

# FEDERAL BUREAU OF INVESTIGATION

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## HEARING

BEFORE THE

### COMMITTEE ON THE JUDICIARY

### HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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MAY 9, 2012  
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# CONTENTS

MAY 9, 2012

	Page
OPENING STATEMENTS	
The Honorable Lamar Smith, a Representative in Congress from the State of Texas, and Chairman, Committee on the Judiciary .....	1
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary .....	2
WITNESS	
The Honorable Robert S. Mueller, III, Director, Federal Bureau of Investigation	
Oral Testimony .....	3
Prepared Statement .....	7
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
Material submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Committee on the Judiciary .....	41
Material submitted by the Honorable Steve King, a Representative in Congress from the State of Iowa, and Member, Committee on the Judiciary .....	48
Material submitted by the Honorable Maxine Waters, a Representative in Congress from the State of California, and Member, Committee on the Judiciary .....	58
APPENDIX	
MATERIAL SUBMITTED FOR THE HEARING RECORD	
Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary .....	75
Post-Hearing Questions submitted to the Honorable Robert S. Mueller, III, Director, Federal Bureau of Investigation .....	91



# FEDERAL BUREAU OF INVESTIGATION

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WEDNESDAY, MAY 9, 2012

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

The Committee met, pursuant to call, at 10:09 a.m., in room 2141, Rayburn House Office Building, the Honorable Lamar Smith (Chairman of the Committee) presiding.

Present: Representatives Smith, Coble, Gallegly, Goodlatte, Lungren, Chabot, King, Franks, Gohmert, Chaffetz, Gowdy, Conyers, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Pierluisi, Quigley, Chu, and Deutch.

Staff Present: (Majority) Travis Norton, Counsel; Holt Lackey, Counsel; (Minority) Danielle Brown, Counsel; and Aaron Hiller, Counsel.

Mr. SMITH. The Judiciary Committee will come to order, and we welcome everyone, particularly the Director of the FBI, to this oversight hearing.

And, Director, let me say, considering that we were voting until 12:30 last night, this is a pretty good turnout for this morning.

I will recognize myself for an opening statement and then the Ranking Member, and then we will proceed with our questions.

Again, welcome, Director Mueller, to today's oversight hearing of the FBI.

When Director Mueller was last in front of this Committee just over a year ago, we all believed that it would be his last hearing before the House Judiciary Committee as FBI Director because his 10-year term was set to expire on September 4, 2011. But because of the changes of leadership at the Department of Defense and the Central Intelligence Agency, the President requested and Congress passed a law to allow him to be renominated and serve an additional 2 years. Director Mueller received this vote of confidence because he has led the FBI with integrity and skill through some of the most difficult and important years in America's history.

Director Mueller became FBI Director only days before the September 11th terrorist attacks. As the first FBI Director of the post-September 11th era, Director Mueller led a historic transformation of the agency. He oversaw a rapid expansion of the FBI's counterterrorism division and still continued its traditional focus on investigating Federal crimes.

Under his leadership, the FBI has successfully stopped dozens of terrorist plots and remained vigilant against the threat of al-Qaeda and like-minded groups. This threat did not end with the death of

Osama bin Laden. Just this week we learned that al-Qaeda leaders in Yemen planned to detonate a bomb on a U.S.-bound jet around the anniversary of bin Laden's death. Fortunately, American intelligence, in cooperation with foreign allies, prevented this attack.

The FBI has also brought to justice inside traders, child pornographers, intellectual property thieves, doctors who defraud Medicare, and countless other criminals.

A strong leader at the helm of the FBI is critical to our national security. So are strong laws that help investigators and intelligence officials keep our Nation safe.

The FISA Amendments Act of 2008 is scheduled to expire at the end of this year unless Congress acts to reauthorize it. This law gives the intelligence community the tools it needs to determine who terrorists communicate with, what they say, and what they may be planning. FISA strikes a balance as it allows the FBI to acquire intelligence information about foreign terrorists abroad while preserving and protecting the civil liberties of American citizens, no matter where they are. I hope to hear Director Mueller's views on how FISA has furthered the FBI's mission to protect Americans and whether Congress should do anything to strengthen or improve this law.

Again, let me conclude by saying that we appreciate Director Mueller's many years of public service. He has been an outstanding Director of the FBI, and America is safer and better because of his tenure.

That concludes my opening statement. I will recognize the gentleman from Michigan, the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Smith. I join you in declaring Director Mueller a true patriot and one committed to the rule of law and the Constitution, and I joined in supporting the extension of his term.

Now, when I first came to the House Judiciary Committee, the Director of the FBI was J. Edgar Hoover, and I remind you of that to talk about and think about the transition and the changes that have gone on in law enforcement and in the FBI in particular so that we are looking at how we make the criminal justice system a little fairer, make it work better, and protect our citizens more. And so I hope that in the course of our discussions this morning we get to several considerations that are on my mind as we begin this particular hearing.

One is overincarceration. We put more people in prison than any other country on the planet and with less successful results, I might add, and so I need to, of course, engage you in that issue. And of course when we talk to each other, I am also talking to my colleagues as well. These are subject matters that we need to examine when the head of the FBI is not our witness.

The other problem that I have got to bring up is what effect has our overconcentration on counterterrorism efforts, how has that hindered or affected the fight against crime inside the U.S., violence, murders, other issues that do not fall into the terrorist category?

And the other matter is the so-called Ryan budget, which calls for four-and-a-half thousand fewer FBI agents in 2014. That is

something that I think we ought to try to have candid public discussions about as well. And I include the diversion programs and treatment programs for less serious offenses as something that we might want to be looking at at the Federal level and at the State level as well.

And then I am sorry to bring up the materials used by the FBI—before your tenure, I believe—I know it was—that painted Muslims as violent and likely to be—quote, likely to be terrorist sympathizers and followers of a, quote, cult leader, and the fact that this created great consternation not only in the law enforcement community and in the Muslim-American community but among all fair-thinking Americans as well.

As you know, The Washington Post has detailed a series of articles about the flawed forensic work at FBI laboratories and instances where prosecutors have failed to notify defendants or their lawyers when they knew that the evidence was flawed, and hundreds of defendants still remain incarcerated at this moment because FBI hair and fiber experts may have, in some cases, misidentified them as suspects.

These are the issues that are on my mind as we meet this morning, and I welcome your presence here today.

I thank the Chairman.

Mr. SMITH. Thank you, Mr. Conyers.

Our only witness is Federal Bureau of Investigation Director Robert S. Mueller, III, who has held that position since September 4th, 2001. He was first nominated by President George W. Bush and last year was nominated by President Barack Obama and confirmed by the Senate for an additional 2-year term.

Director Mueller has a long and honorable record in public service. After graduating from Princeton and receiving a master's degree from New York University, Director Mueller enlisted as a Marine in Vietnam. He received a Bronze Star, two Navy commendation medals, the Purple Heart, and the Vietnamese Cross of Gallantry. After his military service, he received his law degree from the University of Virginia.

Early in his legal career he served as a prosecutor in the United States Attorney's offices of San Francisco and Boston. After working as a partner in the Boston law firm of Hill & Barlow, Director Mueller returned to the Justice Department in 1989 as an assistant to the Attorney General and later as the head of the Criminal Division. In 1998, Director Mueller was named United States Attorney in San Francisco, a position he held until 2001, when he was nominated to be Director of the FBI.

And, Director Mueller, once again we welcome you today and look forward to your statement, and if you will please proceed.

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

Mr. MUELLER. Well, good morning and thank you, Chairman Smith, Ranking Member Conyers, and Members of the Committee. I do want to thank you for the opportunity to appear before the Committee today and thank you for your continued support of the men and women of the FBI.

As you know and have pointed out, the Bureau has undergone unprecedented change in recent years. Since the attacks of September 11th, we have refocused our efforts to address and prevent emerging terrorist threats. The terrorist threat is more diverse than it was 10 years ago, but today we in the FBI are better prepared to meet that threat.

We also face increasingly complex threats to our Nation's cyber security. Nation state actors, sophisticated organized criminal groups, and hackers for hire are stealing trade secrets and valuable research from America's companies, universities, and government agencies.

And, of course, national security is not our only concern, as we remain committed to our criminal programs.

In the economic arena, billion dollar investment fraud, health care fraud, and mortgage fraud have undermined the world's financial system and victimized investors, homeowners, and taxpayers. And while crime rates may be down nationwide, gang violence still plagues many neighborhoods, and our communities continue to confront violent crime, crimes against children, and transnational organized crime.

And as national security and criminal threats continue to evolve, so must the FBI change to counter and prevent those threats before they occur. In doing so, we in the Bureau are relying on our law enforcement and private-sector partners more than ever before. Throughout these efforts, the FBI remains firmly committed to carrying out our mission while protecting the civil liberties of the citizens we serve.

Let me begin with the threat from terrorism, which remains our top priority. Al Qaeda is decentralized, but the group is committed to high-profile attacks against the West, as we confirmed from the documents seized from Osama bin Laden a year ago. Meanwhile, al-Qaeda affiliates, especially al-Qaeda in the Arabian Peninsula, represent the top counterterrorism threat to the Nation. AQAP has attempted several attacks on the United States, including the failed Christmas day airline bombing in 2009 and the attempted bombing of U.S.-bound cargo planes in 2010. And of course we are currently—we in the Bureau are currently exploiting an IED, improvised explosive device, seized overseas which is similar to the devices used by AQAP in the past.

We also remain concerned about the threat from homegrown violent extremists. These individuals have no typical profile, and their experiences and motives are often distinct, which makes them difficult to find and difficult to stop. These cases illustrate why we must continue to enhance our intelligence capabilities and to share information to make sure that critical information gets to the right people before any harm is done.

Let me turn next to counterintelligence. While we still confront traditional espionage, today's spies are also students, researchers, business people, or operators of front companies. They seek not only state secrets but also trade secrets, intellectual property, and insider information from government, businesses, and American universities. We are also seeing a growing insider threat. That is when employees use their legitimate access to steal secrets for the benefit of another company or the benefit of another country.

Turning to cyber, of course, the counterintelligence threat is now merging with the cyber threat. Today, so much sensitive data is stored on computer networks our adversaries often find it as effective or even more effective to steal secrets through cyber intrusions.

The cyber threat has evolved significantly over the past decade. The threat ranges from nation states who seek to exploit weaknesses in our computer networks to hackers that seek information for sale to the highest bidder, and there are also hackers and hacktivist groups intent on pioneering their own forms of digital anarchy.

We in the Bureau have built up a substantial expertise to address these threats both at home and abroad. We have cyber squads in each of our 56 field offices, with more than a thousand specially trained agents, analysts, and forensic specialists. We have 63 Legal Attache offices that cover the globe and assist in addressing the cyber threat. In addition, the National Cyber Investigative Joint Task Force brings together 20 law enforcement, military, and intelligence agencies to stop current and predict future attacks. With our partners at DHS, CIA, NSA, and the Secret Service, we are together targeting cyber threats facing our Nation.

Next, let me address our efforts to combat financial crimes. The FBI and its partners continue to focus on the most egregious offenders of mortgage fraud. At the end of last year, the FBI had nearly 2,600 mortgage fraud investigations nationwide, and a majority of these cases included losses greater than a million dollars. Over the past 4 years, we have nearly tripled the number of Special Agents investigating mortgage fraud; and working with our Federal and State law enforcement partners, our agents and analysts are using intelligence, surveillance, computer analysis, and undercover operations to find the key players behind large-scale mortgage fraud.

Turning to health care fraud, health care spending currently makes up about 18 percent of our Nation's total economy, which presents an attractive target for criminals, so much so that we lose tens of billions of dollars each year to health care fraud. As announced last week, the FBI, HHS, and Justice Department continue to bring a record number of cases involving hundreds of millions of dollars in fraud; and since their inception in March 2007, Medicare Fraud Strike Force operations in nine locations have charged more than 1,300 defendants who collectively have falsely billed the Medicare program for more than \$4 billion.

And crime on our streets remains as much of a threat to our overall security as terrorism, espionage, or cyber crime. The most recent uniform crime report indicates violent crime continues to fall, but, as we all know, this does not represent every community. For some cities and towns across the Nation, violent crime, including gang activity, continues to pose a real problem.

We also continue to confront organized crime. Today's organized crime is marked by sophisticated enterprises that run multi-national, multi-billion dollar schemes, everything from human trafficking to health care fraud and from computer intrusions to intellectual property theft. The annual cost of transnational organized

crime to the U.S. economy is estimated to be in the tens of billions of dollars.

Lastly, FBI remains vigilant in its efforts to keep children safe and to find and stop child predators. Through our partnerships with State, local, and international law enforcement, we are able to investigate crimes across legal, geographical, and jurisdictional boundaries. Through our Child Abduction Rapid Deployment Teams, the Innocence Lost National Initiative, the Office of Victim Assistance, and numerous community outreach programs, the FBI and its partners are working to make the world a safer place for our children.

Chairman Smith and Ranking Member Conyers, I thank you for the opportunity to discuss the FBI's priorities and the state of the Bureau as it stands today. The transformation the FBI has achieved over the past 10 years would not have been possible without the support of Congress and the American people. I thank you for the opportunity to appear here today, and I am happy to answer any questions you might have.

Thank you, sir.

[The prepared statement of Mr. Mueller follows:]



# Department of Justice

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STATEMENT

OF

ROBERT S. MUELLER, III  
DIRECTOR  
FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

AT A HEARING ENTITLED

“OVERSIGHT OF THE FEDERAL BUREAU OF INVESTIGATION”

PRESENTED

MAY 9, 2012

**Statement for the Record  
Robert S. Mueller, III  
Director  
Federal Bureau of Investigation**

**Committee on the Judiciary  
U.S. House of Representatives**

**Oversight of the Federal Bureau of Investigation  
May 9, 2012**

Good morning, Chairman Smith, Ranking Member Conyers, and Members of the Committee. Thank you for the opportunity to appear before the Committee today and for your continued support of the men and women of the FBI.

As you know, the Bureau has undergone unprecedented transformation in recent years. Since the attacks of September 11<sup>th</sup>, we have refocused our efforts to address and prevent emerging terrorist threats. The terrorist threat is more diverse than it was 10 years ago, but today, we in the FBI are better prepared to meet that threat.

We still confront traditional espionage and work diligently to prevent foreign intelligence agents from gaining our nation's political, military or economic secrets.

We also face increasingly complex threats to our nation's cyber security. Nation-state actors, sophisticated organized crime groups, and hackers for hire are stealing intelligence and national security data, as well as trade secrets and valuable research from America's companies, universities, and government agencies. These cyber threats are also a risk for our nation's critical infrastructure.

Yet national security is not our only concern, as we remain committed to our criminal programs. In the economic arena, investment fraud, mortgage fraud, securities fraud and health care fraud have harmed the world's financial system and victimized investors, homeowners, and taxpayers.

And although crime rates may be down nationwide, gang violence still plagues many neighborhoods, and our communities continue to confront violent crime, crimes against children, and threats from transnational organized crime.

As national security and criminal threats continue to evolve, so too must the FBI change to counter those threats. We must continue to use intelligence and investigative techniques to find and stop criminals and terrorists before they act. As we face greater challenges, we in the Bureau are relying on our law enforcement and private sector partners more than ever before.

The FBI remains firmly committed to carrying out our mission while protecting the civil liberties of the citizens we serve.

### **Counterterrorism**

Counterterrorism remains our top priority.

In the past decade, Al Qaeda has become decentralized, but the group remains committed to high-profile attacks against the West. We confirmed this with records seized from Osama bin Laden's compound just over a year ago, as well as the recent conviction of an Al Qaeda operative plotting to conduct coordinated suicide bombings in the New York City subway system.

Al Qaeda affiliates and adherents, especially Al Qaeda in the Arabian Peninsula (AQAP), currently represent the top counterterrorism threat to the nation. These groups have attempted several attacks in and on the United States, including the failed Christmas Day airline bombing in 2009, and the attempted bombing of U.S.-bound cargo planes in October of 2010.

We also remain concerned about the threat from homegrown violent extremists. Over the last two years, we have seen increased activity among extremist individuals. These individuals have no typical profile; their experiences and motives are often distinct. But they are increasingly savvy and willing to act alone, which makes them difficult to find and to stop.

For example, in February 2012, the FBI arrested Amine El Khalifi, a 29-year-old Moroccan immigrant, for allegedly attempting to detonate a bomb in a suicide attack on the U.S. Capitol. According to court documents, Khalifi believed he was conducting the terrorist attack on behalf of al Qaeda, although he was not directly affiliated with any group.

Another example is the case of Rezwan Ferdaus, a 26-year-old U.S. citizen and graduate student residing in Ashland, Massachusetts. Last fall, Ferdaus allegedly planned to use unmanned, remote-controlled aircraft to attack locations in Washington, D.C., including the U.S. Capitol and the Pentagon. Ferdaus was influenced by radical websites advocating violent extremism, among other things, and had expressed admiration for Al Qaeda's leaders, but was not directly affiliated with any group. He had allegedly become extremist on his own, making his activities much more difficult to detect. Ferdaus is currently awaiting trial in the United States District Court for the District of Massachusetts.

Much like every other multi-national organization, terrorist groups are using the Internet to grow their business and to connect with like-minded individuals. Al Qaeda uses online chat rooms and web sites to recruit and radicalize followers to commit acts of terrorism. AQAP has produced a full-color, English language online magazine. Cases such as these illustrate why we in the Intelligence Community must continue to enhance our intelligence capabilities and to share information to ensure that critical information gets to the right people – before any harm is done. The FISA Amendments Act (FAA), allows the Intelligence Community to collect vital

information about international terrorists and other important targets overseas while providing a robust protection for the civil liberties and privacy of Americans. I join the Attorney General and the Director of National Intelligence in urging Congress to reauthorize this authority before it expires at the end of this year.

The Bureau itself has established a Countering Violent Extremism (CVE) Office within the National Security Branch (NSB) to improve our effectiveness in empowering our state, local, and community partners to assist in this effort. The duties and goals of this office include developing a better understanding of, and countering the threat of, violent extremism in the United States, strengthening community partnerships and providing to state and local officials and to community leaders unclassified briefings regarding the threat of extremism, addressing CVE-related operational and mission-support needs, including investigations, analysis, and training, and coordinating Bureau interests with regard to CVE matters with those of other agencies to ensure U.S. Government efforts are aligned.

### **Counterintelligence**

We still confront traditional espionage – spies working under diplomatic cover, or even posing as ordinary citizens.

Today’s spies are also students, researchers, businesspeople, or operators of “front companies.” And they seek not only state secrets, but trade secrets, research and development, intellectual property, and insider information from the federal government, U.S. corporations, and American universities.

Consider the recent case of Stewart David Nozette, a scientist who once worked for the Department of Energy, the Department of Defense, NASA, and the National Space Council. He was sentenced in March to 13 years in prison for attempted espionage, conspiracy to defraud the United States, and tax evasion after providing classified information to an undercover FBI agent whom he believed to be an Israeli intelligence officer.

In another case, Hanjuan Jin, a former software engineer at Motorola, Inc., was found guilty in February on charges of stealing the company’s trade secrets. She was stopped by U.S. customs officials in February 2007 at Chicago’s O’Hare International Airport with more than 1,000 electronic and paper proprietary documents from Motorola. She was attempting to travel on a one-way ticket to China. Authorities also recovered multiple classified Chinese military documents that described telecommunication projects for the Chinese military.

In another case, 36-year DuPont employee, Tze Chao, pled guilty in March to providing trade secrets concerning DuPont’s proprietary titanium dioxide manufacturing process to companies controlled by the Chinese government. He admitted providing information he understood to be secret to DuPont and not available to the public. He faces up to 15 years in prison and a \$500,000 fine plus restitution.

These cases illustrate the growing scope of the “insider threat” — when employees use their legitimate access to steal secrets for the benefit of another company or country.

## **Cyber**

The counterintelligence threat is quickly becoming cyber-based. So much sensitive data is stored on computer networks, our adversaries often find it as effective, or even more effective, to steal vital strategic and economic information through cyber intrusions, rather than through more traditional human spies.

The cyber threat has evolved significantly over the past decade. Indeed, we anticipate that cyber security may become our highest priority in the future.

Foreign cyber spies have become increasingly adept at exploiting weaknesses in our computer networks. Once inside, they can exfiltrate important government and military information, as well as valuable commercial data — information that can compromise national security as well as improve the competitive advantage of state-owned companies.

Unlike state-sponsored intruders, hackers for profit do not seek information for political power; rather they seek information for sale to the highest bidder. Some of these once-isolated hackers have joined forces to create criminal syndicates. Organized crime in cyber space offers a higher profit with a lower probability of being identified and prosecuted.

Additionally, hackers and hacktivist groups such as Anonymous and Lulz-Sec are pioneering their own forms of digital anarchy.

The end result of these developments is that we are losing data, money, ideas, and innovation. And as citizens, we are increasingly vulnerable to losing our personal information.

We in the FBI have built up an expertise to address these threats, both here at home and abroad.

We have approximately 70 cyber squads across our 56 field offices, with more than 1,000 specially trained agents, analysts, and forensic specialists. The FBI also has 63 Legal Attaché offices that cover the globe. Together with our international counterparts, we are sharing information and coordinating investigations. We have Special Agents embedded with police departments in Romania, Estonia, Ukraine, and the Netherlands, working to identify emerging trends and key players.

Here at home, the National Cyber Investigative Joint Task Force brings together 20 law enforcement, military, and intelligence agencies to investigate current and predict future attacks. With our partners at DOD, DHS, CIA, and the NSA, we are targeting the cyber threats that face

our nation. The Task Force operates through Threat Focus Cells – specialized groups of agents, officers, and analysts that are focused on particular threats, such as botnets.

Together with our intelligence community and law enforcement agency partners, we are making progress toward defeating the threat – through our use of human sources, technical surveillance, and computer science.

Last April, with our private sector and law enforcement partners, the FBI dismantled the Coreflood botnet. This botnet infected an estimated two million computers with malware that enabled hackers to seize control of the privately owned computers to steal personal and financial information.

With court approval, the FBI seized domain names and re-routed the botnet to FBI-controlled servers. The servers directed the zombie computers to stop the Coreflood software, preventing potential harm to hundreds of thousands of users.

In another case, last fall we worked with NASA’s Inspector General and our partners in Estonia, Denmark, Germany, and the Netherlands to shut down a criminal network operated by an Estonian company by the name of Rove Digital.

The investigation, called Operation Ghost Click, targeted a ring of criminals who manipulated Internet “click” advertising. They redirected users from legitimate advertising sites to their own advertisements and generated more than \$14 million in illegal fees. This “click” scheme impacted more than 100 countries and infected four million computers, half a million of which were here in the United States.

We seized and disabled rogue servers, froze the defendants’ bank accounts, and replaced the rogue servers with legitimate ones to minimize service disruptions. With our Estonian partners, we arrested and charged six Estonian nationals for their participation in the scheme.

Together with our partners at DHS and the National Cyber-Forensics Training Alliance, we are using intelligence to create an operational picture of the cyber threat to identify patterns and players, to link cases and criminals.

We must continue to share information with our partners in law enforcement, in the Intelligence Community, and in the private sector.

We also must segregate mission-centric data from routine information. We must incorporate layers of protection and layers of access to critical information. And when there is a compromise, we must limit the data that can be gleaned from it.

Attribution is critical to determining whether an attack on a U.S. company is perpetrated by a state actor, an organized criminal group or a teenage hacker down the block. We can use the ability to attribute an attack to a specific attacker to help deter future attacks.

We cannot simply minimize vulnerabilities and deal with the consequences. Collectively, we can improve cyber security and lower costs with systems designed to catch threat actors, rather than simply to withstand them.

### **Financial Crimes**

We have witnessed an increase in financial fraud in recent years, including mortgage fraud, health care fraud, and securities fraud.

#### *Mortgage Fraud*

The FBI and its partners continue to pinpoint the most egregious offenders of mortgage fraud. At the end of last year, the FBI had nearly 2,600 mortgage fraud investigations nationwide — and a majority, over 70 percent, of these cases included losses greater than \$1 million dollars.

With the collapse of the housing market, we have seen an increase in schemes aimed at distressed homeowners, such as loan modification scams and phony foreclosure rescues. So-called “rescue services” claim they can expose errors by lenders that might allow owners to keep their homes. In reality, they are just a clever way to lure nervous consumers into giving up sensitive personal information and paying thousands of dollars in fees for false hopes. Indeed, in some cases, these criminals convince homeowners to sign away the deeds to their homes.

Other criminals preyed on investors’ hopes of cashing in before the housing bubble burst. In March, 61-year-old Andrew Williams, Jr., of Hollywood, Florida, was sentenced to 150 years in prison for his role in a \$78 million mortgage fraud scheme. Through the scheme, Williams promised to pay off homeowners’ mortgages in five to seven years following an initial investment of \$55,000. Unfortunately for investors, this was no more than a Ponzi scheme. Those who paid the fee and joined the “Dream Homes Program” later found that there was no money left to fund their mortgage payments.

The FBI has made mortgage fraud a top priority, because we recognize its negative impact on homeowners, neighborhoods, and our nation’s economy.

Over the past four years, we have nearly tripled the number of Special Agents investigating mortgage fraud. Our agents and analysts are using intelligence, surveillance, computer analysis, and undercover operations to identify emerging trends and to find the key players behind large-scale mortgage fraud.

We also work closely with the Department of Housing and Urban Development's Office of Inspector General, U.S. Postal Inspectors, the IRS, the FDIC, SIGTARP, the U.S. Trustee Program, the Federal Housing Finance Agency's Office of Inspector General, the Federal Trade Commission, and the Secret Service, as well as with state and local law enforcement offices.

#### *Health Care Fraud*

Health care spending currently makes up about 18 percent of our nation's total economy and continues to rise. These large amounts of money present an attractive target for criminals — so much so that we lose tens of billions of dollars each year to health care fraud.

In February, the Medicare Fraud Strike Force — a partnership between the Department of Justice and the Department of Health and Human Services — broke up the largest alleged home health care fraud scheme ever committed.

Dr. Jacques Roy, the owner of Medistat Group Associates in the Dallas area, was arrested along with several others for allegedly billing nearly \$375 million in fraudulent Medicare and Medicaid claims for home health care services. Between January 2006 and November 2011, Medistat had more purported patients than any other medical practice in the United States — including more than 11,000 patients from more than 500 home health agencies.

Since their inception in March 2007, Medicare Fraud Strike Force operations have charged more than 1,300 individuals who collectively have falsely billed the Medicare program for more than \$4 billion. Recently, a nationwide takedown by Medicare Fraud Strike Force operations in seven cities resulted in charges against 107 individuals, including doctors, nurses and other licensed medical professionals, for their alleged participation in Medicare fraud schemes involving approximately \$452 million in false billing.

Health care fraud is not a victimless crime. Every person who pays for health care benefits, every business that pays higher insurance costs to cover their employees, and every taxpayer who funds Medicare, is a victim.

As health care spending continues to rise, the FBI will use every tool we have to ensure our health care dollars are used to care for the sick — not to line the pockets of criminals.

#### *Corporate and Securities Fraud*

Another area where our investigations have increased substantially in recent years is in corporate and securities fraud. Since September 2008, we have seen a 49 percent increase in these cases to more than 2,600 today.

One of our largest insider trading cases centered on the Galleon Group, a \$7 billion dollar hedge fund based in New York. Using evidence obtained through court-approved wiretaps,

attorneys and corporate insiders at several Fortune 500 companies were convicted of leaking proprietary information. The owner of the Galleon Group was convicted of multiple counts of securities fraud and sentenced in October to 11 years in prison — the longest sentence ever for insider trading. And in March 2012, Allen Stanford, former chairman of the board of Stanford International Bank, was convicted on wire, mail and other fraud charges for orchestrating a \$7 billion investment fraud scheme.

As financial crimes such as these become more sophisticated, so too must the FBI. In addition to devoting more agents and analysts, we established a Forensic Accountant Program three years ago. Under this program we have hired nearly 250 forensic accountants who are trained to catch financial criminals.

Three years ago, we also established the FBI's Financial Intelligence Center to strengthen our financial intelligence collection and analysis. The Center coordinates with FBI field offices to complement their resources and to identify emerging economic threats.

In 2010, the FBI began embedding Special Agents at the SEC, which allows us to see tips about securities fraud as they come into the SEC's complaint center. This, in turn, enables us to identify fraud trends more quickly and to push intelligence to our field offices so that they can begin criminal investigations where appropriate.

#### **Gangs/Violent Crime**

The most recent Uniform Crime Report (UCR) indicates violent crime continues to fall. However, for some cities and towns across the nation, violent crime – including gang activity – continues to pose a real problem.

Gangs have become more sophisticated. They have expanded their operations from street violence and drug trafficking to alien smuggling, identity theft, and mortgage fraud. Our Violent Crime, Violent Gang/Safe Streets, and Safe Trails Task Forces target major groups operating as criminal enterprises – high-level groups engaged in patterns of racketeering. This allows us to identify senior leadership and to develop enterprise-based prosecutions.

The FBI is also working to ensure crimes are being reported accurately. In collaboration with our state and local partners, the UCR program recently adopted a new, more inclusive definition of rape, which more accurately reflects current state laws defining the crime. This change will provide better data for our law enforcement partners in their efforts to respond to violent crimes. The Bureau is also beginning to look for ways to increase the accuracy and utility of the UCR more generally. These plans include collaborating within DOJ and the law enforcement community to increase the usage of the National Incident Based Reporting System (NIBRS) which is part of the UCR. Increased coverage of incident based reporting will lead to a more detailed and meaningful picture of crime in America.

**Transnational Organized Crime**

We also continue to confront organized crime. Crime syndicates run multi-national, multi-billion-dollar schemes – from human trafficking to health care fraud, and from computer intrusions to intellectual property theft.

These sophisticated enterprises operate both overseas and in the United States, and include Russian, Asian, Italian, Balkan, Middle Eastern, and African syndicates as well as Outlaw Motorcycle Gangs.

In the fall of 2010, an investigation by the FBI and its partners led to the indictment and arrest of more than 70 members and associates of an Armenian organized crime ring for their role in nearly \$170 million in fraudulent Medicare billings. This case included more than 160 phony medical clinics. Some of the subjects opened bank accounts to receive Medicare funds and submitted applications to Medicare to become Medicare providers.

The annual cost of transnational organized crime to the U.S. economy is estimated to be in the tens of billions of dollars. The effects of these schemes filter down to everyday Americans, who pay more for gas, health care, mortgages, clothes and food, not to mention the economic and social harm that such criminal activity costs our nation as a whole.

But organized crime does more than just impact our economy. These groups have the potential to infiltrate our businesses, and provide support to hostile foreign powers.

The FBI has squads dedicated to Eurasian Organized Crime investigations, including in New York, San Francisco, Miami, Philadelphia, Newark, and Chicago. Over the past decade, Asian criminal enterprises have evolved into transnational and decentralized networks that focus on low-risk and high-profit crimes. Chinese and Korean criminal networks across the United States obtain, sell, and use fraudulent U.S. identification documents to conduct a variety of financial crimes. The FBI is currently expanding its focus to include West African and Southeast Asian organized crime groups. The Bureau continues to share intelligence about criminal groups with our federal and international partners, and to combine resources and expertise to gain a full understanding of each group. In furtherance of these efforts, the FBI participates in the International Organized Crime Intelligence Operations Center. This center is responsible for coordinating the efforts of nine federal law enforcement agencies in combating non-drug transnational organized crime networks. The FBI is also enhancing its ability to address transnational criminal enterprises that operate along the Southwest Border and the Caribbean. We have developed Hybrid Squads to target these groups, which linked to U.S.-based gangs, cross-border drug trafficking, public corruption, money laundering, and violent crime.

No one department, agency, or country can fight organized crime on its own – we must work with our partners to end this predatory environment. We will continue to use all of our investigative tools, intelligence from our sources, and the strength of our partnerships to stop organized crime in the United States.

**Crimes Against Children**

The FBI remains vigilant in its efforts to keep children safe and to find and stop child predators. Through our partnerships with state, local, tribal, and international law enforcement, we are able to investigate crimes that cross geographical and jurisdictional boundaries. We are also able to share intelligence, resources, and specialized skills to prevent child abductions.

Through our Child Abduction Rapid Deployment Teams, the Innocence Lost National Initiative, the Office of Victim Assistance, and numerous community outreach programs, the FBI and its partners are working to make the world a safer place for our children.

Last month we added accused child pornographer Eric Justin Toth to the FBI's Ten Most Wanted Fugitive list. Toth, who also goes by the name David Bussone, is a former private-school teacher and camp counselor who taught here in Washington, D.C. He has been on the run since 2008, after an FBI investigation revealed pornographic images on a camera in his possession while at the D.C. private school. There is a reward of up to \$100,000 for information leading directly to Toth's arrest.

Since its creation in 1950, the Top Ten list has been invaluable to the FBI, helping us to capture some of the nation's most dangerous criminals. Of the 495 fugitives named to the list, 465 have been apprehended or located. That level of success would not have been possible without the strong support of the public, which has helped capture 153 of the Top Ten fugitives.

**Indian Country**

The FBI also maintains primary federal law enforcement authority to investigate felony crimes on more than 200 Indian reservations nationwide. Last year, the FBI handled approximately 2,900 Indian Country investigations.

Sexual assault and child sexual assault are two of the FBI's investigative priorities in Indian Country. Statistics indicate that American Indians and Alaska natives suffer violent crime at greater rates than other Americans. Approximately 75 percent of all FBI Indian Country investigations concern homicide, crimes against children, or felony assaults. To address these threats, the FBI is deploying six new investigators to Indian Country as part of the Department of Justice's broader effort to fight crime in tribal communities.

The FBI continues to work with tribes through the Tribal Law & Order Act to help tribal governments better address the unique public safety challenges and disproportionately high rates of violence and victimization in tribal communities. The Act encourages the hiring of additional law enforcement officers for Indian lands, enhances tribal authority to prosecute and punish criminals, and provides the Bureau of Indian Affairs and tribal police officers with greater access to law enforcement databases.

The gang threat on Indian reservations also poses a concern for the FBI. Currently, the FBI has 15 Safe Trails Task Forces focused on drugs, gangs, and violent crimes in Indian Country. In addition, the FBI continues its efforts to address the emerging threat from fraud and other white-collar crimes committed against tribal gaming facilities.

### **Technology**

As criminal and terrorist threats become more diverse and dangerous, the role of technology becomes increasingly important to our efforts.

We are using technology to improve the way we collect, analyze, and share information. In 2011, we debuted new technology for the FBI's Next Generation Identification System, which enables us to process fingerprint transactions much faster and with increased accuracy. We are also integrating isolated data sets throughout the Bureau, so that we can search multiple databases more efficiently, and, in turn, pass along relevant information to our partners.

Sentinel, the FBI's new information and case management program, will replace the outdated Automated Case Support System. Sentinel is transforming the way the FBI does business by moving the Bureau from a primarily paper-based case management system to an electronic workflow-based management system of records. The system's indexing ability will allow users to extract names, dates, vehicles, addresses, and other details, and to more efficiently share data with our law enforcement partners.

We expect that Sentinel will be deployed to the field by the end of this fiscal year, encompass all of its original design concept functionality and come in at budget or below.

### **Going Dark**

As technology advances, both at the FBI and throughout the nation, we must ensure that our ability to obtain communications pursuant to court order is not eroded. The increasingly mobile, complex, and varied nature of communication has created a growing challenge to our ability to conduct court-ordered electronic surveillance of criminals and terrorists. Many communications providers are not required to build or maintain intercept capabilities in their ever-changing networks. As a result, they are too often not equipped to respond to information sought pursuant to a lawful court order.

Because of this gap between technology and the law, law enforcement is increasingly challenged in accessing the information it needs to protect public safety and the evidence it needs to bring criminals to justice. It is only by working together – within the law enforcement and intelligence communities, and with our private sector partners – that we will find a long-term solution to this growing problem. We must ensure that the laws by which we operate keep pace with new threats and new technology.

**Civil Liberties/Rule of Law**

Technology is one tool we use to stay one step ahead of those who would do us harm. Yet as we evolve and update our investigative techniques and use of technology to keep pace with today's complex threat environment, we always act within the confines of the rule of law and the safeguards guaranteed by the Constitution. The world around us continues to change, but our values must never change. Every FBI employee takes an oath promising to uphold the rule of law and the United States Constitution. I emphasize that it is not enough to catch the criminal; we must do so while upholding civil rights. It is not enough to stop the terrorist; we must do so while maintaining civil liberties. It is not enough to prevent foreign nations from stealing our secrets; we must do so while upholding the rule of law.

Following the rule of law and upholding civil liberties and civil rights – these are not our burdens. These are what make all of us safer and stronger. In the end, we will be judged not only by our ability to keep Americans safe from crime and terrorism, but also by whether we safeguard the liberties for which we are fighting and maintain the trust of the American people.

**Conclusion**

Chairman Smith and Ranking Member Conyers, I thank you for this opportunity to discuss the FBI's priorities and state of the Bureau as it stands today. Mister Chairman, let me again acknowledge the leadership that you and this committee have provided to the FBI. The transformation the FBI has achieved over the past 10 years would not have been possible without the support of Congress and the American people. I would be happy to answer any questions that you may have.

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Mr. SMITH. Thank you, Director Mueller.

Let me recognize myself for some initial questions.

I mentioned in my opening statement, Director Mueller, the fact that the FISA Amendments Act of 2008 is going to expire at the end of this year. Just quickly, how important is it that we continue

those FISA amendments, and should we seek to improve them or improve that Act in any way?

Mr. MUELLER. Well, Mr. Chairman, we have seen over the last several days, particularly with regard to the IED that was recently recovered, that terrorism should be—is and should be and continues to be our number one priority and the number one priority of a number of our intelligence agencies. The amendments that are up for passage again, reenactment at the end of this year, are absolutely essential in our efforts to address this threat.

Mr. SMITH. Okay.

Mr. MUELLER. It gives not only us, the FBI, the access to information that enables us to identify persons both within the United States but also without the United States that would hurt us but also our intelligence agencies to operate overseas to pull in this information under the supervision of the FISA court so that we can put together the information we need to prevent attacks. It has been essential and remains essential.

Mr. SMITH. Okay, appreciate that. If you can think of any way we can improve it and get that information to us in the next couple months, that would be helpful as well.

Mr. MUELLER. I think you will have our support and the support of the department.

Mr. SMITH. Appreciate that, thanks.

Let me go to the next subject, which is the drug trafficking crisis that we have along our southern border. And I know you are as much aware of that as anyone, but, just as an example, last week over one night there were 23 people killed in Nuevo Laredo, directly across the border from Laredo, Texas. To say these people were killed is probably a euphemism. Most of them were mutilated and tortured before they died.

The problem, if anything, I think, is perhaps getting worse, but I just wanted to get your feeling about what more we could do in this country to address the drug trafficking problem that we have along our southern border and what more the FBI might be doing.

Mr. MUELLER. Our focus along the southern border is in several areas.

First of all, public corruption. We have a number of squads, task forces that address public corruption on our side of the border as a result of the amounts of monies that are generated through drug trafficking occurring south of the border.

Secondly, we have task forces addressing kidnappings across the border, task forces with other Federal authorities and our State and local law enforcement to address that particular phenomenon, which has, I would say, decreased somewhat in the last couple of years.

And, lastly, and the most important part of it, is the accumulation of intelligence that can help our partners south of the border. We have a relatively large Legal Attache office in Mexico City. We have a number of our offices along the border. We have a focus back at Headquarters. Our efforts had been to consolidate that intelligence, make it available, and integrate it with the intelligence developed by others and then, in appropriate circumstances, pass that intelligence on to our counterparts south of the border.

Mr. SMITH. Okay. Director Mueller, one of the fastest-growing crimes in America, and it may well be the fastest-growing crime, is child pornography on the Internet, which has been increasing at about 150 percent a year for each of the last 10 years. What more can the FBI do to address this particularly horrible crime which, of course, points to the least innocent among us as being the primary victims?

Mr. MUELLER. We have numbers of agents that work both with themselves but also—by themselves, in particular undercover operations on the Internet but also in task forces around the country with State and local law enforcement. We also have a task force in Maryland, International Task Force where we rotate individuals from various countries in to help us address the purveyors of child pornography on the Internet wherever they may be in the world.

On the one hand, the growth of child pornography is as you have set out, but also we are developing new tools that enable us to more quickly identify the persons who are putting this stuff on the Internet and making our investigations more—far more effective coupled with the growth of intersection with our counterparts overseas. Because this is a worldwide phenomenon, not just a U.S.—United States phenomenon, and to have any impact whatsoever we have to have a global reach.

Mr. SMITH. Okay, thank you, Director Mueller.

My time is up, and the gentleman from Michigan is recognized for his questions.

Mr. CONYERS. Thank you very much, Chairman Smith.

We have at least three points that I made in my opening statement that I would like to review with you. They are the overcriminalization that has become a custom inside the criminal justice system in America in which we put away more of our citizens than any other country on earth and for longer periods of time.

The second thing is the prejudicial Muslim materials that were pulled from FBI training that were so slanderous, and the third issue is the flawed FBI lab forensic work that sent a lot of people to prison, many of whom are still there.

Could you take your time and let's go through these together.

Mr. MUELLER. The first one is the point you make, Congressman, about overincarceration. I do believe any discussion of that warrants looking at the particular crimes that—for which there is incarceration. It is very difficult to generalize or to reach some sort of understanding or make progress with that generalization.

I will say there is some areas in which there needs to be, in my mind, harsher penalties. We are going into the cyber arena in the next number of years, and there should be substantial penalties for those persons who abuse their capabilities in the cyber arena.

Let me talk, if I could, for a second about the counterterrorism training issue that you raised. Last summer, it came to our attention that there were materials in certain of our training materials that were being used that were in some ways inappropriate, in bad taste. It may have also depicted stereotypes. It was brought to our attention internally and also externally.

We put together a panel of experts from within the Bureau and also from other agencies, three from other agencies in the government, persons with substantial credentials from places like Yale,

Princeton, Johns Hopkins, to review materials and put together a touchstone document of what should be taught. We then, understanding that we needed a closer review of this, we pulled together 30 personnel, agents and others, to go through the training materials we had used in this arena since 2001. Went through 160,000 documents and over a thousand videos of the training and found that there are 876 documents that were inappropriate, and we have removed those from our training.

But what it also showed us is that we had to put in place a screening mechanism to assure that our agents, our analysts, our personnel receive the best possible training in addressing a subject such as the terrorists in the various—whether it be a domestic terrorist or an international terrorist, we need to give our persons top-flight training. And it showed us that we did have to put into place not only in this area but in other areas a system of review of that training to assure that it comports with what we expect.

Going to the last subject, and this was the hair analysis. As you pointed out, I think, back in—there was a report done in 2004 following a study of certain examiners at the laboratory. One of those was a hair and a fiber examiner. The other examiners, though, who may have conducted those examinations prior to 1996 were not part of that review.

In 1996, we started using mitochondrial DNA along with hair and fiber analysis, and that changed the ball game, so to speak. But we are talking now with the Department of Justice in terms of how we go back, the universe of cases that we wish to review to determine whether or not examiners in cases probably prior to 1996 may have overstated the import, the impact of their hair analysis. As I say, we are working with the Department of Justice to see what kind of review should be undertaken.

Mr. CONYERS. And, as you know, there are some people that are, I think, still incarcerated on the basis of some of those flawed reports.

Mr. MUELLER. Well, we have seen in the—the government has and the District of Columbia has at least a couple of cases where it looks like the DNA indicated that the analysis that was done on hair and fiber was wrong, and we want to make certain that we follow up on that class of cases to the extent that we can.

Mr. CONYERS. Thank you very much.

Mr. SMITH. Thank you, Mr. Conyers.

The gentleman from North Carolina, Mr. Coble, is recognized.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Chairman, first of all, I want to associate myself with the words of compliments you and the Ranking Member spoke on behalf of Director Mueller. Mr. Mueller, you have indeed been an outstanding Director of the FBI.

Mr. MUELLER. Thank you, sir.

Mr. COBLE. Good to have you in the field today.

In your recent testimony on the FBI's fiscal year 2013 budget request, you made reference to several criminal threats that will receive heightened focus, ranging from white-collar crime and health care fraud to organized crime and gang violence. Part of that heightened focus requires putting more special agents onto these cases. Help me, Mr. Mueller, if you will, reconcile the need for more

agents to address these important criminal threats on the one hand with Federal employee pay and hiring freezes on the other. Have you, Mr. Mueller, considered asking on behalf of the FBI—considered asking Congress to exempt Federal law enforcement officers from these actions, much like the President did with the military?

Mr. MUELLER. There are two areas on which I guess I should focus. The first is on the 2013 budget that has gone through Congress, at least the initial stages in Congress at this point, and with that budget we do not face those kinds of losses that you are contemplating. If sequestration occurs, then it is a different ball game, and we would be seeking to put ourselves in the same stature or status as the military.

I do believe that when it comes to the work that we do in the national security arena, whether it be counterterrorism, counterintelligence, espionage, or the cyber arena, the work that we do in contributing to the national security, not to mention the other crimes that you alluded to, organized crime, health care fraud, and the like, the Nation can ill afford for us to lose a substantial number of agents.

We have had to, since September 11th, prioritize and make certain that all of our persons focus on the most important priorities, and that has meant we do not do some things we did prior to September 11th, but it is absolutely essential to make certain that we do prioritize in order to stop terrorist attacks, stop spies, stop cyber intruders, lock up organized criminals, child predators, and the like. And, as I say, my hope would be that we would do as well if not better than the military when it comes to the budget review.

Mr. COBLE. I thank you for that, Mr. Mueller.

The bipartisan Senate report on the Fort Hood massacre, the, quote, worst terrorist attack on U.S. soil, close quote, since 9/11, found that political correctness inhibited Hasan's superiors from taking actions that may have stopped or at least delayed that attack. Can you see why, given that report, why some of us may be concerned, even worried that "materials purge" may be another issue or instance of a governmental agency compromising national security under the pressure of political correctness? And do you—what can you say, Director Mueller, to assure us that you appreciate how pressures for political correctness can harm and may have harmed our national security efforts?

Mr. MUELLER. I can say absolutely and with certainty that political correctness played no role in the efforts we—I undertook to make certain that we give the best training to our personnel. It does us no good to have personnel who are trained with inadequate materials or misguided materials. We have made those 876 pages available with an explanation as to why we thought they should be—should not be used in further training. But by the same token I should say we went through 160,000 pages, and out of those 160,000 we only found far less than 1 percent that were at all questionable. And so political correctness had nothing to do with it. It was the appropriate thing to do, and it was done because we want the best possible training for our personnel.

Mr. COBLE. Sir, I didn't mean to imply that it did, but at least it is exposed. That was my point.

Mr. Chairman, I see that red light is about to illuminate, so I yield back my time.

Mr. SMITH. Thank you, Mr. Coble.

The gentleman from New York, Mr. Nadler, is recognized.

Mr. NADLER. Thank you.

I would like to follow up a bit sort of on what the gentleman from North Carolina was asking. The House is now considering on the floor today the Commerce, Justice, Science appropriations bill for the next fiscal year, and this includes the FBI. Some Republicans believe we should not be abiding by the appropriations figures agreed to in the Budget Control Act last year and that spending should be much lower. What would happen if, as some want, there was a drastic across-the-board cut in government funding, including the FBI, of, let's say, 5 or 10 percent? How would you handle that?

Mr. MUELLER. Again, we would have to prioritize. In my opening statement, the lengthier statement that I provided to the Committee, you can see the various threats that we are facing. We would have to cut down. We would have to find some area amongst those priorities where we would have to reduce personnel. But it is very hard to pick when you are reducing personnel on gang violence, reducing personnel to address the cyber threat, reducing personnel in addressing the threat of child pornography on the Internet. Every one of those priorities we have is a—every one of those priorities is a substantial priority to the American public and the security of the United States. But we would have to prioritize. That is what we had to do after September 11th. We would have to cut it again.

Mr. NADLER. And if the sequestration that was mandated by the Budget Control Act were allowed to go into effect January 1, how many agents would have to be let go? How many investigations—

Mr. MUELLER. I would have to get back to you. Several hundreds, if not over a thousand. I would have to get back to you on that figure.

Mr. NADLER. How many agents do you have now?

Mr. MUELLER. Approximately 14,000.

Mr. NADLER. So you are talking 8, 9 percent maybe?

Mr. MUELLER. Maybe something a little bit less. But, yes, it would be a substantial, substantial cut.

Mr. NADLER. Let me switch subjects a moment.

Under the February 2012, Presidential Policy Directive which implements Section 1022 of last year's National Defense Authorization Act, or NDAA, the FBI is given lead authority in all cases where terror suspects are captured or taken into custody by law enforcement. Can you tell us how this policy directive was developed and will it help or hurt the FBI in its counterterrorism mission?

Mr. MUELLER. I am sorry. I could hear part of the question but not the last part of the question. How the directive was developed?

Mr. NADLER. Was developed, and will this directive, as it was developed, in your opinion help or hurt the FBI in its counterterrorism mission?

Mr. MUELLER. I had some initial concerns about NDAA in two areas. The first area was with regard to our continuing authorities, and the final passage of the NDAA resolved that concern. The sec-

ond concern is what would happen at the time of an arrest where events are fast moving, and would there be confusion with regard to who does what when. And the directive, in my mind, resolves those issues. And it makes it relatively clear that if we had a terrorism case that fell within the parameters of NDAA, we would continue to work that case in conjunction with the Department of Defense. So I was satisfied with the bill as well as the directive as assuring us that we would be able to do our job effectively, given both the directive and the statute—changes in the statute, I should say.

Mr. NADLER. Okay. And would you recommend any changes in the statute when it comes up again this year?

Mr. MUELLER. I would have to look at it and see what was proposed. You asked about the development of the—

Mr. NADLER. Policy directive.

Mr. MUELLER [continuing]. Procedures, the policies. That was done in a number of working groups, with the Justice Department, Department of Defense, DHS, and the like. That is how it was developed.

Mr. NADLER. Okay. My last question. Last month, we passed a couple of—we, the House, not the Senate, passed some legislation regarding cyber legislation, the CISPA. From the FBI's perspective, do these bills go far enough, too far in assisting you in what you need to deal with, in the powers that you need to deal with the cyber security threat?

Mr. MUELLER. There are a variety of issues with regard to how you address the cyber threat. The bills address one aspect of it, I think, and that is how you protect the infrastructure and who was going to be involved in that, how they are going to be involved.

There are two areas that we will have continuous concern. The first area is, not necessarily addressed in the bills, is the mandatory reporting of substantial cyber incidents, which we believe should be part of the statute at some point in time; and the second is the sharing of intelligence. We saw that we—in the days leading up to September 11th, we saw how we were disadvantaged by the inability in some cases and cultural insensitivity in other cases to sharing intelligence. It is absolutely essential in the cyber arena, as you had in the counterterrorism arena, that intelligence be shared.

Somewhat different, though, is the importance of sharing information that is obtained from the private sector, because often the victims are the private sector. And so to the extent that those bills address the sharing of intelligence particularly with us, we are supportive.

Those are the two issues that we are concerned about in any cyber legislation, whether that which has recently been passed or otherwise.

Mr. NADLER. Thank you. I see my time has expired.

Mr. SMITH. Thank you, Mr. Nadler.

The gentleman from Virginia, Mr. Goodlatte, is recognized.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Director Mueller, welcome.

Director, do you agree that no United States citizen arrested in the United States should be indefinitely detained without all the

rights of due process? What is your interpretation of Section 1021 of the National Defense Authorization Act?

Mr. MUELLER. Could you repeat the question again, if you wouldn't mind?

Mr. GOODLATTE. Sure. The question is whether or not you agree that no United States citizen apprehended, seized, captured, arrested in the United States should be indefinitely detained without all the rights of due process provided by our Constitution?

Mr. MUELLER. I believe that should be the case.

Mr. GOODLATTE. So do you have concern over the language that is in the National Defense Authorization Act called Section 1021 which does not clarify the status of U.S. citizens in that regard?

Mr. MUELLER. I haven't focused on that aspect of the Act as much as I had focused on the other aspects of the Act, but I do believe it gives—affirms the President's authority to make what decisions the President believes are necessary to thwart a terrorist attack.

Mr. GOODLATTE. But that might include seizing a U.S. citizen in their home in Chicago, Illinois, and then detaining them indefinitely without charges.

Mr. MUELLER. I have not—I am not certain that is the case, but I have not read the OLC opinions, and I have not followed the debate on it.

Mr. GOODLATTE. Sure. Well, we would look forward to the opportunity to work with you to make sure it is clear that U.S. citizens have that protection, and we are in the process of working through that here in the Congress.

Let me ask you another question. Last week, the FBI arrested five men in Cleveland, Ohio, who were involved in a terrorist plot to bomb a bridge. Some of these men were members of the Occupy Cleveland movement. Has the FBI seen an increase in this type of left wing extremist terrorist activity and is the Occupy movement a breeding ground for this type of extremism? And if those within the Occupy movement perceive that their demands are not being met, what is the likelihood that we will see them resorting to more of this type of violence?

Mr. MUELLER. As to the last aspect of your question I can't speculate. I will tell you that, because it is individuals who were arrested last week, I am limited to, and I direct you if I could, to the complaint that was filed and the facts that are laid out in the complaint which focus on their conduct, not necessarily the conduct of others.

Mr. GOODLATTE. And how about my first question which was have you seen an increase in this type of left wing extremist terrorist activity?

Mr. MUELLER. Well, I wouldn't—I would say—I wouldn't necessarily go with the predicate left wing terrorist attack. I would say persons who have violated the laws in this particular way. We have not seen necessarily an increase. It is episodic.

Mr. GOODLATTE. And how about if it is ideologically driven without characterizing the particular ideology?

Mr. MUELLER. Again, these individuals violated the law. That is why they were arrested.

Mr. GOODLATTE. Thank you.

In recent years, we have seen many reports of confidential and secret government information leaking out and being posted on the Internet. The WikiLeaks cases are perhaps the most prominent example. But an FBI report last year also drew attention to the growing problem of foreign students and professors engaging in espionage and intellectual property theft on campuses. When millions of secret documents can be walked out of a government building or a lab on a thumb drive in a back pocket, the risks of espionage, leaks, and theft increase. Does the FBI have the tools that it needs to protect confidential information and the records that contain much private information about individual citizens and corporate secrets and confidential government secured information? Do you have the tools that you need in the Internet era to protect against that?

Mr. MUELLER. Well, let me speak—I will speak to the protection of information within the databases of the FBI. Yes, I will say, yes, we have quite obviously concern not only about insiders but also hackers from outside, and I believe we have state-of-the-art capabilities to protect our databases. That does not mean it cannot be done. It is a continuous worry for anybody who heads up any department.

But we have taken—and I do believe it is the best you have out there to assure the protection of our data. When it goes—as you point out, often, data is contained in universities or colleges or elsewhere, and to the extent that we have—we as an entity have—are working with those institutions, we of course seek to assure that those institutions have up-to-date security to protect whatever they may have on our—

Mr. GOODLATTE. Thank you. My time has expired. But with regard to my first question, I would also call to your attention legislation that was just signed into law by Governor McDonnell of my State—it was House Bill 1160—which basically, in addressing this concern about unlawful seizures of citizens in their homes, directs that no State agency in Virginia can cooperate with any Federal agency for the enforcement of that provision in the NDAA. So if you could look at that further and respond to the Committee with your thoughts about how we can correct this problem and protect our citizens here at the Federal level, we would very much welcome it.

Mr. MUELLER. Thank you, sir.

Mr. GOODLATTE. Thank you, sir.

Mr. SMITH. Thank you, Mr. Goodlatte.

The gentleman from Virginia, Mr. Scott, is recognized.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. Mueller, there is not a lot we agree on around here, but your reconfirmation was one of them, and so I appreciate your service.

A few years ago, according to published accounts, the United States participated in waterboarding, a practice for which there is an international consensus that it constitutes torture. What was the FBI participation in that practice?

Mr. MUELLER. None.

Mr. SCOTT. And why was the FBI not participating?

Mr. MUELLER. We—

Mr. SCOTT. Is that because you told—

Mr. MUELLER. Our guidelines, the guidelines we adopted some years ago, preclude our participation.

Mr. SCOTT. And did you issue an order for them not to participate in what is generally perceived to be torture?

Mr. MUELLER. The guidance was, make certain that we follow our guidelines when it comes to interrogation of persons in our custody or in the custody of others.

Mr. SCOTT. And so your conscience prevented the FBI from participating in torture; is that right?

Mr. MUELLER. I don't want to characterize our action.

Mr. SCOTT. Well—

Mr. MUELLER. I can tell you that our guidelines precluded it, and our guidance was you follow our guidelines.

Mr. SCOTT. Well, let me tell you, that is why you have universal support. Because that practice, had the FBI not participated because it didn't follow the guidelines, was a breath of fresh air.

One of the problems that we noticed in the early—right after 9/11 was that the personnel in the FBI and CIA may not have reflected the ethnic representation that we needed to appropriately fight terrorism. Could you make a brief comment on where you are now or for the record submit an ethnic breakdown of the staff at the FBI?

Mr. MUELLER. I can, I think, give you some larger figures. Forty-three percent of our workforce now are women and a full 25 percent are representatives of various minority groups.

For a greater breakdown, I would have to get you additional figures. I will tell you—

Mr. SCOTT [continuing]. For the record.

Mr. MUELLER. We still have work to do, but we continuously strive to have our workforce reflect the communities in which we serve and operate.

Mr. SCOTT. Thank you.

My colleague from New York talked about the budget and talked about numbers of agents. Can you translate that into how it would affect your ability to get the job done?

Mr. MUELLER. As I pointed out, we would have to prioritize, and it would be a question of which of the priorities that are listed either in my opening oral comments or in my more lengthy submission to the Committee. We will have to cut back. Now—and cutting back in an age where crime is global in ways that it was not 10 years ago, and by that I mean whether it be organized crime, whether it be cyber crime, white-collar crime, gangs, MS-13 and the like, they are globalized, and consequently that entity that has the best chance for addressing globalized criminal activity is the FBI. And, consequently, if you cut us from doing it at a point in time where much of the crime is globalized, it is a double hit in some sense.

Mr. SCOTT. You mentioned organized crime. One organized strategy is what is called organized retail theft where groups go in and pretty much clean shelves of hotly desirable—very desirable items and have them sold on eBay or other Internet. Can you say what you are doing about organized retail theft and whether or not more agents would be helpful?

Mr. MUELLER. To be blunt, we would work with State and local law enforcement entities in a particularly egregious situation. But organized retail thefts are not a priority, and even with additional agents I can think of other higher priorities. But I will tell you that the guidance is that there is an egregious series of crimes, persons are hurt, injured, amounts are substantial, then we would make an exception to our usual prioritization to try to help out State and locals to address that problem.

Mr. SCOTT. We have the same problem with consumer ID theft where you can solve those crimes, but it is labor intensive, and I think if we had more agents on it, not cutting agents but increasing agents, we could be more effective in dealing with organized retail theft and identity theft.

Mr. MUELLER. Well, if I may say what we have tried to do over the last several years with the scarcer resources, develop task forces where we will have an agent or two agents but the task forces will be augmented by State and local law enforcement. So you have access not just to State laws but also Federal laws and we are much more effective in utilizing our personnel, and this is an area in which in certain cities around the country where there is rampant crime in these areas where a task force would be our approach.

Mr. SMITH. Thank you, Mr. Scott.

The gentleman from Texas, Mr. Gohmert, is recognized for questions.

Mr. GOHMERT. Director, welcome back. Last we spoke, we weren't expecting to see each other in this setting again, and, as the Chairman pointed out, you got an additional 2 years. There was no objection to your having 2 years because they presented it at a time when nobody knew they were going to be bringing up your extension of 2 years, so there was nobody else on the floor. And it went rather smoothly since nobody knew they were bringing it up.

There are some of us that are still concerned about the thousands and thousands of years of experience we have lost due to your former 5-year up-or-out policy, but I want to get to the concerns about the purging of material, of training material. Now, we have a document here that points out in the 9/11 Commission report there were 322 references to Islam. In the current FBI counterterrorism lexicon there are zero references to Islam, to zero references to jihad. And when we talk about—we will hear about the outreach programs that the FBI had to the Muslim community.

We have done some looking, and apparently in June of 2002 you had given a speech to the American Muslim Council that your spokesman said was, quote, the most mainstream Muslim group in the United States, that is the American Muslim Council, and the head of the AMC was a guy named Alamoudi. That same year, the AMC board adviser, former acting president, Jamil Al-Amin, was arrested for murdering a Georgia police officer. Alamoudi was arrested himself in 2003 in a Libyan assassination plot targeting the Saudi Crown Prince, later identified by the U.S. Treasury as one of al-Qaeda's top fund-raisers in the U.S.

Then there is the 2003—October 2003, just days before a ceremony honoring Detroit Muslim leader Imam Hamad. The story on

him, your own Director's award for exceptional public service. The FBI contacted Hamad to tell him he wasn't going to receive the award, and later, when your spokesman said that there was unflattering information about Hamad that had been made public during the deportation proceedings of one of his close associates, and the INS had fought for two decades to deport this guy that was about to get the award. He was suspected in supporting the popular front of the liberation of Palestine or Palestine, and that is a designated terrorist organization.

And, again, the reason I am bringing these things up is because we have got people, we know there are three subject matter experts that your office has refused to identify who have gone through and purged these materials. We were not even told whether they were U.S. citizens, whether they are one of these people that would have gotten the award, that didn't get the award that had all these other suspected problems.

We know that Al-Arian, the Palestinian Islamic Jihad leader, had meetings and conversations with high-ranking officials at DOJ and the Department of Homeland Security, and that was despite him being the subject of a FISA wiretap warrant since the early 1990's, and his home was raided in 1995.

We know that in 2008 you had handed one of your Director's Community Leadership Awards to Imam Yahya Hendi, who testified during Al-Arian's trial as a defense witness, and Hendi then served as a moderator during a 2000 fundraiser for the Benevolence International Foundation, which was shut down in 2002 because they were a designated terrorist organization supporting al-Qaeda, of all groups.

This just goes on and on, and I am very concerned that since there are people, potentially of terrorist organizations, terrorist ties, as we have seen, that the FBI has made these types of mistakes before in trying to judge character, we would like to know who these subject matter experts are that are going through the FBI material and purging that of reference to jihad and Islam and these types of things.

Would you identify those people for us?

Mr. MUELLER. Well, there was quite a bit in that question, again.

Mr. GOHMERT. Well, some of it is background that I hope that you are aware of.

Mr. MUELLER. I cannot address all of what is said there. I will say at the outset that we make every effort to make certain that in our outreach, that we—outreach to that segment of the Muslim community that is supportive of America. And the vast, vast majority of the Muslim-American community has been exceptionally supportive.

Mr. GOHMERT. You know you are not answering my question, Director.

Mr. MUELLER. If I may, if I may.

Mr. GOHMERT. It was very pointed. Are you going to identify the subject matter experts? That is the question.

Mr. MUELLER. If I may finish my answer.

Mr. GOHMERT. But are you going to answer that question?

Mr. SMITH. Let the Director respond to the question.

Mr. GOHMERT. I will when he answers the question.

Mr. MUELLER. As I was saying, outreach is very important to us. We make every effort to make certain that we have appropriate persons.

With regard to the individuals who are reviewing the individuals, there are 5 individuals, not three, and we are happy to give you their backgrounds and consider giving the names if you find it important. We would hope there would be some confidentiality in doing that, but we have nothing to hide in this regard.

Mr. GOHMERT. So you are going to identify those.

Mr. MUELLER. We will discuss the circumstances under which we would identify those individuals, yes.

Mr. GOHMERT. All right, and could we also get the documents you produced to the terrorists that were convicted in the Holy Land Foundation trial?

Mr. MUELLER. We have invited Congress to come and look at these documents. A number of Congress persons have come and looked at the documents.

Mr. GOHMERT. Okay. I wasn't aware of that. I will be there to look. Thank you.

Mr. SMITH. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

And thank you, Director Mueller, for being here. You may have noticed that I was here for your testimony and then left because we have a hearing going on in Financial Services, on which I also serve.

I want to spend some time talking about what is going on in the mortgage fraud area. During the time that we were working in Financial Services on what turned out to be the Dodd-Frank legislation, I had a lot of constituents who were saying to me, when are some of these people going to be put in jail?

And my response always was, look, my primary focus at this point is to try to make sure that we don't have the same kind of things that led to this financial and economic meltdown occur again, so my priority is really not trying to deal with people who have done—who got us here but trying to figure out how not to be there a second and third and fourth time.

But since we have done Dodd-Frank, and I have continued to get a number of inquiries from people who are saying, when is somebody going to go to jail for all of these things. Now, you indicated that there were—you had nearly 2,600 mortgage fraud investigations. I guess the question I am asking and that my constituents are asking me has to do with, what have those investigations led to? And there seems to still to be a of the lack of prosecutions and accountability resulting from those investigations.

Now, I understand that you are not on the prosecution side; you are on the investigating side and the building of the case side. But can you give us any information about what those 2,600 investigations have led to in terms of prosecutions, convictions, or how many of them are still in the prosecution process, what we might expect going forward on that front?

Mr. MUELLER. Let me—I actually thought I had the figures, but I don't have the figures here today. I will have to get you the figures in terms of prosecutions, but there have been literally thou-

sands of prosecutions in many multi-million dollar scams that have been successfully prosecuted with individuals going to jail for tens of years.

I was recently in Florida, and I talked to a group down there and pointed out that several prosecutions where there were groups of individuals and particularly, in particular, housing complexes who—and they rolled over houses fraudulently for a number of years. And if I am not mistaken, one of the principals was going to jail for something like 30 years. I will have to get you the facts on that.

Mr. WATT. That would be very helpful, because to somebody who serves on the Financial Services Committee in particular, we get a lot of inquiries. I guess we see periodically in local communities that somebody has been prosecuted, going to jail, but if we could get an overall picture of what has happened, a number of prosecutions, da-da-da-da-da on a nationwide basis, it would allow us to respond more effectively to people who are saying, I haven't seen anybody prosecuted or going to jail as a result of this.

The second part of that is the higher ups in the hierarchy, the more visible national prosecutions, how many of those have there been, and how successful have they been to get to some of the people at the higher corporate levels who may have been involved in bringing down substantial financial institutions ultimately and resulted in massive housing loss, foreclosure loss of various kinds?

Mr. MUELLER. Let me, there have been a number of prosecutions, particularly in New York, that have dominated the newspapers over the last year, particularly when it comes to insider trading, and the first use of Title 3 wire intercepts and that kind of white-collar crime.

We have also had a number of securities fraud, you know, prosecutions and corporate institutional fraud. In fact, our investigations, I believe, in the securities arena, are up some 55 percent, 50, 55 percent over 2008, and also up almost 40 percent in the corporate fraud arena.

Again, I will have to give you have a breakdown of the cases and give you some sense of what we are doing in that regard.

Mr. WATT. My time has expired, but I think it would be very helpful if we could get a broader picture of this statistical picture, not only of your part of it, the investigatory part, but the prosecution and conviction side of it, for those of us who are facing constituents who still are going through substantial foreclosures and have lost their homes. They want to see some results, and I think there are results, so I appreciate your agreeing to follow up after the hearing on that.

Mr. MUELLER. Yes, sir.

Mr. SMITH. Thank you, Mr. Watt.

The gentleman from Utah, Mr. Chaffetz, is recognized.

Mr. CHAFFETZ. Thank you, and Director, thank you for your service and thank you for being here. I am going to try to touch on three subjects. I need to move fairly quickly.

On the anniversary of the killing of Osama bin Laden, was there a specific and/or credible threat of terrorism upon the United States of America?

Mr. MUELLER. We did not believe so, and you are referring no doubt to the fact that—

Mr. CHAFFETZ. There was an arrest.

Mr. MUELLER. The IED that had come up, and I think it is fair to say that that plot had been thwarted at the time.

Mr. CHAFFETZ. Let me move quickly to Fast and Furious, have you ever spoken with Attorney General Holder or Secretary Napolitano about the Fast and Furious case?

Mr. MUELLER. I would have to think, certainly not Secretary Napolitano. Unless you are talking about the killing of Brian Terry. If that is part of the question, then, quite obviously, yes, because we are conducting that investigation and both are concerned about how that investigation is going and get periodic updates.

With regard to the wider Fast and Furious examination, I don't believe I have. I will tell you, our people have talked to the Department of Justice because we had to produce documents and the like, but I do not recall having a particular discussion with the Attorney General.

Mr. CHAFFETZ. The Attorneys General's Office has called Fast and Furious itself, even though they ran it and operated, quote-unquote, fundamentally flawed. There are literally close to 2,000 weapons that have been released.

Other than the two guns that were found at the scene of Brian Terry, have you or the agency come across any guns that were purposefully released by our government under Fast and Furious? Have they shown up at any crime scenes? Have you come across any of these guns in anything that has happened here in the United States?

Mr. MUELLER. I would have to check on that.

Mr. CHAFFETZ. If you could get back to me on that, I would certainly appreciate it. I would also appreciate it, Director, if we could get a clarification as to whether there were two guns or three guns that were found at that gun—at that scene. And even the letter we got most recently back to Chairman Issa, I think, was not as crystal clear as we would like it to be. I am not asking you to respond to that, but other, to just follow up with this afterwards.

Mr. MUELLER. I would be happy to respond to it, two guns. Two guns, I replied to that previously. There were two guns. There was some, I think, misinterpretation of information on the evidence control sheet that seemed to indicate the potential or possibility of a third gun. But only two guns were recovered.

Mr. CHAFFETZ. Okay, thank you. I want to move now to the more recent Jones case that came before the Supreme Court that had to do with GPS devices put on cars so that they could be tracked. There is some concern, I would guess, in law enforcement that this ruling 9-0 by the Supreme Court would change the way law enforcement is able to track.

I just want to get your thoughts and perspective on that quickly, get a sense of how many GPS devices were being inserted onto cars and how this would affect what you are doing at the FBI.

Mr. SMITH. Director Mueller, would you pull your mike just a little bit closer to us.

Mr. MUELLER. Is that better?

Mr. SMITH. Yes.

Mr. MUELLER. Okay. You know, first of all, I would say, several hundred, there were 200 investigations were impacted by the Jones decision, somewhat over 200. And one impact it has is the need for additional surveillances. When you have the use of GPS devices, you do not have to have teams of surveillance agents because you know where the individual may be at any particular point in time.

And in certain investigations, that is going to mean that we are going to use very precious, valuable surveillance resources, where before we had the electronic capability to monitor individuals.

I am aware of efforts, I believe your bill, to address the issue, and I would say this, my looking at—initial just quick review, indicates that the definition of that kind of information that would be protected and require a warrant, would expand the things such as telephone toll records, which we have traditionally gotten with subpoenas and the like, because a toll record may have a geographical indicator in it in the area code.

And so as one thinks of legislation in this arena, I would try to keep in mind the impact it would have on our ability to do much of the work we do, particularly since the information we get from GPS devices and the like contributes to the probable cause that is necessary to conduct the investigation, the further investigation, using enhanced investigative techniques.

Mr. CHAFFETZ. And the intent of the legislation is not to preclude those, when you have probable cause, what it is concerned about is just the ever expanding use of GPS to track and follow, not just by law enforcement but individuals who surreptitiously want to follow somebody else. And my time has expired, but I appreciate being able to work with you.

I hope you do find that there is a need to clarify the law based on what Justice Alito, Mr. Weinstein and Weissman have also said about this and the need for Congress to further define the parameters of what would be needed so that there is clarity for the FBI and other law enforcement moving forward.

Mr. SMITH. Okay. Thank you, Mr. Chaffetz.

The gentlewoman from California, Ms. Lofgren, is recognized.

Ms. LOFGREN. Thank you, Mr. Chairman.

And thank you, Mr. Director, for being here. You have served your country with tremendous distinction, and we are honored by your presence here today.

I want to talk about technology. I remember visiting with you and looking at your plans for your new computer systems many years ago, and I want to know where we are on that. It started in 2000 for me with the Virtual Case File. We spent a lot of money. That was abandoned in January of 2005.

In 2006, the FBI planned this new Sentinel system, we spent a lot of money, over \$425 million. That was, I guess, kind of rescoped in 2008 with an additional \$26 million, but it wasn't finished by the target date. In 2009, it was extended again. In July of 2010, the second phase had more problems, and in September of 2010, the agency announced a plan to have the agile methodology with the new target completion date of September, which was not met.

And then, in October, there was a, I understand, a bureau-wide test exercise, which showed problems, insufficient hardware capacity.

And the IG gave a report in December that the FBI was still trying to determine the costs of the additional hardware and had delayed its planned deployment until May. Well, it is May now.

Where are we on this much awaited and extremely expensive system?

Mr. MUELLER. Unfortunately, I am very aware of that history, and I can tell you that it has been one of the most difficult challenges.

But as it comes to a couple of things that—points along the way that were important. First of all was when we first received, we received the first phase, received from the contractor the second phase. The second phase did not work, and we rescoped, as you said, the contract, brought much of it in-house and saved a heck of a lot of money in the agile development applications that we were using.

In September of last year, we had the test, and we had anticipated as a result of the test that we would put it in place, but what we found is we had to replace certain of the architecture, the infrastructure, in order to support it. We have done that now. We are in the final testing phases, and my expectation is this summer, we will transfer our databases over or transfer our investigations over to the new Sentinel—so we think it is a go.

Ms. LOFGREN. We are going to hit on it this summer.

Mr. MUELLER. I always knock on wood. And I would expect—

Ms. LOFGREN. Maybe what I would do is come over and visit with you again and spend a number of years just to look at the system, if that would be a possibility.

Mr. MUELLER. We would be happy to—

Ms. LOFGREN. I want to talk about another technology issue. In your testimony, you, under going dark, I think you talked about the concern that the communications providers are not required to maintain intercept capabilities in their networks. And especially given the not-wonderful experience with your own technology development, I think that raises a few concerns. First, the technological capability, direct private sector technology firms.

Secondarily, whether it is your view that the Federal Government ought to be dictating to private sector communications firms, including Internet providers, what their technology ought to be.

And, finally, a question, as you can, I guess, guess by my questions, I have a deep concern—I think the American public would have a concern about the American public building in back doors to the Internet, because although we want to get the bad guys, we also value the privacy rights of Americans online—if you have considered or are aware of the apparent plans of Russia and China to take over the governance of the Internet from ICANN, which has been engineer-driven, multinational but apolitical, since we entered a contract with ICANN in the mid-1990's. There is a meeting in mid-October for the U.N. To take it over with perhaps a more politicized agenda and certainly likely less collaboration with Western law enforcement. Have you considered that, and have you had a role in formulating Administration policy on that? Two questions.

Mr. MUELLER. Well, let me focus on the issue of where I think there has to be an accommodation. We go to court. We make a showing to a court that these individuals are engaged in crime—

it could be terrorism; it could be espionage; it could be distribution of child pornography and that we need the communications—whether it be through an ISP or a large corporation, and the court finds the probable cause and directs that corporation to be responsive to that court order requirement.

And yet these, many of these companies are very wealthy, have not considered at the outset how they should need to be responsive to a court order. And so what we are seeking is responsiveness to a court order and in many of these companies they can afford to do it, and many of these companies that can afford to do it, particularly at the outset, at the outset, to understand that they have an obligation to be responsive to court orders when there is a court order that directs it.

And so the accommodation we are looking for is the corporations in their own way put themselves in a place, in a position to be responsive to a court order that they know, can anticipate, is coming down the road.

Now, how we do that is probably the issue that is at the heart of this. But I think it is a very valid objective, particularly in this day where communications are not done by the telecommunications companies necessarily; they are done by a number of other companies, many of whom are in your district, and we have to have accommodations, an accommodation so that we get that information we need or else we will be behind the eight-ball when it comes to terrorists, to child pornography, espionage and the like.

Mr. SMITH. Thank you, Ms. Lofgren.

Ms. LOFGREN. Mr. Chairman, I noted that Mr. Gohmert had an extended period. I wonder if Mr. Mueller—

Mr. SMITH. Let me make something clear, because I am a little bit put off by that. The Chairman does initially and occasionally give Members a few extra seconds.

I don't want that to necessarily to set a precedent. And in this case, your time has far exceeded that of Mr. Gohmert, so I would like to stay within the schedule if we could.

Ms. LOFGREN. Mr. Chairman, if we could ask then Mr. Mueller off schedule, I think it is an enormously important issue for the country that Russia and China are seeking to take over governance of the Internet, and I think it is something that the FBI might wish to comment on. Perhaps—

Mr. SMITH. That might be for another time. I also notice that you and the director have agreed to have a personal meeting and follow up on some of the issues you have raised, which were certainly legitimate issues. And I am hoping that you will take advantage of that opportunity, too.

Mr. MUELLER. I would be happy to do that.

Mr. SMITH. The gentleman from Arizona, Mr. Franks, is recognized.

Mr. FRANKS. Thank you, Mr. Chairman.

And Mr. Director, I am glad that you are here, sir.

And with that, unceremoniously, I am going to yield my time to my colleague from Texas, Mr. Gohmert.

Mr. GOHMERT. Thank you. I appreciate my friend from Arizona.

I have a blast that was emailed out from the Islamic Society of North America director on February 14, 2012, which they were ba-

sically sounded like they were spiking the football. They had had the meeting again with you, and they said the director has also informed participants that to date, nearly all related FBI training materials, including more than 1,600 pages—or 160,000 pages of documents, were reviewed by subject matter experts multiple times.

They also said material was pulled from the curriculum if even one component was deemed to, one, include factual errors; two, be in poor taste; three, be stereotypical and; for, four, lack precision. And then we had also gotten—one of the lines that had been purged simply says in training, other self-described jihadist groups can differ with al-Qaeda and like-minded groups in targeting tactical preference and their ultimate political goals, although many jihadist groups overlap in terms of target tactics and goals. And apparently that was found to be offensive to say that there were some jihadist groups that overlap in terms of target because apparently that fits the criteria of being stereotypical.

And I want to go back to the subject matter experts. You have mentioned, as we have been told, there were five subject matter experts that were doing this purge and that two of them were inter-agency. But three of them were outside the agency, and we know Imam Magid, the president of the named co-conspirator in the Holy Land Foundation trial, for which there was plenty of evidence, as the Fifth Circuit Court of Appeals said, to substantiate that they were supporting terrorism, even though the Attorney General decided he did not want to pursue them, or his office—he didn't take credit for that decision, but—and, in fact, he left that to an acting U.S. Attorney to say that there wasn't evidence when, actually, he was on the record before the district court and the Fifth Circuit saying there was plenty of evidence there.

But the concern still goes back to who are these subject matter experts? You were ready to give a couple of awards to people for their civic leadership and assistance that ended up not being worthy of being recognized. There are people that have access to you directly, like most Americans would not have, who have ties that are certainly questionable. And so I think it is worth, when my friends across the aisle pointed out, America knowing who are these people that are purging our documents? And why is it so offensive to say that many jihadist groups overlap in terms of targets and tactics and goals?

Do you have a comment on that? You had said that you may talk about their backgrounds, but who in the world gets to know who these people were? Most of us have very secure classifications even though we find out that people like Elibihari, that is on the Homeland Security Advisory Group, got a secret classification from Secretary Napolitano. And from the evidence, it is very clear that man could never have been vetted, could never have gotten a security clearance, unless the Secretary bypassed all the laws and requirements to give him that.

So I just keep coming back to the importance of knowing who it is that is actually cleaning out the FBI training materials.

Mr. MUELLER. Well, let me say that I addressed the issue of the way forward on the individuals. We will try to accommodate the Committee on that.

With regard to the meeting with members of the American Muslim, American Arab, Sikh communities, I have periodically, as do our Special Agents in Charge of each of our offices, have meetings with members and representatives of the Muslim community.

The meeting to which you refer was one that I stopped in at, and I gave exactly the same review of what—the process we had undertaken to review these materials that I have given today and in previous testimony. And so I think we have done, appropriately addressed the issues with regard to the training.

Again, I finish, as I did before, and welcome you down to review those materials yourself and to hear the explanations as to why we thought that these particular pages were inappropriate. And I, again, would point out that we had 160,000-plus pages that were appropriate in terms of training. So it is not as if we have purged a substantial amount of our training materials.

Mr. SMITH. Thank you, Mr. Gohmert.

The gentlewoman from Texas, Ms. Jackson Lee, is recognized.

Ms. JACKSON LEE. Mr. Chairman, thank you very much.

Mr. Mueller, I am over here. Good morning, how are you? Thank you again for your service.

It looks like we have traveled this journey for a number of years. And, again, I thank you for your work and the work that you have done, even in my State of Texas.

I just want to make one statement. Our special agents in charge are very important, and I think you have heard me to say this again, I continue to encourage them to interface with the community. Obviously, their work is work that relates to their duties, but that is just a public statement I want to make. And I think you joined in with me in times past for them to engage, even as they engage in local law enforcement.

I, too, have a series of questions, but I would make one statement and not to join with my colleagues but thank you for your graciousness and would like to have an opportunity to meet with you. Today I will be discussing the national epidemic of bullying, which we have seen. Obviously I am not asking you to intrude in local jurisdictions, but cyberbullying, cyberbullying has become an epidemic as well, and it crosses State lines, and it tracks, if you will, national security issues in terms of its depth and breadth. And so I would like to meet with you on that issue. I will not pose that question as we speak, but I know that we can find ways to address that because it deals with children.

I do want to raise a series of questions, as I indicated, and I want to go right to the National Defense Authorization Act in your testimony that mentioned that you had a quarrel or questions about the FBI and the military showing up. There was provision to the legislation to weaken that, if you will, depth of coverage of the military. Can you just quickly say, does that work through your issues with respect to that separation, and I think that is enormously important, including the prosecution of terrorists in civilian courts?

Is that where we stand today?

Mr. MUELLER. Yes.

Ms. JACKSON LEE. Does that help the FBI?

Mr. MUELLER. It does. The statute directed the President to develop procedures that would assure continuity of investigation, continuity of the interrogation in like circumstances. And that directive issued by the President does resolve those issues.

Ms. JACKSON LEE. And does it move you closer to both the idea of what your work is supposed to do but also the respect for civil liberties, as you look at it as a lawyer and former judge.

Mr. MUELLER. Yes.

Ms. JACKSON LEE. Let me thank you very much for the lab that many utilize, DNA lab that many law enforcement submit their requests through.

Can you tell me what your timeframe is? As you well know, there is a huge backlog of rape kits across America. It is almost tragic that women are waiting.

What is the involvement of the FBI lab? Are you getting these labs? I know—excuse me, are you getting these kits? Do you get them on particular cases? Do you get them on more heinous cases?

Can you just answer that question and how we could be of greater help for that backlog?

Mr. MUELLER. The first step for us was to reduce our own backlog.

Ms. JACKSON LEE. Right.

Mr. MUELLER. And to do backlogs, we had the backlog in terms of ingestion in the samples given, changes in the statutes around—federally and in the country. We reduced that backlog 2 years ago, and last year, we reduced to almost nothing the backlog of nuclear DNA examinations. And so—and that was by dint of additional personnel given to us by Congress, as well as developing a new—more mechanical techniques that enabled us to expedite those examinations.

That does not necessarily help jurisdictions around the country who have backlogs of samples that need—

Ms. JACKSON LEE. Yes.

Mr. MUELLER. We do not have the funding or capability federally to step in and assist State and local.

I don't think there is one of us who wouldn't like to have the ability to make certain that all those tests, samples, are sitting on the shelves of a police department, somebody went through the DNA protocol.

But, again, it is a matter of funding and particular police departments or in State agencies.

Ms. JACKSON LEE. Let me ask these two questions, and I appreciate the Chairman's indulgence for you to be able to answer. I will add the rape kits to our discussion in office.

But let me just, in your answer, indicate what an impact the sequestration would have in terms of staffing. But I would like to go straight to two points.

The Stand Your Ground laws have taken up—their major stand across America, and they have, in essence, created a quandary. One of them, of course, is Mr. Zimmerman's case, which you have been involved in investigating.

I raise the question as to what is the FBI involvement in some of these cases that come in extreme results?

And, lastly, I have heard my colleague talk a lot about Muslims. What kind of team does the FBI have on domestic terrorism, particularly what I call wilderness groups, as well as this article from Reuters, "Florida Nabs White Supremacists Planning "Race War." This happened today.

Do you have a separate sector? How do you relate to that kind of terrorism, and how do we have the investigative component that matches or complements State authorities?

Mr. Mueller, thank you.

Mr. MUELLER. With regard to domestic terrorism, ever since 1995 and the bombing of Oklahoma City, we have been aware that we cannot take our eye off domestic terrorists who have the capability and maybe the will to undertake such terrorists attacks.

We have had a number of cases over the years. The most recent one was in Spokane where an individual undertook to develop an IED to set it off on the birthday of Martin Luther King.

Ms. JACKSON LEE. Yes.

Mr. MUELLER. If you will recall, the persons who were cleaning the area beforehand found the IED, and we were able to identify the individual. He has been sent away for a good long time. So we have separate domestic terrorism entities that are every bit as effective and efficient as we hope we are in the counter, international terrorism arena.

And as to the—I didn't pick up the first part of the question.

Ms. JACKSON LEE. The impact on sequestration or loss of employees through major cuts.

Mr. MUELLER. We will, again, as I say, have to prioritize. We would not, we would not take people away from counterterrorism, whether it be domestic terrorism, international terrorism. We will not take them away from the espionage cases. We will not take them away from the important cybercases. And we will have to prioritize, and other areas, particularly in the criminal arena, will suffer.

Ms. JACKSON LEE. And Stand Your Ground?

Mr. SMITH. Thank you, Ms. Jackson Lee.

The gentleman from California.

Ms. JACKSON LEE. Mr. Chairman, may I put something in the record, please?

Mr. SMITH. What would you like to put into the record?

Ms. JACKSON LEE. Well, first of all, thank you, Mr. Mueller. We will speak afterwards.

But in any event, I would like to put in the article from Reuters, "Florida Nabs White Supremacists Planning a "Race War." I ask unanimous consent to place this in the record.

[The information referred to follows:]

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## Florida nabs white supremacists planning "race war"

12:12pm EDT

By Barbara Liston

ORLANDO, Florida (Reuters) - Ten alleged members of a white supremacist group training near Orlando and Disney World for a "race war" have been rounded up in a series of arrests in central Florida, authorities said on Tuesday.

The arrests were based on evidence from a confidential informant who infiltrated the neo-Nazi organization known as the American Front 17 months ago, according to an arrest affidavit.

"The American Front (AF) is a military-styled, anti-Semitic, white supremacist, skinhead organization and is known as a domestic terrorist organization," the affidavit said.

It said the group's alleged local ringleader, Marcus Faella, 39, had been "planning and preparing the AF for what he believes to be an inevitable race war" and had stated "his intent ... to kill Jews, immigrants and other minorities."

Faella operated a heavily fortified paramilitary training center for the AF on his isolated property in St. Cloud, Florida, 11 miles from the Walt Disney World theme parks, according to the affidavit.

It said he recently had been plotting a disturbance at Orlando City Hall and a confrontation against a rival skinhead group in coastal Melbourne in a bid to garner media attention, but had also been experimenting with the potential manufacture of the biological toxin ricin.

"Faella views himself and the other members of the AF as the protectors of the white race," the affidavit said, adding that Faella also believed "the race war will take place within the next few years based on current world events."

Faella's compound, where he regularly conducted firearms, explosives and tactical training for AF members and other neo-Nazi groups, was protected by two pit bull dogs, a barbed-wire fence and three military-style trenches.

Faella fortified the walls of his residential trailer and added firing ports, according to the affidavit.

### MODELED AFTER BRITISH GROUP

A nationwide skinhead movement, originally modeled after Britain's far right, whitas-only National Front, the AF's activities have been concentrated in recent years in central Florida, according to the Anti-Defamation League.

Faella and his alleged followers were each charged with paramilitary training, shooting into an occupied dwelling and evidence of prejudices while committing an offense, according to a written statement from the prosecutor's office.

The investigation into the AF was conducted by the FBI's Joint Terrorism Task Force and local law enforcement agencies.

It was shut down and the arrests were made after the confidential informant came to believe his life was in danger, according to the affidavit.

Besides Faella, those arrested were Christopher Brooks, 27, of Palm Bay; Richard Stockdale, 23, of St. Cloud; Kent McLellan, 22, of St. Cloud; Patricia Faella, 36, of St. Cloud; Jennifer McGowan, 25, of Cocoa; Mark McGowan, 29, of Cocoa; Diane Stevens, 28, of Kissimmee; Paul Jackson, 25, of St. Cloud; and Dustin Perry, 21, of Kissimmee.

In addition to the other charges, Brooks and Stockdale were charged with possession of a firearm by a convicted felon, according to their arrest reports.

A lawyer for Faella and other suspects arrested in the case could not be reached for immediate comment but Marcus and Patricia Faella, who were arrested on Friday, have already been released on a bond totaling \$500,000 each.

The central Florida town of Sanford, also near Orlando, made international headlines over the last two months after the racially charged shooting death of unarmed black teenager Trayvon Martin.

George Zimmerman, the white Hispanic who killed Martin, said he acted in self-defense. He was not arrested or charged initially, because his use of deadly force was alleged to be protected under Florida's 2005 Stand Your Ground law.

But after weeks of protest demonstrations across the country Zimmerman was eventually arrested and he is now charged with second-degree murder.

(Correction: An earlier version of this story had photos of persons unrelated to this case.)

(Editing By Tom Brown and Todd Eastham)



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Mr. SMITH. Without objection.  
The gentleman from California, Mr. Gallegly, is recognized for his questions.  
Mr. GALLEGLY. Thank you very much, Mr. Chairman.

I, in the interest of time, I want to welcome you, first of all, Director Mueller. I miss our regular meetings in the 8 years I served on the Intelligence Committee, and it is great to see you back.

What I would like to do, with the Committee's concurrence, is I have four or five issues. I would like to ask you a brief question. Perhaps you could give me a very short answer. And with unanimous consent, you could provide us with a follow up, maybe a couple of paragraphs or something that could maybe fill in some of the blanks.

The first question I had has to do with al-Qaeda, and there are actually two questions I will put into and try to make one out of it. First of all, as it relates to our Southwest border, do you see any growing evidence of al-Qaeda or any other terrorist organization working to exploit our border with the attempt of launching another terrorist attack on our own soil? That would be first part of that question.

The other is having to do with al-Qaeda and the continuing concern about, particularly in Yemen, the focus on targeting U.S. airplanes. Of course, it is becoming more and more unsettling to American travelers, as you well know.

And if you see any added support that you might be able to get from Congress, who could help you in doing that job, maybe you could briefly answer that, and then I will move on to a couple of other issues.

Mr. MUELLER. As to the Southwest border and al-Qaeda, we have not seen an increase of effort by al-Qaeda to come across the Southwest border.

On the other hand, when you open the question up to other terrorist groups, I would say that we have a continuing concern about Iranian influence, actors, and Hezbollah.

I would say the indication of this, most recently, was the arrest of Arbabsiar, the Iranian individual who thought he was dealing with a cartel associate in the expectation of killing the Saudi Arabian ambassador here in Washington, which is indicative of efforts of Iran and others to operate south of the border with the impact to north of the border.

Well, and the IED—the second question, I am sorry, the second question with regard to Yemen, having obtained the most recent explosive device from Yemen, it again reinforces the necessity to address—and those who were responsible for the production of those devices in Yemen. And the intelligence communities, law enforcement communities, need the full support of Congress to make that happen.

Mr. GALLEGLY. Director Mueller, regarding smuggling and human trafficking that we have on our southern border, I know this continues to be an ongoing issue.

One thing that I would like to get your assessment on, particularly as it relates to the smuggling of drugs, do you see the weakening of laws in, for instance, in the California State legislature, weakening our drug laws, some to the point that many legislators believe that drug use is a victimless crime, do you see this as having any strengthening effect on the drug cartels, particularly from Mexico?

Mr. MUELLER. I really would not be in a position to comment on that, most because I am not that familiar with—

Mr. GALLEGLY. I didn't expect that you would, but I tried.

There is another issue that we have discussed in the past, having to do with activities within our Federal penitentiaries. This isn't limited to Federal penitentiaries, but since you are a Federal representative, probably you could speak more directly to the Federal penitentiaries, rather than the State prisons and even local jails.

I have a growing concern for the infiltration of certain people operating under the guise of being clerics to indoctrinate very vulnerable people that are already filled with hate. I know that we have a way of vetting who comes in to counsel and to—so on and so forth.

Can you give us a brief statement on the process of vetting and/or surveillance to make sure that our vetting is correct?

Mr. MUELLER. Well, early on, after September 11th, we worked closely with the department, the Federal department of prisons, to assure that the appropriate teaching, again, the appropriate teaching was being conducted within the Federal Department of Prisons and so that has been an ongoing process since probably 2002.

At the same time, we have over 100 Joint Terrorism Task Forces around the country. And one of the mandates of that Joint Terrorism Task Force is to see and develop intelligence as to what threats there may be within the prison system.

You know, on many of the State and local prison systems, on many, I will tell you, some, maybe many, the task forces, you will have personnel assigned on the State and local prison authorities, corrections authorities, to work closely with the Joint Terrorism Task Force to address that concern.

Mr. GALLEGLY. Mr. Chairman, the red light is on. If I could just ask that the director respond to us—

Mr. MUELLER. Happy to do so.

Mr. GALLEGLY. And/or follow up on a couple of other issues. One being you mentioned the issue of health care fraud. We discussed this before in this hearing, in this meeting, venue, I think, last time, about Medicare fraud and principally Eastern European involvement. If you could bring us up to date on that, also on the gang issues in some of our metropolitan areas, particularly where illegal immigrants are the predominant population in specific gangs.

With that, Mr. Chairman, with unanimous consent, I would ask that he, the gentleman answer those for the sake of the Committee and be placed in the record of the hearing, and I would I yield back.

Mr. SMITH. Thank you, Mr. Gallegly.

The gentlewoman from California, Ms. Waters, is recognized.

Ms. WATERS. Thank you very much, Mr. Mueller, I want to thank you for being here.

You have a tough job and sometimes we don't make it any easier for you, but I am pleased that you are here. I have two areas that I am very interested in.

I have been tracking your diversity with your special agents, and, as you know, this question has come up many times. It appears that you still only have about 4 percent African Americans

in your special agents, and I want to know why you haven't been able to do better in recruitment and hiring of African Americans in the FBI.

In addition to that, I am really concerned about some information that I just learned. I attended a briefing yesterday that was organized by the Washington Bureau of the American Civil Liberties Union, and they shared with me some very troubling information that I want to talk about because it reminds me of COINTELPRO, the most controversial FBI program, I think, under the J. Edgar Hoover that caused a lot of concern in this community.

The FBI's current Domestic Investigations and Operations Guide permit FBI agents to track racial and ethnic facilities and certain racial and ethnic behavior. The FBI documents recently obtained through Freedom of Information Act requests by the ACLU demonstrate how the FBI is identifying and mapping American communities by race, ethnicity and national origin all over the country through a program that you have called Domain Management.

The documents show that FBI analysts across the country are associating criminal behaviors with certain racial and ethnic groups and then using U.S. Census data and other demographic information to map where those communities are located to investigate them.

For instance, in 2009, the Atlanta FBI field office published an intelligence note from your Domain Management that purports to examine the so-called Black separatist threat in part by documenting the growth of the Black population in Georgia over the preceding years.

I want to know how does the size of the Black population in Georgia have any bearing on the number of Black separatists in a given area or the threat that they pose? Did the FBI map Black communities in Georgia in its examination of the Black separatist threat?

The other thing that I am concerned about is the Atlanta FBI field office intelligence, no documents that members of the New Black Panther Party were at former Congresswoman Cynthia McKinney's side during the elections, and they appeared at events protesting police violence in the community. We also have the information that indicates that Congresswoman Cynthia McKinney has been under surveillance and has been tracked for quite some time now.

Does the FBI feel that participation in the political process or protesting police violence constitutes a threat of any kind? Do you think it is appropriate for the FBI to track Americans' First Amendment protected activity in this way?

Does the FBI list of major terrorism cases, past and present, a more comprehensive list of terrorist attacks going back to 1930, detailed in an FBI report, entitled "Terrorism 2002 to 2005," include any terrorist acts committed by anyone who could fairly be described as a member of a Black separatist group? So that is a lot that I have asked, but I am really interested.

Do you have a program called Domain Management that is similar to the old COINTELPRO program.

Mr. MUELLER. We have, yes, we have domain managers. We have a program that requires our intelligence analysts to identify a threat in a particular area.

And an aspect of that program may depend on the threat information we got from a source, either inside the United States or outside the United States.

But let me start by saying that we do not investigate individuals or groups solely on the basis of ethnicity or race.

There may be occasions where we know a particular entity—it can be a gang, it could be a terrorist group, it can be organized crime—preys on certain groups and communities. And in those situations, where there may be victims or what have you, the data in terms of those communities may bear on that intelligence analysis. But we do not have anything regarding—

Ms. WATERS. But Domain Management, is that directed toward—

Mr. MUELLER. Pardon.

Ms. WATERS. Domain Management program, is that directed toward certain communities?

Mr. MUELLER. No. It is the threats. I mean, what is your mortgage fraud in that community in Los Angeles? Where is the mortgage fraud? Domain management means look at your particular division or your district and identify the threats and the existence of those threats and how you are going to address that threat. That is domain management. That is identifying the threats and how you are going to allocate the resources to address the threats.

Ms. WATERS. And what is mapping?

Mr. SMITH. The gentlewoman's time has expired.

Ms. WATERS. I ask unanimous consent for at least 1 more minute.

Mr. MUELLER. Well, mapping—

Mr. SMITH. Let me say to the gentlewoman, without objection, she will be recognized for an additional 30 seconds in order to allow the Director to answer the last question.

Ms. WATERS. Is Cynthia McKinney under surveillance and has been tracked by your—this report.

Mr. MUELLER. I don't know where that comes from. I do not think it has any validity whatsoever.

Ms. WATERS. It is in your report.

Mr. MUELLER. Then I would appreciate seeing it. I am not familiar with what you are looking at.

Ms. WATERS. Thank you very much.

Mr. SMITH. Thank you, Ms. Waters.

The gentleman from Iowa, Mr. King, is recognized.

Mr. KING. Thank you, Mr. Chairman.

Director, on your left, I appreciate your testimony here today and I will start with low-key material.

I am looking at our report here, a DOJ victims report, a typical crime victims report and that has on it the categories of age, educational attainment, school, et cetera, race, ethnicity, all the categories that I think we should be tracking as far as crime is concerned for the victims report, that is fine.

The next one I look at is a hate crime incident report. It has similar categories, maybe not exactly identical, but it has cat-

egories for race and ethnicity as well in the hate crime incident report.

Then when I go to the uniform crime report, the older report, and that is module E-3, for the record. It has categories there for race, but no category for ethnicity. It says White, Black, American Indian or Alaskan native or Asian or Pacific Islander. Neither does it have a category, as the other two forms do, for mixed race. And I would just ask if that perhaps is an oversight? Is it something you would consider bringing up to date so that our typical crime report would include the broader definitions of mixed race and ethnicity?

Mr. MUELLER. Yes, I am not certain why that is. I know—well, I assume that what we try to do is take that information, where that information is relevant to a particular violation of law, but I would look at that. I am not familiar with that distinction, but we will get back to you on that.

Mr. KING. And I appreciate that, and I would just state that I am interested in it because there are a lot of numbers thrown around about actual crime perpetrators and the victims. And this Congress is going far more toward looking at race and ethnicity of the victims of the crimes. And the George Zimmerman case in Florida is one that comes to mind that caused me to think about it.

So I will be very interested in that response. And then also I would ask you with regard to voter fraud, there has been much more publicity about voter fraud in the past few months, something I have been interested in at least a decade or a little more since the 2000 elections in Florida. What are you finding in voter fraud? Do you anticipate prosecutions coming forward? Has anything happened under your tenure that should be pointed out to me that I might have missed as far as voter fraud investigations?

Mr. MUELLER. I again would have to get back to you. Let me get back to you, but obviously, the allegations of voter fraud spike in or about elections. We would have to go back and look at what has been done. Yes, we have done cases. I am not personally familiar and cannot tell you right now what those cases might be.

Mr. KING. Did you get a call when the young man presented himself to pick up Attorney General Eric Holder's ballot here a couple of months ago? Was that something that was brought to your attention? I know that film, the video of that, came before this Committee about a month ago.

And a young White male in his early twenties stepped into the voting location in, I believe it was Arlington, Virginia, and presented himself as Eric Holder, a 61-year-old African American male, a young Caucasian male in his early twenties, and they were ready to present him a ballot. Would that kind of thing be of interest to the FBI?

Mr. MUELLER. I am not—this is the first I have heard about that incident.

Mr. KING. I am quite surprised at that. I guess maybe the Attorney General wasn't alarmed either that his vote might have been disenfranchised so easily.

But I will go on to something that I am perhaps more concerned about, and that is the publicity that has unfolded here just this week, and I would cite and ask unanimous consent to enter into

the record a Newsweek article, dated May 14, 2012, entitled, "Why Can't Obama Bring Wall Street to Justice," and a Forbes magazine article, dated May 7, 2012, entitled "Obama's DOJ and Wall Street: Too big for Jail."

These are subjects—

Mr. SMITH. Without objection, those articles will be made a part of the record.

[The information referred to follows:]

WHY CAN'T  
**OBAMA**  
BRING  
**WALL STREET**  
TO JUSTICE?



*Maybe the banks are too big to jail. Or maybe Washington's revolving door is at work.*

**BY PETER J. BOYER AND PETER SCHWEIZER**

WITH THE Occupy protesters resuming battle stations, and Mitt Romney in place as the presumptive Republican nominee, President Obama has begun to fashion his campaign as a crusade for the 99 percent—a fight against, as one Obama ad puts it, "a guy who had a Swiss bank account." Casting Romney as a plutocrat will be easy enough. But the president's claim as avenging populist may prove trickier, given his own deeply complicated, even conflicted, relationship with Big Finance. Obama came into office vowing to end business as usual, and, in the gray post-crash dawn of 2009, nowhere did a reckoning with justice seem more due than in

the financial sector. The public was shaken, and angry, and Wall Street seemed oblivious to its own culpability, defending extravagant pay bonuses even while accepting a taxpayer bailout. Obama channeled this anger, and employed its rhetoric, blaming the worldwide economic collapse on "the reckless speculation of bankers." Two months into his presidency, Obama summoned the titans of finance to the White House, where he told them, "My administration is the only thing between you and the pitchforks."

The bankers may have found the president's tone unsettling. Candidate Obama had been their guy, accepting vast

amounts of Wall Street campaign money for his victories over Hillary Clinton and John McCain (Goldman Sachs executives ponied up \$1 million, more than any other private source of funding in 2008). Obama far outtrailed his Republican rival, John McCain, on Wall Street—around \$16 million to \$9 million. As it turned out, Obama apparently actually meant what he said at that White House meeting: his administration effectively would stand between Big Finance and anything like a severe accounting. To the dismay of many of Obama's supporters, nearly four years after the disaster, there has not been a single criminal charge filed by the federal

PHOTO: GETTY IMAGES; WALL STREET: JEFFREY M. HASTON/REUTERS

Obama with  
Attorney General  
Holder, who worked  
at a law firm that  
represents big  
banks before taking  
his current job.



## POLITICS

government against any top executive of the elite financial institutions.

"It's perplexing at best," says Phil Angelides, the Democratic former California treasurer who chaired the bipartisan Financial Crisis Inquiry Commission. "It's deeply troubling at worst."

Strikingly, federal prosecutions overall have risen sharply under Obama, increasing dramatically in such areas as civil rights and health-care fraud. But according to the Transactional Records Access Clearinghouse, a data-gathering organization at Syracuse University, financial-fraud prosecutions by the Department of Justice are at 20-year lows. They're down 39 percent since 2003, when fraud at Enron and WorldCom led to a series of prosecutions, and are just one third of what they were during the Clinton administration. (The Justice Department says the numbers would be higher if new categories of crime were counted.)

"There hasn't been any serious investigation of any of the large financial entities by the Justice Department, which includes the FBI," says William Black, an associate professor of economics and law at the University of Missouri, Kansas City, who, as a government regulator in the 1980s, helped clean up the S&L mess. Black, who is a Democrat, notes that the feds dealt with the S&L crisis with harsh justice, bringing more than a thousand prosecutions, and securing a 90 percent conviction rate. The difference between the government's response to the two crises, Black says, is a matter of will, and priorities. "You need heads on the pike," he says. "The first President Bush's orders were to get the most prominent, nastiest frauds, and put their heads on pikes as a demonstration that there's a new sheriff in town."

Obama delivered heated rhetoric, but his actions signaled different priorities. Had Obama wanted to strike real fear in the hearts of bankers, he might have appointed former special prosecutor Patrick Fitzgerald or some other fire-breather as his attorney general. Instead, he chose Eric Holder, a former Clinton Justice official who, after a career in government, joined the Washington office of Covington & Burling, a top-tier law firm with an elite white-collar defense unit. The move to Covington, and back to Justice, is an example of Washington's revolving-door ritual, which, for Holder, has been lucrative—he pulled in \$2.1 million as a Covington partner in 2008, and \$2.5 million



Top bankers after meeting with Obama, who told them, "My administration is the only thing

(including deferred compensation) when he left the firm in 2009.

Putting a Covington partner—he spent nearly a decade at the firm—in charge of Justice may have sent a signal to the financial community, whose marquee names are Covington clients. Goldman Sachs, JPMorgan Chase, Citigroup, Bank of America, Wells Fargo, and Deutsche Bank are among the institutions that pay for Covington's legal advice, some of it relating to matters before the Department of Justice. But Holder's was not the only face at Justice familiar to Covington clients. Lanny Breuer, who had co-chaired the white-collar defense unit at Covington with Holder, was chosen to head the criminal division at Obama's Justice. Two other Covington lawyers followed Holder into top positions, and Holder's principal deputy, James Cole, was recruited from Bryan Cave LLP, another white-shoe firm with A-list finance clients.

Justice's defenders point out that prosecuting financial crime is a complicated matter requiring the highly specialized expertise found in the white-collar defense bar. But some suggest there is also the potential for conflicting interest when the department's top officials come from lucrative law practices representing the very financial institutions that Justice is supposed to be investigating. "And that's where they're going back to," says Black. "Everybody knows there is a problem with that." (Two members of Holder's team have already returned to Covington.) A spokesperson for Covington was not available for comment. (Newsweek uses the firm as outside counsel.)

Justice's inaction regarding the big Wall Street firms is not for a lack of suspicious activity. Three different government entities exhaustively examined the practices that contributed to the financial collapse, and each has referred its findings to the

PHOTO: MICHAEL O'NEILL



between you and the pitchforks."

**THE LACK OF PROSECUTIONS IS 'PERPLEXING AT BEST. IT'S DEEPLY TROUBLING AT WORST,'**

says Phil Angelides of the Financial Crimes Inquiry Commission.

department for possible criminal investigation. One such matter involved a 2007 transaction by Goldman Sachs, in which Goldman created an investment, based on mortgage-backed securities, that seemed designed to fail. Goldman allowed a client who was betting against the mortgage market to help shape the investment instrument, which was called Abacus 2007-AC1; then both Goldman and the client bet against the investment without informing other clients (whose investments were wagers on its success) how the securities included in the portfolio were selected. These uninformed clients lost more than \$1 billion on the investment. In 2010, the Securities and Exchange Commission charged Goldman with securities fraud "for making materially misleading statements and omissions" in marketing the investment. The SEC, which conducts only civil litigation, referred the case to Justice for criminal investigation.

A year later, in April 2011, the Senate Permanent Subcommittee on Investigations, chaired by Democrat Carl Levin, after a two-year inquiry, issued a fat report detailing several transactions, including Goldman's Abacus deal, that Levin and his staff believed should be investigated by Justice as possible crimes. The subcommittee made a formal referral to the department (as did the federal Financial Crisis Inquiry Commission, chaired by Phil Angelides), and Levin publicly stated his view that criminal inquiry was warranted. Goldman executives, including the firm's chief executive officer, Lloyd Blankfein, started hiring defense lawyers.

Meanwhile, Obama's political operation continued to ask Wall Street for campaign money. A curious pattern developed. A *Newsweek* examination of campaign finance records shows that, in the weeks before and after last year's scathing Senate report, several Goldman executives and their families made large donations to Obama's Victory Fund and related entities, some of them maxing out at the highest individual donation allowed, \$35,800, even though 2011 was an electoral off-year. Some of these executives were giving to Obama for the first time.

Justice insists that political operations such as fundraising are kept strictly distanced from the department, in order to avoid even the appearance of political influence. But the attorney general and his team are not unfamiliar with the process: Holder was himself an Obama bundler—a

fundraiser who collected large sums from various donors—in 2008, as were several other lawyers who joined him at Justice.

It would be a leap to infer these Goldman contributions were made—or received—as quid pro quo for dropping a criminal investigation. Still, the situation constitutes what one Justice veteran acknowledged is a "bad set of facts."

Maintaining public faith in the justice system is one of the reasons why people such as Angelides continue to call for a rigorous criminal investigation into Wall Street. "I think it's fundamental that people in this country need to feel that the justice system is for everyone—that there's not one system for those people of enormous wealth and power, and one for everyone else," he says.

In July 2010, three months after the SEC charged Goldman in the Abacus case, the agency reached a settlement with the firm. Goldman agreed to pay \$550 million, but admitted no wrongdoing. The agency touted the amount of the fine as the biggest ever—but to Goldman it was a relative pittance. The fine amounted to about 4 percent of the sum that Goldman paid its executives in bonuses (\$12.1 billion) in 2007, the year of the Abacus transaction.

Earlier this year, it was reported that Goldman executives were feeling optimistic that the Justice inquiry would not result in criminal charges against the firm, or its executives. Goldman declined to comment on the case, as did the Justice Department. But spokeswoman Allison Pinelli said, "When we find credible evidence of intentional criminal conduct—by Wall Street executives or others—we will not hesitate to charge it. However, we can and will only bring charges when the facts and the law convince us that we can prove a crime beyond a reasonable doubt." Holder, speaking in February at Columbia University, said that while "we found that much of the conduct that led to the financial crisis was unethical and irresponsible... we have also discovered that some of this behavior—while morally reprehensible—may not necessarily have been criminal."

Midway through his State of the Union speech this year, President Obama announced plans "to create a special unit of federal prosecutors and leading state attorneys general to expand our investigations into the abusive lending and packaging of risky mortgages that led to the housing crisis," and he vowed again to "hold accountable those who broke the law."

## POLITICS

That portion of the speech had a familiar ring. In November 2009, Attorney General Holder, with Treasury Secretary Timothy Geithner at his side, announced the creation of another special unit—the Financial Fraud Enforcement Task Force—that was similarly charged with investigating securities and mortgage fraud that contributed to the financial meltdown. Since its creation, that task force, which critics say was drastically under-resourced, has produced not a single conviction (or even indictment) of a major Wall Street player related to the financial disaster.

Some who heard the president's State of the Union speech thought they discerned a hidden purpose behind his new "special unit"—the Residential Mortgage-Backed Securities Working Group, as it would be called. The day before the president's speech, state attorneys general from around the country met in Chicago with justice officials to discuss a proposed national settlement with five major banks, including JPMorgan Chase and Bank of America, over questionable foreclosure practices. The administration was pushing the settlement, as were the banks. But a handful of attorneys general were resisting the settlement, believing it gave too much away to the banks—including protection from mortgage-related investigations that were still unfolding. These holdout state officials were supported by a coalition of activists, who argued that the banks would never make meaningful concessions—such as the reduction of principal on underwater mortgages—unless they faced the threat of investigation.

One of those activists, Mike Gecan, of the Industrial Areas Foundation, says he was disheartened when he heard Obama's speech, and the news that New York Attorney General Eric Schneiderman would be co-chairing the new "working group." Schneiderman, who is in the tough-guy mold of his predecessors, Eliot Spitzer and Andrew Cuomo, had been a leader of the state holdouts; now, Gecan feared, Schneiderman had been co-opted by the Chicago Way. "I'm from Chicago, I've seen this game played my whole life," he says.

Gecan's view seemed vindicated two weeks later, when Obama announced that the settlement had been reached.

Nearly three months later, it is not clear what, if any, progress the "working group" has made. The unit was only promised 55 investigators, attorneys, and support staff—a tiny fraction of the resources afforded to



Frustration over the lack of action has fueled the Occupy movement.

similar groups investigating the S&L and Enron/WorldCom scandals—and it is not clear that even that commitment has materialized. "I think what happened is what usually happens: the administration rope-a-doped," says Gecan. "There's no office, there's no director, there's no staff, there's no space, there's no phone."

Last month, Gecan wrote an op-ed article for the *New York Daily News*, calling upon Schneiderman to quit the group in protest (Schneiderman's office did not respond to requests for an interview). In the meantime, Gecan said, he will work to bring pressure on Obama. "There's a little presidential campaign that's going to start, and we're going to make this issue central to this campaign," he said.

It may be, as the attorney general points out, that Wall Street was greedy, stupid, and immoral, without actually breaking any laws. But the powers of the Justice Department are immense, and a more aggressive prosecutor surely could have found cases to make. Black, the UMKC professor, says the conduct could well have violated federal fraud statutes—"securities fraud for false disclosures, wire and mail fraud for making false representations about the quality of the loans and derivatives they were selling, bank fraud for false representations to the regulators."

The absence of prosecutions, and the fact that the cops on the beat hail from the place that represents the banks, does not sit right with many who hoped Obama would fulfill his promise to hold

Big Finance accountable. The left's frustration fuels the Occupy movement, and chills the Democratic base. And it gives Romney, the career capitalist, an opening he is avidly exploiting.

Through last fall, Obama had collected more donations from Wall Street than any of the Republican candidates; employees of Bain Capital donated more than twice as much to Obama as they did to Romney, who founded the firm. By this spring, however, resolution had come to the GOP contest, and Wall Street could see a friendly alternative to Obama. While most of Romney's contributions so far come mainly from the financial sector, Obama's donations from Wall Street have dropped sharply.

But this turn may yet help Obama, playing into the Romney-as-plutocrat theme. Just the other week, the Republican candidate quietly slipped into a fundraiser at the home of hedge-fund king John Paulson, who made a killing shorting mortgage futures (including about \$1 billion on the Abacus deal). The Obama campaign pounced. Obama may yet fully liberate his inner populist—that Obama who in 2010 in an off-Prompter moment uttered a sentence that made blood run cold on Wall Street: "I do think at a certain point you've made enough money." **EW**

*Peter Schweizer is president of the Government Accountability Institute and the William J. Casey Fellow at the Hoover Institution.*

## Forbes



Capital Flows, Contributor  
Swiss commentary created by the QUORA editors

04/05 | 5/07/2012 @ 5:38PM | 11,855 views

### Obama's DOJ And Wall Street: Too Big For Jail?

By Peter Schweizer

*"The appearance of conflict is as dangerous to public confidence in the administration of justice as true conflict itself. Justice must not only be done; justice must also be seen to be done."* -Lloyd Cutler, 1981



US Attorney General Eric Holder (Image credit: AP/Geety Images via @daylife)

Over the past three years, the Department of Justice has filed criminal charges against hundreds of ordinary Americans for financial fraud. But no one from the largest banks and firms on Wall Street have been similarly charged for events leading up to the financial crisis. Could that be because those banks are clients of the firms from which top DOJ officials hail?

In November 2009, President Obama established the Financial Fraud Enforcement Task Force to deal with financial crimes related to the 2008 financial crisis. As Attorney General Eric Holder, chairman of the Task Force, explained at the time: "This Task Force's mission is not just to hold accountable those who helped bring about the last financial meltdown, but to prevent another meltdown from happening. We will be relentless in our investigation of corporate and financial wrongdoing, and will not hesitate to bring charges, where appropriate, for criminal misconduct on the part of businesses and business executives."

None of that happened. The Task Force is still humming along almost three years later, but its highlighted successes are less "business executives" than ordinary Americans who have had the book thrown at them. From their website:

**"Three Connecticut Women Charged with Overseeing 'Gifting Tables' Pyramid Scheme."** Three women in their 50s and 60s have been indicted on conspiracy, tax and wire fraud charges. "These arrests should send a strong message to all who threaten the financial health of our communities," said

one federal agent.

Ten people in Las Vegas have been criminally charged with conspiracy to commit mail and wire fraud in a "scheme to fraudulently control" Condominium Home Owners Associations. They have pled guilty and face up to 30 years in prison.

"Justice Department Sues Princeton Review for Claiming Reimbursement for Tutoring Services It Did Not Provide." The educational publisher apparently billed the federal government for reimbursements in connection with a federally-funded program for underprivileged children.

"Alabama Real Estate Investor Agrees to Plead Guilty to Conspiracies to Rig Bids and Commit Mail Fraud for the Purchase of Real Estate at Public Foreclosure Auctions." Steven Cox will get one year in prison because he and some friends agreed not to bid against each other at public auctions and then hold a second secret auction with the properties they purchased. This meant that they "artificially suppressed prices...[and] homeowners and others with a legal interest in rigged foreclosure properties receive less than the competitive price for the properties," reads the [Task Force press release](#). People in several other states have been similarly charged.

"Former Real Estate Appraiser Sentenced in Washington, D.C. to 6 1/2 months in Prison for Mortgage Fraud." A property appraiser goes to jail for fraudulently manipulating mortgage applications while flipping real estate properties. The fraud scheme cost mortgage lenders \$2.3 million. A Florida man was sentenced to 14 months in federal prison for obstructing an SEC investigation.

Certainly there have been opportunities to aggressively investigate criminal acts of fraud involving the largest banks and investment houses. The SEC has alleged that half a dozen banks "knowingly" passed fraudulent information along to government agencies and investors. The same charges have been leveled against several of the largest investment houses as it relates to subprime mortgages.

The SEC has accused a number of banks including JP Morgan, Wachovia Securities, UBS, and Bank of America, of "fraudulently" rigging municipal bond auctions by "entering into secret arrangements with bidding agents to get an illegal 'last look' at competitors' bids." And they won bids because "the bidding agent deliberately obtained non-winning bids from other providers, and it facilitated bids rigged for others to win by deliberately submitting non-winning bids." All of these investment houses faced civil charges and paid fines. Meanwhile those fixing HOA elections or residential foreclosure auctions go to jail.

Why these two levels of justice? Could this disparity simply be a case that the big banks will fight charges more aggressively, thus making criminal prosecutions more difficult? Maybe. But it also undoubtedly has something to do with the fact that the top leadership at DOJ is drawn almost exclusively from [White Collar Criminal Defense](#) Practices at large firms that represent the very firms that Justice is supposed to be investigating. Covington and Burling, the firm from which both Attorney General Eric Holder and Associate Attorney General and head of the criminal division Lanny Breiter hail, has as its current clients Goldman Sachs, Bank of America, JP Morgan, Wells Fargo, Citigroup, Deutsche Bank, ING, Morgan Stanley, UBS, and MF Global among others. Other top Justice officials have similar connections through their firms.

White Collar Criminal Defense work has become one of the few revenue bright spots for large firms. According to a detailed analysis by the Professor Charles D. Weisselberg of UC-Berkeley in the *Arizona Law Review*, there is big money to be made because "this area of practice is not susceptible to the same types of cost controls" that apply to other legal work. In short, white collar criminal defense work is "enormously lucrative."

Eric Holder left Covington with a \$2.5 million salary and a seven figure bonus. If he returns to Covington (as two of his colleagues at Justice already have) a similar payday certainly awaits him.

Lloyd Cutler, who served as White House Counsel to President Carter, argued in the Robert Tyre Jones Memorial Lecture on Legal Ethics back in 1981 that "integrity is not enough." It's not enough to simply proclaim that Justice officials will do the right thing. You need to know that they are making decisions that don't have ethical entanglements. He argued that conflicts arise "when a private lawyer enters government service and a matter comes before him affecting his former law firm or its clients." Relationships are key at this level of the legal profession and he warned that lawyers at a firm like Covington "operate at somewhat more distance, their friendships and loyalties—not to mention their financial interests—tie them closely to the corporate officers."

*Peter Schweizer is the author of "Throw Them All Out".*

This article is available online at:  
<http://www.forbes.com/sites/realspin/2012/05/07/obamas-doj-and-wall-street-too-big-for-jail/>

Mr. KING. Thank you, Mr. Chairman.

These articles point out that Attorney General Holder and his lieutenants, at least its published in the documents, a history of bundling funds, as much of a half a million or more dollars for the campaign of the President, coming from Covington, a number of them, who have clients that might have been those clients that were under investigation because of the Wall Street meltdown in 2008.

I would point out that in 2009, the President established the Financial Fraud Enforcement Task Force. That task force has

brought some prosecutions, small, little, I think, petty crimes by comparison. And one example, the case that we have would be of Goldman Sachs settling for a \$550 million settlement to the SEC, no criminal prosecution.

So, in the pattern of the financial history since 2008, can you point out any criminal investigations for the alleged perpetrators that brought about or might have accelerated this Wall Street meltdown that we saw in 2008?

Mr. MUELLER. Absolutely. I will get you those. There have been a number of prosecutions up in New York and a number around the country. I will get you those, and I will say that we have had full support from the Department of Justice in any white-collar criminal case we had, whether it be corporate fraud or securities fraud.

Mr. KING. And in closing, Director—and I mean closing, Mr. Chairman—very short, the words of Lloyd Cutler, who was underneath Jimmy Carter, he said: “The appearance of conflict is dangerous to public confidence in the administration of justice as true conflict itself. Justice must not only be done; justice must also be seen to be done.”

Thank you, and I yield back.

Mr. SMITH. Thank you Mr. King.

The gentleman from Puerto Rico, Mr. Pierluisi.

Mr. PIERLUISI. Thank you, Mr. Chairman.

Director Mueller, like my colleagues, I want to thank you for your service. You have one of the most challenging jobs in our government, and you perform it with great skill, so thank you.

Director, I would like to talk to you about the drug-related violence that we are seeing in the U.S. jurisdictions of Puerto Rico and the U.S. Virgin Islands and to express my respectful but strong belief that the FBI and all Federal law enforcement agencies need to do far more to deal with this problem.

Let me briefly summarize the situation for you. While violent crime has decreased nationally, violent crime in Puerto Rico and the U.S.V.I. has been on the rise for over a decade now.

The homicide rate in each territory is about six times the national average and almost three times higher than any State. Puerto Rico has nearly the same number of murders each year that Texas does, even though Texas is home to 25 million people, and Puerto Rico’s population doesn’t reach 4 million.

According to estimates, three-quarters of the homicides in Puerto Rico are linked to the international drug trade. As the U.S. Government has increased resources in the Southwest border, what is happening is this is like a moving target. The drug traffickers are changing routes and are hitting the Caribbean once again. This is a problem of national scope.

About three-quarters of the cocaine that enters Puerto Rico is then transported to the U.S. mainland because Puerto Rico is part of the U.S. This is not a foreign country. Once the drugs enter the islands, they are easily delivered to the States. There is no Customs, no heightened scrutiny.

In order to reduce drug-related violence in Puerto Rico and to make the island a less attractive trans-shipment point for these trafficking organizations, both the Governor of Puerto Rico and I

have requested that the Administration establish a Caribbean Border Initiative along the lines of the Southwest Border Initiative, and now we have a Northern Border Initiative.

What is happening is that there is no initiative, no stretch, no comprehensive multi, cross-agency counter-drug strategy for the Caribbean, and the consequences are crystal clear: The violent deaths of tens of thousands of my constituents, and I can, and I will have to say that if this were happening in the States, it would be an outrage, it would be a national emergency.

I am not the only one, though, who believes that the Federal Government has yet to dedicate the resources and personnel necessary to address this problem.

The CJS appropriations bill that the House would approve this week includes the following language. I quote, “the committee is aware that efforts by Federal law enforcement to reduce drug trafficking and associated violence in the Southwest border region have affected trafficking routes and crime rates in the Caribbean. The committee expects the Attorney General to address these trends by allocating necessary resources to areas substantially affected by drug-related violence and reporting such actions to the committee,” end quote.

I know, I am the first one who realizes that we have fiscal constraints, but this is a matter of prioritizing limited resources and responding to problems in relation to their severity. Your agents on the ground in Puerto Rico are doing terrific work. In fact, I met with your SAC just recently. But I don’t believe they are doing—you have enough of them down there and that you have the necessary resources, not only the FBI but the other agencies within DOJ and DHS. So all I am asking is that we need to deal with this with a sense of urgency, and I would like to hear from you at least briefly on this. It is serious, Director.

Mr. MUELLER. There are maybe three aspects of it that we need to address. One is the drug trafficking. That is principally the responsibility of DEA, but we work closely with DEA. Secondly is the homicide rate and the deaths there which, you are absolutely right, are horrendous. In any other city it would be the principal focus. And the third is public corruption.

And our efforts have been in the violence. Some of the violence is tied in to the drug trafficking, but often with the gangs in Puerto Rico it is turf and it is not necessarily associated with the drug trafficking but is an issue all of its own. And our efforts are directed at addressing the homicide rate and the gangs and developing intelligence to take them out, but you have got hundreds, as you well know better than I, and then secondly public corruption.

We had Operation Guard Shack which you are familiar with in which we literally arrested I think it was over a hundred police officers who were involved in covering for the narcotics trade. And so we prioritize Puerto Rico, our efforts, in these particular areas: additional resources, more persons behind bars.

Ms. WATERS. Mr. Chairman, I have a unanimous consent—

Mr. SMITH. Thank you, Mr. Pierluisi.

The gentlewoman from California is recognized for a unanimous consent request.

Ms. WATERS. I would like to have inserted into the record the intelligence note from Domain Management Intelligence related to the Black separatist threat FBI Atlanta.

Mr. SMITH. Okay, without objection.  
[The information referred to follows:]

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ON 02-10-2011



**FBI Atlanta**  
**Intelligence Note from Domain Management**  
**Intelligence Related to the Black Separatist Threat**  
**October 07, 2009**

**Approval:** SIA [redacted]  
 Derived from FBI NSIS XX-2460501  
 Declassify on: 20340527

**Subject:** (U//FOUO) Black Separatist Threat within the Atlanta Division Area of Responsibility

**Summary:**  
 (U//FOUO) The Atlanta Domain Team assesses with moderate confidence the [redacted]

[redacted]

**Scope:**  
 (U//FOUO) This domain intelligence note identifies and assesses the black separatist presence and threat to the Atlanta Division's area of responsibility (AOR). Information is current as of 25 September 2009.

(U) The following information was utilized for this domain note: FBI Atlanta information on black separatists, to include source reporting, assessments, and case files; interviews of FBI Atlanta agents and analysts; FBI reporting on black separatists; and open source data to include US Census Data, Southern Poverty Law Center information, and additional internet searches.

(U//FOUO) This information addresses requirements contained in [redacted]. The Atlanta Domain Team submitted Intelligence Information Needs (IINs) identified in this domain note to the Collection Management Team for further review.

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8014-AT-0104290 Serial 13

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**Key Judgments<sup>1</sup>**

- (U//FOUO) The Atlanta Domain Team assesses with moderate confidence the

[Redacted]

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- (U//FOUO) The Atlanta Domain Team assesses with moderate confidence the

[Redacted]

**Background:**

(U//FOUO) The Atlanta Division encompasses the State of Georgia and is home to over nine million diverse residents. The chart below depicts the population increases among the white and black/African American populations in Georgia from 2000 to 2005-2007, according to US Census data; it also includes estimated population percentages for 2015.<sup>1</sup> Historically, black separatist groups have maintained a presence within Atlanta's area of responsibility (AOR). From 1998 to 2001, Khalid Abdul Muhammad, a former leader within Nation of Islam, operated in Atlanta and was the national leader of the New Black Panther Party (NBPP), leading it in a more radical and potentially more violent direction.

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[Redacted] Georgia NBPP members have been and continue to be active in the NBPP organization.<sup>2</sup>

	2000 census data	% of total GA pop (2000 data)	2007 census data	% of total GA pop (2007 data)	2015 Estimate % of total pop
White	5,327,281	65.1	5,918,880	62.0	59
Black	2,349,542	28.7	2,855,189	29.9	28
Other	509,630	6.2	770,681	8.1	13
Total GA	8,186,453	100%	9,544,750	100%	100%

**Details:**

(U) The known black separatist extremist groups operating within Atlanta's AOR are the New Black Panther Party (NBPP) and the Nation of Islam (NoI). In addition to these

<sup>1</sup> (U) High Confidence generally indicates that judgments are based on high-quality information from multiple sources or from a single highly reliable source, and/or that the nature of the issue makes it possible to render a solid judgment.

(U) Medium Confidence generally means that the information is credibly sourced and plausible, but can be interpreted in various ways, or is not of sufficient quality or corroborated sufficiently to warrant a higher level of confidence.

(U) Low Confidence generally means that the information's credibility and/or plausibility is questionable, the information is too fragmented or poorly corroborated to make solid analytic inferences, or that the FBI has significant concerns or problems with the sources.

\* This statement can be in a text box or in a footnote.

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groups, there is also the potential for an individual with similar ideology to conduct extremist activity within Atlanta's AOR.

(U) *New Black Panther Party (NBPP)*

(U) The Atlanta Domain Team assesses with moderate confidence the [redacted]

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(U) *Augusta*: Although past reporting [redacted] According to Augusta RA reporting, [redacted] Most recently in December 2008, NBPP members conducted a protest against the police officers' killing of a black individual in the Cherry Trees housing projects area of Augusta. During the media reporting on this incident, [redacted]

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(U) *Savannah*: Past reporting identified [redacted] While past reporting indicates that [redacted]

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(U) *Atlanta*: Within the Atlanta metropolitan area, the Atlanta Division has identified [redacted]

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- (U) In [redacted] was involved in the [redacted] and in [redacted] legally purchased [redacted]

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- (U) In July 2006, NBPP members were noted at former Congresswoman Cynthia McKinney's side during the elections. There were also reports from the news

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media that individuals dressed in NEPP uniforms assaulted reporters when they approached McKinney for comments.<sup>8</sup> In addition, in November 2006, NEPP initiated a protest and rally following the shooting death by Atlanta police officers of an elderly African American woman, which was covered by the media.<sup>9</sup>

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• [redacted] has attempted to [redacted] in support of his work for the NEPP.<sup>10</sup>

• [redacted]

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(U) [redacted]

(U) *Recruitment*: Between 2005 - 2007, reporting from multiple officers indicated that

[redacted]

<sup>11</sup> Within Atlanta's AOR, [redacted]

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[redacted]

[redacted] Based on

the above information, there are indicators that [redacted]

*Nation of Islam (NoI)/Fruit of Islam (FoI)*

(U) The Atlanta Domain Team assesses with low confidence that [redacted]

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[Redacted]

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(U) [Redacted] According to the Southern Poverty Law Center, the NOI does have a presence in Macon, GA.

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[Redacted]

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[Redacted]

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*Cross-Program*

[Redacted] Within Atlanta's AOR, there are indications that black separatist extremist group members are [Redacted]

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(U) In December 2001, [Redacted] indicated there is a strong alliance between the Crips and NBPP in Atlanta.<sup>27</sup>

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[Redacted]

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<sup>27</sup> NOI's website is www.noip.org

[Redacted]

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[Redacted]

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[Redacted]

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**Outlook:**

(U) [Redacted]  
[Redacted] Despite this, the Atlanta Domain Team assesses with moderate confidence that the known black separatist groups operating within Atlanta's AOR, NBPP and Nol/Fol [Redacted]

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[Redacted] The Atlanta Domain team assesses with high confidence that [Redacted]

[Redacted]

**Source Coverage:**

(U) The Atlanta Division has identified [Redacted]  
[Redacted]

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**Intelligence Gaps:**

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**Recommendations:**

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**Appendix A: Threat Justification Matrix**

**(U) Black Separatist Threat Assessment Table**

	Threat Level	Confidence Level	Description
Capability	Physical Means/Tools		
	Knowledge		
	Sophistication		
	Association		
Intent	Activity		
	Risk		
Criticality Potential for *	Violence		
	Economic Impact		
	National Security		
	Public Trust		
Vulnerability	Target Richness		
	Defense		
	Access		

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(U) Domain Management Threat Assessment Methodology

Capability	Low	Medium	High
Physical Means/Tools	Has identified tools and/or needs	Has the ability to readily obtain materials or already has some materials	Possesses requisite materials and tools
Knowledge	Actors rarely exhibit a specialized skill set and do not seek training	Actors occasionally exhibit a specialized skill set but are actively seeking training related to that skill set	Actors routinely exhibit a specialized skill set and actively seek training related to skill set
Sophistication	Actors have little or no organizational structure, exhibit a limited if not absent ability to adapt and/or modify their techniques	Actors occasionally employ highly structured, long term plans, rarely exhibit an ability to adapt and/or modify their techniques as appropriate	Actors routinely employ highly structured, long-term plans, regularly exhibiting an ability to adapt, modify their techniques as appropriate and avoid detection
Associations	Actors have no connections to persons of concern to the FBI or Intelligence Community	Actors have connections to persons of concern to the FBI or Intelligence Community within Domain	Actors have multiple connections to persons of concern to the FBI or Intelligence Community within and outside domain

Intent	Low	Medium	High
Activity	Actors have vocalized desires but has taken little or no action to achieve goal	Actors have occasionally taken some action to achieve goal	Actors have made continuous and dedicated actions to achieve goal
Acceptance of Risk	Avoids Risk	Willingness to accept minimal risk	Willing to accept substantial risk

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Criticality	Low	Medium	High
Violence	Aggression and violent actions rarely result in death or psychological trauma	Aggression and violent actions typically result in moderate loss of life or bodily harm or is expected to result in severe psychological trauma	Aggression and violent actions typically result in substantial loss of life or severe bodily harm and often include collateral damage
Economic Impact	Actor(s) poses to exact thousands of dollars in losses to US entities	Actor(s) poses to exact millions to tens of millions of dollars in losses to US entities	Actor(s) poses to exact hundreds of millions to billions of dollars in losses to US entities
National Security	Actor(s) specifically targets US entities, potentially resulting in damage to US national security, regional infrastructure or the nation's critical infrastructure	Actor(s) specifically targets US entities, potentially resulting in serious damage to US national security or the nation's critical infrastructure	Actor(s) specifically targets US entities, potentially resulting in grave damage to US national security or the nation's critical infrastructure
Public Trust	Actions affect local levels of public trust only	Actions affect regional levels of public trust only	Actions affect national levels of public trust

Vulnerability	Low	Medium	High
Target Richness	Traditional singular targets	Traditional type of target but many them in domain	Non-traditional targets, many potential targets in domain
Defenses	Well-protected and difficult to exploit	Simple security that requires threat to have a plan and basic level of skill to overcome	No defenses, target easily attacked or compromised
Access	Actor(s) do not have access to target	Actor(s) have indirect access or the potential to obtain direct access to target	Actor(s) have direct access to target

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Appendix B: Common Operational Pictures (COPs)

(U//FOUO) The Atlanta Domain Team produced a COP comparing the [redacted]  
 [redacted]  
 As demonstrated by the COP [redacted]  
 [redacted]

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End Notes:

- <sup>1</sup> Office of Planning and Budget: Policy, Planning, and Technical Support, "Georgia 2015 Population Projections," dated 2005
- <sup>2</sup> FBI documents, 100A-WF-232405, serial 215, dated 04 January 2006, and 100A-AT-94658, serial 269, dated 23 November 2004.
- <sup>3</sup> FBI Augusta RA reporting and The Augusta Chronicle, "200 March After Blotore's Funeral," by Johnny Edwards, December 23, 2008 ([http://blotore.blogspot.com/2008/12/23/inst\\_585087.html](http://blotore.blogspot.com/2008/12/23/inst_585087.html)).
- <sup>4</sup> Refer to 260A-AT-96326 for additional information, closed November 2004.
- <sup>5</sup> FBI EC, 100A-AT-94658, serial 229, dated 31 March 2004.
- <sup>6</sup> FBI documents, [redacted] multiple serials.
- <sup>7</sup> FBI Letterhead Memorandum (LHM), 100A-WF-232405, serial 215, dated 04 January 2006. b7A
- <sup>8</sup> FBI EC, 801F-AT-101762, serial 75, dated 26 March 2007.
- <sup>9</sup> FBI EC, 100A-WF-232405, serial 202, dated 13 December 2006.
- <sup>10</sup> FBI LHM, 100A-WF-232405, serial 215, dated 04 January 2006.
- <sup>11</sup> FBI EC, [redacted] dated 02 August 2007.
- <sup>12</sup> FBI 302, [redacted] dated 09 May 2007.
- <sup>13</sup> FBI Situational Intelligence Report, "U//LES" [redacted] dated 19 March 2009. b7E
- <sup>14</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 14 May 2009. b7A
- <sup>15</sup> FBI documents, 100A-AT-232405, multiple serials, dated 2005 - 2007.
- <sup>16</sup> FBI LHM, 100A-AT-94658, serial 1, dated 27 September 2002.
- <sup>17</sup> FBI Situational Intelligence Report, "U//LES" [redacted] dated 19 February 2009. b7E
- <sup>18</sup> FBI documents, [redacted] 11/2005, [redacted] dated 14 May 2009.
- <sup>19</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 06 May 2009.
- <sup>20</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 06 May 2009.
- <sup>21</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 18 May 2009. b7E
- <sup>22</sup> [redacted]
- <sup>23</sup> FBI source reporting from a collaborative source with good access, [redacted] dated 06 May 2009.
- <sup>24</sup> FBI documents, 801F-AT-101762, serial 75, dated 26 March 2007, and 801E-AT-101760, serial 89, dated 14 May 2009. b7A
- <sup>25</sup> FBI EC, [redacted] dated 26 January 2007.
- <sup>26</sup> FBI LHM, 100A-WF-232405, serial 215, dated 04 January 2006.
- <sup>27</sup> FBI LHM, 100A-AT-94658, serial 1, dated 27 September 2002.

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<sup>20</sup> FBI EC [redacted] dated 05 June 2009. b7A  
<sup>21</sup> FBI 302, 266A-AT-96326, serial 45, dated 01 October 2004.  
<sup>22</sup> FBI LHM, 100K-DE-103300, serial 3, dated 08 October 2008.  
<sup>23</sup> FBI source reporting from a collaborative source with good access, [redacted]  
dated 09 February 2009.  
<sup>24</sup> FBI LHM, 100K-DE-103300, serial 3, dated 08 October 2008.  
<sup>25</sup> FBI EC [redacted] dated 18 June 2009.

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Mr. SMITH. The gentleman from South Carolina, Mr. Gowdy, is recognized.

Mr. GOWDY. Thank you, Mr. Chairman. Because of his long-serving service to this Committee and because of his exemplary service as the Attorney General from California, I am going to let Mr. Lungren go before me, and I will go last.

Mr. SMITH. Okay. The gentleman from California, Mr. Lungren, is deferred to.

Mr. LUNGREN. What a nice fellow. I sure appreciate that.

I was recalling when I was a kid growing up and listening to Notre Dame football games, one of the stars of Notre Dame was a halfback, Aubrey Lewis, one of the most highly recruited players at that time. I think he had over 200 scholarship offers. He was in the first class of FBI agents which included Blacks. He was an African-American, one of the very first agents and served, died about 11 years ago, but I always remember that. So I guess the FBI can do better, as was suggested, but, as a kid, I remember him being a hero who went to the FBI, and it was kind of exciting to see that happen.

Mr. Director, let me ask you this: I am concerned always about the proper relationship between the executive branch and the legislative branch, deeply aware of the tremendous job the FBI does and the Department of Justice does in looking at public corruption. But I also think it ought to be done in the proper way, and I think the Ted Stevens case was a black mark on the department. And the conduct of the lead FBI agent in the investigation in prosecution of former Senator now deceased Ted Stevens has been called into question.

Among the improper conduct, the agent failed to write post-interview memos, including the government's key witness—when the government's key witness provided information favorable to the defense. Allegedly, the agent also participated in an intentional effort to conceal Brady and other material from the attorneys for Senator Stevens, which are required under law. Those are disturbing.

And I have always thought that when you find improper conduct by officials that action needs to be taken, not only because it is a matter of justice but also to make it very, very clear to others in the department that such action will not be tolerated and that, in fact, direct and specific and immediate recourse will be taken. Can you tell us what has happened in that case?

Mr. MUELLER. Yes. We had actually two agents involved. One of them—one of the agents brought to the attention of the court the issues that were disclosed, and another agent is the one to whom you are referring is going through our OPR process at this point. We are taking into account the most recent report from the person appointed by the court; and, as I say, that person is going through the OPR process at this juncture.

Mr. LUNGREN. I appreciate that. But, you know, Ted Stevens has been—died in a plane accident sometime ago. He was defeated in his election in part because of the actions that were taken against him officially by the Department of Justice, including actions by the FBI agent. It is little solace to people who I believe are attempting to serve this country well in positions of authority that an agency required to uphold the law and being a coequal branch of government had at least that alleged improper activity. It must have been some improper activity, because the court seemed to think it was. And yet here we are after this passage of time, and nothing has taken place. I know you want to be fair about it, but is there going to be a resolution of that any time in the future?

Mr. MUELLER. Yes. There has been an investigation and findings; and, as I say, it is going through the process. The individual has a right to present—

Mr. LUNGREN. Yes, he does. But Members of Congress and elected officials and appointed officials have a right to be treated fairly by the executive branch. I know you take this very seriously. I know your history.

Mr. MUELLER. Absolutely, absolutely.

Mr. LUNGREN. I took it very seriously as Attorney General of California. We investigated and prosecuted all sort of people. I put them in prison.

Mr. MUELLER. And occasionally we did it together.

Mr. LUNGREN. Yes. But the point is, on the other side of it, I think you have an obligation—your institution has an obligation to be absolutely fair. Because if, in fact, you make an error, you have not only done an injustice to the individuals but you have done an injustice to their constituents whose decision to elect someone in office is reversed or individuals in the voting booth have made decisions based on improper information.

So I would just hope that that could be—I don't know if the word is accelerated, but certainly there needs to be some posture to suggest that at least publicly it is taken seriously, that consequences flow from it, and that people should understand that you take it as seriously as I know you do. But in the absence of completed action, I am not sure that message is out there.

I have a whole lot of other questions, but my time is up. I thank the gentleman from South Carolina for being so generous.

Mr. SMITH. Thank you, Mr. Lungren.

The gentleman from South Carolina has been very patient and very gracious, and he is now recognized.

Mr. GOWDY. Thank you, Mr. Chairman.

Director, I want to start by thanking you for your service to our country as a Federal prosecutor and now as the Director of the Bureau. And, again, as I did last time you were here, I want to compliment the Bureau agents in the State of South Carolina, Spartanburg and Greenville. They are always extremely well prepared. They are professional. They are a credit to the Bureau. And if you ever have a chance to tell them, I know a word from someone they respect as much as you would mean a lot to them, so—

My first question really isn't a question. It is more a therapeutic rant.

With the trial going on with KSM, you know, Director, to have a female prosecutor suggest or female defense attorney suggest what female prosecutors ought to have on, to have a defendant take his shirt off in trial, and to have defendants claim that their religion will not allow them to look at women who are dressed a certain way, but that same religion does not prevent them from stoning rape victims and burning women with jet fuel is just outrageous to me, and I don't expect you to comment unless you want to, but the notion that we ever were going to try this case in the media center of the world to give an even bigger platform to these defendants—I will tell you, I had judges come down a lot harder on me because I poured water in a cup too loud than this judge is coming down on these defendants and these attorneys. And I doubt there is a thing in the world you can do about it, but when I read about it and when I juxtapose that with the way American defendants and American prosecutors and defense attorneys are treated

in ordinary court, it just strikes me that we are contorting ourselves like an Olympic gymnast to want the world to think that we are fair with animals.

So, with that, Mr. Watt and Elijah Cummings from Maryland and I don't ever vote the same way, I don't think. If we have, it has been by accident. But we do agree on this.

There is a notion that when poor people steal they go to jail and when rich people steal sometimes they get invited to Senate or House congressional Committee hearings, like the former Governor of New Jersey. And I don't have any idea whether or not that constitutes a crime, but it sure looks like it does. And you have the statistics. I don't challenge them.

I would just encourage you to let the public know that there are prosecutions and convictions and sentences being meted out with respect to the financial fraud. Because the notion that poor people go to jail and rich people don't is ultimately going to destroy our judicial system.

So I will give you a chance to comment. I know you say there are prosecutions going on. I believe you when you say that. I would just ask maybe for your press shop to get the word out or U.S. Attorney's office, who always have very active press shops, to get the word out so the public sees that there are consequences for this.

Mr. MUELLER. I think you make a valid point there. With each prosecution, successful prosecution, there will be an article in the paper, but we can do a better job of pushing together the full portrait of what we have done across the country and the sentences we are achieving in the white-collar arena, and that is a good suggestion we will follow up with.

Mr. GOWDY. Thank you, Director.

The other suggestion that I would have—and, again, I preface again I think you have had a remarkable career, and it just seems like we always focus on the two or three things where there can be improvement instead of the 98 that you do a great job on.

Some of my constituents—and I know NSLs are not part of the Patriot Act, but, nonetheless, they get blended together sometimes—and some of my constituents have asked me, is there any way we can see how often NSLs are used or how often or how pervasive in certain parts of the country? I just think, again, the more information we can give to folks to kind of demystify this notion that the Bureau was walking through people's homes at night—I mean, I never knew a Bureau agent to do that, but I wish we were more aggressive in allaying the fears that people have that we are striking the balance too much in favor of government intervention and not enough in favor of privacy.

Mr. MUELLER. Well, we do file reports with Congress. I would have to check and see which parts are public in terms of what we do with regard to the FISA Act and the FISA statute as well as national security letters. But the fact of the matter is, there are very few—we have very few agents around the country. People think that we are far more prevalent, I think, than we actually are. And if you look around to your right and your left and you see is there somebody who has been anything other than helped by the FBI, then I want that brought to my attention.

But the fact of the matter is we have been successful in addressing over the years organized criminals, terrorists, and that is what we do, and we hope the public recognizes that and in the absence of any other activity such as you describe would understand that their FBI agent is their neighbor, their friend, their supporter, and a defender of the community.

Mr. GOWDY. Thank you, Director.

Mr. SMITH. Thank you, Mr. Gowdy.

Director Mueller, thank you for being here today. Our hearing has been concluded, and we appreciate your testimony. Several Members have asked to follow up with you, and I am sure that that will be able to be accomplished as well, and we will continue to be in touch. Again, thank you for your service.

Mr. MUELLER. Thank you.

Mr. SMITH. Without objection, all Members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record, and the hearing is adjourned.

[Whereupon, at 12:18 p.m., the Committee was adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

#### **Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary**

I join the Chairman in welcoming FBI Director Mueller to the Committee today. Over the years, I have not supported every action taken by the FBI. But during his tenure, I have learned that Director Mueller is a true patriot—a man firmly committed to the rule of law and the constitution. In his many appearances before this Committee and in our meetings, I have been impressed with his openness and his frankness.

That is why I was proud to support the extension of Director Mueller's term for another two years. The nation needs, now as much as at any time in our history, an FBI that is capable of a multifaceted mission—both solving crimes and preventing them—and that capability has been proven under the Director's leadership.

The Director's extended term also means that we will have more opportunities to invite him here before the Judiciary Committee—and, on matters of substance, I look forward to hearing Director Mueller's views on several critical issues:

*Criminal Justice:* Any discussion of law enforcement in this nation requires us to ask serious questions about our criminal justice system. Even Supreme Court Justice Anthony Kennedy, through his work with the American Bar Association, has challenged us as lawyers and lawmakers to address these issues.

Why are more than 2 million people in state or federal prison? Why is more than 60% of that population made up of persons of color? Why are recidivism rates so high? Do mandatory minimum sentences serve any purpose other than limiting judicial discretion where justice might be better served with leniency?

A series of articles in the Washington Post last month raises another set of questions. The Justice Department began its review of flawed forensic work at FBI laboratories nearly twenty years ago. Why have dozens of wrongly incarcerated persons not yet been notified of the exculpatory findings of that review? Why were FBI experts pressured to give improper testimony in court, "asserting the remote odds of a false match or invoking bogus statistics in the absence of data?" Why was the Justice Department's review of this matter conducted in secret, without publishing its findings and without the participation of the defense bar?

The FBI is seen as the nation's preeminent law enforcement agency. We would expect that the FBI would not only be at the forefront of investigating criminals, but also at the forefront of efforts to make our system as a whole more just and fair. The Director has always been fair-minded, and I wonder what his thoughts are on these matters.

*Relationship with the Muslim Community:* Late last year, we learned that many of the materials used to train FBI agents contained wildly inaccurate information—painting the American Muslim community as violent, and perpetuating other dangerous and harmful stereotypes.

There is no place for such misinformation in official training materials. Gross insensitivity aside, these flatly inaccurate portrayals distract federal agents from real threats, and serve to isolate American Muslims when we ought to be building trust with that community.

I understand that the FBI has undertaken a review of its training materials and excised the errors from its database. I also understand that the FBI has issued guidance to its agents that requires supervisors to play a more active role in vetting instructors. I look forward to hearing from the Director about this review, and about

the steps he has taken to prevent further damage to the relationship between the federal government and the American Muslim community.

*Mortgage fraud:* Home foreclosures and delinquencies have surged in recent years—as have schemes to defraud distressed homeowners. One common type of fraud now involves scammers claiming that they can negotiate a loan modification with the bank, demanding large fees up front, and failing to deliver any service to the homeowner.

We ought to be doing more to keep people in their homes. Part of that mission is catching the crooks who would prey on homeowners at their most vulnerable moments. I hope the Director can share with us the efforts of the FBI to stop these crimes.

*Budget:* I would also like to know where the Director stands on proposals to cut the FBI's budget. Under the proposal passed by the majority, we would lose at least 4,500 federal agents at the Department of Justice by 2014, and prosecute 160,000 fewer criminal cases over the next decade.

These losses would appear to have a devastating impact on the FBI's mission, and in particular on the FBI's ability to conduct counterterrorism investigations. I would like the Director to elaborate on the effects of this proposal.

I look forward to today's testimony on this and other issues.

## ATTACHMENTS

Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The Was... Page 1 of 10

## The Washington Post

[Back to previous page](#)

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### Convicted defendants left uninformed of forensic flaws found by Justice Dept.

By **Spencer S. Hsu**, Published: April 16

Justice Department officials have known for years that flawed forensic work might have led to the convictions of potentially innocent people, but prosecutors failed to notify defendants or their attorneys even in many cases they knew were troubled.

Officials started reviewing the cases in the 1990s after reports that sloppy work by examiners at the FBI lab was producing unreliable forensic evidence in court trials. Instead of releasing those findings, they made them available only to the prosecutors in the affected cases, according to documents and interviews with dozens of officials.

In addition, the Justice Department reviewed only a limited number of cases and focused on the work of one scientist at the FBI lab, despite warnings that problems were far more widespread and could affect potentially thousands of cases in federal, state and local courts.

As a result, hundreds of defendants nationwide remain in prison or on parole for crimes that might merit exoneration, a retrial or a retesting of evidence using DNA because FBI hair and fiber experts may have misidentified them as suspects.

In one Texas case, Benjamin Herbert Boyle was executed in 1997, more than a year after the Justice Department began its review. Boyle would not have been eligible for the death penalty without the FBI's flawed work, according to a prosecutor's memo.

<http://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-fore...> 4/17/2012

Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The Was... Page 2 of 10

The case of a Maryland man serving a life sentence for a 1981 double killing is another in which federal and local law enforcement officials knew of forensic problems but never told the defendant. Attorneys for the man, John Norman Huffington, say they learned of potentially exculpatory Justice Department findings from The Washington Post. They are seeking a new trial.

Justice Department officials said that they met their legal and constitutional obligations when they learned of specific errors, that they alerted prosecutors and were not required to inform defendants directly.

The review was performed by a task force created during an inspector general's investigation of misconduct at the FBI crime lab in the 1990s. The inquiry took nine years, ending in 2004, records show, but the findings were never made public.

In the discipline of hair and fiber analysis, only the work of FBI Special Agent Michael P. Malone was questioned. Even though Justice Department and FBI officials knew that the discipline had weaknesses and that the lab lacked protocols — and learned that examiners' "matches" were often wrong — they kept their reviews limited to Malone.

But two cases in D.C. Superior Court show the inadequacy of the government's response.

Santae A. Tribble, now 51, was convicted of killing a taxi driver in 1978, and Kirk L. Odom, now 49, was convicted of a sexual assault in 1981.

Key evidence at each of their trials came from separate FBI experts — not Malone — who swore that their scientific analysis proved with near certainty that Tribble's and Odom's hair was at the respective crime scenes.

But DNA testing this year on the hair and on other old evidence virtually eliminates Tribble as a suspect and completely clears Odom. Both men have completed their sentences and are on lifelong parole. They are now seeking exoneration in the courts in the hopes of getting on with their lives.

Neither case was part of the Justice Department task force's review.

A third D.C. case shows how the lack of Justice Department notification has forced people to stay in prison longer than they should have.

Donald E. Gates, 60, served 28 years for the rape and murder of a Georgetown University student based on Malone's testimony that his hair was found on the victim's body. He was exonerated by DNA testing in 2009. But for 12 years before that, prosecutors never told him about the inspector general's report about Malone, that Malone's work was key to his conviction or that Malone's findings were flawed, leaving him in prison the entire time.

After The Post contacted him about the forensic issues, U.S. Attorney Ronald C. Machen Jr. of the District said his office would try to review all convictions that used hair analysis.

Seeking to learn whether others shared Gates's fate, The Post worked with the nonprofit National Whistleblowers Center, which had obtained dozens of boxes of task force documents through a years-long Freedom of Information Act fight.

Task force documents identifying the scientific reviews of problem cases generally did not contain the

<http://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-fore...> 4/17/2012

Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The Was... Page 3 of 10

names of the defendants. Piecing together case numbers and other bits of information from more than 10,000 pages of documents, The Post found more than 250 cases in which a scientific review was completed. Available records did not allow the identification of defendants in roughly 100 of those cases. Records of an unknown number of other questioned cases handled by federal prosecutors have yet to be released by the government.

The Post found that while many prosecutors made swift and full disclosures, many others did so incompletely, years late or not at all. The effort was stymied at times by lack of cooperation from some prosecutors and declining interest and resources as time went on.

Overall, calls to defense lawyers indicate and records documented that prosecutors disclosed the reviews' results to defendants in fewer than half of the 250-plus questioned cases.

Michael R. Bromwich, a former federal prosecutor and the inspector general who investigated the FBI lab, said in a statement that even if more defense lawyers were notified of the initial review, "that doesn't absolve the task force from ensuring that every single defense lawyer in one of these cases was notified."

He added: "It is deeply troubling that after going to so much time and trouble to identify problematic conduct by FBI forensic analysts the DOJ Task Force apparently failed to follow through and ensure that defense counsel were notified in every single case."

Justice Department spokeswoman Laura Sweeney said the federal review was an "exhaustive effort" and met legal requirements, and she referred questions about hair analysis to the FBI. The FBI said it would evaluate whether a nationwide review is needed.

"In cases where microscopic hair exams conducted by the FBI resulted in a conviction, the FBI is evaluating whether additional review is warranted," spokeswoman Ann Todd said in a statement. "The FBI has undertaken comprehensive reviews in the past, and will not hesitate to do so again if necessary."

#### **Santae Tribble and Kirk Odom**

John McCormick had just finished the night shift driving a taxi for Diamond Cab on July 26, 1978. McCormick, 63, reached the doorstep of his home in Southeast Washington about 3 a.m., when he was robbed and fatally shot by a man in a stocking mask, according to his widow, who caught a glimpse of the attack from inside the house.

Police soon focused on Santae Tribble as a suspect. A police informant said Tribble told her he was with his childhood friend, Cleveland Wright, when Wright shot McCormick.

After a three-day trial, jurors deliberated two hours before asking about a stocking found a block away at the end of an alley on 28th Street SE. It had been recovered by a police dog, and it contained a single hair that the FBI traced to Tribble. Forty minutes later, the jury found Tribble guilty of murder. He was sentenced in January 1980 to 20 years to life in prison.

Tribble, 17 at the time, his brother, his girlfriend and a houseguest all testified that they were together preparing to celebrate the guest's birthday the night McCormick was killed. All four said Tribble and his girlfriend were asleep between 2 and 4:30 a.m. in Seat Pleasant.

Tribble took the stand in his own defense, saying what he had said all along — that he had nothing to do

<http://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-fore...> 4/17/2012

with McCormick's killing.

The prosecution began its closing argument by citing the FBI's testimony about the hair from the stocking.

This January, after a year-long effort to have DNA evidence retested, Tribble's public defender succeeded and turned over the results from a private lab to prosecutors. None of the 13 hairs recovered from the stocking — including the one that the FBI said matched Tribble's — shared Tribble's or Wright's genetic profile, conclusively ruling them out as sources, according to mitochondrial DNA analyst Terry Melton of the private lab.

"The government's entire theory of prosecution — that Mr. Tribble and Mr. Wright acted together to kill Mr. McCormick — is demolished," wrote Sandra K. Levick, chief of special litigation for the D.C. Public Defender Service and the lawyer who represents Gates, Tribble and Odom. In a motion to D.C. Superior Court Judge Laura Cordero seeking Tribble's exoneration, Levick wrote: "He has waited thirty-three years for the truth to set him free. He should have to wait no longer."

In an interview, Tribble, who served 28 years in prison, said that whether the court grants his request or not, he sees it as a final chance to assert his innocence.

"Ms. Levick has been like an angel," Tribble added, "... and I thank God for DNA."

Details of the new round of hair testing illustrate how hair analysis is highly subjective. The FBI scientist who originally testified at Tribble's trial, Special Agent James A. Hilverda, said all the hairs he retrieved from the stocking were human head hairs, including the one suitable for comparison that he declared in court matched Tribble's "in all microscopic characteristics."

In August, Harold Deadman, a senior hair analyst with the D.C. police who spent 15 years with the FBI lab, forwarded the evidence to the private lab and reported that the 13 hairs he found included head and limb hairs. One exhibited Caucasian characteristics, Deadman added. Tribble is black.

But the private lab's DNA tests irrefutably showed that the 13 hairs came from three human sources, each of African origin, except for one — which came from a dog.

"Such is the true state of hair microscopy," Levick wrote. "Two FBI-trained analysts, James Hilverda and Harold Deadman, could not even distinguish human hairs from canine hairs."

Hilverda declined to comment. Deadman said his role was limited to describing characteristics of hairs he found.

Kirk Odom's case shares similarities with Tribble's. Odom was convicted of raping, sodomizing and robbing a 27-year-old woman before dawn in her Capitol Hill apartment in 1981.

The victim said she spoke with her assailant and observed him for up to two minutes in the "dim light" of street lamps through her windows before she was gagged, bound and blindfolded in an hour-long assault.

Police put together a composite sketch of the attacker, based on the victim's description. About five weeks after the assault, a police officer was talking to Odom about an unrelated matter. He thought Odom looked like the sketch. So he retrieved a two-year-old photograph of Odom, from when he was

Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The Was... Page 5 of 10

16, and put it in a photo array for the victim. The victim picked the image out of the array that April and identified Odom at a lineup in May. She identified Odom again at his trial, telling jurors her assailant “had left her with an image of his face etched in her mind.”

At trial, FBI Special Agent Myron T. Scholberg testified that a hair found on the victim’s nightgown was “microscopically like” Odom’s, meaning the samples were indistinguishable. Prosecutors explained that Scholberg had not been able to distinguish between hair samples only “eight or 10 times in the past 10 years, while performing thousands of analyses.”

But on Jan. 18 of this year, Melton, of the same lab used in the Tribble case, Mitotyping Technologies of State College, Pa., reported its court-ordered DNA test results: The hair in the case could not have come from Odom.

On Feb. 27, a second laboratory selected by prosecutors, Bode Technology of Lorton, turned over the results of court-ordered nuclear DNA testing of stains left by the perpetrator on a pillowcase and robe.

Only one man left all four partial DNA profiles developed by the lab, and that man could not have been Odom.

The victim “was tragically mistaken in her identification of Mr. Odom as her assailant,” Levick wrote in a motion filed March 14 seeking his exoneration. “One man committed these heinous crimes; that man was not Kirk L. Odom.”

Scholberg, who retired in 1985 as head of hair and fiber analysis after 18 years at the FBI lab, said side-by-side hair comparison “was the best method we had at the time.”

Odom, who was imprisoned for 20 years, had to register as a sex offender and remains on lifelong parole. He says court-ordered therapists still berate him for saying he is not guilty. Over the years, his conviction has kept him from possible jobs, he said.

“There was always the thought in the back of my mind ... ‘One day will my name be cleared?’” Odom said at his home in Southeast Washington, where he lives with his wife, Harriet, a medical counselor.

Federal prosecutors declined to comment on Tribble’s and Odom’s specific claims, citing pending litigation.

One government official noted that Odom served an additional 16 months after his release for an unrelated simple assault that violated his parole.

However, in a statement released after being contacted by The Post, Machen, the U.S. attorney in the District, acknowledged that DNA results “raise serious questions in my mind about these convictions.”

“If our comprehensive review shows that either man was wrongfully convicted, we will promptly join him in a motion to vacate his conviction, as we did with Donald Gates in 2009,” Machen said.

#### **The trouble with hair analysis**

Popularized in fiction by Sherlock Holmes, hair comparison became an established forensic science by the 1950s. Before modern-day DNA testing, hair analysis could, at its best, accurately narrow the pool of criminal suspects to a class or group or definitively rule out a person as a possible source.

<http://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-fore...> 4/17/2012

Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The Was... Page 6 of 10

But in practice, even before the “CSI effect” led jurors to expect scientific evidence at every trial, a claim of a hair match packed a powerful, dramatic punch in court. The testimony, usually by a respected scientist working at a respected federal agency, allowed prosecutors to boil down ambiguous cases for jurors to a single, incriminating piece of human evidence left at the scene.

Forensic experts typically assessed the varying characteristics of a hair to determine whether the defendant might be a source. Some factors were visible to the naked eye, such as the length of the hair, its color and whether it was straight, kinky or curly. Others were visible under a microscope, such as the size, type and distribution of pigmentation, the alignment of scales or the thickness of layers in a given hair, or its diameter at various points.

Other judgments could be made. Was the hair animal or human? From the scalp, limbs or pubic area? Of a discernible race? Dyed, bleached or otherwise treated? Cut, forcibly removed or shed naturally?

But there is no consensus among hair examiners about how many of these characteristics were needed to declare a match. So some agents relied on six or seven traits, while others needed 20 or 30. Hilverda, the FBI scientist in Tribble’s case, told jurors that he had performed “probably tens of thousands of examinations” and relied on “about 15 characteristics.”

Despite his testimony, Hilverda recorded in his lab notes that he had measured only three characteristics of the hair from the stocking — it was black, it was a human head hair, and it was from an African American. Similarly, Scholberg’s notes describe the nightgown hair in Odom’s case in the barest terms, as a black, human head hair fragment, like a sample taken from Odom.

Hilverda acknowledged that results could rule out a person or be inconclusive. However, he told jurors that a “match” reflected a high likelihood that two hairs came from the same person. Hilverda added, “Only on very rare occasions have I seen hairs of two individuals that show the same characteristics.”

In Tribble’s case, federal prosecutor David Stanley went further as he summed up the evidence. “There is one chance, perhaps for all we know, in 10 million that it could [be] someone else’s hair,” he said in his closing arguments, sounding the final word for the government.

Stanley declined to comment.

#### **Flaws known for decades**

The Tribble and Odom cases demonstrate problems in hair analysis that have been known for nearly 40 years.

In 1974, researchers acknowledged that visual comparisons are so subjective that different analysts can reach different conclusions about the same hair. The FBI acknowledged in 1984 that such analysis cannot positively determine that a hair found at a crime scene belongs to one particular person.

In 1996, the Justice Department studied the nation’s first 28 DNA exonerations and found that 20 percent of the cases involved hair comparison. That same year, the FBI lab stopped declaring matches based on visual comparisons alone and began requiring DNA testing as well.

Yet examples of FBI experts violating scientific standards and making exaggerated or erroneous claims emerged in 1997 at the heart of the FBI lab’s worst modern scandal, when Bromwich’s investigation found systematic problems involving 13 agents. The lab’s lack of written protocols and examiners’ weak

<http://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-fore...> 4/17/2012

Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The Was... Page 7 of 10

scientific qualifications allowed bias to influence some of the nation's highest-profile criminal investigations, the inspector general said.

From 1996 through 2004, a Justice Department task force set out to review about 6,000 cases handled by the 13 discredited agents for any potential exculpatory information that should be disclosed to defendants. The task force identified more than 250 convictions in which the agents' work was determined to be either critical to the conviction or so problematic — for example, because a prosecutor refused to cooperate or records had been lost — that it completed a fresh scientific assessment of the agent's work. The task force was directed to notify prosecutors of the results.

The only real notice of what the task force found came in a 2003 Associated Press account in which unnamed government officials said they had turned over results to prosecutors and were aware that defendants had been notified in 100 to 150 cases. The officials left the impression that anybody whose case had been affected had been notified and that, in any case, no convictions had been overturned, the officials said.

But since 2003, in the District alone, two of six convictions identified by The Post in which forensic work was reassessed by the task force have been vacated. That includes Gates's case, but not those of Tribble and Odom, who are awaiting court action and were not part of the task force review.

The Gates exoneration also shows that prosecutors failed to turn over information uncovered by the task force.

In addition to Gates, the murder cases in Texas and Maryland and a third in Alaska reveal examples of shortcomings.

All three cases, in addition to the District cases, were handled by FBI agent Malone, whose cases made up more than 90 percent of scientific reviews found by The Post.

In Texas, the review of Benjamin Herbert Boyle's case got underway only after the defendant was executed, 16 months after the task force was formed, despite pledges to prioritize death penalty cases.

Boyle was executed six days after the Bromwich investigation publicly criticized Malone, the FBI agent who worked on his case, but the FBI had acknowledged two months earlier that it was investigating complaints about him.

The task force asked the Justice Department's capital-case review unit to look over its work, but the fact that it failed to prevent the execution was never publicized.

In Maryland, John Norman Huffington's attorneys say they were never notified of the findings of the review in his case, leaving them in a battle over the law's unsettled requirements for prosecutors to turn over potentially exculpatory evidence and over whether lawyers and courts can properly interpret scientific findings.

In Alaska, Newton P. Lambert's defenders have been left to seek DNA testing of remaining biological evidence, if any exists, while he serves a life sentence for a 1982 murder. Prosecutors for both Huffington and Lambert claim they disclosed findings at some point to other lawyers but failed to document doing so. In Lambert's case, The Post found that the purported notification went to a lawyer who had died.

Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The Was... Page 8 of 10

Senior public defenders in both states say they received no such word, which they say would be highly unlikely if it in fact came.

Malone, 66, said he was simply using the best science available at the time. "We did the best we could with what we had," he said.

Even the harshest critics acknowledge that the Justice Department worked hard to identify potentially tainted convictions. Many of the cases identified by the task force involved serious crimes, and several defendants confessed or were guilty of related charges. Courts also have upheld several convictions even after agents' roles were discovered.

#### **Flawed agents or a flawed system?**

Because of the focus on Malone, many questionable cases were never reviewed.

But as in the Tribble and Odom cases, thousands of defendants nationwide have been implicated by other FBI agents, as well as state and local hair examiners, who relied on the same flawed techniques.

In 2002, the FBI found after it analyzed DNA in 80 selected hair cases that its agents had reported false matches more than 11 percent of the time. "I don't believe forensic science truly understood the significance of microscopic hair comparison, and it wasn't until [DNA] that we learned that 11 percent of the time, two hairs can be microscopically similar yet come from different people," said Dwight E. Adams, who directed the FBI lab from 2002 to 2006.

Yet a Post review of the small fraction of cases in which an appeals court opinion describes FBI hair testimony shows that several FBI agents gave improper testimony, asserting the remote odds of a false match or invoking bogus statistics in the absence of data.

For example, in testimony in a Minnesota bank robbery case, also in 1978, Hilverda, the agent who worked on Tribble's case, reiterated that he had been unable to distinguish among different people's hair "only on a couple of occasions" out of more than 2,000 cases he had analyzed.

In a 1980 Indiana robbery case, an agent told jurors that he had failed to tell different people's hair apart just once in 1,500 cases. After a slaying in Tennessee that year, another agent testified in a capital case that there was only one chance out of 4,500 or 5,000 that a hair came from someone other than the suspect.

"Those statements are chilling to read," Bromwich said of the exaggerated FBI claims at trial.

Todd, the FBI spokeswoman, said bureau lab reports for more than 30 years have qualified their findings by saying that hair comparisons are not a means of absolute positive identification. She requested a list of cases in which agents departed from guidelines in court. The Post provided nine cases.

Todd declined to say whether the bureau considered taking steps to determine whether other agents intentionally or unintentionally misled jurors. "Only Michael Malone's conduct was questioned in the area of hair comparisons," Todd said. "The [inspector general] did not question the merits of microscopic hair comparisons as a scientific discipline."

Experts say the difference between laboratory standards and examiners' testimony in court can be important, especially if no one is reading or watching what agents say.

<http://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-fore...> 4/17/2012

Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The Was... Page 9 of 10

"It seemingly has never been routine for crime labs to do supervision based on trial testimony," said University of Virginia School of Law professor Brandon L. Garrett. "You can have cautious standards, but if no one is supervising their implementation, it's predictable that analysts may cross the line."

**'Veil of secrecy'**

A review of the task force documents, as well as Post interviews, found that the Justice Department struggled to balance its roles as a law enforcer defending convictions, a minister of justice protecting the innocent, and a patron and practitioner of forensic science.

By excluding defense lawyers from the process and leaving it to prosecutors to decide case by case what to disclose, authorities waded into a legal and ethical morass that left some prisoners locked away for years longer than necessary. By adopting a secret process that limited accountability, documents show, the task force left the scope and nature of scientific problems unreported, obscuring issues from further study and permitting similar breakdowns.

"The government has hidden behind the veil of secrecy to shield these abuses despite official assurances that justice would be done," said David Colapinto, general counsel of the National Whistleblowers Center.

The American Bar Association and others have proposed stronger ethics rules for prosecutors to act on information that casts doubt on convictions; opening laboratory and other files to the defense; clearer reporting and evidence retention; greater involvement by scientists in setting rules for testimony at criminal trials; and more scientific training for lawyers and judges.

Other experts propose more oversight by standing state forensic-science commissions and funding for research into forensic techniques and experts for indigent defendants.

A common theme among reform-minded lawyers and experts is taking the oversight of the forensic labs away from police and prosecutors.

"It's human to make mistakes," said Steven D. Benjamin, president-elect of the National Association of Criminal Defense Lawyers. "It's wrong not to learn from them."

More specifically, the D.C. Public Defender Service, Benjamin's group and others said justice would be served by retesting hair evidence in convictions nationwide from 1996 and earlier. "If microscopic hair analysis was a key piece of evidence in a conviction, and it was one of only a limited amount of evidence in a case, would it be worthwhile to retest that using mitochondrial DNA? I would say absolutely," said Adams, the former FBI lab director.

The promised review by federal prosecutors of hair convictions in the District would not include cases before 1985, when FBI records were computerized, and would not disclose any defendant's name. That approach would have missed Gates, Odom and Tribble, who were convicted earlier.

Representatives for Machen, the FBI and the Justice Department also declined to say why the review should be limited to D.C. cases. The Post found that 95 percent of the troubled cases identified by the task force were outside the District.

Avis E. Buchanan, director of the D.C. Public Defender Service, said her agency must be "a full participant" in the review, which it has sought for two years, and that it should extend nationwide.

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Convicted defendants left uninformed of forensic flaws found by Justice Dept. - The W... Page 10 of 10

“Surely the District of Columbia is not the only place where such flawed evidence was used to convict the innocent,” she said.

Staff researcher Jennifer Jenkins and database editor Ted Mellnik contributed to this report.

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### DOJ review of flawed FBI forensics processes lacked transparency

By [Spencer S. Hsu](#), [Jennifer Jenkins](#) and [Ted Mellnik](#), Published: April 17

The bombshell came at the most inopportune time.

An FBI special agent was testifying in the government's high-profile terrorism trial against Omar Abdel Rahman, the "blind sheik" suspected of plotting [the first attack on the World Trade Center](#).

[Frederic Whitehurst](#), a chemist and lawyer who worked in the FBI's crime lab, testified that he was told by his superiors to ignore findings that did not support the prosecution's theory of the bombing.

"There was a great deal of pressure put upon me to bias my interpretation," Whitehurst said in U.S. District Court in New York in 1995.

Even before the Internet, Whitehurst's extraordinary claim went viral. It turned out he had written or passed along scores of memos over the years warning of a lack of impartiality and scientific standards at the famed lab that did the forensic work after the World Trade Center attack and in other cases.

With the FBI under fire for its handling of the 1993 trade center attack, [the Oklahoma City bombing](#) and the [O.J. Simpson murder case](#), officials had to act.

After the Justice Department's inspector general began a review of Whitehurst's claims, [Attorney General Janet Reno](#) and [FBI Director Louis J. Freeh](#) decided to launch a task force to dig through

<http://www.washingtonpost.com/local/crime/doj-review-of-flawed-fbi-forensics-processes-...> 4/18/2012

thousands of cases involving discredited agents, to ensure that “no defendant’s right to a fair trial was jeopardized,” as one FBI official promised at a congressional hearing.

The task force took nine years to complete its work and never publicly released its findings. Not the results of its case reviews of suspect lab work. Not the names of the defendants who were convicted as a result. And not the nature or scope of the forensic problems it found.

Those decisions more than a decade ago remain relevant today for hundreds of people still in the U.S. court system, because officials never notified many defendants of the forensic flaws in their cases and never expanded their review to catch similar mistakes.

A review of more than 10,000 pages of task force documents and dozens of interviews demonstrate that the panel operated in secret and with close oversight by FBI and Justice Department brass — including Reno and Freeh’s top deputy — who took steps to control the information uncovered by the group.

“It was not open,” said a person who worked closely with the task force and who spoke on the condition of anonymity because the bureau and Justice Department maintain a strong influence in forensic science. “Maybe [a coverup] wasn’t the intent, but it did seem to look that way. ... It was too controlled by the FBI.”

The documents and interviews tell a story of how the Justice Department’s promise to protect the rights of defendants became in large part an exercise in damage control that left some prisoners locked away or in the dark for years longer than necessary. The Justice Department continues to decline to release the names of defendants in the affected cases.

A Washington Post review of the department’s actions shows an agency struggling to balance its goal of defending convictions in court with its responsibility to protect the innocent. The Justice Department’s decision to allow prosecutors to decide what to disclose to defendants was criticized at the time and allowed most of the process to remain secret. But by cloaking cases in anonymity, failing to ensure that defendants were notified of troubles with their cases and neglecting to publicly report problems or recommend solutions, the task force obscured problems from further study.

Justice Department spokeswoman Laura Sweeney said the federal review met constitutional requirements by allowing prosecutors in the affected cases to make the final decision whether to disclose potentially exculpatory information to the defendants.

“In January 1996 the Department established a Task Force to advise prosecutors of the Office of Inspector General investigation of the FBI lab,” Sweeney said in a statement. The task force worked with prosecutors and the FBI “to notify the relevant prosecutors [local, state and federal] so that they could determine what information needed to be disclosed to defense counsel.”

#### **Scathing report**

If the Justice Department was secretive, the agency’s independent inspector general was not. Michael R. Bromwich’s probe culminated in a devastating 517-page report in April 1997 on misconduct at the FBI lab.

His findings stopped short of accusing agents of perjury or of fabricating results, but he concluded that FBI managers failed — in some cases for years — to respond to warnings about the scientific integrity and competence of agents.

The chief of the lab's explosives unit, for example, "repeatedly reached conclusions that incriminated the defendants without a scientific basis" in the 1995 Oklahoma City bombing, Bromwich wrote. The head of toxicology lacked judgment and credibility and overstated results in the 1994 Simpson investigation. After the 1993 World Trade Center attack, the key FBI witness "worked backward," tailoring his testimony to reach the result he wanted. Other agents "spruced up" notes for trial, altered reports without the author's permission or failed to document or confirm their findings.

The investigation led to wide-ranging changes, including higher laboratory standards and requirements for examiners.

Meanwhile, the Justice Department set out to evaluate discredited agents' work in thousands of cases that had gone to trial.

Jim Maddock, the FBI's assistant general counsel, told reporters that the goal of the new task force was to identify any potentially exculpatory information that had arisen in any criminal case involving agents criticized in the report.

"We are undertaking that review," Maddock said at an April 15, 1997, news conference. "And when it is done, we will give a full accounting of our findings."

Interviews and documents show that key decisions about the task force's work were made at the highest levels, including the decisions to exclude defense lawyers from the review and not publicly release the findings.

Task force participants said Reno signed off on the decision allowing prosecutors to decide what to disclose, because normal legal and constitutional requirements give prosecutors that discretion.

Justice Department officials also believed that the public release of the 1997 inspector general report generated enough publicity to give defense attorneys and their clients opportunities to appeal, task force participants said.

"Our job was to do the scientific reviews and then to send the results to the prosecutors, and they were responsible for determining whether they were going to disclose or not," Lucy L. Thomson, the chief of the task force, said in an interview. "That was just the way Janet Reno decided to do it."

Reno is physically ailing and was unable to comment for this article.

Her deputy attorney general until April 1997, Jamie Gorelick, said Reno "was very, very interested in assuring that we weren't keeping in prison people who deserved to have their convictions reviewed."

"I am sure she tried as hard as she could to keep the pressure on the bureau and on the criminal division," Gorelick said.

#### **Delays, omissions**

Documents show that the FBI and Justice Department set strict rules about what information would be disclosed as they prepared to battle defendants who challenged convictions.

The department planned to "monitor all decisions" by federal prosecutors over whether to disclose information, the head of the criminal division, John C. Keeney, wrote in a memo to all U.S. attorneys on

DOJ review of flawed FBI forensics processes lacked transparency - The Washington Post Page 4 of 6

Jan. 4, 1996. The division stood ready, if necessary, to "evaluate the allegations and, if appropriate rebut them," he wrote.

In addition, the Justice Department and the FBI negotiated over the limit and scope of the task force review, the documents show.

For example, in a June 1997 memo, Keeney told federal prosecutors that the criminal division and the FBI would "arrange for an independent, complete review of the Laboratory's findings and any related testimony" in all convictions in which they found there was a "reasonable probability" that work by discredited agents had affected the conviction or sentence.

But two months later, the senior attorney in charge of the task force told Keeney's deputy that the FBI indicated that it planned to require "a cursory paper review" only and generally did not plan to reexamine evidence.

That attorney in charge, Thomson, told Deputy Assistant Attorney General Kevin V. DiGregory in an Aug. 19, 1997, memo that the FBI also wanted to keep the focus off the most vulnerable cases by not conducting reviews if a case was still in litigation or on appeal — even though the panel's work would have been most relevant to a judge at those times.

There were other hitches. One year later, in August 1998, Thomson complained to DiGregory that "no scientists have been retained to date" by the FBI to conduct reviews of cases in which defendants may have been wrongly convicted.

Reviews were "needed as soon as possible in order to avoid possibly undercutting prosecutors' arguments . . . and to ensure that defendants will not exhaust opportunities to file post-conviction relief motions," Thomson said.

As it turned out, reviews would continue for six years, leaving defendants in jail after having been convicted in cases with faulty forensics.

Keeney died last year after retiring in 2010 as the longest-serving federal prosecutor in U.S. history. DiGregory did not return messages left at his home and passed through an associate.

Thomson, now a privacy expert, said that the reviews were not cursory and that she did not know whether any defendants had lost opportunities to appeal their convictions.

#### **Reduced paper trail**

As the cases became known to state and local prosecutors, many moved swiftly and made full disclosures. Others stymied the effort, whether intentionally or not.

Because of the sheer passage of time, files, trial transcripts or other records often were lost or destroyed. Personnel turnover in prosecutors' offices often left behind no living memory of cases. Many state and local prosecutors worked in small offices with enormous active caseloads and had little stake in the Justice Department process.

As a result, reviewers dropped plans to require that state and local prosecutors sign statements when they determined a discredited agent's work was pivotal to a case, or to explain in writing if they determined it was not, records show.

DOJ review of flawed FBI forensics processes lacked transparency - The Washington Post Page 5 of 6

That reduced the paper trail. As long as the task force got the information, a participant said, it did not matter whether it was written down.

The task force did order reviews for multiple cases in which prosecutors refused to cooperate. For example, Tampa prosecutor Harry Lee Coe III, now deceased, told the department that his lawyers were too overworked to review questioned death penalty cases, documents show.

In South Carolina, the task force completed a scientific review in late 2002 in the case of Roy David Brooks, who had been convicted of murder. But the review came after the state had destroyed records. And the destruction of records came days after the task force wrote to prosecutors for the third time in four years seeking such records.

Even when cases were disclosed to defense counsel, it was not clear what was disclosed.

In some cases, one-sentence notifications were sent to defendants, many of whom were indigent, still in prison or without attorneys.

"Please find enclosed a copy of the Attachment to Independent Case Review Report for CDRU#6480 Case File #95-253567, which we received, from the U.S. Department of Justice," stated the entirety of a letter from prosecutors in Tampa to one defendant in April 2001. That letter came 18 years after the offense.

The attached three-page report did not contain the defendant's name — only strings of four- and eight-digit FBI and Justice Department code numbers. It had nothing to indicate that it involved the particular defendant's case or the meaning of bland statements of scientific results.

In other cases, records indicate that prosecutors told defendants or their attorneys early on about the inspector general's report but never mentioned that the task force found more-specific problems.

The task force gradually wound down when Thomson and DiGregory departed. A new administration arrived months before the Sept. 11, 2001, terrorist attacks, which transformed priorities. In 2002, Michael Chertoff, then assistant attorney general for the criminal division, narrowed the review to speed its completion, dropping unspecified "small cases."

Through a spokesman, Chertoff declined to comment.

In addition, the criminal division stopped asking prosecutors to notify it if they turned over review results to defense attorneys.

Research director Madonna Lebling and researcher Aaron Carter contributed to this report.

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**Post-Hearing Questions submitted to the Honorable Robert S. Mueller, III,  
Director, Federal Bureau of Investigation\***

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July 3, 2012

The Honorable Robert S. Mueller, III  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Ave., NW  
Washington, DC 20535

Dear Director Mueller,

I would like to thank you again for your testimony at the Committee's hearing on May 9, 2012. As follow up to that hearing, enclosed are questions from Committee members for the hearing record. Please remember your responses to these questions will be included in the official hearing record.

The Committee would appreciate a response to these questions by August 3, 2012. Please submit your response to Kelsey Deterding at [kelsey.deterding@mail.house.gov](mailto:kelsey.deterding@mail.house.gov) or 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact Holt Lackey, Chief Oversight and Investigations Counsel, at [holt.lackey@mail.house.gov](mailto:holt.lackey@mail.house.gov) or at 202-225-3951.

Thank you again for your participation in the hearing.

Sincerely,

  
Lamar Smith  
Chairman

Enclosure

\*December 18, 2012—At the time of printing, the Committee was aware that the FBI's responses were pending with the Department of Justice. The Committee's repeated attempts to retrieve this information were unsuccessful.

**United States House of Representatives**

*Committee on the Judiciary*

Questions for the Record

**Questions from Representative Mark Amodei**

Human Trafficking:

I am concerned about Mexican drug cartels and their involvement in human trafficking, particularly the trafficking of minors to the United States for sex-related activities. This is a major problem in Nevada. According to FBI Special Agent In-Charge Joseph Dickey, in the Reno Field Office, since 2003, over 1,000 children have been rescued in the Las Vegas area alone. From 2002 to 2006, one local organization reported serving over 3,000 trafficked minors. While more than 1,496 minors were prosecuted for prostitution-related charges from 1994-2007, only 10 johns were charged during that time.

I had the pleasure to meet with Special Agent Dickey in the FBI's Reno office back in January and was informed at that time that he did not believe human trafficking, including sex trafficking of minors, to be a major problem. He did mention some sexual tourism instances, where minors might be brought in from other states to service visitors in the Reno and Las Vegas areas, but otherwise indicated that there was not a trafficking issue. However, this observation is in direct contrast with the statistics he is previously on record as providing, as well as in contrast with the experience of several faith-based and other community groups who aid victims of human trafficking in Nevada.

1. What, if any, oversight have you provided or direction have you given to your staff to pursue human trafficking investigations and enforcement? And specifically human trafficking of minors, including sex trafficking of minors? What are you doing to pursue the trafficking rings that are victimizing these children? What are you doing to pursue the "johns"? Does your office interrogate child sex-trafficking victims or do you instead treat them as children in need of protection?
2. What current statistics can you give me about FBI human trafficking enforcement across the country? And in Nevada?

Have you broken those numbers down by type of trafficking? By type of victim? By city? If so, please provide that breakdown to me.

If you do not have any statistics on the problem or on the enforcement of federal trafficking laws, why not?

3. What additional resources do you need and what future plans will you make to crack down on this issue? Do you have plans specific to Nevada? If so, what are they?

4. In your opinion, is additional federal legislation required to effectively combat the trafficking problem? If so, what would you recommend?

Mortgage Fraud:

1. Mortgage fraud has become a huge problem in Nevada, the State (until very recently) with the highest foreclosure rate in the nation. I recently met with the Nevada Assistant Attorney General and the District Attorney of the largest county in my district to discuss state-level efforts to deal with these crimes. What steps is the FBI taking to deal with this problem, both in Nevada and across the country?
2. You mentioned in your testimony that you interact with other federal agencies as you investigate these crimes, as well as state and local law enforcement. How does this interaction work?
3. Is the FBI engaged in any targeted investigations in Nevada to deal with this problem? If so, can you give me a broad overview of actions you're taking there and tell me about any successes you've had with completed investigations?

Tribal Crime Investigations:

1. As you may know, this Committee just reauthorized the Violence Against Women Act. Domestic violence, rape, and sexual assault on tribal lands are epidemic. Members of tribes in my district have expressed frustration that federal investigators and prosecutors are not, in their opinion, doing enough to pursue these and other violent crimes on tribal lands. You mention in your testimony that the FBI is aggressively investigating such crimes, particularly sexual assault and child sexual assault.

Could you tell me about the initiatives you've launched to combat violent crime and the successes you've had to date? Are there any specific steps you're taking to deal with the problem of domestic violence on tribal land involving non-Indian on Indian violence? What is the standard protocol and timeline for handling those kinds of cases?

2. How does the referral process work between tribes and federal law enforcement? Can this process be strengthened, in your opinion? If so, how?
3. What is being done to enforce the Indian Arts and Crafts Act of 2010, to provide trademark protection to Indian artwork against counterfeiters?

**Question from Representative John Conyers, Jr.**

Last October, the Wall Street Journal reported that law enforcement agencies around the country have acquired and are using specialized Stingray surveillance equipment to track the location of individuals without the assistance of phone companies. According to the journal, the FBI has a policy of deleting all data gathered using the equipment, "mainly to keep suspects in the dark about their capabilities."

1. Must law enforcement agencies always obtain a warrant from a judge when using Stingray surveillance technology? If not, what checks and balances exist to ensure that the privacy rights of Americans are protected?

**Questions from Representative Robert C. "Bobby" Scott**

1. When discussing the issue of organized retail crime with me at the hearing, you said that the FBI's existing interstate theft task forces have the responsibility of investigating this type of crime. Please provide additional details about these task forces, the frequency with which they investigate organized retail crime, and information about prosecutions that have been obtained during the past two years based on their efforts.
2. As discussed at the hearing, the FBI has revised various training materials because they included erroneous information about Muslims. Please let me know what percentage of the FBI's agents, and employees as a whole, are Muslim, and please let me know the percentages of each of the other categories of ethnic backgrounds of your agents and other employees.

**Questions from Representative Melvin L. Watt**

1. Since 2008, how many convictions and prosecutions have mortgage fraud investigations by the Federal Bureau of Investigation resulted in nationwide?
2. How many mortgage fraud investigations has the Federal Bureau of Investigation conducted since 2008?

**Questions from Representative Judy Chu**

1. The FBI recently conducted a review of its counterterrorism training materials, after media reports revealed factually inaccurate FBI training products that exhibited severe anti-Muslim and anti-Arab biases. The FBI identified 800 inappropriate documents that would be removed from circulation. A generation of FBI agents and Joint Terrorism Task Force Members were trained with these biased materials. What is the FBI doing to identify and notify these FBI agents that the materials they were trained with were inappropriate, and to ensure they receive proper training to correct any misunderstandings about Muslims, Arabs and Asians they might still have?
2. September 11th, there has also been a number of hate crimes reported against South Asian, Sikh, and Arab Americans in the country. Currently the FBI does not track hate crimes against Sikhs, Arabs, and Hindus, is the FBI open to tracking the number of hate crimes that occur against these communities?
3. On August 24, 2011, the Associated Press published an investigative article describing intelligence gathering by the NYPD of the Muslim community. This surveillance includes the targeting mosques, student groups, restaurants and even motorists in both New York City and outside the NYPD's jurisdiction. Does the FBI think it's appropriate for a law enforcement agency to spy on Americans like this without probable cause?
4. An internal FBI policy implementing the 2008 amendments to the Attorney General's Guidelines, called the Domestic Investigations and Operations Guide (DIOG), contains a detailed description of how the FBI authorizes its field agents to use race and ethnicity in conducting assessments and investigations. This includes identifying "locations of concentrated ethnic communities in the Field Office's domain," and collecting "the locations of ethnically-oriented businesses and other facilities..." The DIOG says the FBI may even map American communities with the racial and ethnic data collected in these demographic investigations.  
  
Doesn't giving FBI agents the authority to collect data based on race and ethnicities run the risk of promoting racial and ethnic stereotyping? Does the FBI treat the various racial or ethnic communities differently when it comes to surveillance, intelligence gathering or law enforcement matters? If not, then what would be the purpose of the FBI identifying the location racial and ethnic communities on a map?
5. In 2007, the Congressional Quarterly reported that the FBI had tracked falafel sales in the San Francisco area to try to find Iranian terrorists. The FBI challenged the report, but it sounds very similar to the types of information authorized for collection under the DIOG. Can you tell me whether the FBI has ever tracked ethnic food sales under any of these programs?