



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 15, 2009

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions posed to FBI Director Robert S. Mueller III, following Director Mueller's appearance before the Committee on March 25, 2009. The subject of the Committee's hearing was "Oversight of the Federal Bureau of Investigation." We hope this information is helpful to the Committee.

The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of these responses. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,

Ronald Weich
Assistant Attorney General

Enclosure

cc: The Honorable Jeff Sessions
Ranking Minority Member

**Responses of the Federal Bureau of Investigation
to Questions for the Record
Arising from the March 25, 2009, Hearing Before the
Senate Committee on the Judiciary
Regarding Oversight of the FBI**

Questions Posed by Chairman Leahy

Outside the Scope

Outside the Scope

Interrogations

4. In 2002, you ordered FBI agents not to participate in the harsh interrogation program being conducted at Guantanamo Bay and other detention centers, and instead to adhere to FBI rules for interrogations. You were previously limited in discussing this issue because much of the information was still classified. But last May, the Department of Justice Inspector General Glenn Fine issued an unclassified report on this issue.

The IG report states that in spite of signoff from the Justice Department's Office of Legal Counsel on the legality of CIA interrogation techniques, you refused to allow FBI agents to participate in these interrogations. The report notes that this issue of whether the FBI would participate in interviews in which other agencies used non-FBI interrogation techniques arose repeatedly as more detainees were captured. You refused to allow your agents to participate in these interrogations.

Now that we have these public conclusions from the unclassified IG report, can you explain to us why you told your agents not to participate in the CIA interrogations of these detainees?

Response:

Longstanding FBI policy, adopted prior to the attacks of 9/11/01 and reiterated in 2004, provides that "no interrogation of detainees, regardless of status, shall be conducted using methods which could be interpreted as inherently coercive, such as physical abuse or the threat of such abuse to the person being interrogated or to any third party, or imposing severe physical conditions." (5/19/04 Electronic Communication from the FBI General Counsel to all FBI divisions.) The FBI's policy has not changed since the attacks of 9/11/01.

Questions Posed by Senator Feingold

5. When and to what extent will the Domestic Investigations and Operations Guide (“DIOG”), which implement the Attorney General Guidelines for Domestic FBI Operations (“AGG”) be made public, as promised by you in September 2008, and the Attorney General in his confirmation hearing earlier this year?

Response:

The FBI is currently working to identify what portions of the Domestic Investigations and Operations Guide (DIOG) can be publicly released without compromising the FBI’s investigations or intelligence gathering mission.

6. A December 15, 2008 letter from General Counsel Valerie Caproni indicates that the DIOG layers more oversight and limitations onto the AGG. Wouldn’t it be preferable to include those mechanisms in the AGG themselves?

Response:

We do not believe it would be beneficial to include in the Attorney General (AG) Guidelines limitations that are imposed on the FBI by the FBI. The AG Guidelines address the conduct in which the FBI is permitted to engage in pursuit of its domestic mission. Merely because DOJ has found particular conduct legally unobjectionable, though, does not mean the FBI wants its employees to engage in such conduct. In some cases the differences exist because the activities are new and the FBI wants an opportunity to assess how the authorities will be implemented in “real world” contexts. For example, unpredicated assessments are a new category of conduct and, as with any new activity, the FBI believes it is important to establish rules that err on the conservative side until we are sure we understand where the risks lie, and that our employees fully understand the new rules under which they are operating. If it becomes clear that we have set approval levels too conservatively or not conservatively enough, the FBI will be able to make adjustments through revisions to the DIOG without requiring a re-draft of the AG Guidelines.

7. Does the FBI have the ability to amend the DIOG in the future without public notification? Will you consult with Congress before making changes to the DIOG?

Response:

Please see the response to Question 6, above. If the FBI makes significant changes to the DIOG, we would be pleased to brief our oversight committees on those changes.

8. A December 15, 2008 letter from General Counsel Valerie Caproni to Chairman Leahy stated that physical surveillance only occurs in public places where “there is no constitutionally protected expectation of privacy.” I am concerned that physical surveillance in churches, mosques, and of peaceful protest will chill protected First Amendment activity. Do the AGG and/or the DIOG address this?

Response:

The FBI takes great care to avoid chilling First Amendment activities. Both the AG Guidelines and the DIOG address this issue, with the DIOG repeatedly stressing that investigative activity cannot be based solely on conduct protected by the First Amendment and that no FBI activity should occur for the sole purpose of monitoring the exercise of First Amendment rights.

Any investigative matter that involves a religious or political institution is considered a “sensitive investigative matter” (SIM). All SIMs, whether they are assessments or predicated investigations, require legal review and approval by a Special Agent in Charge (SAC). Before approving a SIM, the SAC must consider: the nature of the violation or threat; the significance of the information sought to the violation or threat; the probability that the proposed course of action will be successful; the risk of public exposure; if there is such a risk, the adverse impact or the perception of an adverse impact on civil liberties and public confidence; and the risk to the national security or the public welfare if the proposed course of action is not approved (*i.e.*, the risk of doing nothing).

The DIOG treats surveillance conducted during assessments (which is the only change the new AG Guidelines make to the rules that have long governed this sort of physical surveillance) differently than it treats surveillance conducted during predicated investigations. In order to conduct physical surveillance during an assessment, the agent proposing the surveillance must obtain supervisory approval, indicating in the request the purpose and objective of the surveillance. In order for the supervisor to approve the physical surveillance, the supervisor must find that: 1) there is an authorized purpose and objective for the assessment; 2) the assessment is based on factors other than the exercise of First Amendment rights or the race or ethnicity of the subject; 3) the assessment constitutes an appropriate use

of personnel and resources; 4) the surveillance is likely to further an objective of the assessment; 5) surveillance is the least intrusive method that is reasonable under the circumstances; and 6) the anticipated value of the assessment justifies the surveillance. Approved surveillance is limited to a 72-hour period, although that period may be repeated based on all the same findings.

9. You agreed with me at a hearing in September 2008 and I assume you still do now, that it would be counterproductive for the FBI to engage in racial profiling in national security investigations. Yet, the Guidelines permit the use of race as a factor in determining whether an assessment will be undertaken. And the FBI General Counsel's December letter to Senator Leahy concerning implementation of the Guidelines makes it clear that is the case. How can you be sure that racial profiling, which you told me in September would be counterproductive and wrong, is not taking place?

Response:

The FBI will not engage in racial profiling in either criminal or national security matters; the letter from the FBI's General Counsel to Senator Leahy did not state otherwise.

Racial profiling, or the invidious use of race or ethnicity as the basis for targeting suspects or conducting stops, searches, seizures and other law enforcement investigative procedures, has no place in law enforcement. It is an unconstitutional, ineffective and unproductive law enforcement tool. The FBI does not engage in racial profiling in either criminal or national security matters. Federal law enforcement officers may consider race and ethnicity in conducting activities in connection with a specific investigation or assessment, however, to the extent that there is trustworthy information, relevant to the locality, time frame or assessment, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, organization or activity.

10. Since assessments do not require supervisory or headquarters approval, how do you know what criteria agents are using to initiate assessments?

Response:

The DIOG identifies six types of assessments, all but two of which require supervisory approval before they can be initiated. The assessments that do not require supervisory approval both involve the sort of prompt and limited checking of leads that also did not require supervisory approval under the prior AG Guidelines. If, however, these types of assessments involve SIMS, legal review

and supervisory approval are required. SIMs can include the activities of U.S. public officials or political candidates (for example, matters involving corruption or threats to the national security), religious or political organizations or prominent members of those organizations, or members of the news media; can include matters having an academic nexus; or can be any other matter that should, in the judgment of the official authorizing the investigation, be brought to the attention of FBI Headquarters (FBIHQ) or DOJ officials. Even if these types of assessments are not sensitive, supervisory review must be obtained in order to continue them for more than 30 days. The FBI's Office of Integrity and Compliance has instituted a compliance monitoring program that requires FBIHQ program managers to review a statistically valid number of assessments opened in their programs on a routine basis to ensure compliance with these DIOG requirements.

11. Does the FBI develop terrorist profiles? Do these profiles come from FBI data mining operations?

Response:

In developing their investigative cases, FBI agents consider evidence developed from FBI investigative efforts, intelligence drawn from the United States Intelligence Community (both open source and non-open source), and intelligence derived from foreign allied services. When assessing this information to determine whether it contains indicators of terrorist activities, human judgment is part of the analytical process, and indicators are subject to constant validation as new information is learned. The FBI does not develop terrorist profiles, does not consider any single indicator to be a definitive predictor of terrorist or criminal activity, and does not view the presence of a single indicator as constituting sufficient predication to open an investigation.

12. Have you authorized the FBI to open national security investigations or assessments based only on profiles developed by the FBI or others, without any actual evidence of wrongdoing?

Response:

No. The FBI uses three primary types of inquiries (assessments, preliminary investigations, and full investigations), none of which are initiated based upon profiles. Assessments do not require factual predication that a specific person or group is engaged in wrongdoing (such facts would justify a preliminary or full investigation), but they do require a proper purpose. Assessments can be opened to respond to a lead, to assess the existence of a threat or vulnerability in the

community, to assess the effectiveness of a source, to plan overall strategy, or (with FBIHQ approval) to collect positive foreign intelligence to address national requirements issued by the Office of the Director of National Intelligence (ODNI). National security preliminary investigations require “information or an allegation” indicating the existence of a national security threat, while full investigations of national security matters can be opened only when there is an “articulable factual basis” that reasonably indicates the existence of a national security threat.

13. Does the FBI use data pools to develop profiles? If so, which ones, and what are you doing to ensure the data in these systems is accurate and relevant?

Response:

The FBI does not develop terrorist profiles. The FBI does search various data bases using indicators of crime or terrorism that are developed as discussed in response to Question 11, above. These indicators are derived from conduct, patterns of behavior, and/or affiliations known to be associated with terrorism and other crimes or derived from specific intelligence reporting. For example, if specific intelligence reporting indicates that an unidentified terrorist is arriving in New York City during a specific time period after traveling from a certain location through a circuitous route, the FBI will search available government data bases to obtain a list of individuals who fit that travel pattern. That list will then be compared to FBI investigative data bases to determine if any person on the list is the subject of a terrorism investigation. Information developed from these searches provides investigative or analytical leads to be followed up by using traditional and appropriate investigative techniques and analysis as authorized by the AG Guidelines.

The FBI searches a variety of data bases using such indicators. While each data set provider is responsible for its own data, data sources are continually evaluated for accuracy, relevancy, timeliness, and completeness. In addition, agents and analysts are trained to assess quality based on reporting histories and confirmation by other sources, and are aware that information received through other sources must be verified as part of case management activities.

14. Please describe the records that the FBI must keep under the AGG or the DIOG to document assessments and investigations. If such records are not created and maintained, why not? If such records exist, will you agree to share them with Congress under appropriate classification procedures if necessary?

Response:

All assessments and investigations conducted by the FBI require appropriate documentation. The DIOG describes the documentation and record-keeping requirements for each type of assessment and investigation. The FBI can provide sample documentation for Congressional review.

15. How many assessments has the FBI conducted and completed using the new authorities provided by AG Guidelines that were put into effect in December 2008? How many preliminary or full investigations were initiated based upon information developed in those assessments? How many assessments are still ongoing?

Response:

The AG Guidelines delineate six types of assessments. Type 1 and 2 assessments are designed to seek information, either proactively or in response to investigative leads relating to violations of Federal criminal law or threats to national security, as they pertain to individuals, groups, or organizations. While these assessments are, by their nature, expected to be of short duration, FBI policy does not impose a time limit on them.

Type 3 assessments are designed to identify and obtain information about potential targets of, or vulnerabilities to, criminal violations of Federal law or threats to national security. Type 4 assessments permit the FBI to obtain information to inform or facilitate intelligence analysis and planning. Type 3 and 4 assessments may continue for as long as necessary to achieve their authorized purpose or objective.

Type 5 assessments allow the FBI to obtain information to assess the suitability, credibility, or value of particular individuals as human sources. All activities conducted in this type of assessment must follow the AG Guidelines Regarding the Use of FBI Confidential Human Sources and the FBI's policy implementing these guidelines.

Finally, Type 6 assessments authorize the FBI to seek information, proactively or in response to investigative leads, relating to matters of foreign intelligence interest responsive to foreign intelligence requirements. These assessments may continue for as long as necessary to achieve their authorized purpose or objective and are closed once that objective is met.

The statistics associated with the number of assessments the FBI has conducted and how many of these assessments have been converted into predicated investigations are sensitive and are, therefore, provided separately.

16. The last time the FBI was given broad discretion to investigate people who were not suspected of wrongdoing was when the Patriot Act authorized the FBI to use National Security Letters against Americans who were not agents of a foreign power, but only “relevant” to an investigation. The Department of Justice Inspector General found widespread misuse and mismanagement of this authority. How can we be sure that the even greater authority provided in the AGGs to investigate Americans with even less of a threshold for starting “assessments,” and no reporting requirements, will not lead to similar abuses?

Response:

The 2007 report by DOJ’s Office of the Inspector General (OIG) regarding the FBI’s use of National Security Letters (NSLs) expressed significant concerns regarding the issuance and documentation of NSLs. The report demonstrated the need for the FBI not only to take action to address the immediate concerns raised by the OIG, but also to ensure that the necessary policy, training, and oversight is in place to prevent similar situations from occurring with other aspects of FBI investigations. It is important to note that the concerns raised by the report, although serious, were not pervasive. For example, of the 293 NSLs the OIG examined in its 2007 report, 22 (or 7 percent) involved unreported potential intelligence violations. Of those 22 potential violations, 10 were third-party overproductions, leaving a net potential FBI violation rate of 4 percent. Only five of the errors (1.7 percent of the total sample) involved FBI errors that resulted in the FBI obtaining information it was not authorized to obtain.

Although the “true” error rate was only 1.7 percent, it was still unacceptable. Accordingly, the FBI has taken significant actions to eliminate or mitigate the problems identified in the course of the OIG review. Perhaps the most notable NSL-specific action (among policy changes and increased training) was the addition of an NSL subsystem to the FISA management system. This system is programmed with drop-down menus and other user friendly features to make the NSL process less time intensive for agents and analysts while simultaneously increasing the accuracy of the process and decreasing the sorts of human errors noted in OIG reports. No NSL prepared within the system can now issue unless vital information is included, such as the subject of the NSL, the predication for the NSL, the type of NSL requested, the recipient, and the specific targets of the NSL. In other words, the automated system captures all the information required for

Congressional reporting before the NSL is generated. In addition to improving the accuracy of Congressional reporting, this system ensures that each NSL receives the required legal and supervisory review. Providing one database for the automated generation of NSLs also reduces the time-consuming manual process for generating the required documentation and ensures consistency between the documents reviewed and the NSLs actually issued. After a pilot project, the system became operational in all FBI field offices and at FBIHQ on 1/1/08.

In addition to taking NSL-specific action, the FBI established an Office of Integrity and Compliance (OIC) to formalize the efforts of executive management to identify and mitigate significant areas of risk. This office focuses the attention of executive management on aspects of the FBI's operations and business processes that pose compliance risks. Through this office, rather than merely reacting to problems once they arise, the FBI is proactively identifying areas of legal risk and developing policy and training to mitigate those risks.

The AG Guidelines and the DIOG contain numerous measures designed to ensure their authorities will be used properly. Most fundamentally, the AG Guidelines and the DIOG authorize only relatively passive, non-intrusive investigative techniques in assessments - NSLs are not authorized nor, with one very limited exception, are other forms of legal process that demand information from third parties. Furthermore, the DIOG imposes an extensive approval, review, and oversight regime to govern the use of assessments. In addition, in many instances there are reporting requirements, especially in those assessments involving sensitive investigative circumstances and undisclosed participation in organizations. The guidelines also require DOJ's National Security Division, in conjunction with the FBI's Office of the General Counsel, to conduct regular reviews of all aspects of FBI national security and foreign intelligence activities. These regular reviews of FBI field offices and headquarters divisions, along with periodic Inspection Division audits, facilitate the OIC's identification of risk areas. Finally, the FBI has learned from the management errors involving NSLs and has imposed a much better system to capture assessment initiation, approval, and progress so the use and conduct of assessments can be monitored and reviewed.

The FBI has also developed a comprehensive training plan to implement the AG Guidelines. Before the implementation of the AG Guidelines and the DIOG, a mandatory 19-module Virtual Academy course was launched. This was followed by a two-day conference on the DIOG for all Chief Division Counsels (CDC) hosted by the OGC, OIC, and Corporate Policy Office (CPO). Finally, the OGC, OIC, and CPO hosted a series of conferences for all CDCs, Division Policy Officers, and Division Compliance Officers to "Train-the-Trainers" on the DIOG's

standards for operational activities. The attendees were certified as trainers upon successfully passing an exam that is scenario driven and designed to test their ability to apply the DIOG's standards and concepts. These trainers are now training their division personnel, who will also be required to pass the exam.

17. An Inspector General's audit of the FBI's Terrorist Threat and Suspicious Incident Tracking System published in November 2008 found 1,785 instances where the FBI may have used federal grand jury subpoenas to gather information about people where no preliminary or full investigation had been opened. Is it appropriate for the FBI to use a grand jury to obtain private records regarding a person that the FBI is not even investigating?

Response:

The AG's new Guidelines for Domestic FBI Operations, which went into effect in December 2008, specifically authorize the use of certain investigative methods during the assessment stage - before a preliminary or full investigation are opened - including the use of grand jury subpoenas for telephone or electronic mail subscriber information. During the OIG audit of Guardian, two sets of AG Guidelines governed the FBI's efforts to address potential terrorist threats and suspicious incidents: the AG's Guidelines on General Crime, Racketeering Enterprise, and Terrorism Enterprise Investigations (General Crimes Guidelines); and the AG's partially classified Guidelines for FBI National Security Investigations and Foreign Intelligence Collection (NSI Guidelines).

To determine whether the FBI's use of grand jury subpoenas in the instances noted in the IG's audit was consistent with the now-superseded AG Guidelines, the FBI consulted with DOJ's Office of Legal Policy, which determined that the FBI's use of grand jury subpoenas to assess the threats in these instances was permissible under the former AG Guidelines.

18. There have recently been reports that the Terrorist watch list now has 1 million entries, which, after accounting for duplicate entries, represents approximately 400,000 individuals. This is a 32% increase since 2007. How is the new Terrorist Encounter Review Program, under which the watch list status of people who are frequently in contact with U.S. officials (when they fly, for example) is reviewed, working? What factors play into the steady increase in the number of names on the watch list, and do you feel that the current list with 1 million entries representing 400,000 people is more accurate than previous lists?

Response:

While the Terrorist Encounter Review Program (TERP) has been successful, we continue to refine the program and to work with our partners to identify additional ways to limit misidentification based on similarities among names and other data to the greatest possible extent.

The United States Intelligence Community continues to identify individuals who meet the stringent “reasonable suspicion” standard for inclusion on the watchlist. Between March 2008 and March 2009, each day there were an average of more than 1,600 nominations for inclusion on the watchlist, 4,800 nominations for modification of existing records, and 600 nominations for the removal of records from the watchlist. Although each nomination for addition does not necessarily represent a new individual, but may instead involve an alias or name variant for a previously watchlisted person, every nomination must be evaluated to ensure it meets the Terrorist Screening Center’s (TSC) “reasonable suspicion” standard. Each nomination is submitted through a three-phase review process that includes the nominating agency, the FBI’s Terrorist Review Examination Unit (for domestic terrorists) or the National Counterterrorism Center (for international terrorists), and the TSC’s nominations unit. This process ensures careful review of each watchlist nominee.

While the number of people on the watchlist has increased since the list’s establishment, we are confident that the many measures taken to verify identities and backgrounds have ensured the list’s improved accuracy. And, though the number on the list is substantial, fewer than 5 percent of those on the watchlist are U.S. persons (U.S. citizens and legal permanent residents). Approximately 9 percent of those on the watchlist are also on the “No Fly” list.

Outside the Scope

Questions Posed by Senator Hatch

31. After the attacks of 9/11/01, I understand why the FBI shifted some of its focus to terrorism. I am grateful for the hard work and investigative efforts that the FBI has contributed to keeping this country free of future attacks. However, it appears to me that other investigative areas have suffered. The FBI has a \$6.8 Billion dollar budget and 12,977 Special Agents. You have 56 domestic field offices. Last month, in a Senate Judiciary Committee hearing on “Strengthening Fraud Enforcement”, Deputy Director John Pistole testified that the FBI has only 240 agents assigned to investigate white collar crime offenses - 240 out of 12,977. That is about 2% of the Special Agent work force or less than 4 agents per domestic field office. Deputy Director Pistole also stated that during the height of the Savings and Loan crisis in the late 1980’s and 1990’s, there were over 1,000 agents investigating fraud related to this crisis. Director, does the FBI need to step aside and focus more on terrorism and violent crime because these numbers are indicative of that?

Response:

In the referenced testimony, Deputy Director Pistole was referring to the number of agents working on mortgage fraud investigations, not on white collar crime matters as a whole. Although the number of agents assigned to white collar crime matters has decreased by 354 agents since 2001, there were approximately 1,869 agents working on these matters as of April 2009. Because public corruption is the FBI’s top criminal priority, approximately 694 of these agents were investigating public corruption cases, including government fraud, while 1,175 agents were working on other white collar crime matters.

Although 143 positions (including 50 agents) and \$25.5 million in additional resources are included in the President’s FY 2010 budget request to Congress for mortgage fraud-related investigations, as it currently stands the number of agents assigned to criminal cases has decreased by approximately 1,347 since the attacks of 9/11/01. To address this decrease, the FBI has made difficult choices in determining how to most effectively use the available agents. In 2002, the FBI established as its criminal program priorities: public corruption, civil rights, transnational and national criminal enterprises, other white collar crimes (which include financial institution fraud, corporate fraud and health care fraud), and violent crimes. Despite the reduction in agent positions, though, protecting the nation from traditional criminal offenses has always been, and remains, a core function of the FBI, and over half of all FBI agents remain assigned to these criminal matters.

32. Recently, the National Academy of Sciences issued a report to Congress on the current needs of the Forensic Science community. The report was hypercritical of the present conditions of the forensic science community, state & local crime labs and even took issue with FBI expert testimony. Two weeks ago this committee heard testimony from Judge Harry Edwards, the Co-Chair of the committee that authored this report. During that hearing there were discussions about the validity of fingerprint evidence. Some of my colleagues are questioning the veracity of fingerprints. They went so far as to quote the report: “with the exception of nuclear DNA analysis, however, no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty demonstrate a connection between evidence and a specific individual or source.”

a. The FBI maintains the Automated Fingerprint Identification System, referred to as AFIS. Every felon arrested in the country is fingerprinted and given an FBI number and an NCIC fingerprint classification and entered into AFIS. As you know this important law enforcement tool is used to compare unknown prints to the database of known inked prints of arrested subjects. This database uses complex mathematical algorithms to complete this analysis. I am well aware that the FBI has been the keeper of fingerprint cards from persons arrested in this country since the 1920's. In your time at the Department of Justice, both as a U.S. Attorney and FBI Director, are you aware of any incidence of two separate individuals ever having the same fingerprint?

Response:

No. In more than one hundred years of scientific research and practical application throughout the world, the FBI is aware of no instance in which two separate individuals had the same fingerprints. This is true even though millions of fingerprint searches and comparisons have been conducted using various fingerprint classification systems and relying on hard copy fingerprint files, the FBI's Integrated Automated Fingerprint Identification System (IAFIS), and other automated systems.

b. Can you provide what quality assurance measures are in place to ensure the reliability of fingerprint identifications made by FBI technicians?

Response:

The FBI analyzes fingerprints in two very different contexts. The FBI's Latent Print Operations Unit compares friction ridge impressions in the context of both crime scene examinations and efforts to identify victims of mass fatalities. There are multiple quality assurance measures in place to ensure the reliability of these latent print identifications, starting with the extensive training received by

fingerprint examiners. This training begins with a vigorous 18-month training process that establishes and tests their competence, and is followed by annual proficiency (competency) testing. A rigorous “case acceptance” standard is in place, requiring that evidence meet an established quality level before any examinations are conducted. Examiners follow a validated and approved standard methodology for analyzing latent prints to determine their suitability for identification before any comparisons are conducted. All information used in the analysis and any subsequent comparisons is documented in the examiner’s case notes. If an identification is made, additional quality-assurance measures are applied, including independent examination by a different examiner. If only a single latent print is examined and is excluded or inconclusively compared to an individual, a blind, independent examination is conducted by another examiner. The documentation from these examinations is then technically reviewed by yet another examiner to ensure that the required quality assurance standards were met. This methodology was reviewed during the most recent accreditation assessment and found to comply with international accrediting standards.

The FBI’s Biometric Services Section (BSS) uses IAFIS to process both electronic and paper ten-print fingerprint identification submissions. The BSS has several quality assurance measures in place to ensure the reliability of their fingerprint identifications. Using IAFIS as a tool, the ten-print fingerprint examiners also practice blind verification, as described above, and approximately ten percent of all IAFIS transactions are randomly reviewed for quality. Quality assurance measures also detect conflicting fingerprint comparison decisions made by separate fingerprint examiners and, if discrepancies are detected, processing ceases and the transaction is forwarded to quality assurance personnel for additional review.

Outside the Scope

Outside the Scope

34. The Obama administration has made its mind up to close the Guantanamo Bay Detention facility in approximately 10 months. As you are aware, more than 500 detainees have been released since 2002. When detainees are transferred, some countries initially incarcerate these detainees and then unexpectedly release these men. It has been long documented that at least 60 former detainees have returned to carrying out terrorist activities against U.S. interests. For example, the #2 in charge of al Qaeda in Yemen is believed to be a planner of the U.S. Embassy attack in Yemen in 2007. I am sure this was a case of interest to the FBI considering an American citizen was killed in the attack. The administration recently issued a statement that only those detainees who provided substantial support to al Qaeda or the Taliban will be detained. This whittles the number of detainees down from 240 to around 100. These 100 are considered to be the most dangerous group out of all the detainees. Director, you have pointed out that there are 61 Legal Attaché Offices worldwide. What steps if any can the FBI take to ensure that any detainees remanded to the custody of other nations remain incarcerated?

Response:

The FBI's Legal Attachés (Legats) are the FBI Director's representatives in the countries they cover, operating in those countries within the constraints of the host countries' laws. Consequently, Legat personnel further the FBI's international mission principally through information sharing and the coordination of investigative interests between the Legats and their foreign law enforcement and intelligence service counterparts. This information sharing includes, where appropriate, information regarding terrorists and detainees remanded to the custody of the host country. When the United States Government is in a position to provide adequate unclassified evidence to support a host country's prosecution and it is appropriate to do so, Legats actively support the host country's prosecution efforts and can often assist in investigations leading to host country prosecution. The role of Legat personnel is not, though, to ensure that the detainees released to other countries are further investigated or incarcerated, as such matters are within the discretion and authority of these host countries.

35. Some provisions of the PATRIOT Act will expire this December. Two sections pertaining to Roving Wiretaps and Business Record Access give the FBI some of its most powerful tools in investigating suspected terrorists operating in the United States. Roving Wiretaps are used in other criminal investigations, for example organized crime and drug trafficking investigations. An examination of business records can provide critical insight into possible pre-attack planning by suspects. Director, how important are these tools in furthering the FBI's mission in investigating terrorism activity here in the United States?

Response:

These tools are extremely important in the FBI's investigative work and we have a solid track record of using both of them. The FBI began using the business records authority in 2004, obtaining approximately 236 orders from the FISA Court to produce business records from that time through Calendar Year (CY) 2008. The business records authority has been exceptionally useful in our national security investigations; some of these orders have been used to support important collection operations, of which Intelligence Committee Members and their staffs are aware. Roving wiretap authority has similarly increased the FBI's efficiency in critical investigations. The FBI has obtained roving wiretap authority an average of approximately 22 times per year from 2004 through CY 2008. It is the FBI's hope that both tools will be extended.

36. Congress granted the FBI the authority to use National Security Letters (NSL) in counterterrorism and counterintelligence investigations. The use of NSLs are invaluable in these investigations. Their use also pre-dates the attacks of 9/11/01. Periodic reviews by the Department of Justice – Office of the Inspector General indicate that the FBI is taking great steps to prevent the unauthorized use of an NSL in investigations. This is largely in part to your commitment to ensure that this invaluable tool is not abused. Can you briefly give me an update on NSL usage since last year's OIG report?

Response:

As the inquiry recognizes, the FBI has taken significant steps to improve compliance with regard to NSL usage, revising policy to address concerns raised by DOJ's OIG, increasing training on the proper issuance and handling of NSLs, and creating an Office of Integrity and Compliance to insure that the FBI will continually improve compliance with statutes, guidelines, and policy governing the use of NSLs and other investigative tools. Perhaps most significantly, on 1/1/08 the FBI mandated the use of a web-based, automated NSL creation system that prompts the drafter to enter all information necessary to create an NSL. This system supplies the appropriate statutory language and ensures that the NSL and the supporting memorandum are internally consistent. An NSL can be issued from

this system only after all the required officials have approved it within the system. This system has increased the accuracy of NSL reporting and has reduced typographical and other non-substantive errors. The FBI continues to look for ways to ensure that the few NSLs prepared outside the system (generally due to the classification level of the underlying facts) are similarly well controlled.

In its March 2008 review of the FBI's use of NSLs, which assessed these corrective actions, the OIG found that the FBI and DOJ had made significant progress in implementing its recommendations and in adopting other corrective actions to address problems in the use of NSLs. Since that OIG report, for the year ending on 3/15/09, the FBI issued more than 14,000 NSLs.

Outside the Scope