16	11	1	19	**47**
Washington, D.C.	9			13	**22**

Source: OIG analysis of Not Satisfactory follow-up results

Monitoring Nationwide Compliance

Compliance with the quality control process is monitored through the Quality Control Quarterly Compliance Reports and the quality control inspections process.[54] To assess how effectively the QCSU monitors nationwide compliance with FLP quality control policy, we tested how often Category IV linguists, those with 1 year or more of experience with the FBI, received quality control reviews. We combined the results for all quality control reviews for current linguists within the four field offices we visited and identified linguists who had not been reviewed in accordance with FBI policy. Our testing included verifying whether linguists received Category IV reviews in FYs 2006 and 2007, and any reviews that were due by the end of

[52] We identified 13 Not Satisfactory ratings that occurred during the end of our testing period and for which the FBI had not yet performed follow up reviews. We note these as pending follow-up reviews, as it was reasonable for the FBI to not have followed up with subsequent reviews by the end of our testing period.

[53] These reviews fell within the Categories I and III and follow-up could not be tracked. The 2007 policy revision allows more than one linguist to work on translations within these categories.

[54] As of November 2007, Certified Quality Control Reviewers are also required to submit samples of completed reviews every four quarters for a quality control review inspection. The inspection process seeks to ensure standardization and compliance with the QCSU procedures by having designated inspectors check reviews for adherence to quality control policies and procedures. This program was in its infancy during our audit, and therefore we did not review these quality control inspections.

the third quarter of FY 2008. Prior to the November 2007 policy revision, linguists were only required to receive annual reviews which, as we explained in footnote 40, could result in a linguist translating for an 18-month period without a formal quality control review. The requirement for linguists to receive quality control reviews once every four quarters, therefore, only applied to reviews due in FY 2008.

As shown in Exhibit 38, we found that 167 of the FBI's current 414 linguists at the 4 field offices we visited had not received Category IV quality control reviews in FYs 2006 and 2007. While the FBI has improved its compliance with quality control requirements since October 2005, we identified 33 linguists who were due to have quality control reviews during the first three quarters of FY 2008 who had not been reviewed. Moreover, we identified 19 linguists who never received a quality control review between October 2005 and June 2008. Further, during our examination of records at the Miami field office, we found evidence of 12 quality control reviews that were not reported to the QCSU. These and other findings in the four offices highlight a need for the QCSU to further improve its management and monitoring of the quality control program.

Exhibit 38
Nationwide Compliance by Office
FY 2006 through June 2008

Field Office	Linguists Missing Category IV Quality Control Reviews (FY 2006)	Linguists Missing Category IV Quality Control Reviews (FY 2007)	Linguists Missing Category IV Quality Control Reviews (FY 2008 – through June)
Language Services Translation Center	32	17	13
Miami	24	5	2
New York	31	20	15
Washington, D.C.	30	8	3
Totals	**117**	**50**	**33**

Source: OIG analysis of FBI Language Services Section records

In October 2008, the QCSU Chief told us the unit had recently been authorized to hire five contract employees to assist with assigning quality control reviews to Certified Quality Control Reviewers. The Unit Chief said this would reduce the burden on FLP field supervisors to find reviewers to perform quality control reviews of their linguists. As of February 2009, two of the five contractors had been hired. However, until the remaining

contractors are hired we believe the LSS Regional Program Managers should take a more active role in assisting field office supervisors in the tracking, coordinating, and reporting of quality control reviews.

Conclusion

We found that the FBI has made improvements to its quality control program since our 2005 audit. In mid-2005, the LSS began monitoring nationwide compliance with the FLP quality control requirements through its quality control program and a nationwide tracking system. During the current audit, we found that the FBI has improved its oversight of the FLP quality control process through the use of its tracking system and by improved record keeping. Additionally, the program increased compliance concerning reviews of experienced linguists and has established specific guidelines to ensure that all reviewers successfully complete certification workshops.

However, we identified several deficiencies in FLP management and quality control oversight that can adversely affect the accuracy of FLP translated material. The FBI's first line of quality control is ensuring that translation work is only assigned to linguists certified to translate the specific language and genre required. We found that the FBI did not consistently ensure that its linguists were performing translations of languages and in genres in which they were certified. Specifically, we found 4 of 414 linguists within the 4 field offices visited translating material in languages in which they were not authorized. In addition, we found 43 out of 467 linguists classified as monitors performing verbatim translations, which is not permitted under FBI rules.

In our review of the FBI's compliance with its quality control program requirements, we identified several deficiencies related to oversight by Certified Quality Control Reviewers reviewing translations in languages and genres for which they were not certified. Specifically, we found 173 instances where Certified Quality Control Reviewers performed quality control reviews in languages they were not certified to review. Further, we found that the FBI granted certification to 71 reviewers who had not been satisfactorily quality-control reviewed in genres in which they were certified. Translation and review of foreign language material by personnel not certified to perform the work increases the potential for inaccurate translations of important intelligence material.

In addition to linguists and reviewers performing work outside of their certifications, we also found that the FBI was not following its procedures for quality control reviews. We determined that the FBI failed to appropriately

respond to 53 percent of the Not Satisfactory quality control reviews that we identified in the four field offices we visited with subsequent quality control reviews. In addition, we found that while the FBI improved its record for performing quality control reviews of its linguists between FYs 2006 and 2008, the FBI did not conduct quality control reviews for 117 experienced linguists in FY 2006, 50 linguists in FY 2007, and 33 linguists in FY 2008. Moreover, 19 experienced linguists did not receive quality control reviews between FYs 2006 and 2008. By not performing timely quality control reviews and by not following up on Not Satisfactory reviews, the FBI reduces the effectiveness of its quality control program to ensure the accuracy of translated material.

Recommendations

We recommend that the FBI:

10. Ensure that the LSS enforces the FBI's quality control policy that requires all linguists with more than 1 year of experience with the FBI to have their regularly assigned tasks quality-control reviewed once every 4 quarters.

11. Develop and enforce procedures to ensure that linguists are only translating in languages in which the Language Testing and Assessment Unit has tested them for proficiency.

12. Develop procedures to ensure that linguist quality control review ratings in the field offices are accurately and timely reported to the QCSU.

13. Improve procedures and controls to ensure that Certified Quality Control Reviewers are only reviewing translations in languages and genres they are qualified to review.

14. Develop and enforce procedures to ensure that Not Satisfactory ratings are followed up in a timely manner with quality control reviews as required by FBI quality control policy.

15. Improve oversight of the quality control program by developing an internal control system that monitors whether field supervisors comply with LSS quality control review reporting policy.

IV. LINGUIST WORKFORCE

The total number of linguists at the FBI decreased from 1,338 in FY 2005 to 1,298 in FY 2008. Additionally, as we found in our 2005 audit, the FBI did not meet its goals for hiring linguists and did not reduce the length of time it takes to hire contract linguists and to convert contract linguists to FBI employees. From FYs 2005 through 2008 it took the FBI about 19 months to hire a contract linguist, an increase from the 16 months we found in our 2005 audit. On average, we found that the security clearance vetting process took an average of 14 months to complete, while the language proficiency testing process took 5 months. Additionally, we found that it took the FBI 9 months, on average, to convert a contract linguist to a permanent FBI employee. The FBI's failure to meet its hiring goals and its delays in hiring and converting contract linguists to FBI employees contributes to the FBI's inability to translate all its collected material and to reduce the backlog of accrued unreviewed material. We also found that the 109,000 hours FBI linguists spent on non-translation duties in FY 2008 was nearly double the 66,000 hours they spent in FYs 2006 and 2007. The significant increase in time spent on non-translation duties prevents linguists from performing their primary duty of translating material collected for FBI counterterrorism, counterintelligence, and criminal investigative operations.

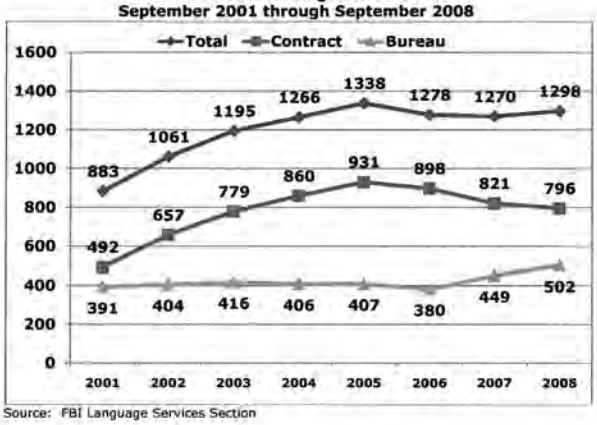
The ability of the FLP to provide effective linguistic support to FBI operations is dependent on its ability to recruit and hire qualified linguists. The FBI typically hires linguists first as contractors and then converts selected contract linguists to permanent FBI employees after assessing the linguist's performance in translating collected material.

Linguist Workforce

As reported in our July 2004 audit, the number of full-time FBI linguists and contract linguists increased from 883 in FY 2001 to 1,214 as of April 2004. In our 2005 report, we noted that the number of FBI and contract linguists increased by 124 to 1,338 as of March 30, 2005. In this review, we found that the number of full-time FBI and contract linguists decreased slightly since March 2005 to 1,298 as of September 2008. As noted in Exhibit 39, since March 2005 the number of contract linguists decreased by 135 positions while the number of FBI linguists increased by

95, resulting in a net decrease of 40 total linguists. The proportion of contract linguists to FBI linguists has decreased since our previous audit. In March 2005, the FBI's linguist pool consisted of 931 contract linguists and 407 FBI linguists, a ratio of 2.3 to 1. As of September 2008, the linguist pool included 796 contract linguists and 502 FBI linguists, a ratio of 1.6 to 1.

Exhibit 39
FBI And Contract Linguists On Board
September 2001 through September 2008



Source: FBI Language Services Section

Hiring Goals

For each fiscal year, the FBI establishes hiring goals for contract linguists based on present and projected supply and demand factors, as well as funding available for contract linguists. In our prior audits, we reported that the FBI, regardless of available funding, established overall linguist hiring objectives – target staffing levels - based on workload volumes, operational priorities and needs, and the number and type of linguists required to meet collection workloads. The FBI does not establish specific hiring goals for every language for which translation work is performed. Rather, linguist hiring goals are established based on available funding and

according to languages considered the most critical to the FBI's counterterrorism, counterintelligence, and criminal investigative operations.

In our current review, we found that the FBI continued setting hiring objectives and goals through FY 2006. The LSS Language Personnel Resources Unit (LPRU) Chief told us that hiring goals for FY 2007 were not established because the LPRU Chief position was vacant, so hiring was guided using FY 2006 goals. This Unit Chief also told us that in FY 2007 the FBI experienced resource limitations due to funding shortfalls that caused "hollow work years."[55] As a result, the FBI eliminated vacant positions that were originally allotted by Congress to the LSS in FY 2006. The Unit Chief told us that the LSS lost a total of 36 management and administrative support positions and 136 FBI Language Analyst positions. These positions were not restored for FY 2008.

The LPRU Chief told us that as a result of the decrease in positions in FY 2007, the LPRU developed a new method for establishing hiring goals for specific languages. Currently, the goals are determined based on the percent of collections reviewed by linguists for audio, text, and electronic communications. The FBI also factors in the anticipated growth in collections and any anticipated linguist attrition rate. Finally, the number of contract linguist applicants pending activation is subtracted to determine the hiring goal.

In our prior reports we found that the FBI did not meet its hiring goals for all languages for which goals were set. For instance, in FY 2004 we found that the FBI only achieved its hiring goals for 11 of 26 languages for which goals were established. By March 2005, the FBI met its hiring goals in only 14 of 43 languages.

In our current review, we analyzed hiring data for FYs 2005 through 2008. Exhibit 40 shows the FBI's overall progress in meeting its established hiring goals.

[55] Hollow work years (also known as unaffordable work years) are positions authorized by Congress that an organization cannot afford to fill due to internal and external funding requirements, such as an increasingly expensive workforce or an unfunded portion of annual cost of living adjustments.

Exhibit 40
FBI Linguist Hiring Goals Achieved
Fiscal Years 2004 through 2008

Fiscal Year	Languages with Hiring Goal	Hiring Goal Achieved	Percentage Hiring Goal Achieved
2004	26	11	42%
2005	43	23	53%
2006	42	17	40%
2007	42	16	38%
2008	14	2	14%

Source: FBI Language Services Section

We found that for FY 2005 the FBI met its hiring goals in 23 of 43 (53 percent) languages for which goals were established: 9 of the 14 (64 percent) languages designated "higher density," and 14 of the 29 (48 percent) languages designated "lower density."[56] For FY 2006, the FBI met its hiring goals in 17 of 42 (40 percent) languages for which goals were established: 5 of the 14 (36 percent) languages designated "higher density," and 12 of the 28 (43 percent) languages designated "lower density." Because the LSS did not establish hiring goals for FY 2007 but continued processing applicants based on FY 2006 goals, we used the FY 2006 hiring goals and found that the FBI met its hiring goals in 16 of 42 (38 percent) languages for which goals were established: 7 of the 14 (50 percent) languages designated "higher density," and 9 of the 28 (32 percent) languages identified as "lower density." For FY 2008, the FBI did not distinguish between higher and lower density languages. We found that the FBI met its hiring goals in only 2 of 14 (14 percent) languages for which goals were established.

LSS officials told us that its difficulties in meeting hiring goals in recent years were the same as during our previous reviews. These reasons included:

[56] "Higher density" languages are those in which there is either a high demand for translation services, a high supply of available linguists, or both. "Lower density" languages are those in which there is either a low demand for translation services, a low supply of available linguists, or both.

- a rigorous foreign language proficiency testing and security vetting process,
- limited staffing resources to process applicants, and
- competition with other intelligence community agencies for linguist resources.

Although the FBI responded to our 2004 recommendations and hired a business process engineering firm to assess their processes and make suggestions for improvement, the LSS continues to struggle in meeting its hiring goals. LSS officials told us that funding limitations resulted in an inability to implement the engineering firm's recommendations for improving its hiring process, such as enhancing technology and using third-party language proficiency testing centers. We believe the LSS's continued inability to meet its hiring goals hinders the FBI's ability to effectively manage the expanding translation workload and reduce the current backlog of unreviewed material.

Ongoing Hiring Challenges

We found that the FBI has continued to experience significant challenges in hiring contract linguists. We determined that since 2005 the length of time required for an applicant to complete the hiring phase increased 6 months and now exceeds 19 months. Additionally, we found that it takes the FBI an inordinate amount of time to convert contract linguists to permanent FBI linguists. These long processing times affect the FBI's ability to fulfill its linguist staffing targets and to meet its needs for additional foreign language translation assistance.

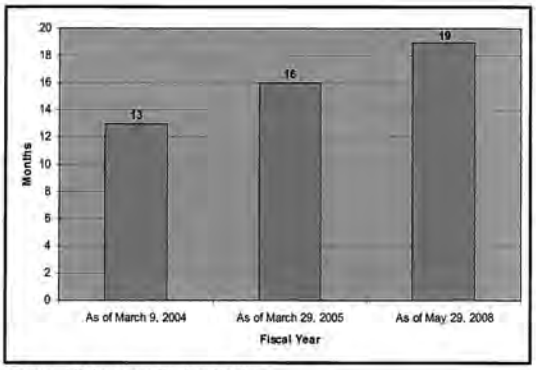
Contract Linguist Applicant Processing Time

The LPRU centrally manages the recruitment and applicant processing of contract linguist applicants, and the FBI Security Division performs initial security clearance background investigations of FBI and contract linguists.

During our 2005 audit, we reported that it took the FBI, on average, about 16 months from the time an application was received until a contract linguist was hired. This was an increase of 3 months over the results of our testing during our 2004 audit. For this audit, we found in our testing of FBI hiring data for October 1, 2004, through May 29, 2008, that the FBI's average duration to hire a contract linguist has increased to 19 months. As in our 2005 audit, we found that the background security clearance adjudication process took the greatest amount of time when hiring a

contract linguist. From FY 2005 through June 10, 2008, it took the FBI an average of 14 months to complete the background adjudication process for linguist applicants. The LSS LPRU Chief told us that most contract linguists are foreign-born and have family or other personal associates still living abroad, which increases the time required to adjudicate an applicant's background. In addition, the language proficiency testing process took the FBI an average of an additional 5 months to complete, about the same length of time we found in our 2005 audit. Exhibit 41 shows the amount of time it took to hire a contract linguist from application to approval for this review and during our two previous audits of the FBI's FLP.

Exhibit 41
Contract Linguist Applicant-Processing Time in Months



Source: FBI Language Services Section

Ratio of Selected Applicants to Hired Contract Linguist

The FBI continues to process a significant number of applicants for each contract linguist hired. In FY 2005, the FBI processed an average of eight applicants for each contract linguist it hired. For October 2007 through June 2008, this ratio increased to 18 applicants for each contract linguist

hired. Exhibit 42 shows FBI applicant processing statistics for the previous 4 fiscal years.

Exhibit 42
Contract Linguist Applicant-Processing Statistics

Process Stage	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008 (through June 10, 2008)
Applications Screened	7,272	10,027	6,618	9,258	8,359	10,171	3,054
Applications Selected for Processing	4,333	2,615	2,930	2,156	1,582	2,849	1,629
Failed Proficiency Testing	1,496	510	1,299	1,280	1,010	1,052	844
Failed Polygraph Examination	238	62	98	15	69	103	82
Discontinued for Suitability Issues	142	32	23	211	337	329	189
Denied Access by Security Division	26	32	21	9	11	11	10
Approved for Hire[57]	319	203	226	280	171	203	89
Ratio - Applicants Selected for Processing: Hires	14:1	13:1	13:1	8:1	9:1	14:1	18:1

Source: FBI Language Services Section

In our 2005 audit, the LSS official responsible for hiring contract linguists told us that the ratio of applicants to linguists hired for FY 2005 (through March 2005) was low because of staffing shortages in the unit responsible for hiring contract linguists. However, the LSS Operations Management Unit Chief told us that he did not agree with the explanation provided to us during our previous review. This Unit Chief said he is not sure why the ratio decreased for FY 2005, stating that because the screening criteria has always been the same there should be little or no variation in the applicant-to-hire ratio. The LPRU Chief told us that while certain languages have better hiring-approval rates than others, he believes some of the variance results from applicants approved for hire in a different fiscal year than when their processing began.

Conversion to FBI Language Analysts

Supervisors in FBI field offices recommend contract linguists for permanent FBI employment based on the linguist's performance. A list of the recommended contract linguists is compiled and submitted to the Language Allocation Board. The board is chaired by the LSS Assistant Section Chief and six LSS Unit Chiefs. LSS told us that this board tries to meet quarterly to assess the FBI's linguistic needs based on languages being collected, local linguist resource needs to address any backlog of unreviewed

[57] Applicants were approved for hire in the fiscal year, but were not necessarily initiated into the application process within the same fiscal year.

material, and FBI investigative priorities. The Language Allocation Board then determines what positions will be filled and which field offices will receive additional linguist resources.

The LPRU requests authorization from the Resource Planning Office (RPO) to fill vacant permanent FBI Language Analyst positions approved by the Language Allocation Board. The RPO has approval authority for all support personnel hiring, including linguists. The RPO verifies that a linguist vacancy exits and grants approval to fill the position. The Chief of the RPO Resource Analysis Unit told us that approval is immediate once a vacancy is verified. If the LSS requests to realign positions, such as moving positions from one field office to another, approval must be obtained from the Corporate Resource Planning Board, which meets on an as-needed basis depending on the availability of the members.[58]

During this audit we analyzed FBI data for contract linguists selected for conversion since October 2004. We determined that it took the FBI 9 months, on average, to convert contract linguists to FBI Language Analysts. Though the LPRU Chief noted that there are no timeliness criteria for converting contract linguists to FBI employees, she did not believe the process should take 9 months. Our analysis found that the background security investigation took an average of 7 months to complete, and the LSS took 2 months administratively processing the conversion.

On April 15, 2008, a new FBI policy took effect requiring that all contract linguist conversions be handled under the FBI's Fast Track hiring initiative. The Fast Track program allows a candidate to be hired conditionally for permanent employment pending the positive result of a security clearance investigation. The LPRU Chief told us that using this fast track approach should significantly reduce the amount of time it takes to convert contract linguists to permanent FBI linguist personnel, estimating that under this new program it should not take more than 90 days to complete the conversion process.

Conclusion

The number of FBI full-time equivalent linguists decreased from 1,338 to 1,298 between FYs 2005 and 2008, even though the backlog of untranslated foreign language material increased during the same period. We found, as we did in previous audits, that the FBI continues to fall short of

[58] The Corporate Resource Planning Board is chaired by the Associate Deputy Director, Executive Associate Directors, other executive staff, and field office personnel. The board is responsible for making corporate level resource decisions that have FBI-wide impacts or substantial financial implications.

its linguist hiring goals for critical languages. In addition, we found that since March 2005 it took the FBI, on average, over 19 months to hire a contract linguist and 9 months to convert a contract linguist to a permanent FBI employee. These long processing times contribute to the FBI's inability to achieve its linguist hiring goals and reduce its translation backlog.

We believe that the FBI's failure to meet its linguist hiring goals and the lengthy period required to hire linguists reduces the FBI's ability to address its backlog of unreviewed foreign language material.

Recommendations

We recommend that the FBI:

16. Improve the efficiency of its contract linguist hiring process, particularly alternatives for reducing the duration of adjudicating a contract linguist's security clearance and in decreasing the time it takes to perform language proficiency testing.

17. Make full use of the FBI's Fast Track hiring initiative for converting contract linguists to permanent FBI employees.

V. LINGUIST REQUIREMENTS

We found that 70 percent of FBI linguists in the field offices we visited did not attend the initial linguist training course in the first year of employment as required by FBI policy. Additionally, we found that the routine 5-year security clearance reinvestigations were overdue. We also determined that the FBI Health Care Programs Unit (HCPU) does not inform the LSS when an FBI linguist fails a hearing test, and the LSS does not have personnel qualified to evaluate audiogram results for contract linguists.

Among other requirements, the FBI requires linguists to attend training within the first year of their FBI employment, maintain security clearances through background investigations and reinvestigations every 5 years, and certify that they have sufficient hearing ability to conduct their translation work.

Training

Since our 2005 audit, the FBI replaced its 4-day Training for New Linguist course with a 2-week Language Analyst Specialized Training (LAST) course.[59] According to the FBI Intelligence Directorate Linguist Training and Professional Development Program policy, all new FBI linguists are required to take LAST training within 1 year of the date they entered on duty. While not required for contract linguists, supervisors use this policy guidance to train contract linguists on the minimum job requirements of an FBI linguist. The Language Training and Certification Unit (LTCU) Chief stated that all contract linguists attended the Training for New Linguist course, or either have attended or will be attending LAST training.

The LSS Operations Management Unit Chief also told us that the FBI is under no obligation to provide training to contract linguists. He said that the FBI chooses to provide such training because it is in the FBI's interest that contract linguists be trained in FBI processes, procedures, and workflow. He stated that in doing so the FBI tries to train as many contract linguists as possible, but in the end there will be some who do not receive training.

[59] LAST is a 2-week introductory training course for all Contract Linguists, Contract Linguist Monitors, Language Analysts, and Foreign-language Monitor Analysts. The training includes sessions on standards and principles of translation, professionalism, quality control, and recording translations. The inaugural LAST course was offered in June 2006.

We examined training records for FBI and contract linguists assigned to the four field offices we visited to determine if they attended Training for New Linguist or LAST training. As shown in Exhibit 43, we were unable to verify whether 240 of 416 (58 percent) FBI and contract linguists ever attended Training for New Linguist or LAST training.

Exhibit 43
Linguists Attending Initial Training for the Four Field Offices Tested

Linguist Type	Number of Linguists in Sample	No Record of Attendance in Initial Training Course	Percentage with No Record of Attending Initial Training Course
FBI Language Analysts	178	125	70%
Contract Linguists	238	115	48%
Total	**416**	**240**	**58%**

Source: FBI Languages Services Section

The LTCU Chief told us that there could be several reasons why both FBI and contract linguists had not taken the initial training courses, including the fact that some FBI and contract linguists:

- cannot leave their local office because of operational responsibilities;
- cannot travel because of childcare or other responsibilities;
- were already experienced linguists by the time the Training for New Linguist course was first offered in January 2004;
- have retired from the FBI as experienced linguists, were hired as contract linguists, and therefore did not need initial training;
- no longer have current Basic Ordering Agreements;[60] or
- only work part-time and have not been available to attend the training.

We believe the FBI's LAST course is beneficial for new linguists, as it includes instruction on FBI translation standards, quality control policies, principles of translation and interpretation, and the FBI's collection and data

[60] The Basic Ordering Agreement is a written contract negotiated between an agency and a contractor.

systems. In those cases where a contract linguist has previous experience with the FBI, the LAST training may not be needed. However, we do not agree that because a linguist is part-time or has responsibilities that make it difficult to travel is sufficient justification for not participating in LAST training. Lack of familiarity with general translation standards and FBI processes and policies can affect the overall quality of translations and hinder the FBI's efforts to reduce the backlog of unreviewed foreign language material.

Security Clearances

All linguists who have access to classified material are required to maintain a Top Secret security clearance.[61] The FBI also designates certain personnel who hold Top Secret clearances for participation in its Post Adjudication Risk Management (PARM) program that monitors personnel whose background, activities, or relationships may pose a security risk.[62]

Background Reinvestigations

Most FBI and contract linguists obtain their initial security clearance during the contract linguist hiring process, as discussed in Finding IV. Executive Order 12968, DOJ Order 2610.2A, and the FBI Security Policy Manual require that reinvestigations for Top Secret clearances be initiated 5 years after the previous investigation.[63] The FBI's Security Division's Reinvestigations Unit performs security clearance reinvestigations for FBI linguist personnel and the Clearance Passage and Sub-Programs Unit (CPSU) performs these reinvestigations for contract linguist personnel.

The FBI temporarily suspended all FBI employee background reinvestigations from March to October 2008 because of the FBI's intensive efforts to hire new FBI employees during this period. Instead,

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[61] Not all contract linguists used by the FBI are vetted for security clearances. Contract linguists who provide periodic translations for criminal matters only are provided "escorted access" security clearances. These linguists do not have or require access to classified information.

[62] We discuss the Post Adjudication Risk Management Program in detail later in this Finding.

[63] Executive Order 12968 on Access to Classified Information; DOJ Order 2610.2A Employment Security Regulations; and Intelligence Community Policy Guidance, Number 704.1, Personnel Security Investigative Standards And Procedures Governing Eligibility For Access To Sensitive Compartmented Information And Other Controlled Access Program Information, October 2, 2008.

Reinvestigations Unit personnel were reassigned to process applicant background reinvestigations, and as a result many linguists' 5-year reinvestigations were delayed.

We analyzed FBI security clearance records to test the FBI's compliance with its background investigation requirements for its linguists. We selected a sample of 193 FBI linguists whose previous 5-year background investigations were adjudicated prior to January 2004. The Reinvestigations Unit provided us with security data from its Bureau Personnel Management System (BPMS) identifying the most recent adjudicated background investigation.[64] We compared this data against information contained in the Security Division's files. We found that as of November 2008, 52 (27 percent) of the 193 linguists we tested had not had a background investigation initiated in over 5 years. Our testing revealed that 34 FBI linguists' reinvestigations were at least 6 months and as much as 23 months overdue.

We determined that the temporary suspension of FBI employee background reinvestigations potentially delayed the initiation of background reinvestigations for 17 of the 52 linguists we identified as overdue. However, the suspension did not affect the initiation of background investigations for the remaining 35 linguists.

Additionally, we selected a sample of 73 contract linguists from the list provided by the LSS and compared CPSU data on contract linguist background investigations to information contained in the Security Division's files. As of November 2008, 9 (12 percent) of the 73 contract linguists we tested did not have a reinvestigation initiated 5 years after their prior investigation. Moreover, we found that these background reinvestigations were up to 23 months overdue. In not initiating background investigations within 5 years of a linguist's previous security clearance adjudication, the FBI was not in compliance with Executive and DOJ Orders regarding employee security regulations.

Exhibit 44 provides a breakdown of FBI and contract linguists found to be overdue for security clearance reinvestigations.

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[64] The BPMS is an electronic database that contains all personnel related information, including a history of personnel actions, performance appraisal information, milestone dates, training received, specialized skill sets, security clearance data, and other information.

Exhibit 44
Linguists Overdue For 5-Year Security Clearance Reinvestigation

Months Overdue	FBI Linguists	Contract Linguists	Total
1-6	13	4	17
7-12	10	1	11
13-18	9	2	11
19-24	15	1	16
Unable To Determine	5	1	6
Total Reinvestigations Overdue	**52**	**9**	**61**
Reinvestigations Conducted When Required	**141**	**64**	**205**
Linguists Sampled	**193**	**73**	**266**

Source: FBI Security Division

FBI personnel stated that based on Intelligence Community Policy Guidance, as long as background reinvestigations were initiated within 7 years of the last adjudication they believed that linguists who hold Top Secret clearances were still in compliance with current federal guidance. Intelligence Community Policy Guidance, Number 704.4, Reciprocity of Personnel Security Clearance and Access Determinations, October 2, 2008, temporarily modified the 5-year reinvestigation policy, requiring heads of intelligence community elements to accept investigations less than 7 years old. For the 61 linguists who did not have a reinvestigation initiated after 5 years, we found that all were reinvestigated within the last 7 years.

However, we asked the Assistant Director of the Personnel Security Group for the DOJ's Security and Emergency Planning Staff (SEPS) about the FBI's position that a reinvestigation that takes place within 7 years of the previous investigation is valid. The Assistant Director stated that DOJ policy and Executive Order 12968 state that individuals holding Top Secret Clearances must be reinvestigated every 5 years. Therefore, she said that FBI personnel who did not meet this criterion were overdue on their security clearance reinvestigations.

Security Clearance Database

During our testing of linguist background investigation data and files, we found that the FBI Reinvestigations Unit's security clearance database did

not contain accurate and current data. We identified 50 FBI linguists who received a background reinvestigation during FYs 2004 through 2007 for whom the Reinvestigations Unit BPMS database was not updated to reflect this information. The inaccuracies in this FBI security clearance database hamper the FBI's ability to ensure that FBI personnel receive background investigations in accordance with federal requirements. Further, the unreliability of the information in the database can place the FBI at risk of compromise by employees who have not had their recent activities and relationships scrutinized through the security clearance adjudication process. Reinvestigations Unit personnel acknowledged that their database had not been updated consistently and stated that they were taking immediate corrective action to ensure that the database was accurate, current, and complete.

Post Adjudication Risk Management Program (PARM)

The PARM program was developed in October 2002 to monitor contract linguists who pose an inherent risk to national security by requiring additional security interviews and polygraph examinations after the contract linguists were granted a security clearance. Contract linguists are identified for inclusion in the PARM program by the FBI Security Division on a case-by-case basis. Many contract linguists were born abroad and maintain relationships with relatives, friends, and other acquaintances living abroad. These relationships heighten the potential for linguists to be in contact with persons in foreign intelligence services or terrorist organizations that may attempt to infiltrate the FBI. In May 2003, the PARM program was expanded to include contract linguists with language skills in 19 specific languages. The PARM program was again expanded in November 2005 to include any personnel who are granted access to sensitive FBI information, personnel, or facilities.

The FBI Security Division's Analytical Investigations Unit manages the PARM program and initiates the additional security procedures. The PARM background investigation includes a personnel security interview of the employee and a polygraph examination 1 year after the employees receive their security clearances. Thereafter, the linguist must participate in personnel security interviews at 1-year intervals and can be subjected to random polygraph examinations at anytime.

As of April 2008, 314 contract linguists were in the PARM program. We reviewed PARM records for these linguists and found that all 314 received the requisite personnel security interviews and polygraph examinations. However, we found during our testing that some PARM database records did not reflect the most current information. Our

comparison of database information to PARM records revealed that dates in the database did not agree with dates on PARM documents for initial clearances, personnel security interviews, polygraph examinations, and adjudications. In addition, we found that 15 inactive linguists were listed as active in the PARM database, and we identified 2 linguists actively working for the FBI who were listed as inactive in the database. Based on our findings, the Analytical Investigations Unit took immediate corrective action to update the PARM database.

For FYs 2005 through 2008, the FBI reported that six contract linguists were either suspended or had their Top Secret clearances revoked as a result of a PARM review. Exhibit 45 provides more detail on these instances.

Exhibit 45
Post Adjudication Risk Management Program Suspensions Or Revocations Of Security Clearances For Contract Linguists

Date of Action	Suspension of Security Clearance	Revocation of Security Clearance	Details
Pending	X		Further security review pending
1/22/07		X	Top Secret security clearance revoked following an arrest
3/1/05	X		Top Secret security clearance suspended following arrest
6/13/08		X	Top Secret security clearance revoked following a polygraph examination and a post-polygraph interview
12/1/05	X		Top Secret security clearance suspended following a failed polygraph examination and a post-polygraph interview
3/17/05		X	Top Secret security clearance revoked following a polygraph examination and a post-polygraph interview

Source: FBI Security Division

Audiometric Program

Adequate hearing ability is an essential requirement of all linguist positions, and all FBI and contract linguists are required to have an audiometric examination upon being hired and every 2 years thereafter. The FBI Health Care Programs Unit (HCPU) oversees the audiometric program for all FBI linguists while the LSS is responsible for overseeing audiometric requirements for contract linguists. In the event a linguist is unable to perform the core requirements of his or her position due to a hearing loss, the employee can:

- explore the use of hearing aids;
- be reassigned to duties that do not require the higher-level of hearing, such as translating documents;
- be reassigned to a non-linguist position; or
- explore eligibility for medical disability retirement.

FBI Linguists

The FBI notifies linguists when an audiometric examination is required and provides the linguist with the name of a doctor from whom they should obtain the examination. HCPU retains all audiometric test data for FBI employees and is responsible for interpreting and monitoring audiometric examinations for FBI employees; it does not interpret or monitor examination results for contract linguists.

In October 2008, we reviewed the audiometric files for 179 FBI linguists assigned to the field offices we visited to determine if linguists received an audiometric examination every 2 years as required. We found that 173 of the 179 (97 percent) FBI linguists that were due to receive an audiometric examination in 2008 had received an exam. The HPCU Supervisory Nurse Specialist who tracks and ensures that FBI linguists receive an audiometric examination stated that two of the six linguists who had not received an exam were temporarily assigned to overseas locations that did not have audiometric vendors and would receive the required examination upon their return to the United States. She stated that the remaining four linguists would be scheduled for audiometric examinations immediately.

If the results of an audiogram do not fall within an acceptable range, an FBI employee may be retested within 30 days.[65] The HCPU must notify the employee and the employee's division or office and immediate supervisor of any audiogram failures. The HCPU does not notify the LSS of any linguists that fail an audiometer examination. The LSS Employee Linguist Administration and Management Program Manager, who oversees the LSS audiometric program for FBI linguists, relies on field supervisors for notification when a linguist fails the hearing test. However, this Program Manager told us such notification is not always provided.

We requested from the FBI a report showing all linguists who did not fall within acceptable audiogram ranges from FY 2005 through September 12, 2008. The HCPU informed us that it was unable to provide us with this information because it could not retrieve the information from its database.

In June 2008, the FBI implemented an information system application designed specifically for occupational medical support that allows HCPU to better manage its audiometric program. In addition, following our inquiry on audiogram results the HCPU started ensuring pertinent data on audiogram results were entered into its audiometric database, and it began coordinating with the FBI Records Management Division to have all paper copies of audiograms scanned and electronically available to HCPU through the new medical support system.

On January 9, 2009, HCPU provided us with a report of FBI linguists who did not fall within acceptable audiogram ranges. The report showed nine linguists who failed an audiometric examination between October 2004 and September 2008. However, we determined that the LSS Employee Linguist Administration and Management Program Manager was not informed that these FBI linguists had failed to meet acceptable audiogram ranges. Without being informed of instances when an FBI linguist fails an audiometric examination, the LSS cannot effectively ensure that FBI linguists have sufficient hearing to accurately translate audio material. We recommend that the FBI implement a policy requiring the HCPU to immediately notify LSS of any FBI linguist that fails an audiometric examination.

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[65] Acceptable ranges vary by person. A baseline audiometric examination is recorded for each linguist and subsequent audiometric examinations are analyzed for standard threshold shifts from the baseline examination.

Contract Linguists

All contract linguists are required to have an audiometric examination upon being hired and every 2 years thereafter. The LSS Language Planning, Automation and Procurement Unit manages the audiometric program for all contract linguists. Unlike FBI linguists, contract linguists are responsible for arranging and paying for their audiometric examinations. Once the contract linguist completes the examination and submits the proper documentation, the contract linguist is reimbursed by the FBI. We found that the FBI spends approximately $35,750 annually on contract linguist audiometric examination reimbursements, depending on the number of active contract linguists.

In October 2008, we reviewed the audiometric files for contract linguists assigned to the field offices we visited to determine whether these linguists received an audiometric examination in the past 2 years as required by FBI policy. Similar to our finding on FBI linguists, we found that 215 of 221 (97 percent) contract linguists obtained an audiometric examination in the last 2 years. Upon learning of our findings, the LSS notified the six linguists who were not in compliance to get an audiometric examination and forward the results to the LSS. The Chief of the Language Planning, Automation and Procurement Unit told us that contract linguists would not be eligible for a Basic Ordering Agreement renewal until a successful audiogram was completed.

Though all contract linguists are required to have audiometric examinations, we found that the FBI does not interpret or monitor the audiometric test results for these personnel. Therefore, a contract linguist could test below an acceptable audiogram range and still be allowed to translate foreign language material for FBI counterterrorism, counterintelligence, and criminal investigative operations. We believe that the LSS needs a means of interpreting contract linguist audiometer examination results, whether the interpretations are performed by contracted or certified FBI medical professionals or by other reliable means. We were informed during our audit that the LSS is considering hiring a contract audiologist to interpret and monitor the audiometer examination results for contract linguists.

Conclusion

The FBI did not ensure that all FBI linguists attend LAST training within 1 year of the date they entered on duty, as required by FBI policy. The FBI does not require contract linguists to attend LAST training, and therefore many contract linguists also did not participate in this 2-week training for

new FBI linguists. We believe this course provides beneficial instruction on translation standards, FBI operations, and other important activities of FBI linguists. We recommend that the FBI institute a policy requiring contract linguists without significant translation experience to either attend LAST training or participate in a separate training curriculum specifically for new contract linguists who cannot travel or where it is not financially feasible or responsible for them to attend the LAST course.

We found that the FBI complied with its policy for monitoring and more regularly evaluating the backgrounds of contract linguists reviewed under the FBI's PARM program. However, in our examination of linguists' security clearances, we found that 61 of 266 linguists (52 FBI and 9 contract) were not in compliance with applicable security reinvestigation policies. While FBI officials said current Intelligence Community Policy Guidance allows the FBI 7 years to complete security reinvestigations for its personnel, DOJ policy requires security clearance reinvestigations to be initiated every 5 years. Additionally, in the course of our review of security clearance data we found that FBI databases used to track security clearance information were often incomplete.

We determined that FBI and contract linguist personnel generally receive audiometer examinations every 2 years in accordance with FBI policy. However, the oversight of the audiometer test results needs to be improved. While the HCPU notifies the employee and the employee's division or office of any audiogram failures, the HCPU does not provide this notification to the LSS – the component responsible for ensuring linguists are qualified to perform their duties. We also found that while the LSS requires its contract linguists to provide the results of audiometer examinations, the LSS does not have personnel qualified to evaluate the test results. Therefore, a contract linguist could test below an acceptable audiogram range and still be allowed to translate foreign language material for FBI counterterrorism, counterintelligence, and criminal investigative operations. Without being informed of instances where FBI linguists fail an audiometer examination and without a means to evaluate contract linguists' audiometer results, the LSS cannot effectively ensure that all its linguists have sufficient hearing ability to accurately translate audio material.

Recommendations

We recommend that the FBI:

18. Ensure that all new FBI linguists attend LAST training unless the linguists can demonstrate sufficient and relevant translation experience such as previous experience as a contract FBI linguist.

19. Implement policy requiring contract linguists without significant translation experience to attend LAST training and develop a separate training curriculum specifically for new contract linguists who cannot travel to attend the LAST course.

20. Ensure that security clearance reinvestigations for FBI and contract linguists are initiated according to the 5-year timeframe outlined in DOJ policy.

21. Continue its efforts to ensure that the Security Division's Bureau Personnel Management System contains complete and accurate security clearance information on FBI linguists.

22. Develop procedures to ensure that the Security Division's Post Adjudication Risk Management Program database is updated regularly.

23. Establish policy requiring the Health Care Programs Unit to immediately notify the LSS when an FBI linguist's audiometric examination falls outside an acceptable hearing range.

24. Ensure that the LSS develops the capacity to interpret audiometric results for contract linguists.

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the FBI's internal controls was *not* made for the purpose of providing assurance on its internal control structure as a whole. FBI management is responsible for the establishment and maintenance of internal controls.

As noted in the Findings and Recommendations section of this report, we found significant internal controls deficiencies that we believe adversely affect the FBI's ability to adequately manage the quality control process. Specifically, the FBI's quality control program lacked sufficient controls to ensure all quality control review assessments were reported to the quality control unit. As a result, the FBI is unable to sufficiently oversee its quality control program and to ensure that all "Not Satisfactory" reviews are followed up as required.

We also found internal controls deficiencies that we believe adversely affect the FBI's ability to adequately manage its Audiometric Program. The FBI's processes do not include controls to ensure that the LSS is immediately informed when an FBI or contract linguist does not meet audiometer standards. Without being informed, the LSS is not able to take necessary corrective action.

Because we are not expressing an opinion of the FBI's internal control structure as a whole, this statement is intended solely for the information and use of the FBI. This restriction is not intended to limit the distribution of this report which is a matter of public record except for classified information that has been redacted from public versions of the report.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the Government Auditing Standards we tested, as appropriate, given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that the FBI management complied with federal laws and regulations, for which noncompliance, in our judgment, could have a material effect on the results of our audit. The FBI management is responsible for ensuring compliance with federal laws and regulations, applicable to the FBI. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditee and that particularly pertained to our audit objectives:

- Foreign Intelligence Surveillance Act (FISA).[66]

Our audit included examining, on a test basis, the FBI's compliance with the aforementioned federal laws and regulations that pertained to our audit objectives and scope and that could have a material effect on the FBI operations. Our examination included reviewing documents and records pertaining to the FLP since May 2005. As we discussed in the Findings and Recommendations section of this report, we found two instances where the FBI collected audio material beyond FISA court authorized expiration dates. One of these potential overruns was not internally reported to the FBI Office of the General Counsel, which adjudicates such matters and decides whether overruns should be reported to the Intelligence Oversight Board.

[66] Foreign Intelligence Surveillance Act of 1978, Pub. L No. 95-511, 92 Stat. 1783 (1978), codified at 50 U.S.C. § 1801 *et seq*.

APPENDIX I

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objectives

The objectives of this audit were to follow up on recommendations made in our July 2004 and May 2005 audit reports on the FBI's FLP, including:

- determining the extent of the FBI's foreign language translation backlog and evaluating the FBI's prioritization of work;
- assessing the FBI's compliance with its requirements for FLP quality control, training, and other linguist standards.
- assessing the FBI's applicant hiring process and its ability to meet hiring goals.

Scope and Methodology

We performed this follow-up audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit focused on FBI FLP operations since April 2005. We conducted work at FBI headquarters, the FBI's Language Services Section, and Miami, New York, and Washington Field Offices.

In our follow-up audit, we interviewed FBI officials regarding the FBI's review of collected material and its administration of the FLP, including the Director and Assistant Director of Intelligence; Assistant Directors for Counterterrorism and Counterintelligence; Deputy General Counsel; Section Chief and other officials in the LSS; Assistant Directors-in-Charge and Special Agents-in-Charge of the Miami, New York, and Washington Field Offices. In addition to discussions with FBI personnel, we also reviewed documents and records pertaining to the FLP. These documents and records included information on workload statistics, budget information, FLP quality control policies and procedures, workforce planning, and personnel.

To achieve the audit objectives, we used computer-processed data contained in the FBI's collection systems. We reviewed the data for the

timeframe of May 2005 through September 2008. The systems contain data regarding audio sessions collected and reviewed by the FBI. We also analyzed data from FLP monthly workload reports reported by the field and compiled by the LSS. These reports contained statistics on monthly collection and review totals for counterterrorism, counterintelligence, and criminal investigative operations. We analyzed this data to determine the amount of reviewed and unreviewed audio (including video), text, and electronic file material that the FBI collected. Additionally, we analyzed data from the FBI's Collection System A to determine the FBI's review of collected audio material contained on this system.

With regard to the monthly workload reporting data, we concluded that the data was not fully reliable because we found several inconsistencies between the numbers reported by the field and finalized figures compiled by the LSS. However, when these data are viewed in context with other available evidence, we believe the opinions, conclusions, and recommendations within this report are valid.

We tested data and records at the LSS and in the four field offices visited to assess the FBI's compliance with FLP quality control policies. Specifically, we examined proficiency exam records at the Language Testing and Assessment Unit for all current linguists within the four field offices we visited to test whether linguists were translating in languages other than those in which they had tested proficient. We also tested LSS Quality Control Quarterly Compliance Reports from July 2005 through June 2008 to determine whether monitors were translating in appropriate genres. Additionally, we reviewed FBI records to verify that Certified Quality Control Reviewers attended a certification workshop, passed the workshop exam, and were satisfactorily reviewed in the genres they will be reviewing.

We also tested FLP quality control reviews between the 4th quarter of FY 2005 through the 3rd quarter of FY 2008 to determine: (1) whether Not Satisfactory ratings were reported by the field offices to the QCSU in a timely manner, (2) whether Not Satisfactory ratings were followed up with additional reviews in accordance with the QCSU policy, and (3) the primary causes for the Not Satisfactory ratings. To assess how effectively the QCSU monitors nationwide compliance with FLP quality control policy, we tested whether linguists within the four field sites we visited received Category IV quality control reviews in FYs 2006 and 2007, and any reviews that were due by the 3rd quarter of FY 2008.

In addition, we analyzed LSS records and personnel data to determine whether the FBI met its established linguist hiring goals and to evaluate the FBI's processing times for hiring contract linguists and for converting

contract linguist personnel to permanent FBI employees for FYs 2005 through 2008. We also reviewed LSS, Security Division, and Health Care Programs Unit records to assess whether the FBI (1) ensured linguist personnel maintained requisite security clearances, (2) provided linguists with basic linguist training, and (3) verified the hearing ability of its linguists.

APPENDIX II

ACRONYMS

BPMS	Bureau Personnel Management System
CPSU	Clearance Passage and Sub-Programs Unit
[redacted]	[redacted]
DOJ	Department of Justice
[redacted]	[redacted]
[redacted]	[redacted]
FBI	Federal Bureau of Investigation
FISA	Foreign Intelligence Surveillance Act of 1978
FLP	Foreign Language Program
FY	Fiscal Year
HCPU	Health Care Programs Unit
LAST	Language Analyst Specialized Training
LPRU	Language Personnel Resources Unit
LSS	Language Services Section
LTCU	Language Training and Certification Unit
NVTC	National Virtual Translation Center
OIG	Office of the Inspector General
PARM	Post Adjudication Risk Management
QCSU	Quality Control and Standards Unit
RPO	Resource Planning Office
SEPS	Security and Emergency Planning Staff

APPENDIX III

LANGUAGES FOR WHICH THE FBI HAS LANGUAGE PROFICIENCY TEST BATTERIES

[redacted]	[redacted]	[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]	[redacted]

Source: FBI Language Services Section

APPENDIX IV

INTERAGENCY LANGUAGE ROUNDTABLE SUMMARY OF LANGUAGE PROFICIENCY-LEVEL DESCRIPTIONS

Level	Speaking	Listening	Reading	Writing
0	Unable to function in the spoken language.	No practical understanding of the spoken language.	No practical ability to read the language.	No functional writing ability.
0+	Able to satisfy immediate needs using rehearsed utterances.	Sufficient comprehension to understand a number of memorized utterances in areas of immediate need.	Can recognize all the letters in the printed version of an alphabetic system and high-frequency elements of a syllabary or a character system.	Writes using memorized material and set expressions.
1	Able to satisfy minimum courtesy requirements and maintain very simple face-to-face conversations on familiar topics.	Sufficient comprehension to understand utterances about basic survival needs and minimum courtesy and travel requirements.	Sufficient comprehension to read very simple connected written material in a form equivalent to usual printing or typescript.	Has sufficient control of the writing system to meet limited practical needs.
1+	Can initiate and maintain predictable face-to-face conversations and satisfy limited social demands.	Sufficient comprehension to understand short conversations about all survival needs and limited social demands.	Sufficient comprehension to understand simple discourse in printed form for informative social purposes.	Sufficient control of writing system to meet most survival needs and limited social demands.
2	Able to satisfy routine social demands and limited work requirements.	Sufficient comprehension to understand conversations on routine social demands and limited job requirements.	Sufficient comprehension to read simple, authentic written material in a form equivalent to usual printing or typescript on subjects within a familiar context.	Able to write routine social correspondence and prepare documentary materials required for most limited work requirements.
2+	Able to satisfy most work requirements with language usage that is often, but not always, acceptable and effective.	Sufficient comprehension to understand most routine social demands and most conversations on work requirements as well as some discussions on concrete topics related to particular interests and special fields of competence.	Sufficient comprehension to understand most factual material in non-technical prose as well as some discussions on concrete topics related to special professional interests.	Shows ability to write with some precision and in some detail about most common topics.
3	Able to speak the language with sufficient structural accuracy and vocabulary to participate effectively in most formal and informal conversations on practical, social, and professional topics.	Able to understand the essentials of all speech in a standard dialect including technical discussions within a special field.	Able to read within a normal range of speed and with almost complete comprehension of a variety of authentic prose material on unfamiliar subjects.	Able to use the language effectively in most formal and informal written exchanges on practical social and professional topics.
3+	Is often able to use the language to satisfy professional needs in a wide range of sophisticated and demanding tasks.	Comprehends most of the content and intent of a variety of forms and styles of speech pertinent to professional needs, as well as general topics and social conversation.	Can comprehend a variety of styles and forms pertinent to professional needs.	Able to write the language in a few prose styles pertinent to professional/ educational needs.

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Level	Speaking	Listening	Reading	Writing
4	Able to use the language fluently and accurately on all levels normally pertinent to professional needs.	Able to understand all forms and styles of speech pertinent to professional needs.	Able to read fluently and accurately all styles and forms of the language pertinent to professional needs.	Able to write the language precisely and accurately in a variety of prose styles pertinent to professional/ educational needs.
4+	Speaking proficiency is regularly superior in all respects, usually equivalent to that of a well-educated, highly articulate native speaker.	Increased ability to understand extremely difficult and abstract speech as well as ability to understand all forms and styles of speech pertinent to professional needs, including social conversations.	Nearly native ability to read and understand extremely difficult or abstract prose, a very wide variety of vocabulary, idioms, colloquialisms, and slang.	Able to write the language precisely and accurately in a wide variety of prose styles pertinent to professional/ educational needs.
5	Speaking proficiency is functionally equivalent to that of a highly articulate well-educated native speaker and reflects the cultural standards of the country where the language is natively spoken.	Comprehension equivalent to that of the well-educated native listener.	Reading proficiency is functionally equivalent to that of the well-educated native reader.	Has writing proficiency equal to that of a well-educated native.

Source: FBI Languages Services Section

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APPENDIX V

FBI ANOMALY CATEGORIES FOR AUDIO COLLECTIONS

The FBI places in anomaly categories certain audio collections identified as "unreviewed" or "needs further review" on Collection System A. As we discussed in Finding I, the LSS eliminates audio hours associated with collections in these anomaly categories from its reported totals of the backlog of unreviewed audio hours. The following describes the FBI's methodology for each anomaly category and our assessment of the methodologies.

Imported Audio – This is audio material that was reviewed by a linguist, and a case agent adds the audio back on Collection System A because the agent wants the material reviewed again. The LSS does not believe this material should be counted as backlog because the material has been reviewed by a linguist. We agree that this material is not technically "unreviewed" foreign language material. However, this material is workload requiring a linguist's review, and the FBI defines its audio backlog as material that is 'unreviewed' or 'needs further review'. While the material has been reviewed by a linguist, imported audio requires a linguist to spend time in further reviewing this material, thereby constituting it as backlog according to the FBI's definition.

Expired Court Order – The LSS classifies certain collections in this category when audio is erroneously collected after a court order authorizing the collection expired, referred to as an overrun. The FBI retains this information on Collection System A and prohibits any review of the material until the FBI Office of the General Counsel and DOJ adjudicates the matter. As overrun totals cannot be a part of the FBI's translation workload by law, the LSS removes associated workload hours from the Collection System A backlog total.

Forward Flow and Back Flow Failure – The LSS classifies certain audio collections on Collection System A as 'forward flow' or 'back flow' failures. The FBI stated that these hours are usually associated with technical problems, such as when audio collections are sent to another office for translation and the sessions were not identified in a reviewed status due to an upload or download issue. The LSS removes from its Collection System A backlog total workload hours it believes are duplicated audio sessions arising from uploading and downloading collection files. The LSS provided an example of audio sessions at two field offices with the same identification numbers reflecting two different statuses – one marked "reviewed" and the other marked "needs further review." This example included about 194

hours of duplicate audio material. We agree that this scenario would cause Collection System A to count reviewed material as backlog.

However, the LSS does not have a mechanism for correcting Collection System A "forward flow" and "back flow" matters. Additionally, the Operational Technology Division (OTD), which maintains Collection System A, was not aware of any system issues as described by the LSS. OTD personnel believed human error could contribute to incorrect session markings. Though, the Section Chief of the OTD's Data Acquisition/Intercept Section told us that it received very few requests to correct such errors.

In order to address this matter, the LSS must coordinate a procedure with the OTD for making corrections to Collection System A. At the time of our audit, the LSS did not coordinate with the OTD and instead, without maintaining support, subtracted from the audio backlog workload hours it believed were associated with "forward flow" and "back flow" matters.

Brady Review – These audio hours have been reviewed. However, because the material will be used in court, the FBI must re-review the material to ensure that the translation is fair and accurate. We agree that this material is not "unreviewed" foreign language material. However, this material is workload requiring a further review and therefore, by the FBI's definition, should be identified as backlog material.

Multiple Copies – Throughout the field, offices occasionally have difficulty confirming whether a receiving office actually received audio sessions from another office. As a result, audio collections may be sent repeatedly to the same site, creating multiple copies of the same audio session. These repeated sessions cause a material to be counted twice when determining the backlog of unreviewed material. If this occurs, the LSS must coordinate with the OTD to correct duplicated audio sessions. The LSS identifies duplicated sessions and subtracts hours from the Collection System A backlog total.

Unidentified Language – The FBI occasionally collects audio material in a language it cannot identify or in a language that the FBI does not have a linguist who can translate it. The LSS believes associated audio hours should not be included in its Collection System A backlog numbers. These hours are legitimate backlog hours. When the FBI determines what language is being spoken or when the FBI finds a linguist who can translate the language, this material should be translated.

Miscellaneous – The FBI describes these anomalies as technical "glitches," network connectivity, and severe system outages. We found an instance

where the LSS identified, in a comment field within Collection System A, an audio collection as miscellaneous when it was actually an overrun of material beyond a court-ordered suspension date. Overruns are not a technical glitch and must be immediately reported to the FBI Office of the General Counsel.

Case Closed/No Interest – Audio hours can be left on Collection System A that are for closed cases or involve material in which the case agent has no interest. The LSS stated that audio hours associated with closed cases no longer require translation. A Supervisory Special Agent in a field office we visited stated that audio sessions for closed cases are occasionally retained as background information for a current case. At the very least, the LSS must work with the field offices to identify and remove unwanted audio collections from the system.

English Only – Through the course of its counterterrorism investigations the FBI collects audio material entirely in English. While it is not foreign language material requiring translation, it is collected audio material that requires review. The LSS does not handle English-only language audio collections and believes these hours should not be reported as foreign language backlog.

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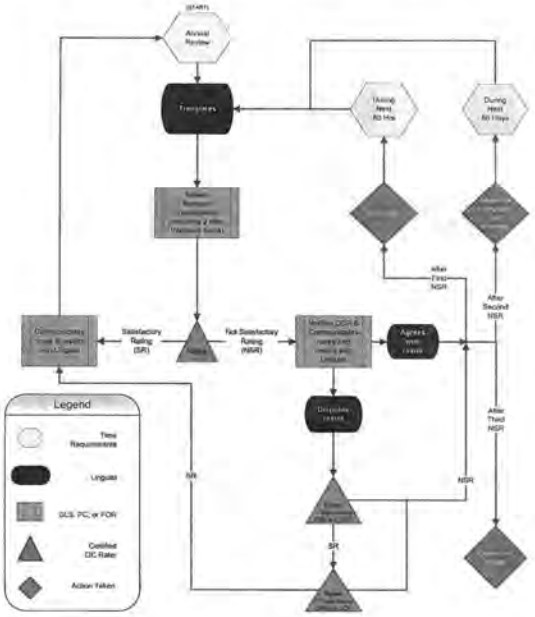
APPENDIX VI

QUALITY CONTROL WORK FLOW CHART FOR CATEGORY IV LINGUISTS



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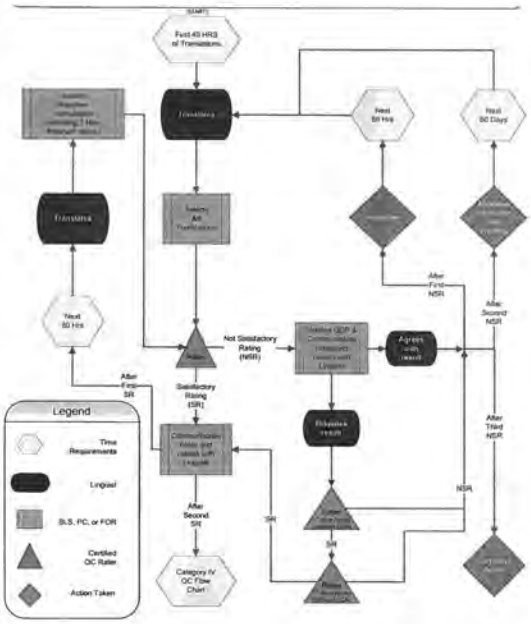
APPENDIX VII

QUALITY CONTROL WORK FLOW CHART FOR CATEGORY V LINGUISTS



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APPENDIX VIII

THE FEDERAL BUREAU OF INVESTIGATION'S RESPONSE

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

September 25, 2009

Honorable Glenn A. Fine
Office of the Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Mr. Fine:

The Federal Bureau of Investigation (FBI) appreciates the opportunity to review and respond to your audit entitled, "The Federal Bureau of Investigation's Foreign Language Translation Program" (hereinafter, "Report").

We are pleased that the Report documents the significant improvements the FBI has made in the past four years in its Foreign Language Translation Program. In particular, the FBI is heartened that this Report reflects an overall reduction by over 40% in the FBI's counterterrorism audio backlog, from 8,354 hours as of March 2005 to approximately 4,770 hours as of September 30, 2008 (see Report at xi). The Language Services Section should take justifiable pride in accomplishing this very substantial reduction in the translation of some of the FBI's most important collected audio.

We are hopeful that readers of the Report will not erroneously conclude that the FBI's audio backlog has increased based on the discussion in the Report of "unreviewed" audio. As you know, the OIG derives the number of "unreviewed" hours by subtracting the number of "reviewed" hours from the number of hours that are shown in FBI systems as having been "collected." However, as the OIG acknowledges (see, e.g., p. vii), the product substantially *overstates* the number of actual unreviewed hours because the first number in the calculation (the number of hours collected) includes hours that are duplicated when audio files are transferred between offices and when audio that was previously reviewed and removed from the online system is re-loaded. Using that unrefined number, the OIG reports that the FBI has accumulated 47,000 hours of "unreviewed" audio in counterterrorism cases when the actual amount, as acknowledged by the OIG, is about one tenth of that, or approximately 4,770 hours. The FBI recognizes that this potential misunderstanding would be obviated if our collection systems were able to provide accurate statistics without manual intervention.

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Honorable Glenn A. Fine

We are similarly hopeful that readers will not misunderstand the discussion in the Report of "unreviewed" electronic files and conclude that the FBI has millions of electronic files that it *should* have translated but has not. It would be a unnecessary waste of funds for the FBI to attempt to systematically review and translate every electronic file it collects. Instead, the FBI handles electronic files analytically. The FBI uses advanced technology to assist in the identification and prioritization of the electronic files that are most relevant to the FBI's mission.

Finally, the Report states that an FBI field office "collected calls on lines on which a FISA court judge ordered it to cease collecting material." The FBI has provided the OIG with documentation demonstrating that the calls to which the OIG refers were not "collected" from "lines" the FBI was monitoring. Instead, the calls at issue were placed *to* the FBI's telephone lines. Such lines are used to deliver to the FBI calls the FBI has authority to intercept; such lines are, however, assigned telephone numbers by the provider and can actually be called. It is not uncommon for these lines to "receive" calls from telemarketers and others who use auto-dialers and other automated call technology to place calls. In short, this was not a potential "overrun," nor did the field office at issue ignore the direction of the FISA court not to collect on particular lines.

We are pleased that the OIG Report recognizes many of the other areas in which the FBI's Foreign Language Translation Program has improved. For example, the Report reflects that the FBI reviewed all of its foreign language collections in its highest priority counterterrorism and counterintelligence cases in 2008, and 100% of the text pages it collected over the past three years. The Report also recognizes significant improvements in the overall management of the Foreign Language Program, including the establishment of the Foreign Language Program's Quality Control Standards Unit to ensure full compliance with linguist quality control standards and the development of a two-week introductory training course for all linguists.

In conclusion, based upon a review of the Report, the FBI concurs with all 24 recommendations directed to the FBI and has already implemented measures to resolve all of the identified issues. The FBI appreciates the professionalism exhibited by your staff in working jointly with our representatives to complete this Report. Enclosed herein are the FBI's responses to the recommendations. Please feel free to contact me should you have any questions.

Sincerely yours,

John S. Pistole
Deputy Director

Enclosure

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RE: REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S FOREIGN LANGUAGE TRANSLATION PROGRAM

Recommendation 1: "Ensure the LSS is reporting accurate, comprehensive, and supported data on the backlog of unreviewed foreign language audio material from all audio collections . . . ."

FBI Response: RESOLVED - The Federal Bureau of Investigation (FBI) concurs with this recommendation.

We agree that it is crucial that the Language Services Section (LSS) of the FBI's Directorate of Intelligence (DI) receive and report accurate data on all foreign language audio collection. The vast majority of the FBI's Foreign Intelligence Surveillance Act (FISA) audio is collected on a platform from which LSS can acquire data automatically. The remaining FISA audio is collected through a different platform, for which the LSS is currently dependent on each field office to report active cases and the associated audio collection. LSS will work to acquire a monthly list of these cases directly from the system managers to ensure that all active FISA cases are being reported each month. Currently LSS acquires data on non-FISA audio collection, primarily audio collected pursuant to Title III in criminal cases, from the monthly surveys received from each field office. The criminal collection systems, as the OIG has noted, have not historically generated audio "backlog," and the FBI believes the reporting on this material is accurate, comprehensive, and supported.

Recommendation 2: "Develop a proactive long-term strategy for the FBI to keep pace with translating and reviewing its increasing collection of electronic files."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

As the OIG recognizes, the vast majority of unreviewed electronic files are not "backlog," because they are not waiting to be translated (see, e.g., page vi,"We recognize that not all collected material yields valuable intelligence and that not all collected material may need to be reviewed."). Thus, the FBI does not anticipate that it would ever actually translate and review *every* electronic file it collects. Instead, the FBI handles electronic files analytically. The FBI uses advanced technology to assist in the identification and prioritization of the electronic files that are most relevant to the FBI's mission. Electronic files that are not relevant are, quite appropriately, not manually reviewed (indeed, it would be a waste of time and money to have translators reviewing the myriad of spam emails that are routinely collected).

In addition to reviewing electronic files analytically, the FBI is also developing new tools that will further reduce the volume of electronic files requiring translation and review.

Recommendation 3: "Develop protocols for monitoring and ensuring that unreviewed foreign language material collected for high-priority counterterrorism and counterintelligence cases is reviewed and translated in a timely manner."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

High-priority counterterrorism and counterintelligence materials must be reviewed and translated in a timely manner. LSS managers at headquarters and field offices are responsible for reviewing each FISA monthly to ensure that work is being reviewed consistent with its priority (as established by the operational divisions) and the availability of foreign language resources. When foreign language resources are scarce for a particular language, LSS managers actively coordinate with the substantive divisions to ensure that the entire workload for that language is being handled in prioritized order. LSS will remind its managers of the importance of effectively executing these responsibilities and will provide guidance regarding best practices.

Recommendation 4: "Develop a strategy and implement protocols for reviewing English-only material in a timely manner, particularly material collected for high priority counterterrorism and counterintelligence operations."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The FBI has already developed new policy to more effectively manage its English-only collection in counterterrorism investigations; English-only counterintelligence collection has not historically been a problem, and we do not anticipate our policies for handling such collections to change. As to counterterrorism collections, each FBI field office will continue to be responsible for reviewing its all-English FISA collection, but the Directorate of Intelligence (DI) will realign personnel resources to the LSS so that it can provide central oversight of such collection. LSS will regularly validate backlog and unaddressed work statistics and provide guidance and training on FISA processing systems to personnel who are responsible for reviewing the material. Additionally, LSS will keep executive management of the Counterterrorism Division fully informed of the number of hours of collected material that has not been reviewed. We believe this policy should effectively ensure that English-only FISA collection is promptly reviewed.

Recommendation 5: "Develop and implement a risk-based policy . . . for removing audio material from the collection system."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The FBI Counterintelligence Division (CD), in conjunction with the Operational Technology Division (OTD), will determine how best to implement a risk-based policy for removing all audio material (regardless of tier) from the collection system. All such material will continue to be held in archives in the event it is subsequently needed for investigative purposes.

Recommendation 6: "Develop protocols to support the FBI policy requiring FBI operational components to work with the LSS and FLP personnel in determining linguistic resource availability before commencing counterterrorism, counterintelligence, and criminal collection techniques that will require foreign language translation."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

In the coming months, the National Security Branch (NSB) will work with LSS personnel and FBI technical personnel to identify, develop, and implement an automated method to notify LSS managers when FISA initiation requests are submitted by FBI field offices. That notice will specify the language that the FBI believes is used by the target of the proposed FISA surveillance. That notification will allow the FLP managers to develop resource allocations plans, and, if necessary, begin the recruitment/hiring process if the FBI has inadequate linguists on board to handle the anticipated workload.

In addition, the FBI will take steps to ensure that notification is made to the LSS when agents seek criminal collection authority that is likely to require linguistic resources.

Recommendation 7: "Comply with its internal policy by reporting the . . . potential overrun to its Office of the General Counsel for appropriate adjudication."

FBI Response to Recommendation #7: RESOLVED – The FBI has already carried out the actions required by this recommendation.

On June 30, 2009, the FBI Office of the General Counsel provided the OIG with documentation reflecting that the Field Office in question had provided it with all of the facts and documents relevant to the collection to which the OIG refers in this recommendation Contrary to the OIG's

understanding, FBI policy did *not* require the Field Office in question to report this matter. The collection to which the OIG refers was not "collected" from "lines" the FBI was monitoring. Instead, the collection was of calls that were placed to the FBI's telephone lines. Such lines are used to deliver intercepted calls to the FBI, but such lines can also be called. It is not uncommon for these lines to "receive" calls from telemarketers and others who use auto-dialers and other automated call technology to place calls. Although this was not, therefore, an "overrun," at the request of OGC, based on the OIG's report, the Field Office in question provided the requested information.

Recommendation 8: "Consolidate collection systems and develop an automated means of reliably reporting the amount of material collected and the backlog of unreviewed material."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

Although the FBI concurs that the ability to easily and reliably know how many hours of FISA audio has been collected, the number of hours of collected FISA audio pending review, and the number of hours of collected FISA audio that no longer requires review, is important, we do not believe that consolidation of collection systems is necessary to reliable reporting of this information. Our collection systems provide the means to extract reliable statistics. Although those statistics need to be combined to obtain a comprehensive statistical view, consolidating all audio collection systems merely to make statistical compilation easier is not the best approach to resolving this issue, because it ignores the other significant implications of consolidating systems, including cost.

The current platform for FISA audio collection utilizes queries to support Language Services Section (LSS) statistical requirements. As noted in the OIG's report, LSS must manually "refine" the data it receives to determine the number of hours of audio that is actually pending review. The FBI is currently procuring and testing the next version of this platform, which will provide integrated workflow tools to facilitate the centralized management of system data and users. In addition, this next version will be able to generate reports from which LSS will be able to report the number of hours collected, the number of hours pending review, and the number of hours no longer pending review. This information will be consolidated in the Integration Engineering Services layer to provide comprehensive statistics on all FISA-collected audio, whether it is resident in the current platform or the next version of the platform. This layer will also provide the foundation and standard interfaces for harvesting statistics across collection platforms.

This capability is scheduled for completion in second quarter of Fiscal Year (FY) 2010.

Recommendation 9: "Develop procedures for comprehensively monitoring the amount of unreviewed foreign language material and for accurately evaluating its ability to review audio, text, and electronic file material."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The FBI agrees that it needs to monitor and be able to assess its capability to handle foreign language materials the FBI collects, whether the material is text, audio or electronic files. The FBI is pleased that the OIG's audit reflects that the FBI reviewed all of the pages of foreign language text material that it collected. As noted in the response to recommendation number 8, the FBI is currently developing technology that will enable it to more comprehensively monitor the FISA audio material it collects. As noted in response to recommendation 2, the FBI is also developing new tools to assist in handling electronic files. The FBI will also review its methodology for comparing the FBI's foreign language translation needs against LSS's current "operational capacity" (i.e., the quantity of foreign language audio, text and electronic material that the FBI expects to be able to review in a given time period).

Recommendation 10: "Ensure that the LSS enforces the FBI's quality control policy that requires all linguists with more than 1 year of experience with the FBI to have their regularly assigned tasks quality-control reviewed once every 4 quarters."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The LSS Quality Control Standards Unit (QCSU) began a pilot program in January 2009 to centralize all quality control reviews. Once fully staffed, the QCSU will coordinate and manage all reviews to ensure proper and complete compliance with all quality control policies, including the requirement that all linguists with more than 1 year of experience with the FBI be subject to quality-control reviews once every 4 quarters. In the mean time, QCSU has monitoring and controls in place to detect anomalies and to notify field offices when they are not in compliance with quality control policies. Field office compliance is rated and scored, and low compliance ratings have direct consequences on the performance appraisals of the responsible field managers.

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Recommendation 11: "Develop and enforce procedures to ensure that linguists are only translating in languages in which the Language Testing and Assessment Unit has tested them for proficiency."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The FBI concurs that, as a general rule, linguists should only translate languages in which they have passed a proficiency test provided by the Language Testing and Assessment Unit. LSS will ensure that its online Foreign Language Program Supervisor's Reference Manual is updated to further clarify this policy.

Any such policy must, however, recognize an exception for exigent circumstances. Operational imperatives may require LSS to use a linguist with untested language ability when an imperfect translation is better than no translation. This is most likely to arise with foreign languages rarely encountered for which the FBI does not have an established language test battery or no available fully qualified linguist with Top Secret clearance. If the FBI has a cleared linguist that possesses to some degree a needed, but rare, language, absent other options, the policy will permit use of such linguist. In such cases, LSS will ensure that the requestor of the translation service understands that the linguist providing services is untested.

Recommendation 12: "Develop procedures to ensure that linguist quality control review ratings in the field offices are accurately and timely reported to the QCSU."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

As noted in response to recommendation number 10, the QCSU began a pilot program in January 2009 to centralize all quality control reviews. Once fully staffed, the QCSU will coordinate and manage all reviews to ensure proper and complete compliance with all quality control policies. Once this occurs, the field offices will no longer be required to report quality control review ratings to the QCSU because QCSU will generate the ratings.

Recommendation 13: "Improve procedures and controls to ensure that Certified Quality Control Reviewers are only reviewing translations in languages and genres they are qualified to review."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

As noted in response to recommendation number 10, the QCSU began a pilot program in January 2009 to centralize all quality control reviews.

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Once fully staffed, the QCSU will coordinate and manage all reviews to ensure proper and complete compliance with all quality control policies, including the policy that quality control reviewers will only review materials in the languages and genres in which they are certified. In the mean time, QCSU has monitoring and controls in place to detect anomalies and to notify field offices when they are not in compliance with quality control policies. Field Offices are required to report to QCSU quarterly as to each of its linguists the quality control reviews that were conducted and the results of those reviews. QCSU examines the reports to determine whether there are any violations of LSS quality control policies or procedures.

Recommendation 14: "Develop and enforce procedures to ensure that Not Satisfactory ratings are followed up in a timely manner with quality control reviews as required by FBI quality control policy."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

As noted in response to recommendation number 10, the QCSU began a pilot program in January 2009 to centralize all quality control reviews. Once fully staffed, the QCSU will coordinate and manage all reviews to ensure proper and complete compliance with all quality control policies, including mandatory follow-up on Not Satisfactory ratings. In the mean time, QCSU has monitoring and controls in place to detect anomalies and to notify field offices when they are not in compliance with quality control policies. Field Offices are required to report to QCSU quarterly as to any quality control reviews that were conducted on each of its linguists and the results of those reviews. QCSU examines the reports to determine whether there are any violations of LSS quality control policies or procedures. QCSU examines each field office report closely to determine whether Not Satisfactory ratings received adequate and timely follow-up.

Recommendation 15: "Improve oversight of the quality control program by developing an internal control system that monitors whether field supervisors comply with LSS quality control review reporting policy."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

As noted in response to recommendation number 10, the QCSU began a pilot program in January 2009 to centralize all quality control reviews. Once fully staffed, the QCSU will coordinate and manage all reviews to ensure proper and complete compliance with all quality control policies.

Recommendation 16: "Improve the efficiency of its contract linguist hiring process, particularly alternatives for reducing the duration of adjudicating a

contract linguist's security clearance and in decreasing the time it takes to perform language proficiency testing."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The FBI concurs that the contract linguist hiring process has some inefficiencies that are unnecessary. During FY 2009, the FBI contracted with a vendor to produce the Consolidated Linguist Automated Support System (CLASS). CLASS will enable applicants to schedule their own language testing at third-party testing centers. Eliminating the field office from most foreign language applicant testing should improve turnaround time for the language testing phase of applicant processing.

During fiscal year 2009, it took the Security Division's Contractor Clearance Unit (CCU) an average 4 months to complete the background investigations and 24.3 days to complete its security adjudication (measured from the date it received documentation reflecting that the candidate had completed the preliminary phases of the process (including the polygraph examination)). In order to further reduce these timeframes, the LSS recently allocated funding for three additional Investigative Analyst Consultants (IACs). When the funding becomes available, the additional IACs will be hired.

Although the FBI would like to further shorten the time necessary to clear contract linguists, most prospective contract linguists have a foreign nexus, which requires a thorough, complex evaluation of those foreign connections. While speed is important, the security evaluation of these issues must also be comprehensive to prevent the FBI from being penetrated by a person with ties or allegiance to a foreign government or terrorist group.

Recommendation 17: "Make full use of the FBI's Fast Track hiring initiative for converting contract linguists to permanent FBI employees."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

Although all contract linguists converting to permanent FBI employees are offered the Fast Track option, it is not likely to materially alter the length of time it takes to convert most contractors to employees. A large percentage of the FBI's contract linguists work part-time for the FBI while simultaneously holding other employment. Any contractor who accepts the Fast Track option must resign his or her other employment and immediately assume a full-time schedule with the FBI. Because the Fast Track offer is a conditional offer of employment, which will be rescinded if information is

found which makes the candidate unsuitable for employment, very few contract linguists accept the Fast Track option. Nevertheless, it will be offered.

Recommendation 18: "Ensure that all new FBI linguists attend LAST training unless the linguists can demonstrate sufficient and relevant translation experience such as previous experience as a contract FBI linguist."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

Upon entering on duty, each new Language Analyst is given a Professional Development Plan, which details specific training and activities the linguist is required to complete during his or her first year as an employee. Language Analyst Specialized Training (LAST) training is part of that plan. Failure to meet training requirements is one factor reflected in annual performance appraisals.

Recommendation 19: "Implement policy requiring contract linguists without significant translation experience to attend LAST training and develop a separate training curriculum specifically for new contract linguists who cannot travel to attend the LAST course."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The FBI concurs that LAST training should be required for new contract linguists who do not have significant prior translation experience. Indeed, since the LAST program was initiated in 2006, 285 contractors have attended the training. Because some contract linguists are simply unable to dedicate two weeks to LAST training at Quantico, the policy will permit as an alternative to LAST pairing such contract linguists with senior linguists for on-the-job training. Additionally, such contractors will be required to take certain courses in Virtual Academy.

Recommendation 20: "Ensure that security clearance reinvestigations for FBI and contract linguists are initiated according to the 5-year timeframe outlined in DOJ policy."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The FBI will work to ensure that security clearance reinvestigations for FBI and contract linguists are initiated according to the 5-year timeframe outlined in DOJ policy.

For FBI employees (including Language Specialists), the periodic reinvestigations are initiated when the Bureau's Personnel Management System (BPMS) generates a list of employees due for reinvestigation. That list is sent to the appropriate Chief Security Officers (CSOs) in the office where the linguist is assigned. The CSOs are responsible for initiating reinvestigations of linguists within their division by instructing the linguist to complete the Office of Personnel Management electronic questionnaire for investigations processing. The CSO is then responsible for forwarding the questionnaire and other required forms to the Reinvestigations Unit. The Reinvestigations Unit verifies, on a monthly or weekly basis, that it has received the required forms for each person whose name appeared on the electronic list generated by BPMS. The CSO is contacted on any delinquent form submittal. Once the reinvestigation unit receives the required forms from the CSO, the tracking of linguist reinvestigations is done through the Case Assignment and Retrieval System (CARS).

With respect to contract linguists, who are not tracked in BPMS, the data on initial background investigations is contained in the Facility Security System (FSS). The Directorate of Intelligence will work with the Security Division to develop a reliable and comprehensive mechanism for ensuring that contract linguist reinvestigations are initiated in a timely fashion and are tracked effectively.

Recommendation 21: "Continue its efforts to ensure that the Security Division's Bureau Personnel Management System contains complete and accurate security clearance information on FBI linguists."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The Security Division does not control BPMS, but it is an FBI system that holds, inter alia, security clearance information regarding employees. The Facility Security System (FSS) holds similar information regarding contractors. The Security Division will continue its efforts to ensure that BPMS and FSS contain complete and accurate security clearance information on FBI linguists. As modifications to security clearances occur due to upgrades, downgrades, suspensions or revocations, those updates will be promptly recorded in BPMS or FSS. To ensure compliance, the Reinvestigation Program is subject to periodic data calls from the Security Division's, Mission Support Section (MSS) and the Inspection Division, Internal Investigative Section (IIS).

Recommendation 22: "Develop procedures to ensure that the Security Division's Post Adjudication Risk Management Program database is updated regularly."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

The Security Division Post Adjudication Risk Management (PARM) Program is managed by the Analysis and Investigations Unit (AIU). In an effort to ensure that the database relied upon by AIU (the CARS database) is correctly maintained, AIU will provide training to those personnel responsible for updating the database. In addition, AIU will review current policies and procedures that govern the updating of the CARS database with information relevant to the PARM program, and will update or revise those policies and procedures as appropriate.

Recommendation 23: "Establish policy requiring the Health Care Programs Unit to immediately notify the LSS when an FBI linguist's audiometric examination falls outside an acceptable hearing range."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

Language Specialist applicants must meet minimum hearing requirements for entry on duty. After being hired, such employees' hearing must be tested every other year. The Health Care Programs Unit (HCPU) has recently implemented use of MEDGATE software, which allows audiometric data to be effectively tracked. MEDGATE will be fully operational in June 2010. A searchable electronic medical record (MEDGATE) will enable HCPU to better identify Language Specialists developing significant hearing losses and will help ensure timely and comprehensive notification of LSS.

Recommendation 24: "Ensure that the LSS develops the capacity to interpret audiometric results for contract linguists."

FBI Response: RESOLVED - The FBI concurs with this recommendation.

Subject to available funding, LSS will seek to enter into a contract with an audiometric professional in FY 2010. The audiometric professional will be responsible for developing validated hearing standards specific to linguists and for evaluating contract linguist audiometric examinations.

APPENDIX IX

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided a draft of this audit report to the FBI. The FBI response is incorporated in Appendix VIII of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Analysis of FBI's Response

The FBI responded to our report, concurred with our recommendations and discussed the actions it will implement in response to our findings. We provide the following analysis of the FBI's comments before discussing the FBI's responses to each of our recommendations and the actions necessary to close those recommendations.

The FBI stated in its response that our audit report reflects a 40 percent reduction in the FBI's counterterrorism audio backlog from March 2005 through September 2008. This statement is accurate only if the consideration of data is limited to the manually refined data from Collection System A – which is only one of several systems used by the FBI to collect counterterrorism audio material – and other critical data is excluded. Considering refined data only from Collection System A, the FBI stated that its backlog of counterterrorism audio material awaiting translation was 4,770 hours as of September 2008. Our audit report explains that when the FBI considers data only from Collection System A to report the backlog of unreviewed counterterrorism audio material, the FBI presents an incomplete picture of the translation backlog by failing to include important data on material collected outside this system. Therefore, the FBI's data is incomplete, as the FBI acknowledged in its response to Recommendation 1, and we disagree that our report reflects a 40 percent reduction in the FBI's counterterrorism backlog.

Rather, in our report we also present data submitted monthly to the LSS by FBI field offices that includes data from collection systems besides Collection System A. Using this FBI data, we computed and reported that the accrued amount of unreviewed audio hours collected for counterterrorism investigations at the end of FY 2008 was about 47,000 audio hours or 5.5 times what it was in FY 2003. While we acknowledge in our report that FBI collection system limitations may cause this FBI data to include duplicative and other data that should not be included in total

backlog figures, we do not believe the FBI should be discounting entirely counterterrorism audio hours contained on systems that it includes in its more comprehensive monthly reporting process. In its response to Recommendation 1, the FBI stated that it will take corrective action to ensure that data for audio collections outside Collection System A is being reported each month, which will provide a more accurate description of the counterterrorism backlog.

The FBI's response also stated that it would be an unnecessary waste of funds to systematically review and translate every electronic file it collects. However, in order to determine if collected electronic file material could yield valuable intelligence, at minimum a cursory review of the electronic file material is needed. Further, as our report notes, for cases in its second-highest priority national security category the FBI did not review 60 percent of the electronic files collected for counterterrorism cases and 50 percent for its counterintelligence cases. We believe that the corrective actions that the FBI described in its response to Recommendation 2 should help it appropriately address its backlog of electronic file material.

The FBI also stated in its response that it provided the OIG with documentation demonstrating that a field office did not collect material beyond a Foreign Intelligence Surveillance Act Court authorization period and thus did not have an "overrun." However, our report did not determine that the FBI had an overrun. Rather, we faulted the FBI for failing to report a potential overrun as required by FBI policy. Specifically, our report stated we found a *potential* overrun during our testing of audio collection data and that an FBI field office was aware of the potential overrun. According to FBI policy, if a field office cannot determine whether it collected material beyond its authorized collection period, it must report the potential overrun to the FBI's Office of the General Counsel. However, we determined that the field office did not report this potential overrun to the Office of the General Counsel for appropriate adjudication. Only after the OIG discovered the FBI's failure to report this potential overrun and the matter was referred to the FBI's Office of General Counsel did the FBI analyze the issue and determine that there was not in fact an overrun because the calls intercepted by the FBI were from telemarketers and others who use auto-dialers or other automated call technologies to place calls. Under FBI policies, the incident should have been reported to the Office of the General Counsel immediately, as the FBI initially agreed.

Summary of Actions Necessary to Close Report

1. **Resolved.** The FBI concurred with our recommendation to ensure that the LSS is reporting accurate, comprehensive, and supported data

on the backlog of unreviewed foreign language audio material from all audio collections, not solely the FBI's Collection System A. In its response, the FBI stated that the LSS will work with field offices to acquire a monthly list of the FISA audio hours collected through different collection platforms for which it has no direct access to ensure that all active FISA cases are being reported each month.

This recommendation can be closed when the FBI provides us evidence that the LSS has instructed its field office system managers regarding proper monthly reporting of all active FISA-related collections, including material collected by and outside Collection System A. Additionally, the FBI should provide us 3 months of data and supporting documentation demonstrating that the LSS and field office system managers are accurately reporting and including audio hours from all FBI collection systems in official FBI backlog totals.

2. **Resolved.** The FBI concurred with our recommendation to develop a proactive long-term strategy to keep pace with translating and reviewing its increasing collection of electronic files. The FBI also stated that in addition to reviewing electronic files analytically, it is developing new tools that will further reduce the volume of electronic files requiring translation and review.

   The FBI also stated in its response to this recommendation that "[a]s the OIG recognizes, the vast majority of unreviewed electronic files are not 'backlog' because they are not waiting to be translated." This does not accurately reflect what is stated in the OIG report. The OIG stated on page vi of the report "that not all collected material yields valuable intelligence and that not all collected material may need to be reviewed." However, we further stated that without performing at least a cursory review of the material, "the FBI cannot determine whether collected material represents critical intelligence information."

   This recommendation can be closed when the FBI provides documentation regarding the new analytical tools it has implemented to reduce its volume of electronic files requiring translation and review.

3. **Resolved.** The FBI concurred with our recommendation to develop protocols for monitoring and ensuring that unreviewed foreign language material collected for high-priority counterterrorism and counterintelligence case is reviewed and translated in a timely manner. The FBI stated that it will remind its managers of the importance of effectively executing the responsibilities of reviewing high-priority material and will provide guidance regarding best practices.

We agree that providing advice and reiterating policy will help ensure that high-priority material is reviewed. However, the FBI's response did not mention implementing any additional protocols for monitoring whether high-priority material is being translated in a timely fashion. We believe enhanced monitoring is particularly necessary for the FBI's highest-priority counterterrorism material, because we found that this critical material was not always being reviewed in accordance with FBI timeliness standards.

This recommendation can be closed when the FBI provides its protocols addressing the importance of translating the counterintelligence and counterterrorism material. The protocols should provide sufficient guidance for managing responsibilities and examples of best practices for prioritization. Additionally, the FBI needs an automated means for monitoring compliance in reviewing its highest priority material. The FBI should provide documentation for 3 months demonstrating that this critical material is being reviewed in accordance with FBI timeliness standards.

4. **Resolved.** The FBI concurred with our recommendation to develop a strategy and implement protocols for reviewing English-only material in a timely manner, particularly material collected for high-priority counterterrorism and counterintelligence operations. The FBI stated that each FBI field office will continue to be responsible for reviewing its all-English FISA collection, but the Directorate of Intelligence will realign personnel resources to the LSS so that it can provide central oversight for the all-English collection. The LSS will regularly validate backlog and unaddressed work statistics and provide guidance and training on FISA processing systems to personnel responsible for reviewing the material. Additionally, the LSS will keep executive management of the Counterterrorism Division fully informed of the number of hours of collected material that has not been reviewed.

   This recommendation can be closed when the FBI provides policy designating LSS as the entity with oversight responsibility for the English-only collection and directing the LSS to keep executive management of the Counterterrorism Division fully informed of English-only material that has not been reviewed. Additionally, the FBI should provide us 3 months of data and supporting documentation demonstrating that the LSS and the field offices are reviewing the English-only collection.

5. **Resolved.** The FBI concurred with our recommendation to develop and implement a risk-based policy for removing audio material from the collection system. The FBI stated in its response that the Counterintelligence Division and Operational Technology Division will determine how best to implement a risk-based policy for removing all audio material from the collection system.

   This recommendation can be closed when the FBI provides its risk-based policy for removing audio material from its collection system.

6. **Resolved.** The FBI concurred with our recommendation to develop protocols to support the FBI policy requiring FBI operational components to work with the LSS and FLP personnel in determining linguistic resource availability before commencing counterterrorism, counterintelligence, and criminal case collection techniques that will require foreign language translation. The FBI stated that in the coming months, the National Security Branch will work with LSS personnel and FBI technical personnel to identify, develop, and implement an automated method to notify LSS managers when FISA initiation requests are submitted by FBI field offices. The FBI stated that this method will allow the FLP managers to develop resource allocation plans and, if necessary, begin any necessary recruitment and hiring to handle the anticipated workload. Additionally, the FBI stated that it will take steps to ensure that notification is made to the LSS when agents seek criminal collection authority that is likely to require linguistic resources.

   This recommendation can be closed when the FBI provides (1) documentation describing its automated notification method for counterterrorism and counterintelligence collections, (2) evidence that this automated method has been successfully implemented, and (3) information on its notification policy and practices pertaining to criminal collection authority and the use of linguistic resources.

7. **Closed.** The FBI stated in its response that the field office provided its Office of the General Counsel with documentation relevant to the potential overrun collection that we identified during our audit. Contrary to the FBI's response, we concluded that given that the field office believed it had potentially collected material outside the period authorized by the FISA Court, the field office should have immediately reported the matter to the Office of the General Counsel.

   Because the Office of the General Counsel became aware of and has reviewed the relevant documentation, we consider the

recommendation for the FBI to comply with its internal policy by reporting the potential overrun to its Office of the General Counsel for appropriate adjudication to be closed.

8. **Resolved.** The FBI concurred with our recommendation to consolidate collection systems and develop an automated means of reliably reporting the amount of material collected and the backlog of unreviewed material. The FBI stated in its response that it is currently procuring and testing the next version of its current platform for generating statistics on FISA audio collections. The FBI stated that it believes this version will provide comprehensive statistics on all FISA collected audio, affording the foundation and standard interfaces for compiling statistics across collection platforms. The FBI stated that this new platform is scheduled for completion in the second quarter of FY 2010.

   This recommendation can be closed when the FBI provides documentation (1) supporting the implementation of its new platform for determining the number of hours collected, pending review, and no longer pending review, and (2) demonstrating that the statistics generated from this platform are accurate and inclusive of data from all FBI collection platforms.

9. **Resolved.** The FBI concurred with our recommendation to develop procedures for comprehensively monitoring the amount of unreviewed foreign language material and for accurately evaluating its ability to review audio, text, and electronic file material. The FBI stated in its response that the actions to address this recommendation will include its new platform for generating automated statistics (see discussion for Recommendation 8 above) and the development of new tools to improve its handling electronic files (see discussion for Recommendation 2 above). Furthermore, the FBI stated that it will review its methodology for comparing the FBI's foreign language translation needs against LSS's current operational capacity.

   This recommendation can be closed when the FBI successfully implements its new platform for generating workload statistics and its tools to help it address its handling of collected electronic files, and when the FBI provides documentation that it has fully implemented a sound methodology for comparing the FBI's foreign language translation needs against the current operational needs of the LSS.

10. **Resolved.** The FBI concurred with our recommendation to ensure enforcement of the quality control policy requiring the regularly

assigned tasks of all linguists with more than 1 year of experience with the FBI be reviewed once every 4 quarters. The FBI stated that the Quality Control and Standards Unit (QCSU) began a pilot program in January 2009 that centralized quality control reviews. Once fully staffed, the QCSU will be responsible for coordinating and managing all quality control reviews to ensure compliance with FLP quality control policies.

This recommendation can be closed when the FBI provides the Translation Quality Control Policy and Guidelines revision addressing these changes and documenting the responsibilities of the QCSU, as well as evidence that the QCSU is sufficiently staffed and has begun its centralized oversight of quality control ratings.

11. **Resolved.** The FBI concurred with our recommendation to develop and enforce procedures to ensure that linguists are only translating in languages in which the Language Testing and Assessment Unit has tested them for proficiency. The FBI stated it plans to update its current FLP Supervisor's Reference Manual to ensure its operating procedures are clearly reflected. The FBI also stated that the policy will include an exception clause to allow, when operational needs require it, material to be translated by a linguist who has not tested proficient in the language needing translation. The FBI also stated that the LSS will ensure that the requestor of this type of translation service understands that the linguist providing the service has not tested proficient in the particular language.

This recommendation can be closed when the FBI provides an updated FLP Supervisor's Reference Manual documenting these procedures as well as the internal controls it has put in place to help ensure that the use of the exception clause for linguists performing translations for which they are not certified is not abused.

12. **Resolved.** The FBI concurred with our recommendation to develop procedures ensuring that linguist quality control review ratings are accurately and timely reported to the QCSU. In its response, the FBI stated that a pilot program was implemented in January 2009 centralizing all quality control reviews. This centralization makes the QCSU responsible for coordinating and managing all reviews and eliminates the field offices' need to submit ratings to the QCSU quarterly. The FBI stated it will be able to fully implement this process when the QCSU is fully staffed.

This recommendation can be closed when the FBI provides a copy of its revised Translation Quality Control Policy and Guidelines outlining these changes and documenting the responsibilities of the QCSU, as well as evidence that the QCSU is sufficiently staffed and has begun its centralized oversight of quality control ratings.

13. **Resolved.** The FBI concurred with our recommendation to improve procedures and controls to ensure that Certified Quality Control Reviewers are only reviewing translations in languages and genres they are qualified to review. The FBI stated that the QCSU is responsible for ensuring proper and complete compliance with quality control policies, including policy that Certified Quality Control Reviewers will only review material in languages and genres in which they are certified. The FBI stated that the QCSU would be able to perform this centralized oversight once it is fully staffed.

    This recommendation can be closed when the FBI provides a copy of the revised Translation Quality Control Policy and Guidelines documenting the responsibilities of the QCSU for monitoring compliance with quality control policy. The FBI should also provide evidence that the QCSU is sufficiently staffed and has begun its centralized oversight of quality control reviews.

14. **Resolved.** The FBI concurred with our recommendation to develop and enforce procedures to ensure that Not Satisfactory ratings are followed up in a timely manner with additional quality control reviews. The FBI stated that the pilot program developed in January 2009, designed to centralize quality control reviews, requires QCSU to ensure proper and complete compliance with all quality control policies, including follow-up reviews for Not Satisfactory ratings.

    This recommendation can be closed when the FBI provides (1) a copy of the revised Translation Quality Control Policy and Guidelines documenting the responsibilities of the QCSU to follow up on Not Satisfactory ratings, (2) evidence demonstrating that the QCSU is following up on Not Satisfactory ratings in a timely a manner with additional quality control reviews, and (3) evidence that the QCSU is sufficiently staffed to effectively perform its responsibilities concerning Not Satisfactory ratings.

15. **Resolved.** The FBI concurred with our recommendation to improve oversight of the quality control program by developing an internal control system that monitors whether field supervisors comply with the LSS quality control review reporting policy. The FBI stated that

through the pilot program it began in January 2009 to centralize all quality control reviews, the QCSU will be responsible for coordinating and managing all reviews to ensure proper and complete compliance with all quality control policies.

This recommendation can be closed when the FBI provides a copy of the revised Translation Quality Control Policy and Guidelines documenting the responsibilities of the QCSU and evidence that the QCSU is sufficiently staffed to perform all of its quality control oversight.

16. **Resolved.** The FBI concurred with our recommendation to improve the efficiency of its contract linguist hiring process, particularly alternatives for reducing the duration of adjudicating a contract linguist's security clearance and in decreasing the time it takes to perform language proficiency testing. The FBI stated in its response that it contracted with a vendor to produce the Consolidated Linguist Automated Support System, which will enable applicants to schedule their own language testing at third party testing centers. Additionally, the FBI stated that it has recently allocated funding for three additional Investigative Analyst Consultants to assist in reducing the timeframes for security clearance adjudications.

    This recommendation can be closed when the FBI provides documentation confirming that the Consolidated Linguist Automated Support System reduces the time it takes to perform language proficiency testing. Additionally, the FBI should provide evidence demonstrating that the Investigative Analyst Consultants are improving the efficiency of the contract linguist hiring process.

17. **Resolved.** The FBI concurred with our recommendation to make full use of the FBI's Fast Track hiring initiative for converting contract linguists to permanent FBI employees. The FBI stated that the Fast Track hiring initiative will continue to be offered as an option to contract linguists.

    This recommendation can be closed when the FBI provides documentation confirming they are following or have revised the policy dated April 15, 2008, requiring that all contract linguist conversions be handled under the Fast Track hiring initiative.

18. **Resolved.** The FBI concurred with our recommendation to ensure that all new FBI linguists attend Language Analyst Specialized Training (LAST) training unless the linguist can demonstrate sufficient and

relevant translation experience. The FBI stated in its response that it has made LAST training a requirement of Professional Development Plans for newly hired FBI employees.

This recommendation can be closed when the FBI provides documentation confirming that newly hired Language Analysts have received LAST training within their first year as an employee for FYs 2009 and 2010.

19. **Resolved.** The FBI concurred with our recommendation to implement policy requiring contract linguists without significant translation experience to attend LAST training. Additionally, we recommended the FBI develop a separate training curriculum specifically for new contract linguists who cannot travel to attend the LAST course, with which the FBI agreed. The FBI stated that the policy developed to require LAST training for inexperienced linguists will permit new contract linguists unable to attend LAST training to be paired with senior linguists for on-the-job training as well as require training through certain courses in Virtual Academy.

    This recommendation can be closed when the FBI provides documentation confirming that all contract linguists without significant translation experience have received formal LAST training or the permitted alternative.

20. **Resolved.** The FBI concurred with our recommendation to ensure that security clearance reinvestigations for FBI and contract linguists are initiated according to the 5-year timeframe outlined in DOJ policy. The FBI stated that it will work to ensure that security clearance reinvestigations for FBI and contract linguists are initiated according to the 5-year timeframe required by DOJ policy. Additionally, the FBI stated that the FBI Security Division will work with the Directorate of Intelligence to develop a mechanism for effectively tracking contract linguist reinvestigations.

    This recommendation can be closed when the FBI provides documentation confirming that security clearance reinvestigations for FBI linguists are initiated according to a 5-year timeframe as required by DOJ policy. Additionally, the FBI should provide documentation that confirms a development of a reliable and comprehensive mechanism that tracks the timeliness of contract linguist reinvestigations.

21. **Resolved.** The FBI concurred with our recommendation to ensure that the Security Division's Bureau Personnel Management System contains complete and accurate security clearance information on FBI linguists. The FBI stated that the Security Division will continue its efforts to ensure that the Bureau Personnel Management System contains complete and accurate security clearance information on FBI linguists. In addition, the Reinvestigation Program is subject to periodic data calls from the Security Division's Mission Support Section and the Inspection Division's Internal Investigative Section, which the FBI believes will help it ensure data completeness and accuracy.

    This recommendation can be closed when the FBI provides documentation confirming complete and accurate security clearance information on FBI linguists is maintained in the Bureau Personnel Management System.

22. **Resolved.** The FBI concurred with our recommendation to develop procedures to ensure that the Security Division's Post Adjudication Risk Management (PARM) Program database is updated regularly. The FBI stated that it will provide training to the personnel responsible for updating the PARM database. In addition, the FBI stated that it will review current policies and procedures that govern the updating of its database with information relevant to the PARM program and will update and revise those policies and procedures as appropriate.

    This recommendation can be closed when the FBI provides the training manual to be distributed to the personnel responsible for updating the PARM database, as well as the updated policies and procedures that are relevant to the PARM Program.

23. **Resolved.** The FBI concurred with our recommendation to establish policy requiring the Health Care Programs Unit to notify the LSS immediately when an FBI linguist's audiometric examination falls outside an acceptable hearing range. The FBI stated that due to a recent software implementation that will be fully implemented in June 2010, it will be able to effectively track audiometric data and identify Language Specialists who are developing hearing loss.

    This recommendation can be closed when the FBI provides policy outlining the Health Care Programs Unit's responsibilities and evidence of the successful tracking of audiometric examinations to enable the LSS to identify results that fall outside the acceptable range.

24. **Resolved.** The FBI concurred with our recommendation to ensure that the LSS develops the capacity to interpret audiometric results for contract linguists. The FBI stated that subject to available funding, it will contract with an audiometric professional who will be responsible for developing validated hearing standards specific to linguists and for evaluating contract linguist audiometric examinations.

    This recommendation can be closed when the FBI provides documentation confirming employment of a trained audiometric professional, the job description for this position, and a copy of the hearing standards developed by the audiometric professional.