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Senate Judiciary Committee Holds Hearing on Oversight of the Federal Bureau of Investigation

LIST OF PANEL MEMBERS AND WITNESSES

LEAHY:

Good morning. I always hate to -- I always hate to rush the photographers. If I do this wrong, I hear about it at family gatherings. And the photographers understand what I'm talking about.

Today, we hold our second hearing in this Congress on oversight of the Federal Bureau of Investigation. And, of course, we welcome the director, Robert Mueller, back to the committee. And as Senator Sessions and I were saying to Director Mueller just before we started, the -- there is a briefing underway for -- on Afghanistan. And that's why a number of senators have to be gone. Others may be delighted to be here.

I see Senator Grassley, my old friend of decades here. He'd probably rather be here than Finance these days. So -- but I appreciate Director Mueller's continued dedication of working with Congress to ensure the FBI is a -- can effectively pursue its critical missions in law enforcement and national security while maintaining the values and freedoms that define us as Americans.

Last month, Attorney General Holder announced a heightened role for the FBI with the formation of a high-value detainee interrogation group to interrogate the most dangerous and high-value terrorist suspects. The group is bringing together experienced professional interrogators, analysts, subject matter experts, linguists from across the intelligence community, law enforcement community, Department of Defense. It's going to be housed within the FBI.

I've talked with Attorney General Holder about this. I understand the internal debates that went on on this matter. But the HIG is being created to improve the ability of the United States to interrogate dangerous terrorists effectively and doing it in a manner not only consistent with our law, but consistent with the values that make America different than other countries.

And I think it's a welcome signal the administration has chosen to house HIG within the FBI. The FBI is an agency with a long history of proven success in interrogation without resorting to extreme methods that violate our laws and our values and fail to make us safer.

Remarks from the director before us -- I noted his important statement last year commemorating the 100th anniversary of the FBI. In fact, I got a copy of that and put it in the congressional record.

The director said, "It's not enough to stop the terrorists. We have to stop them while maintaining his civil liberties. It's not enough to catch a criminal. We must catch them while respecting his civil rights."

"It is not enough to prevent foreign countries from stealing our secrets. We must prevent that from happening while still upholding the rule of law. The rule of law, civil liberties and civil rights -- these are not our burdens. They are what make us better. And they are what has made us better for the past 100 years."

I agree with him. The committee soon will turn to discussion expiring provisions of the USA Patriot Act, what needs to be done in that regard. During the past few years, audit provisions, including the previous Patriot Act statutes brought to light the misuse of certain tools provided by the Patriot Act.

For example, national security letters allow the government to collect sensitive information such as personal financial records. As Congress expanded the NSL authority in recent years, I raised concerns about how the FBI handles the information it collects on Americans. I know that with no real limits imposed by Congress the FBI could store this information electronically and use it for large-scale data mining operations.

And we know that the NSL authority was significantly misused. In 2008, the Department of Justice inspector general issued a report on the FBI's use of NSL, revealing serious over-collection of information. I've also closely tracked the use of Section 215 of the original Patriot Act, which authorizes an order for business records. (inaudible) believed that greater oversight of this section is required, including broader access to -- to judicial review of the nondisclosure orders that are so often ordered with Section 215 demands for records.

And finally, I've raised concerns over the misuse of exigent letters to obtain phone records and other sensitive records of Americans, including reporters -- including reporters without a warrant, without emergency conditions and without a follow-up legal process. Director Mueller has assured us that appropriate steps have been taken to prevent a repeat of that abuse. He's helped to address concerns that records illegally obtained with these letters may have been inappropriately retained by the government.

So I'm hoping you'll agree that as we consider the reauthorization of expiring provisions of the Patriot Act we should keep in mind the proven effectiveness of audits and reviews and continuing oversight by Congress. Our oversight also includes review of the FBI's traditional and vital law enforcement role.

The FBI has just released a 2008 crime statistic. And the work of law enforcement in the trend lines are to be commended. I hope the preliminary indications for this year show the continuation of these trends despite the economic downturn and financial crisis and the assistance we are able to put in the economic stimulus package to state and local law enforcement will help to keep crime down throughout the country. In May Congress passed and the president signed into law the Pro, Enforcement and Recovery Act, which gives investigators and prosecutors the resources they need to aggressively detect and prosecute mortgage fraud and financial fraud that contributed to the massive economic crisis.

Director Mueller, I want to thank you personally and the bureau for the help you gave us in putting together that important piece of legislation. The testimony of your deputy, others that came up here were extremely important to make sure that

we wrote a law that would actually give law enforcement the tools they -- they need to combat this really vicious and malicious form of fraud.

I think we need a similarly aggressive approach to combating health care fraud, another insidious form of fraud that victimizes the most vulnerable Americans and drives up the cost of health care for all of us. And seeing Senator Grassley here, I might note Senator Grassley was my chief co-sponsor on that piece of legislation, helped to make sure that we got a vote on the floor. And I know it was applauded when it was signed into law by the president.

So I applaud the department for its commitment to reducing waste and excess in the health care system. I thank the director for coming here. And once again, I thank the hard-working men and women of the FBI. I look forward to your testimony.

Senator Sessions, you wish to say something?

SESSIONS:

Thank you, Mr. Chairman.

Thank you, Director Mueller. I -- not often enough in our country do we have people holding positions for which their background and -- and learning and experience equip them for it exceptionally well. And I believe you are one of the most capable leaders we have in our country. You are utterly experienced in the matters that you handle now every day. And I thank you and all your agents who work tirelessly to make sure that we're not subject to another attack in this country and to fight crime and fraud throughout our country.

And I know a lot of us were dismayed last month when Abdel Megrahi, the person who was involved in the bombing of the Pan Am flight 103 at Lockerbie was released. And thank you for speaking directly on behalf of the feelings of so many of us that this was unconscionable and unacceptable decision to release that murderer to the -- and -- and the political environment that he was released in made it even worse. And you -- every now and then a leader like yourself needs to speak out on those kind of issues. And I appreciate that.

There are a number of issues I'd like to talk to you about. I'm on the Armed Services Committee. And I need to be at this briefing on Afghanistan. It's at a critical stage now. So I won't be able to stay throughout this hearing. But would -- some of the questions I'll submit to you in writing and ask a few before I leave.

Last month, Attorney General Holder announced he was establishing a high-value detainee interrogation group. The interrogators will operate out of the FBI under the guidelines established by the Army field manual. And according to department press release, the group would be subject to the National Security Council for, quote, "policy guidance and oversight."

Beyond the department's announcement and a few press reports, we know very little about how it will operate, either administratively or operationally. We need to learn more about that. I would just say this: That is an odd mixture. The FBI entire heritage and background and training is focused on civil law enforcement in America and prosecution of cases in federal courts primarily in this country.

And we've always had military commissions. They're referred to in the Constitution. And we've had them before to deal with people who are unlawfully at war with the United States.

And they are not treated in the same way. And I don't understand this at all. It really is an odd mixture to me. It's blurring lines that shouldn't be blurred.

SESSIONS:

Lastly, we had testimony from the National Academy of Sciences strengthening forensics in America, and they question whether law enforcement should be involved in any of the forensic activities.

Well, I think perhaps the greatest technological development in criminal justice history is the FBI fingerprint program and its availability to every law enforcement agency in America, and it's used hundreds of thousands of times every week.

And this would be an issue I think we need to talk about, whether the FBI would be required, if that policy were to be effected, to somehow transferred this out of the oversight that you have so ably given it for so many years.

This week the committee will consider legislation to shield journalists from being compelled to testify or produce any documents and investigations relating to certain protected information. I believe this information will do considerable -- this legislation as written will do damage to our national security.

There are reasons -- very good reasons -- that nations have to maintain a certain amount of secrecy, and I think we need to be aware of that. And I hope to ask you questions about that.

So I thank you for being here today. I look forward to your testimony and will probably submit some written questions to you later.

Thank you, Mr. Chairman.

LEAHY:

Thank you.

We'll keep the record open for any other statements.

And, Director Mueller, please feel free to go ahead, sir.

MUELLER:

Thank you and good morning, Chairman Leahy and Senator Sessions, members of the committee. Thank you for having me here today.

When I was before the committee back in March, I updated you on our national security threats, our strategies to prevent those threats from occurring, and ongoing efforts to develop our intelligence capabilities and infrastructure.

The statement I have submitted today focuses on criminal threats, as well as our other priorities. I might say in fighting crime the FBI continues to focus on areas where our skills and our expertise will have a substantial and a lasting impact.

Today's FBI is not an intelligence service that collects but does not act, nor are we a law enforcement service that acts without knowledge. We are a security service using the capability to understand the breadth and scope of threats with the capability to dismantle those same threats, whether they be terrorist or criminal.

On the counterterrorism fund, Al Qaeda continues to present a threat to the homeland. Domestically through our joint terrorism task forces and overseas through our legal attaches and international partners, we work to detect and identify any potential Al Qaeda operatives who may have access to the United States.

We are also alert to home grown or self-radicalized terrorists. And we work closely with impacted communities, our law enforcement partners, any intelligence community to identify and disrupt these threats.

Closer to home, we are focused not only on terrorist threats but also on the threats posed by violent crime and white-collar crime. To address these threats, we have moved from a quantitative to a qualitative approach.

We are using intelligence to identify the greatest threats to each of our communities. To be effective we need to collect intelligence that reveals any links between our existing cases and also fills in gaps in our knowledge base. Intelligence gathering differs from city to city and state to state, just as criminal and terrorist threats differ.

And just as partnerships have been key to our efforts against terrorism, partnerships are critically important in addressing criminal threats as well. Partnerships have enabled us to achieve noble successes in the fight against public corruption, our top criminal priority.

Taking as an example is our efforts along the Southwest border, where we have focused efforts and concentrated agents. With 120 of the 700 agents we have fighting corruption assigned to the Southwest border, we already have over 100 arrests and 130 indictments and over 70 convictions in this fiscal year.

We are seeing success in the fight against violent crime as well. Earlier this week we released the uniform crime report, depicting crime statistics for 2008. And for the second year in a row, there has been a decrease in violent crime.

And while the report does not give the reasons for that decrease, I do believe that the drop in violent crime says much about the efforts of state and local law enforcement and the efforts of state and local law enforcement with the federal agencies.

Within our criminal program, our field offices continue to work with our law enforcement partners and Safe Streets, OCIDEF (ph), violent crime task forces in order to fight crime in the communities that you represent.

Yet despite the positive trends in this year's report, violent crime continues to plague many communities, especially small to midsize cities. Gangs are morphing, multiplying and migrating, entrenching themselves not just in our inner cities, but increasingly in suburbs and rural areas.

The FBI focuses its efforts on the most violent and criminally active gangs, those that function as criminal enterprises. And this model enables us to remove the leadership and the most dangerous members of violent gangs and seize their criminally obtained assets. Our goal is not to just disrupt their activities, but to dismantle their organizations entirely.

We are also focused on economic crime, primarily mortgage fraud, health care fraud. These are not victimless crimes. They impact all Americans by stealing taxpayer dollars and undermining the integrity of our financial and health care systems.

We currently have more than 2,400 pending health care fraud investigations and more than 2,600 pending mortgage fraud investigations. Our investigations are focused on partnerships, intelligence and information sharing through task forces and working groups and targeted law enforcement actions.

We are having success both in generating cases, but also successfully committing those responsible for those cases and in general combating fraud.

In April of this year, 24 individuals were charged as a result of a joint FBI-IRS investigation that identified an extensive mortgage fraud scheme based in San Diego, California. The scheme involved 220 properties with a key motive sale price of more than \$100 million.

Joint investigations such as the successful investigation and prosecution mean that additional resources for identifying perpetrators of fraud and additional prosecutive options for bringing them to justice are essential.

Similarly in June, I joined the attorney general and Secretary Sebelius in announcing indictments against 53 persons in a combined enforcement effort targeting fraud schemes that threaten Medicare. The schemes involve persons who arranged unnecessary or nonexistent treatment for straw patients, who were willing to go along with the scheme for money.

Our investigative partnerships, in this instance through the Department of Justice and HHS, ensure the prompt resolution of complex health care fraud cases and contribute to the prevention of fraud and abuse.

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

Mr. Chairman, Senator Sessions, members of the committee, I appreciate the opportunity to appear today and -- appear here today and I look forward to answering your questions.

LEAHY:

Thank you very much, Director. Incidentally, there has been some mention of the Lockerbie matter. As I said, several of us, self included, were at a meeting over -- over the -- over a long weekend, the first of September and the Labor Day weekend, on the meeting of the United States, United Kingdom and the parliamentary group that meets every two years.

And we raised with our counterparts from England the strong and bipartisan displeasure with the release of the Lockerbie bomber. I raised the point that it was very unusual for you to speak out as you did and that I strongly agreed with what you -- what you said.

I'm -- I said in my opening statement I was pleased to see the Obama administration housing the high value detainee interrogation group in the FBI. You've -- you've had a long tradition of conducting interrogations that have produced valuable, but more than valuable -- actionable intelligence.

Former FBI agent Ali Soufan testified to this committee about his interrogation of Abu Zubaydah -- Zubaydah almost immediately after he was captured. He used FBI techniques that had proven useful time and time again, and he learned that Khalid Sheikh Mohammed was the mastermind of the 9/11 attacks, and he discovered Jose Padilla, something that he's had to point out a number of times when the record has been misstated.

What lessons in the long history of FBI interrogations will you import to this high value detainee interrogation group, now that it's going to be housed at the FBI?

MUELLER:

Let me start by saying that the concept is to have this combined group administratively housed within the FBI. Speaking specifically of the FBI, we have had a -- a tradition of negotiation interrogation over a period of years that is dependent principally on building rapport. It is one way to go. We believe we are successful at it.

Many of our agents have spent years on the streets as police officers before they come to the Bureau, conducting interrogations in many environments and in many ways, and have some expertise.

There are other substantial capabilities and expertise in terms of interrogation elsewhere in the -- in the country, and other organizations and particular intelligence organizations.

And I believe the concept is to bring together this expertise in terms of what techniques work legally and appropriate under the current statutes and regulations, but more particularly put together not only the -- the capabilities of an interrogator, but also assure that for each of the agencies you have subject matter expert, if it's terrorism or some counterintelligence arena, that you have subject matter expertise as well as expertise and background of the person to be integrated so that that is -- that capability is used to full effect in gaining the information you need.

I will say at the outset that what one wants to do is give the policymaker the options on the table for how you proceed, and to the extent possible, if there is an -- the possibility or anticipation of a court proceeding in the United States, leave open that option.

By the same token, I must say that the most important thing for us, whether it be the FBI, the CIA or the intelligence community, is to gain that intelligence information that will prevent attacks in the first place, as opposed to the prosecution of somebody who has successfully undertaken that attack.

LEAHY:

Well you have oversight of the HIG to make sure that their methods are legal and effective?

MUELLER:

Yes, we will.

LEAHY:

What about the Army Field Manual? Does that give any guidelines?

MUELLER:

It is. But the -- you know, the Army Field Manual, which is the manual that is being used to conduct investigations particularly overseas by the military in places like Afghanistan and Iraq, has a set of procedures.

There may be other procedures there that are not contained within the Army Field Manual that may be wholly useful and legal that should be undertaken as well. And that's something that has to be explored.

LEAHY:

But -- but your department will have the oversight on that.

MUELLER:

Our department has, yes, the oversight in terms of we are putting it together, but I will tell you it's going to be, I hope, FBI leadership with CIA as the deputy. I've had conversations with Leon Panetta. We are agreed that this is a valuable contribution and is going to be a -- a joint effort.

LEAHY:

Then in that regard, and -- and you have been very responsive to this committee's jurisdiction for oversight, I assume that you'll be responsive to oversight requests from the committee on how this group is working.

MUELLER:

Absolutely.

LEAHY:

And I realize, of course, in that regard there will be areas that will have to be responded to in a classified fashion, but as well as others that can be done in an open fashion.

MUELLER:

May I mention one or two other aspects of it, Mr. Chairman, if I might? And that is the importance of having a -- a uniform training and building training curricula that each of the agencies contributes to and understands and build the best possible training capabilities, but also pulling together the science, the capabilities that are known and in academia in one place so that we can look at it and develop the best possible techniques -- legal techniques -- to proceed.

LEAHY:

When Congress included the 2006 Patriot Act reauthorization, we had a requirement that the Justice Department's Office of Inspector General conduct audits and reviews of the use of national security letters authority in Section 215 orders for business records. The inspector general found some significant abuses, including widespread misuse of NSL so-called exigent letters falsely claiming emergency circumstances to keep and obtain evidence the government was entitled.

You have told the committee about the important steps -- and you and I have discussed it privately, too -- that the FBI has taken in light of these audits to change its procedures. The Justice Department sent a letter to me this week. "The oversight provided since 2001 and the specific oversight provisions that added to the statute in 2006 have helped to ensure the authority is being used as intended." Would you agree with that, the congressional oversight and the audits mandated have been helpful in encouraging the FBI to improve its procedures and to make sure these are being used in the way they should be?

MUELLER:

Well, I -- I -- I'd at the outset say that we have for several years now. I have -- I have used totally revised procedures that have answered and responded to the -- the criticisms of the inspector general, most particularly an office of integrity and compliance within the -- the FBI, which has now become a model for such offices.

The other -- whichever mechanism reviews it is of less importance to me than there be periodic outside review. My belief is that this could well be handled by the annual reviews that are done by the National Security Division of the Department of Justice, who has an oversight role in this particular arena. But I do believe that there should be some outside review, periodic review. My suggestion would be that it be with the -- wrapped in, rolled into that review, which is already undertaken by the National Security Division, Department of Justice.

LEAHY:

Thank you.

Senator Sessions?

SESSIONS:

Thank you.

With regard to the threat of terrorism and Al Qaida, do we have any reason in this country to feel that that threat is less today? Or are they -- can you tell us if there are any -- any indications that, in fact, the threat may be growing?

MUELLER:

As I think I repeatedly testified and discussed, the threat is always there. And the concern is that we become complacent. I tend to look at the Al Qaida threat in three areas.

One is a rising directly out of Waziristan and the federally- administered tribal areas where you have individuals in a plot that is controlled by individuals in the -- in that area. You then have individuals in other countries, whether it be the U.K., the United States or elsewhere who have been radicalized in some way, shape or form who may travel to Pakistan to obtain additional training, which is the second level. And I call that a hybrid threat -- and then come back and pretty much on its own, not controlled necessarily by the Al Qaida hierarchy in -- in Pakistan. That's the second level.

And the third level is self-radicalized on the Internet or otherwise individuals who have no contact with Al Qaida in Pakistan but subscribe to the same extremist -- extremist ideology that present a threat. It has continued to present a threat over the last eight years and presents a threat today.

SESSIONS:

With regard to the media legislation, the media shield bill, you and a number of intelligence community colleagues opposed the predecessor of that bill in a letter stating, quote, "The high burden placed on the government by these bills will make it difficult, if not impossible, to investigate harms to the national security and only encourage others to illegally disclose the nation's sensitive secrets." Are you aware of any nation that has not found it necessary to maintain secrets regarding their national security?

MUELLER:

I can't purport to be an expert, but I do not know of any.

SESSIONS:

Throughout the history of the modern nations, they all have intelligence agencies and -- and have to operate with some degree of secrecy. Isn't that true?

MUELLER:

True, but I do believe that we are somewhat unique in that there's a First Amendment which many countries do not have as well.

SESSIONS:

Well, are you saying the First Amendment prohibits the United States government from maintaining secret investigations of Al Qaida or other things of that nature?

MUELLER:

That is not at all what I'm saying. And the letter that I didn't participate in writing...

SESSIONS:

I think so.

MUELLER:

... in January 23rd was my view then and my view now with regard to the legislation.

SESSIONS:

Thank you for that. I think it's important that we get that right in that legislation and not make a mistake on it.

With regard -- would you share with the members of the committee what kind of rules are in place and for the most part have been in place for many, many years, 20, 30 years, about agents and assistant United States attorneys, federal prosecutors when they make inquiry of media people? Can a -- can an agent go out and interview a newspaper person? Or can an assistant United States attorney issue a subpoena on their own to a newspaper person? Or...

MUELLER:

The basic rule -- it cannot be done without the approval of the attorney general.

SESSIONS:

The attorney general himself or herself?

MUELLER:

The attorney general, yes.

SESSIONS:

This is one of the highest protective standards in the Department of Justice, is it not?

MUELLER:

Excuse me just one second. I wanted to make certain I -- I know at one point when I was in the Department of Justice, I was involved in one of these. And I was acting deputy. And I wanted to make certain that it was my role. It was my role to advise the attorney general because it is the attorney general's responsibility to sign those.

SESSIONS:

Well, the point which is this is institutionally deep in the culture of the Department of Justice...

MUELLER:

Yes. Yes.

SESSIONS:

FBI and the Department of Justice that it's very sensitive matter to inquire of a free newsperson in America. And it should only be done after the most careful review. And there are standards set out in the U.S. attorney's manual that have to be met, are they not, before such things like (inaudible)?

MUELLER:

That's correct. And if you look at the record -- and I think the -- I know in submissions from the department, the numbers of occasions which approval has been given is miniscule over the years.

SESSIONS:

It happened -- that is correct. It just almost is not done unless it has to be done for some very significant reason. I'm not sure that's always wise. But I think the error has been on the side of protecting the media if there's been any error in recent years, for the most part.

Let me ask you about this entire high-value detainees and whether or not they'll be Mirandized. The president said, of course, we're not going to give Miranda to people we arrest who are combatants against the United States, at war against us. But it appeared to me that's exactly where we are heading.

If this commission or group that was formed within the administration to study it -- they have required and -- and opined that most -- that most prosecutions would be in federal courts and not in military commissions. Or the presumption is that they would be in federal courts and not military commissions. And isn't there -- just yes or no -- a significant difference between the evidentiary standards of a military tribunal and a federal court prosecution?

MUELLER:

Well, it may well be. But I think -- I do believe there's a great deal of confusion about this.

We have been working over in Iraq and Afghanistan...

SESSIONS:

Wait a minute. There may well be.

(CROSSTALK)

SESSIONS:

There is -- is there a difference between a military commission with regard to Miranda warning and a trial in United States district court?

MUELLER:

There may be.

SESSIONS:

Yes or no?

MUELLER:

There may be.

SESSIONS:

I think there is.

MUELLER:

Yes.

SESSIONS:

All right. Now, if you're going to try a case in a federal district court, Director Mueller, aren't you required to comply with the rules of evidence that are enforced in that court?

MUELLER:

Yes.

SESSIONS:

And if you are going to bring a witness in who's confessed to a military interrogation and try to try them in a federal court and they haven't been Miranda'd -- Mirandized and they confessed, can't the defense lawyer likely prevail in suppressing the confession?

MUELLER:

He would certainly try and likely prevail.

SESSIONS:

And doesn't that mean then if the presumption is in place that these cases are going to be tried in federal court, that we need to be Mirandizing everybody arrested in the war on terror?

MUELLER:

I don't believe that follows.

SESSIONS:

Well...

MUELLER:

I don't believe that follows.

SESSIONS:

... who would we not Mirandize?

MUELLER:

Most of the individuals that are picked in Afghanistan and Iraq have not been Mirandized, although we have been participant in interrogations for the last five, six years.

SESSIONS:

Well...

MUELLER:

There are occasions and a very few occasions where the determination has been made to Mirandize somebody for a reason principally to hold out the option of being able to try that person in another court.

SESSIONS:

To hold out the option? So if you're going to try them in federal court, they should be Mirandized, right?

MUELLER:

If you want the statement, a particular statement at a particular time admissible in the federal court, generally that -- that has to be Mirandized.

SESSIONS:

I think that's correct.

MUELLER:

I agree.

SESSIONS:

And so, if you've got a presumption that these cases are going to be tried in federal court, why wouldn't the rule be pretty normal in the field by military interrogators and others to give Miranda warnings? Wouldn't it be making a mistake not to? And isn't that likely to reduce the amount of intelligence they gather?

MUELLER:

I think you can make -- sit and look at it and determine what kind of information the person has, regardless of what court the person (inaudible).

SESSIONS:

Who's going to look at it, Director Mueller?

MUELLER:

Who's going to look at...

SESSIONS:

Who's going to be making the...

MUELLER:

The -- the -- the National Security Council in terms of is the intelligence more important than holding out an option in federal court. And sitting and looking at that, you would want that -- that option available if it could be available and not to the detriment of gaining the intelligence you need to prevent terrorist attacks.

SESSIONS:

I think it creates quite a bit of pressure to give Miranda warnings on many, many, many cases if the presumption is those cases are going to be tried in federal court and not a military commission, that this is going to reduce the amount of intelligence obtained on the battlefield, that we've never given Miranda warnings before in the history of this country of those who are at war against us. And it represents a significant problem. And I don't agree with you on that. And you can minimize it. And we'll ask some written questions. But I feel strongly about it. This is an alteration of military effort, war, to a civilian prosecution. And it's a dangerous trend, in my opinion.

LEAHY:

Director Mueller, isn't it -- Director Mueller, isn't a fact that...

SESSIONS:

Well, what I asked...

LEAHY:

Well, you've gone way over your time. But I just wanted to make -- cut to the chase here. If soldiers are in the field, they've been in battle. They've captured some people. They don't give them Miranda warnings when they capture, do they?

MUELLER:

No, no, no.

LEAHY:

Of course, not. And that -- I wanted that clear because I've actually had letters from people who have listened to some of these -- some of this hoopla that goes on

and said I mean, how can you capture somebody and have to give them a Miranda warning. Nobody does. My son was in the Marines. You were in the military. Of course, we don't do that.

Senator Kohl?

SESSIONS:

That's -- I would just say the presumption came into place on July 20th of this year that these cases would be tried in federal courts. And that inevitably requires a far more -- far larger increase in Miranda warnings than ever has been done in the history of this republic or any other nation, to my knowledge.

LEAHY (?):

That's correct. I might note that we have an awful lot of people that are captured in the battlefield that are never going to see a federal court and never going to be held anywhere else. And when you're in -- win a battle and you capture somebody, you don't give a Miranda warning.

Senator Kohl?

MUELLER:

And I -- I do believe, sir, if you ask the commanders in the field in Afghanistan or Iraq to determine whether or not the issue of whether or not you give Miranda warnings has ever interfered with their ability to do their job, I think they would say no. And it is important to have the FBI there and the FBI's expertise there.

SESSIONS:

You think the FBI needs to be involved in the interrogations in Iraq now?

MUELLER:

In some, yes.

SESSIONS:

In some?

MUELLER:

Yes.

SESSIONS:

Well, aren't you going to pick and choose?

MUELLER:

We dealt with...

LEAHY:

Let's hold that for the next round.

SESSIONS:

I think this is an important issue...

LEAHY:

Senator Kohl?

Well...

SESSIONS:

... and that we have modeled entirely the classical distinction between war and criminal prosecution.

LEAHY:

Senator Sessions, I've allowed you to have twice as much time here as I have took in questions. And I want to make sure, though -- we have a number of senators who also want to go to this briefing. I want them to have a chance.

We'll go to Senator Kohl.

SESSIONS:

I excuse myself to go see what we can do to help win this war in Afghanistan.

LEAHY:

Then we'll go next to -- then we'll go next to Senator Grassley. And we'll go next to Senator Feinstein. Then we'll go next to Senator Hatch.

Senator Kohl?

KOHL:

Thank you, Mr. Chairman.

First, I'd like to thank the FBI for your assistance (OFF-MIKE) the serial murder string in Milwaukee that spanned over 20 years. The FBI was instrumental to this investigation, resulting in a major arrest, as I'm sure you're aware. On behalf of our chief, our mayor, victims' families and the entire city, we'd like to thank you and the FBI.

MUELLER:

Thank you. Thank you, sir. It was a joint effort. And I appreciate Ed Flynn's comments in that regard.

KOHL:

Thank you so much. As you said in your remarks at the outset, major crime across the country is showing some decrease. But it seems to be centered in the largest cities across our country. We in Wisconsin have experienced the same kind of a decrease in Milwaukee. It's been major and recognized and very much appreciated.

KOHL:

But in cities of medium and smaller size around our state, we also have experienced significant increases in major violent crime. For example, in Racine the number went from 99 in 2005 to 206 in 2008. And in Madison the number went from 391 violent crimes in 2005 to 542 in 2008. And in other cities like La Crosse, we've had similar significant increases in violent crime from 2005 to 2008.

As you indicated, this also seems to be a pattern around the country. To what do you attribute it and what are some of the thoughts you have about addressing this serious issue?

MUELLER:

Like I say, it may be three things: The first is that the quality of policing in cities makes a substantial difference. And secondly, I do believe the spread of gangs can have a huge impact and the rise of crime in particular, cities of the (inaudible), Latin Kings you name those. And to the extent that they gain a foothold in a community, then you see crime rising.

And lastly, although the violent crime statistics have gone down over the last couple of years, I do believe that we will face some resurgence in the future. You have a number of persons being released from prison in some cases because of the shortage of prison space.

You have a number of persons who have spent substantial periods of time having been arrested 10, 15, 20 years ago coming out and coming out to an economy that is very difficult to find a job. And consequently I do believe we have to watch this closely.

To that end, we're working closely with our state and local counterparts. My belief is always that we do a better job working in task forces and combining the capabilities and the skills of the local police departments and sheriff's offices with the FBI, ATF, DEA. And that maximizes our capabilities of addressing a particular violent crime program in a particular city.

KOHL:

I appreciate that, but what would explain the difference between the decrease in violent crime in the major cities around our country, including Wisconsin and smaller to medium-size communities?

MUELLER:

I'm not sure that anybody can put their finger on it. And I'm not certain that one answer fits all. As I go back it may be the quality of policing. It may be the impact of taking out a particularly violent gang in a particular city. It may be a combination of utilizing social services along with the efforts of the federal and state local law enforcement authorities.

I don't think there's one answer. We tend to look at crime and say "OK, what is the fix for crime generally in our cities?" And too often it is individualized. And I do recognize the patterns in our larger cities has gone down more substantially than others. And to a certain extent I think the argument can be made that it's the quality of policing in those particular cities.

KOHL:

Director Mueller, in your testimony you emphasize the importance of the FBI's coordination with local law enforcement by maintaining regular contact with the officers who are on the street day in and day out. And to work as you indicated shoulder to shoulder with them. I think we all agree that FBI coordination with state and local law enforcement is a critical component of fighting and preventing crime.

For example, FBI agents are currently working with the Racine Police Department and sheriff's office to target violent street gangs and drug trafficking organizations operating within that area in Racine. Their presence in the community is also important to further principals of community policings that have been successful.

What are some of the specific programs that the FBI has been working on to achieve this shoulder to shoulder coordination? Are there any new programs or efforts on the horizon to improve the ones you are using now?

MUELLER:

Well, let me -- as I said, the critical programs for us relate to -- they're working on task forces. Now let me just to recount if I could. We have almost 200 violent crime, violent gang task forces around the country. We have almost 2,100 agents working gangs and criminal enterprises, which is a very substantial number for us.

We have 17 safe trails task forces that have been set up to address violent crime in Indian country. We have 34 child prostitution task forces, or working groups. And we have eight major theft task forces. And to the extent that persons are willing to sit down shoulder to shoulder with us and share experience, expertise in task forces directed at either a specific threat like an individual gang or a more generalized threat, we're always open to do that.

I believe we are most effective when we work closely together and share the expertise and capabilities in addressing these crimes.

KOHL:

Director Mueller, the FBI has brought jurisdiction and a critical role to play in crime investigations and law enforcement in ways that impact every American. We count on the FBI to combat mortgage and corporate fraud, health care fraud, international and domestic terrorism, violent crime, crimes against children and border violence just to name a few.

In these tough economic times, we're all cautious about spending our money wisely and stretching each dollar as far as we can. The FBI's budget has increased slightly from year to year, but your needs and activities seem to grow considerably every year.

What has the FBI done to try to stretch the limited dollars that you have so that the American tax payer get the most for their dollar?

MUELLER:

Actually, one of the more innovative and useful programs we've had is -- for several years now we bring in graduates of various business schools around the country. We bring them in as interns and then we bring them in for the FBI. They come out of business school with a desire to make a difference and with expertise in areas such as finance procurement and the like. And we've set them to particular issues.

For instance, we had millions of dollars of savings in terms of utilizing rental cars in our rental fleet attributable to the fact that we had a group of individuals that took that particular problem and looked at a better way to do it that would solve millions of dollars.

And we've replicated that in a variety of areas throughout the bureau. And we have to look at our facilities, because we have 56 field offices around the country, more than 400 resident agencies. And we looked at savings in terms of we need the spread, we need to cover the country, but we also have to look at savings there.

I call it savings. And unfortunately those who look at the federal budget call it cost avoidance as opposed to savings. But we're continuously driving to save money and be able to utilize those funds in the areas that they may be better spent.

KOHL:

Thank you so much.

Thank you, Mr. Chairman.

LEAHY:

Thank you.

Senator Grassley?

GRASSLEY:

Yes. Thank you, Mr. Chairman.

Thank you, Director. It would be nice if I had the Department of Justice here with you, because I think there's a lot of questions that they ought to be answering as well as you answering. But I have the opportunity to ask you, so I'll start out with where we were a year ago now.

I asked you a question about highlighting problems with cooperation between the FBI and ATF. You gave what I'd have to consider a legitimate answer. DOJ requested the opportunity to provide consolidated responses on behalf of all involved DOJ components.

The FBI has provided its input to DOJ for preparation of a consolidated response. The only thing is the FBI or I mean the Department of Justice has not responded. So in this morning's paper in regard to the same issue of cooperation between ATF and FBI, we're finding the inspector general, Glenn Fine saying that there are repeated squabbles. They are feuding over bomb investigations. So it brings me to my first question with you about the article or about questions of the past.

I've been asking about FBI, ATF relationships for over two years. And my last question was submitted as I said, September 2008. I never received a response. It is completely unacceptable that I get more information from a newspaper article than directly from the Department of Justice.

I'm particularly concerned about this latest news report, because committee staff received a briefing from your agency and the ATF last year in which they were told -- this committee staff was told that the agencies understood the jurisdictional problems and that these conflicts had been resolved. Hence then raising questions about the inspector general's report seemingly refuting statements that we had in staff briefings.

So I want to know what the real story is. Could you tell me please what is the true state of cooperation between the FBI and ATF, specifically have the jurisdictional problems been resolved? And I suppose in connection with answering that specific question about jurisdictional problems, have they been resolved, can the current memorandum of understanding be improved in any way?

MUELLER:

Well, first of all they have not all been resolved as the I.G. points out. There are still issues.

A year ago, we had just entered into an MOU which addressed a number of the issues in terms of responsibility when one gets to a scene. As I think you are aware and as much as we have responsibility for terrorism, it's important for us. I do believe it's tremendously important for us to be on the scene and utilizing our capabilities both domestically and perhaps internationally when there's a possibility of a terrorist event.

If it does not turn out to be a terrorist event and falls within the purview of ATF, then it's appropriate that ATF have it. We had when we last talked a year or so ago it was our expectation that a MOU would satisfy that. As the I.G. is pointing out, it does not satisfy it, because two sides of it are interpreting it different ways. And it has to be resolved.

I will tell you that at our level and the top levels, I think the cooperation is excellent, it's good. It has been for a year or two. When you get down to the field, there are pockets where it is not so good. And I generally think that it is not institutional but more individual. And each of our agencies has persons that perhaps live more in the past than they should. And so there's still work to be done as the I.G. has pointed out.

GRASSLEY:

Well, for the tax payer's benefit I think that they would expect agencies within the same federal government working for the same American population would get along to get done what needs to be done and not waste time that way. Let me go on (inaudible).

(CROSSTALK)

MUELLER:

Can I just mention one thing if I could? If you look at the cooperation we've had. We have jointly investigated any number of places and done it exceptionally well whether it be Oklahoma City or the 1993 bombings in New York. We have done -- the ability not to get along is the exception in my mind and not necessarily the rule.

GRASSLEY:

Well, if it gets the inspector general's attention, it seems to be still quite a problem. Let me go on to another one.

In February I cosponsored S372 Whistleblower Protection Enhancement Act, legislation updating whistleblower protection for all government employees. It addresses a number of hurdles of good faith whistleblowers face when bringing complaints alleging retaliation for protected whistle blowing.

The legislation was marked up to a homeland security committee where a compromised substitute was adopted. As an original co-sponsor I am deeply concerned by a provision that was included at the very 11th of hours, which strikes the current whistleblower protection for FBI employees. That law was passed in 1978 and wasn't effective until '97 when President Clinton issued a memorandum

directing the attorney general to establish whistleblower protections for FBI.

Those procedures have provided some basic level of protection for FBI employees now over the years. And while not perfect, are greater than if the homeland security committee substitute became law. I'm very concerned with this provision striking the existing provisions and have been working to determine who authored it.

In chasing down where this came from I've heard a number of different things. Some have said the provision came from the White House. Others said the Intelligence Committee. And others have directly stated it was done at the request of the FBI. I understand that the committee members and the White House have said this provision will be removed. But I still want to know where and why it came to be. So Director Mueller, I'm going to ask five questions, but they can be answered shortly.

You've repeatedly stated your view that whistleblowers shouldn't face retaliation. My first question: Do you believe that current whistleblower protections under section 2303 should be repealed?

MUELLER:

I'm not that familiar with the particular statutory numbers. I have to get back to you on that.

GRASSLEY:

OK. Well, do you have any idea where the provision for repeal came from?

MUELLER:

No.

GRASSLEY:

Did any individual at the FBI have anything to do with drafting the provision?

MUELLER:

I don't know.

GRASSLEY:

Would you get back to me on that?

MUELLER:

Yes.

GRASSLEY:

Has the FBI provided any comment to the Department of Justice, White House or other executive agencies regarding repealing the existing FBI whistleblower protections?

MUELLER:

I don't know.

GRASSLEY:

Get back to me, please?

MUELLER:

Yes, sir.

GRASSLEY:

Lastly, will you make -- I hope you'll make a commitment to me and this committee that the FBI will not advocate to repeal the existing whistleblower protections outlined in Section 2303 as part of whistleblower reforms.

MUELLER:

I could do that. I can't do that now. I'd have to look at it. I'm not really familiar with the issue.

GRASSLEY:

Well, you've kept telling me for a long period of time, ever since you've been in office and predecessors to you, that you thought whistleblower protection was important for...

MUELLER:

I do.

GRASSLEY:

... FBI people.

MUELLER:

I would -- I would reiterate that I...

GRASSLEY:

OK.

MUELLER:

... I think whistleblower protection is important. And, as we have discussed, every year, I send out a -- an e-mail to persons saying I will not abide, tolerate the retribution. I -- anytime I get a claim of whistleblower status, I send it immediately to the inspector general, so that there is no conflict of interest. And I think, as I have indicated to you, and I think has been proven over the years, I would not...

GRASSLEY:

OK.

MUELLER:

... put up with retaliation against whistleblowers.

GRASSLEY:

And on that last point, would you get back whether or not you'd support any modification of 2303?

MUELLER:

Yes, sir.

GRASSLEY:

As well as the other two...

MUELLER:

Yes, sir.

GRASSLEY:

And -- and does that have to go through the Department of Justice for you to answer my question...

MUELLER:

Yes.

GRASSLEY:

... on those points?

MUELLER:

Yes.

GRASSLEY:

Well, will you -- will they get back to me? You probably don't know, because they haven't gotten back to me over the year on the other one.

LEAHY:

I will join with the distinguished senator from Iowa to help get those...

GRASSLEY:

Well, thank you. Thank you.

LEAHY:

... those answers before we're done.

GRASSLEY:

And I knew you would. Thank you.

LEAHY:

Because the senator from Iowa has -- has been as much a leader on these whistleblower matters as any senator of either party. And I will work with you on that.

GRASSLEY:

Thank you very much, Mr. Chairman.

LEAHY:

Thank you.

Director Mueller, we have -- you know, there are so many, sometimes, jurisdictions that you have to appear before. I know one is, of course, the Intelligence Committee. We're fortunate that we have members of this committee who, by tradition, also serve on the Intelligence Committee. And we're, of course, twice as fortunate to have the chair of the Intelligence Committee here. And I'll yield to her now.

Senator Feinstein.

FEINSTEIN:

Thank you very much, Mr. Chairman.

And welcome, Director.

MUELLER:

Thank you.

FEINSTEIN:

It's good to see you again. Let me begin by saying -- using my capacity for a minute as chairman of the Intelligence Committee to thank you. I've mentioned to you, I think on three prior occasions, about intelligence-related reports from the FBI not reaching the committee in a timely way. And I want to tell you they are now reaching the committee in a timely way. So, thank you very much for achieving that.

MUELLER:

And thanks also goes to the Department of Justice for that.

FEINSTEIN:

Well, that's -- maybe that's a precedent that material can flow more quickly. So, I thank the Department of Justice.

Secondly, the FBI gang assessment indicated that violent gangs are moving from large cities to smaller cities. Senator Hatch and I have been working on a gang bill for 10 years now, which has stalled, because of House objection to the fact that it's got an enforcement portion to it.

Could the drop in crime -- have you looked at whether the drop in crime in large cities is related in any way to this movement of gangs to smaller communities?

MUELLER:

Have not looked at that, and will.

FEINSTEIN:

Would you?

MUELLER:

Yes, will. I have not look at it.

FEINSTEIN:

Thank you very much. From an intelligence point of view, on the subject that Senator Sessions raised about Miranda warnings, it's my understanding that the FBI just wants to keep the possibility of Miranda warnings on the table, so that if you have been involved in an arrest of somebody that is likely to be tried in a federal court, that warning can be given; but that soldiers are not given -- giving Miranda warnings, nor is there any request for them to do so. Is that correct?

MUELLER:

That is true. And, in fact, the -- we have been, as I say, operating with the military in Iraq and Afghanistan for a number of years. The military welcomes us and our expertise. And it is rare is the occasion that we will give Miranda warnings when we are participating in an interrogation in that environment.

On the other hand, you may pick up an individual who has been indicted someplace, and you have the possibility of bringing that person back to the United States to face that indictment for a terrorist act that occurred sometime before. And the -- at least it ought to be put on the table as to whether or not you wish to Mirandize that individual before you talk to him, both for -- well, and certainly to make a statement admissible in court in the United States.

But that does not necessarily exclude that the person will be interviewed for intelligence purposes as opposed to the admissibility of the statement in a court in the United States.

FEINSTEIN:

Thank you. I'm pleased we cleared that up. I think that's helpful.

In August, during the break, I had the opportunity to meet with the BATF in Los Angeles and found it very interesting. And then, later, during that period of time, I saw this quote from Dewey Webb, the chief of the ATF office in Houston, saying that at least a dozen women in the past two years have surfaced in federal gun trafficking cases as the suspects or cooperating witnesses in Houston and South Texas.

Essentially, women with no criminal history, he asserted, were being used to be straw buyers of high-powered weapons and then giving those weapons to relatives or to smugglers to bring them into Mexico. What do you know about this? And what is being done about it?

MUELLER:

It is principally the purview, as you point out, of ATF. But it has been, over the years, persons who want straw buyers will use women or others without any criminal background. And often, it's -- it's not something new. It's been there for any number of years.

Often, whether it be a woman or a man who is a straw buyer, is the avenue you have to breaking down the -- the ream -- the ring and getting the cooperation you need to investigate successfully and -- and to -- and to incarcerate the -- incarcerate the individuals who are responsible. So, it's a phenomenon that's been there for a period of time.

FEINSTEIN:

Well, perhaps we can discuss that more fully...

MUELLER:

Yes, ma'am.

FEINSTEIN:

... another time. But, you know, I know a high concern of the Mexican government is the massive importation of guns from the United States into Mexico, big guns too.

MUELLER:

Yes.

FEINSTEIN:

And we have to find a way to stop that. So, I'd like to talk with you. But I'd like to turn now to a FISA matter, the three sun-setting provisions of the Patriot Act, the lone wolf, the business letters and the roving wiretaps. This -- is an issue where two committees have jurisdiction, both the Judiciary Committee and the Intelligence Committee.

I spoke with Senator Leahy yesterday and indicated that we'd like to work together, if possible, so we don't get into battles of sequential referrals and that kind of thing. It was my thinking simply to extend those three provisions until the Patriot Act is up for reauthorization, which is three years hence. I believe Senator Leahy will submit a bill that does some other things as well.

I have just received a copy of a letter, or a letter directed to me and the vice chairman of intelligence, dated September 14, by the Justice Department, saying that they are in full support of reauthorization of all three provisions; and that they, if there were some ideas for some changes, they would be happy to discuss them. The

letter is signed by Ron Weich. And it's a rather forceful case for continuation.

I would like to ask you if you would discuss your use of those three provisions and their relevance today in the continuing concerns about terror infiltrating our country.

MUELLER:

Well, let me start by saying I hope you reinforce each other to -- to, again, pass these three -- these three provisions.

LEAHY:

We'll work it out.

FEINSTEIN:

Right.

MUELLER:

The -- first of all, the business records, 200 -- 215, between 2004 and 2009, we've used that more than 250 times. I make the point that that provision is used with the approval of the FISA court. And the business records that are sought there relate almost -- not all the time -- but almost solely to terrorist investigations in which the records that are received are absolutely essential to identifying other persons who may be involved in terrorist activities.

FEINSTEIN:

Involving a foreign terrorist.

MUELLER:

Involving a -- a -- a -- someone who is a -- yes, a foreign terrorist.

FEINSTEIN:

So, you're prepared to say that there is no domestic exclusivity, but that this relates to a foreign terrorist.

MUELLER:

Well, it relates to an agent of a foreign power.

FEINSTEIN:

Exactly.

MUELLER:

Agent of -- as it says in the...

FEINSTEIN:

Yes, exactly.

MUELLER:

... in the FISA statute.

FEINSTEIN:

So, each one would.

MUELLER:

Yes. My understanding is that 215 relates to any investigation relating to...

[CROSS-TALK]

FEINSTEIN:

It does and (inaudible) it's being used that way.

MUELLER:

Yes.

FEINSTEIN:

OK.

MUELLER:

Let me just check and make sure that's so. Yes.

LEAHY:

The...

FEINSTEIN:

Can we...

LEAHY:

Do you want to add to the question?

FEINSTEIN:

Oh, I -- if he could just finish quickly...

LEAHY:

Sure.

FEINSTEIN:

... on the -- the lone wolf provision...

MUELLER:

OK.

FEINSTEIN:

... and the roving wiretap.

MUELLER:

Roving wiretaps we used approximately 140 times over the -- the -- those same years. And it's tremendously important. With the new technology, it is nothing to buy four or five cell phones at the same time and use them serially to avoid -- to avoid coverage. And the roving wiretaps are used in those circumstances, where we make a case that is going to happen. And we've got approval for it. It's essential, given the technology and the growth of technology that we've had.

As to the lone wolf, that has been -- that has not been used yet. But my belief is it needs to be there, where we have an individual, such as Moussaoui, whom we need to go up and get a FISA warrant, either for a search or a -- an interception and cannot identify specifically, with specificity, a particular foreign power that is particularized terrorist organization, that he belongs to.

But we -- the need to, as they say in this lone work -- lone wolf context -- go to a FISA court and say, OK, this is a lone wolf. We can't put the -- the tie to this particular terrorist group. But here are the reasons why we need to go up on this individual. So, my belief is each of these three provisions are important to our work.

FEINSTEIN:

Thank you, Mr. Chairman, for allowing him to answer.

Thank you.

LEAHY:

Thank you.

Senator Hatch.

HATCH:

Well, thank you, Mr. Chairman.

I want to thank you, Director Mueller -- Mueller, for the great service you have given this country over all these years. I -- we've been together a lot -- lot of times. And all I can say is that you're -- you're one of the heroes in this country. And I just want to -- so are all of those FBI personnel people who really protect us throughout all the years. So, I just want to say I sure appreciate you.

But I was relieved when the Census Bureau independently chose to terminate its relationship with the Association of Community Organizations for Reform Now, commonly known as ACORN. I'm deeply troubled by the most recent controversy concerning that organization and many other controversies too.

The disturbing behavior of ACORN employees was captured on video at an ACORN office -- offices in Brooklyn, New York; Baltimore, Maryland; Washington, D.C.; and San Bernardino, California, giving guidance on criminal activity. The documentary filmmaker posing as a prostitution ring leader entered these ACORN offices and received advice on how to maintain his enterprise and receive tax credits for doing so. I was basically shocked when this advice included, among other things, how to launder profits from an alleged prostitution ring that was going to involve underage girls.

Now, during a meeting, ACORN representatives were informed that the girls were smuggled into the United States from a foreign country for the purposes of sex trafficking. ACORN employees were told by the filmmaker that the reason for obtaining a residence was to establish a brothel that would house these underage girls.

Consistent amongst all three ACORN offices was the advice to lie to law enforcement, conceal the profits and ensure that any of the underage girls involved in the prostitution ring do not talk to law enforcement. One ACORN employee in Baltimore told the alleged prostitution ring leader that, quote, "Girls under 16 don't exist," unquote, and quote, "Make sure they keep their mouths shut," unquote.

Now, this heinous conspiratorial criminal activity is usually carried out by organized crime families. However, it appears that ACORN, which has offices in 41 cities nationwide, has decided to engage in offering expert advice on how to get caught running a sex slavery ring, money laundering and even mortgage fraud.

Now, this was not random. And the consistency of the advice indicates that this system is systematic and widespread within ACORN.

The complicit behavior of ACORN employees in multiple offices offering to assist persons engaging in sex trafficking is egregious behavior. Now, can you tell me have you been made aware of all these issues, and if the FBI field officers in Washington, Baltimore and New York are examining these -- these incidents?

MUELLER:

I -- I think the first time I heard of this incident to which you refer was last evening. And I -- I -- and beyond that, I do know -- I do not know where we are. Clearly, given what you have said, it's something in consultation with the Department of Justice that we would look at.

HATCH:

Now, this is what I've been led to believe. And I'd sure appreciate it if you'd look at it and -- and do something about it.

Now, last month, the White House and the attorney general announced the formation of a new working...

MUELLER:

... do not know where we are. Clearly, given what you have said, it's something in consultation with the Department of Justice that we would look at.

HATCH:

Well, that's what I've been led to believe, and I'd sure appreciate if you'd look at and -- and do something about it.

Now, last month the White House and the attorney general announced the formation of a new working group, comprised of federal law enforcement and intelligence personnel, for the sole purpose of interrogating high value detainees. This has been referred to as the HIG. You're familiar with.

MUELLER:

Yes, sir.

HATCH:

OK. According to both the White House and the attorney general, the HIG will be housed inside the FBI. The senior FBI official will be in charge of the HIG.

MUELLER:

Yes.

HATCH:

However, the administration has stressed that the HIG will not be a sub-unit of the FBI or DOJ. Now, that point by the administration does not shed light on who the HIG will report to -- either the FBI or the National Security Council.

If the ultimate goal of the administration is to prosecute high value detainees in -- in Article II courts, the development of evidence will be key to the government's case.

Now, what I've -- what I have reservations about is evidence that was developed by the intelligence community. For instance, in some cases the government may not be willing or able to produce the source of the evidence in court. Furthermore, the evidence may be the fruit of information obtained from foreign intelligence or foreign investigations.

Now, this information could -- could lead investigators down the line of questioning during an interrogation that they will have to explain in court. If trying these cases in federal criminal courts is the ultimate goal, what solution does the FBI propose to address hearsay evidence exclusions?

And just one follow-up question -- will the FBI implement a policy on the HIG to begin each intelligence interrogation with a Miranda warning? Is the FBI currently Miranda-izing detainees in Afghanistan? I think you have approached that, but if you could answer those three questions.

MUELLER:

I think that the heart of the issue is prosecution is not the ultimate goal of every interrogation.

HATCH:

Sure.

MUELLER:

But by the same -- it may well be intelligence gathering, but by the same token you should not -- not avoid the possibility that you may be able to obtain evidence that would result in a prosecution. And consequently, the effort is to look at an individual. Determine what's the evidence you have on him. Is the evidence in this going to a courtroom?

Is it come from intelligence sources where it is problematic, given the reasons you said? It may have come from a source or method that would be disclosed or it may have come from a foreign country, but tie that together and say, "What do we have on this individual?"

Firstly, how does it tie together to -- to maximize our ability to interrogate that individual? And information that you need to effectively interrogate an individual may well come from law enforcement sources, or it may well come from intelligence sources. But the persons who are doing the interrogation should have that information in front of them.

And in unique cases -- this is high value targets, and I said before, maybe somebody who's been indicted before -- at least have the option of giving Miranda warnings in certain circumstances where it's appropriate that would help the prosecution, not to the detriment of gathering intelligence.

And so the -- the group, the HIG units, are a combination of intelligence and law enforcement, FBI, but intelligence in terms of CIA, in terms of DIA, with the combined expertise that we can more effectively do it and make certain we have the -- the intelligence on the -- on the table.

The other thing that we have in this country that many countries do not have is the Classified Information Procedures Act, which enables us, as it happened in Moussaoui and other cases, successfully try individuals while still protecting sources and methods, while still protecting information that may have come from overseas.

HATCH:

Well, thank you.

Thank you, Mr. Chairman. My time is up, and I'll submit the rest of my questions.

LEAHY:

(inaudible).

HATCH:

Well, I'll just submit the rest of the questions.

LEAHY:

We are going to be having...

HATCH:

Thank you, Mr. Director.

LEAHY:

... votes on the floor soon. What I'm going to try to do is keep this going during that time and that people take turns going over there.

Next is Senator Feingold, of course. And then it will be Senator Kaufman and Senator Franken. I have the rest of the list here. Senator Feingold, Senator Franken, Senator Whitehouse, Senator Klobuchar, Senator Schumer and Senator Cardin.

Senator Feingold?

FEINGOLD:

Thanks, Mr. Chairman.

Let me begin, Director. Good to see you again. I'd like to first associate myself with Senator Kohl's comments about violent crime in Wisconsin. The overall trend of violent crime as being decreasing is, of course, heartening. But I urge you to continue to work closely with state and local law enforcement on these issues.

Director, as to the Patriot Act, three provisions of the Patriot Act expire, as we know, at the end of the year. And yet critical information about their implementation has not been made public -- information that I think would have a significant impact on the debate.

During the debate on the Protect America Act and the FISA Amendments Act in 2007 and 2008, I felt that critical legal and factual information remained unknown to the public and also to most members of Congress. Information that was certainly relevant to the debate might even have made a difference in the way that some people voted.

And during the last Patriot Act reauthorization debate in 2005, a great deal of implementation information remained classified. This time around I think we got to try to find a way to have an open and honest debate about the nature of these government powers while, of course, protecting national security secrets.

I've raised this repeatedly, as you know, with administration officials over the past couple of years -- most recently in June in a classified letter also signed by Senators Leahy, Durbin, Wyden and Whitehouse.

I appreciate that the Justice Department in a letter this week made public for the first time that the lone wolf authority, as you just confirmed, one of these three provisions, has never been used. That's a good start, since this is a key fact is they consider extending that power.

But there's also information about the use of Section 215 orders that I believe Congress and the American people deserve to know. I really is that you're -- you're not the sole person to make this decision, but I'm asking you today for your commitment to advocate for finding a way to allow some limited information to become public so we can have a real debate about this. Will -- will you make that commitment?

MUELLER:

I don't think I can, because there is inevitable tension between -- particularly when it comes to national security -- keeping the information classified because to do -- or not to do so would -- would harm our national security.

On the other hand, I understand what you're saying in terms of what you learn on the Intelligence Committee would be useful in the debate on the floor. And there is a tension.

But I do believe that the information that's provided to the Intelligence Committee in classified setting is appropriately provided to the Intelligence Committee in the classified setting. And while there is that tension there, I cannot give you the commitment that I would advocate for releasing more information than we have in the past.

FEINGOLD:

Well, I hope you'll reconsider that. I mean, the fact is you have made public that the lone wolf provision has never been used. That is something that perhaps other people would like to know. But you have chosen to do that, so obviously you're not applying this as an across-the-board rule.

And I know that -- that the number of times Section 215 orders have been issued is -- is something, but it does not come close to providing the kind of information about the use of the authority that I think is needed for meaningful public debate. I...

MUELLER:

And that made me -- that may be where we disagree.

FEINGOLD:

And -- and I just want to say that I -- I feel as strongly as anybody in this body or in this country about keeping things secret that have to be kept secret. And my feeling and understanding about this increased greatly as a member of the Senate Intelligence Committee for the past four years.

But I really do believe there is a way to do this, and I hope you will work with us and consider appropriate disclosure that is not harmful to our country, but allows us to have a real debate.

MUELLER:

I would do that in terms of particular pieces of information, yes.

FEINGOLD:

In December the U.S. Court of Appeals for the Second Circuit found that the gag order provisions of the national security letter statutes violate the First Amendment.

Has the FBI changed its procedures for NSL gag orders to address the constitutional problems identified by this decision? If so, has it made these changes nationwide, or are they just changed in the states that are in the Second Circuit?

MUELLER:

Let me check one thing, if I might.

We made the change across the country.

FEINGOLD:

OK. Good.

While the court's decision was specific to NSL, there's implications for the gag orders associated with Section 215 orders as well. Has the FBI made any changes to these procedures as a result of the Second Circuit's decision?

MUELLER:

Not in that venue. We disagree with the application of the Second Circuit opinion to these other procedures.

FEINGOLD:

We'll take that up in the future then, but I appreciate the answer.

As Senator Leahy already mentioned, last year the DOJ inspector general issued a second set of reports on the FBI's use of the national security letters and the Section 215 of the Patriot Act.

In light of the upcoming reauthorization process, I want to follow up on a particularly troubling incident discussed in one of these reports.

The IG said that the FBI had issued NSLs to obtain financial records in an investigation after the FISA court had twice refused to approve Section 215 orders in the same investigation because of First Amendment problems. So this obviously leads me very concerned about how seriously the FBI takes First Amendment issues in the course of its investigations.

Do you think it was appropriate for the FBI to seek information using NSLs, an investigative tool that does not require judicial approvals, to get around the FISA court's refusal to approve a Section 215 order?

MUELLER:

I'm not familiar with this instance. Quite clearly, in the way you have characterized it in terms of judge shopping or -- or process shopping, I'm not certain that's appropriate. But I'm not familiar with the incident, and I'll have to get back to you.

FEINGOLD:

Well, the report was issued a year and a half ago.

MUELLER:

Yes.

FEINGOLD:

Has the FBI taken any action to ensure that this doesn't happen again?

MUELLER:

I have to -- there are a number of issues we looked at in the wake of the two to three IG reports, and on this one I just -- I can't give you a specific answer at this time. We'd have to get back to you.

FEINGOLD:

I look forward to hearing from you, and you've been responsive to my requests...

MUELLER:

Yes.

FEINGOLD:

... in the past, so I look forward to hearing from you as soon as possible.

I'd like to ask you finally about roving FISA wiretaps, one of the provisions of the Patriot Act that is due to sunset. I -- I never objected to granting this authority to the FBI. My concern, as with a lot of the Patriot Act provisions, was that adequate safeguards weren't included.

For example, in the criminal roving wiretap statute, there is a requirement before a new phone or computer can be wiretapped that hasn't explicitly been approved in advance by a judge, there must be reason to presume that the target of the surveillance is nearby.

This is sometimes referred to as the ascertainment requirement. It helps ensure that the FBI doesn't tap the wrong phone or -- or computer being used by an entirely innocent American.

Why not include a similar requirement for the FISA roving taps?

MUELLER:

It's my understanding -- and again, I haven't looked at it in a while -- that we're

required to show that there is a likelihood that the individual will be using many phones in order to get the approval for that particular provision. It seems to me that that satisfies the due process, the constitutional requirement, and it is -- is adequate.

To prove more would mean that we would be going back to the judges day in and day out in this day where cell phones are throwaway cell phones. I mean, given the technology now, in many places, as we've seen in the debate on FISA, the statutes do not team up with the technology.

In -- in drafting and adding another requirement, it will inhibit our ability to swiftly track those individuals who are seeking to avoid surveillance, counter surveillance and...

FEINGOLD:

Is that the consequence in the criminal roving wiretap statute where...

MUELLER:

Well, criminal rule is much -- I think is -- ask my opinion, it's too restrictive.

FEINGOLD:

OK.

MUELLER:

It's too restrictive.

FEINGOLD:

Fair answer.

MUELLER:

And we would be far more effective on criminals if we went back to looking at Title 3, given the new technology. Title 3 has been on the books for a number of years. Technology has changed dramatically.

FEINGOLD:

Well, I'm just fine. Go to the next senator.

LEAHY:

Senator Franken?

FRANKEN:

Thank you, Mr. Chairman.

And thank you, Mr. Director.

First of all, Director Mueller, I want to thank you for providing me with briefings on Somali individuals from Minnesota who returned to Somalia to join Islamic extremists. After those briefings, I am satisfied that the FBI is doing a very good job on the ground in the Twin Cities.

Obviously, these individuals are a rare exception within the Somali community in Minnesota, which is a patriotic and hard-working, important part of our state.

One of the main things that makes this country special is that we're a melting pot, and we have people with the cultural background and language skills that we need for these investigations. How is the FBI doing on this front? Do we have enough Arabic speaking translators, for example, for terror investigations?

MUELLER:

We -- we -- I -- I can't say we're doing as well as I would like. We have almost doubled our capabilities since September 11th, but that was a small capability to begin with.

When it comes to Somali speakers or Pashtu or others, where they are our various clan dialects and the like, it becomes even more problematic. We have had substantial outreach programs since September 11th in trying to attract those who have those capabilities, both in terms of providing translating and -- and, well, translating capabilities but also as agents to be able to operate.

We're not where we want to be. It's tremendously difficult in the end, but we have done everything we possibly can to encourage, recruit and bring in persons from diverse backgrounds.

FRANKEN:

OK. Thank you.

The -- the task force has been discussed today. It's -- I'm -- I'm concerned about rendition. And I can see from a release that the -- on the task force from the Department of Justice on August 24th that actually we're going to -- you're calling it "transfers" -- or it was called "transfers" in this. But that's renditions, isn't it?

MUELLER:

Well, there -- there are renditions -- somebody can be rendered from another country pursuant to an extradition treaty.

FRANKEN:

Sure.

MUELLER:

I mean, that's also called renditions. Somebody can be transferred from another country as a result of the other country putting the person on a plane to the United States. That's a rendition, albeit without any extradition paper. There are other ways...

FRANKEN:

Well, my question is are we going to continue the policy of rendition where we send folks, prisoners to other countries. And will the FBI be handing folks over to the CIA for rendition?

MUELLER:

We have not done that in the past and will not do it in the future. I gave a brief description of that because, yes, we have been involved in renditions, but not the renditions I think you're asking about.

FRANKEN:

OK. So I just -- what -- well, I -- I -- I just want to make sure that there's not transfers of people to other countries for torture. And...

MUELLER:

I -- we certainly would not do that. When we transfer somebody to another country, it's actually generally is the Marshal Service, and it's pursuant to paper, extradition (inaudible)>

FRANKEN:

OK. And -- and you do not hand them over to the CIA?

MUELLER:

No. Have not, will not.

FRANKEN:

OK. The FBI has a human trafficking initiative that investigates and arrests traffickers. In Minnesota there's a serious problem with trafficking in Native American communities. People are trafficking Native American women. In fact, the

Minnesota Indian Women's Resource Center recently found that 27 percent of its clients, Native American women, were victims of human trafficking as defined by Minnesota law. I want to know if human trafficking is a priority at the FBI. And how many full-time employees investigate human trafficking at the FBI? And how many man hours are spent investigating human trafficking at the FBI?

MUELLER:

I had not been aware prior to the mention by your staff that this question might be coming up about human trafficking of Native American women. And it's something I have to look into. I do not believe...

FRANKEN:

Please.

MUELLER:

... that we -- we will. I can tell you that we have over 100 agents that work in Indian country. We've maintained that since September 11th, despite the other priorities. But I'd have to get back to you as well as to the number of agents and others we have that are working on human trafficking in general. And I will do that.

FRANKEN:

Please get back to me on that and on how many of your investigations have centered on trafficking of -- of native women.

The FBI gathers crime statistics from around the country. But in Minnesota, Indian tribes actually don't participate in -- in our state's crime reporting program. State law says actually that they -- they can't. This means that -- that crimes on Indian reservations are under-reported in national statistics and that Indian tribes themselves have difficulty tracking and analyzing crime. And this is a big problem. Do you know how many Indian tribes and reservations participate in the uniform crime reporting program?

MUELLER:

I don't. I don't. I might be able to get back to you. But it is a voluntary reporting structure.

FRANKEN:

OK. I have about a little bit over a minute left. So I'm just going to -- you know, we hear a lot about cyber terrorism. But I think a lot of folks don't have a clear idea what it is and -- and how it can actually harm people in the country. So -- and -- and just how fighting it is crucial in our war on terror. Can you tell me what cyber terrorism is and how it can actually result in the loss of lives, or do that for our people watching?

MUELLER:

Well, if you have a cyber -- if you have an attack, if you have a denial service attack or a worm or a virus, quite often you don't know who is responsible for that. Is it a state actor? Is it a country some place? Is it a terrorist or a terrorist group? Or is it an individual?

The -- whatever the activity is, you have to trace it back and attribute it to one of the three. Generally, with terrorists it could be disrupting a communications network. I mean, the possibilities are shutting down an electrical grid, shutting down a stock exchange. In other words, any activity that would bring attention to the terrorists that would disrupt our capabilities would probably be called a terrorist activity.

FRANKEN:

Again, they do stuff with satellites. Can they do stuff with air traffic control?

MUELLER:

Air traffic control is one that we'd be concerned about. But it generally is off the Internet and utilizing Internet as the vehicle as opposed to statutes. You also have the more recent example of the Russians disrupting the Georgian command and control capabilities before the invasion of Georgia by Russia. It is that kind of activity that either state-sponsored or terrorist-sponsored that can shut down various networks of the military or in the private arena as well.

FRANKEN:

And presumably, we have really smart people working on this. I remember the FBI several years ago didn't have the best -- it was before you took office -- didn't have the best computer system.

MUELLER:

Luckily, we -- we do have very smart people. I rely on them.

FRANKEN:

OK. I...

MUELLER:

As does (inaudible) other agencies.

FRANKEN:

... am very reassured. Thank you. Thank you, Mr. Director.

MUELLER:

Thank you. If I may make one more other point on that?

FRANKEN:

Sure. Sorry.

MUELLER:

This is the wave of the future, though. For the FBI, it is absolutely essential that we -- we attract, we bring in these people because the war -- the battlefields of the future are going to be in the cyber arena. And we have to grow in the same way that NSA, intelligence community and the military have to grow to address those -- those threats of the future.

FRANKEN:

Thank you.

MUELLER:

Thank you.

WHITEHOUSE:

Director, Chairman Leahy has gone to the vote. He will be back shortly. But in the meantime, it's both my turn and my temporary chairmanship. So I guess I call on myself.

MUELLER:

And do I call you Mr. Chairman?

WHITEHOUSE:

First of all -- better not do that. First of all, welcome you here and thank you for your continued leadership of the Federal Bureau of Investigation, which is an organization that Americans are very proud of. You have been given a significant new responsibility with respect to the high-value detainee interrogation group and very recently -- it was, I think, the end of August when this was announced. I'm wondering what your administrative benchmarks are for the next couple of months to keep that process moving forward and to discharge the obligations that you have received. What do you see as your next steps? When do you think the group will be fully operational? What are the key benchmarks on the way there?

MUELLER:

Let me start by saying we are in the midst right now of following up with protocols for the -- this group. But as important as anything else is the leadership, both the leadership from the bureau and the leadership from the intelligence community. And we are exploring names and options for that.

And the third area that we are -- there's outreach to other persons who have done research in this area to try to bring in early the -- the lessons learned and research from General Hindman (ph), Harvard (ph), Defense Intelligence Committee, other areas who have been looking at this over the last three years so we start with some accumulated knowledge upon which we will build. But in my mind, the -- the two critical issues are the -- bringing together our organizations to work closely together and understand and have consensus on the goal of this structure and secondly, the leadership of it that should be supported by all participants.

WHITEHOUSE:

And could you put that into some kind of a time horizon for me?

MUELLER:

I would say by the -- by the first of the year. But I tend to be impatient. I will give you a longer time horizon than I would like.

WHITEHOUSE:

(inaudible)

MUELLER:

I can tell you that just about every other day I'm looking at one or another pieces of it.

WHITEHOUSE:

Very good. I should take this opportunity to congratulate you for the success that the FBI has had in its role in these high-value interrogations, the very identity of Khalid Sheik Mohammed as the architect of the 9/11 horrors was something that was achieved by an FBI-led interrogation. It was a joint effort. There were CIA and FBI interrogators present. But I want to take this opportunity to congratulate you because...

MUELLER:

Can I -- can I...

WHITEHOUSE:

... you had an effective role.

MUELLER:

... answer?

WHITEHOUSE:

Yes.

MUELLER:

Can I just insert something?

WHITEHOUSE:

Please.

MUELLER:

And that is we have participated in interrogations with the agency and the military. There have been successes across the board.

WHITEHOUSE:

Yes.

MUELLER:

And in my mind, we are not where we are today without the -- the activities and capabilities of the agency in terms of addressing the war on terror and the military. And while I appreciate the congratulations, I must say that we do spend a lot of time in attributing successes to particular areas, given the policy debate. But the fact of the matter is the agency has been absolutely instrumental in bringing us the safety that we -- to the extent that we have it today. And I did want to make that point as -- as (inaudible).

WHITEHOUSE:

That's a -- that's a very good point. And I think you are wise and administratively generous and prudent to make it. I also -- and accurate, I believe, also. But I also think that the FBI's role has been under-sung. And I wanted to take this opportunity to express my appreciation for your agency's efforts.

MUELLER:

Thank you.

WHITEHOUSE:

As we look towards bringing people from Guantanamo to the United States for further detention, for prosecution as criminals, for incarceration, presumably after a conviction, what is the FBI's assessment of the security risks that that process presents? Do you believe that the Federal Bureau of Prisons, for instance, has any -- how big of a hazard is -- would the detention of these folks in the custody of the Federal Bureau of Prisons be to the United States?

MUELLER:

I think it depends on the circumstances, the -- depending on -- on where the Bureau of Prisons puts a person, quite honestly. You've been out to Colorado and seen Florence, I think. And -- and there's very, very little risk there. In most federal prisons there's very, very little risk. And county jails are somewhat different.

My expectation is that when you're bringing persons from overseas who were involved in terrorism, they will be given top priority in terms of assuring that, not only are they incarcerated, cannot escape, but also that they do not affect or infect other prisoners or have the capability of affecting events outside the prison system.

WHITEHOUSE:

Assuming appropriate prioritization for these individuals, do you have any doubts about the Federal Bureau of Prisons' ability to keep them secure?

MUELLER:

Yes. Yes.

WHITEHOUSE:

You do not have any doubts, or you do have doubts?

MUELLER:

Well, I -- no, I think the Bureau of Prisons -- I don't -- I don't know the circumstances or the -- my expectation is the -- the Bureau of Prisons along with the Marshall Service will provide adequate and appropriate security.

WHITEHOUSE:

Very good.

Senator Klobuchar?

KLOBUCHAR:

Thank you very much, Chair Whitehouse.

Good to see you again.

Director Mueller, I just wanted to talk with you a little bit about the white collar area. I know you devoted some of your testimony to that. And while I -- I see the prosecution of violent crimes and the investigation of violent crimes as well as terrorism to be priorities of your work, I also have always believed that it's been very difficult for local law enforcement to handle some of these complex cases coming from that angle that I -- my previous job before I came to the U.S. Senate.

One of the things we've talked about at previous hearings is the potential for fraud with the TARP money and the stimulus money. And I wondered if there were -- without revealing specific cases -- if the FBI is prepared for that type of fraud that we might see.

MUELLER:

I think in the out-years we're going to need additional resources. We've been given some resources. We requested additional resources in the -- the 2010 budget. And our expectation is we'll ask for more in the 2011 budget. And there is no doubt in my mind that with the monies that are flowing freely, relatively freely through the federal government, we have to work closely with the I.G.s to identify where those monies are flowing and who is going to take a -- a piece of it, whether it be through fraud or public corruption.

With those amounts out there, there is no doubt that there will be a number of people who seek to obtain those frauds -- those amounts illegally. And it will take us as well as the inspector generals as well as new -- new ways of identifying and maintaining data that'll enable us to get to the heart of a -- a scheme relatively early and through manipulating that data or pulling in that data, be able to make a prosecutorial case that much quicker.

And we're working on that at this point in time. There's no doubt in my mind, whether it be from the TARP or the stimulus package and the like that there is going to be fraud, abuse, betrayal of the public trust.

KLOBUCHAR:

And -- and you also testified about the health care fraud and the work that's being done there. And as we deal with cost savings from -- for health care and looking for those savings, one of the things I was most startled by was some of the estimates that the health care fraud cost tax payers \$60 billion a year which potentially is 20 percent of total Medicare spending.

I know when I was a prosecutor we had a number of cases involving this that were quite shocking. And some of it is technology because people are able to get

into hospital systems and start work -- for getting identity numbers and things like that. And then some of it just providers which is actually the scariest part. People putting patients at risk or doing multiple billings, multiple surgeries.

So could you address what the FBI is doing in that regard? And I also have a bill on this to require direct depositing or electronic funds transfer for the Medicare payments, because the regulations have now been uniformly enforced. And to me that's a simple no-brainer that we would have direct depositing. So that would also help us to prohibit some of this fraud. All right.

MUELLER:

Well, I could tell you at this point we have almost 2,500 cases. This year alone we've had 490 convictions in health care fraud cases. And we have ten task forces around the country. And we have about seven -- almost 800 persons working on health care fraud, in which 460 are special agents.

That is not enough to address the problem. And as the health care debate goes on and if indeed there is a health care bill, we would hope that there would be provisions in there that would address this particular issue. Perhaps the one that you just suggested be one. And our people I know are looking at what might come out and how we can at the outset put into place the records and the capability of access to those records so that we can identify the fraud schemes without waiting for somebody to walk in the door.

KLOBUCHAR:

Exactly. And I would think your input from the agency would be very important as we go forward. I believe this has got to be part of any kind of health care reform bill when we're looking at those kinds of numbers and we're trying to.

So I mean, like I said some of these schemes can be really easy. We'll tell them to just collect the social security numbers at a hospital cause they happen to be in a drawer in a little stack in a rubber band. Obviously, they changed their procedures since that. That was just a straight identity theft scheme using the social security numbers. But there are much more complex schemes as you know.

MUELLER:

Well, on a number of occasions the attorney general and Secretary Sebelius have spoken out about this and are concerned about it and have taken the opportunity to make the point in press conferences relating to health care fraud where there have been successful conclusions to investigations.

KLOBUCHAR:

Exactly. And I know again how high cost these investigations can be. But it's my hope when you look at that Madoff case which of course was FCC (inaudible) issue but to have all of those whistle blowers that have called and tried to report that and \$65 billion stolen that the cost of these investigations may be high. But the cost of not doing anything is so much higher. So thank you on that.

Last thing I'm going to talk to you about was we recently had a hearing on the National Academy of Science report -- forensic science. And as you know, they released a report in February on some of the changes (inaudible) some recommendations in the forensic science area. We had a very interesting report -- hearing with police chiefs and prosecutors and people from the Innocence Project there. And we actually found some general agreement. There was clearly disputes about some of the language in the report that the prosecutors did not like. But there was some general consensus on accrediting some of these forensic science labs and some certification and also funding for more training in this area and also taking care of some of the backlog that we've seen across the country.

Could you comment on the FBI's view on that?

MUELLER:

Well, I think our view is that we absolutely believe in accreditation. It is tremendously important. We have sought it and received it. But think that that is absolutely essential to raising the capabilities of laboratories around the country. Training quite obviously always contributes to that. And the one area in which there was some discussion and that is separating the forensics laboratory from the police. In our case I think it would have a substantially detrimental effect.

KLOBUCHAR:

Right. I agree.

MUELLER:

And here was a prosecutor...

KLOBUCHAR:

I totally get that part of it. That's why I'm trying to find the consensus pieces. And there was a consensus on the accreditation, funding, training, backlog, and then to some of the certification issues. So...

MUELLER:

We're on that train.

KLOBUCHAR:

OK. Good. Very good. Thank you very much, Director.

WHITEHOUSE:

I think we await the return of the chairman from the vote. It should be very shortly.

If you don't mind, I'll take an extra moment and follow up with you until he gets here on the questions for the record that I asked when you appeared before the committee on March 25th having to do with issues surrounding the security clearance, background checks, the hiring process for the individuals that the FBI needs to bring on board as it takes more and more of a national security oriented role. People with foreign experience. People with foreign language capability. People who have more national security backgrounds and so forth.

You have a very considerable security clearance process and I gather, from the response that I've been given, that you have been able to manage quite effectively to keep the security clearance process within the 90 day time frame that is suggested for trying to bring people on board. And that in driving it to that standard, you feel you've also been able to meet the national security and clearance security requirements.

Could you comment a little bit more about what it took to get there? Was that an easy step? And did it sort of fall within ordinary chains or did you have to really press matters to get that accomplished.

MUELLER:

It has the impact in two areas. One is our ability to hire any given year. We get a one year budget and often we don't get our budget because of the continued resolution. And so we have a much truncated time in which to bring those persons on board. And our human resources division is completely revamping its procedures and while we won't get everybody on board, have not by -- or will not by September 30th, we will be by the first of the year.

Certainly with agents and analysts we actually are above our numbers in hiring there and we're just a bit down on the professional staff. We also have looked in the context over the overarching view -- a review that has been done by the office director of National Intelligence as to how to restructure our security checks for our people and have done that. And then working -- I'm not certain where we are in terms of the 90 day time frame. I have to get back to you on that. But I do believe we're working with the ODNI and the rest of the intelligence community to fix this problem.

WHITEHOUSE:

I appreciate that. The chairman has returned.

LEAHY:

Thank you. Thank you, Senator Whitehouse, for filling in.

We have checked with whether Senator Schumer, Cardin or Specter are coming back. The votes as I think they probably told you Director -- there's a whole series of votes and -- but you've been here before. You know how that...

MUELLER:

Yes, sir.

LEAHY:

... sometimes works. I would share however, that we've had on our side of the aisle, we've had 11 senators who have taken prior -- 11 democratic senators in this. We've also had the distinguished ranking member, Senator Sessions and two senior -- very senior members of the republican party take place. So 11, 3, 14 of us -- it shows how serious we take this. Note that you take the question of oversight seriously. You and I (inaudible) not just here, but we talked during the weeks and the months as we go along.

I would note that in the spring the National Academy of Sciences issued a comprehensive report on the need to improve forensic sciences in the United States. The Judiciary Committee has held two hearings on this already. I've been disturbed by some of the things I've heard. As a -- when I was a prosecutor, I used forensic evidence all the time. We didn't have DNA then, but we used everything else. I know how valuable it can be both to the prosecution and the defense. But valuable only if it's accurate and reliable and if it reflects state of the art and technique.

I think we have to have total confidence. As you know and I know, there are some cases that have no forensic evidence. But when it is there, for the interest of justice it has to be accurate. It has to be something both sides can agree on.

In the 1990s I called the FBI to face some similar problems that (inaudible) the FBI laboratory wasn't living up to the highest standards. Ultimately the FBI worked with the Congress. We built an entirely new FBI laboratory. Massive undertaking -- I think it was about \$100 million, years. Now the FBI is at the forefront of forensic science. In fact, one area that we see now that people agree as being solidly reliable DNA, the sections and standards were developed by the FBI.

How do we -- what do we do with forensic programs around the country? I mean, we have some argue that we should have one national lab. Others say that we -- state labs can be good. And as you know, some states have very good labs. Some states don't. How do we establish standards so if you're trying a case in Vermont or California or Ohio and forensic science is used, that there is some touchstone standard that -- like the National Science Academy has said that we can look at and say, "OK. We know this is good."

MUELLER:

I do believe that accreditation is commensurately important and driving persons to upgrade laboratories. And shaming them into seeking accreditation. And it's going to require the support not just of the laboratories themselves, but it costs money to upgrade a lab. It takes money to train the various technicians you need.

LEAHY:

Money and time.

MUELLER:

Money and time and you need everybody to be pushing it. And particularly in this case it should be the judges. It should be the prosecutors, should be defense counsel, it should be the technicians themselves. And as you had pointed out, the guilt or innocence of somebody is often dependent on the quality of that forensic evidence even before DNA.

The other aspect of it is as everything else, we need to work together. You indicate that we established standards with regard to DNA. When we did it, we have a working group of individuals from around the country from a variety of laboratories. So that it wasn't the FBI dictating. It was law enforcement within United States coming together with appropriate solution and standards. The same thing could be said for CJIS, Criminal Justice Information Services, where we have a board which is made up mostly of state and local law enforcement that we basically are the administrator. And that works exceptionally well.

So having the money, having the push, having the accreditation and then having the input of a board from state and local law enforcement are the -- I would say the key components.

LEAHY:

And this is something really that affects everybody in the criminal justice system. It affects the judges, defense attorneys, prosecutors. We've talked about this before. A prosecutor wants to make sure they've got the right person. The worst thing is you convict the wrong person, because it means whoever committed the crime is still out there going free. Plus the obvious violation of convicting the wrong person.

But you have -- I call it the CSI factor. You go into court. Everybody says, "Where's the DNA?" Well, a lot of cases don't have DNA. Or, "Where's the finger prints?" A lot of cases don't have finger prints. "Where is the ballistics?" A lot of cases don't have it.

But when it's there, it ought to be something where you -- the argument is: We all agree on the finding. Otherwise, I think we're going to be in for some real difficulties especially with some of the court cases that have come down about requiring the testimony of the person who actually did it.

That could be almost impossible. And I know your laboratory helps local law enforcement all around the country and that could create a real problem.

Let me ask you another thing while the staff is checking if there's others coming back. We saw the murder of Marcelo Lucero, Ecuadorian immigrant brutally killed in Long Island. And we've seen other such crimes against Latinos and immigrants. I saw the (inaudible) law center (inaudible) show the FBI statistics suggest a 40 percent rise in anti-Latino hate crimes across the nation between 2000, 2007.

What is happening here and what steps should be taken? I think both of us abhor hate crimes of any sort whether they are against Latinos, Blacks, people because of their gender or sexual identification. But is there an increase in Latino hate crimes?

MUELLER:

I had not been aware of that. I will have to go and -- and check with that. But whenever we get allegations with that regard in consultation and conjunction with the Department of Justice to determine applicability of our jurisdiction, we thoroughly investigate and -- and try and convict. I will have to go back -- get back to you on that increase. I do not recognize that.

I know we have a problem with reporting of hate -- hate crimes, because some believe it is a somewhat nebulous category. Some are unwilling to put it into that category. And our statistics, as I say, are dependent on -- on the state and local law enforcement providing that information.

We have, in the last couple of years, focused when we have our meetings with regard to the information that's provided (inaudible) just focused on that particular issue in order to encourage state and local law enforcement to spend more time and get -- and enable us to have accurate statistics in that regard.

LEAHY:

Well, the late Senator Kennedy had espoused hate crime legislation. And I -- I'm proud to follow his lead in doing that. We have legislation pending that would increase the tools for federal investigators, but also to local -- to state and local law enforcement that deal with -- with hate crimes. We -- we know this happens. We saw the murder of a guard at the Holocaust Museum. And your department was involved as the other areas were in that; something that all of us found as shocking things you might see.

Do you think, if we pass a bill, we may be able to help law enforcement and curb the trend of crimes on ethnicity or race or sexual orientation or bias? Would that help us?

MUELLER:

I'd have to take a look at it. But it might well.

LEAHY:

Thank you.

I see Senator Schumer here. I'll -- I'll yield to Senator Schumer.

You voted, I take it.

SCHUMER:

(OFF-MIKE) I did (inaudible).

Thank you, Mr. Chairman. First, let me thank you. I know you asked many more questions than you thought you would. And you're a good friend, a great

leader and a wonderful chairman. So, thank you for doing (inaudible) me.

And I hope the questions, Mr. Director, weren't too difficult that I caused to be asked.

MUELLER:

No.

SCHUMER:

Anyway, I have a bunch of questions. The first relates, of course, to what happened in New York a few days ago. We marked the eighth anniversary of our terrorist attacks, the 9/11 attacks last Friday in solemn ceremony, seeing the families still wearing the pictures of the people they lost. And we mark this day with remembrance, but also re-dedication to the country's national security.

As I have said publicly, I think the FBI does a very good job and is light years better than they were on 9/10/2001. And a lot of that is to your credit, Mr. Director. And the men and women who work for you, the thousands and thousands who do it. In New York, we have a very good task force.

Now, my question is just, you know, this recent report put New Yorkers on edge. It came at a time right after 9/11. There are all sorts of rumors flying around. So, I just want to ask you a question. And I know that this is an ongoing investigation. Not much can be said of it in public, nor should it, so that the compromise -- so that the investigation is not compromised.

However, here's the one question I have. Could you assure New Yorkers and the American public that the situation is under sufficient control, and there is no imminent danger to their safety?

MUELLER:

I can say that I do not believe there's imminent danger from that particular investigation -- from what I know of that particular investigation.

SCHUMER:

OK. And -- OK. I think we'll leave it at that. I want to urge you to continue the Joint Terrorism Task Force. It is a very successful enterprise. And I would urge continued cooperation. I intend to visit it shortly. They invited me to come. And I will be there.

MUELLER:

Let me -- let me also put in, I can say, without any reservation, that our relationships with NYPD in this and other investigations could not be better; and that New Yorkers are well-benefited by the work of NYPD and Ray Kelly in -- in making the city safe. And in situations where there are investigations being

conducted, we have a very good working relationship. And we'll continue that relationship.

SCHUMER:

Glad to hear it. I know it to be the case. And thank you for saying it.

Next question relates to the terror alerts. As you know, Tom Ridge, the former secretary of the Department of Homeland Security recently wrote a book. IT was entitled, *The Test of our Times*. The book reveals how some, including former Attorney General Ashcroft, former Secretary of Defense Rumsfeld, he said, pressured him to elevate the national security threat just days before the 2004 election in what he suspected was an effort to influence the election. That's his characterization, not mine.

Furthermore, he states you were on his side against raising the terrorist level. Could you please provide us with what you know happened then? Is it true that you were against raising the alert level?

MUELLER:

I -- I won't spoke -- I cannot speak to the particular incident that is recounted in Tom Ridge's book.

What I can say is I do believe, throughout the years that we have been dealing with terrorist attacks, that any person sitting at the table was interested in doing the right thing, not for political reasons. Each one sitting at the table on these decisions -- when these decisions were made, understands the -- the decision may well relate to whether a person lives or dies as a result of a terrorist attack. And I did not see political considerations in those discussions.

SCHUMER:

Those specific discussions.

MUELLER:

Throughout.

SCHUMER:

Thank you. Next question relates to security of FBI databases and cyber security experts. The administration released a new national intelligence strategy yesterday. And it designated cyber security as a new top priority for the intelligence community. That makes a great deal of sense. You told the committee this morning how important this area is, and how important it is to hire appropriate experts.

A report issued by a private consulting firm, Booz Allen, this summer highlighted numerous continuing problems our government has in hiring enough capable cyber security experts. And you can't this work without highly qualified

personnel.

So, first question, does the FBI have sufficient experts to meet the nation's growing cyber security needs? And similarly, is the FBI expanding its efforts to recruit and retain such experts?

MUELLER:

Yes, in the wake of September 11, we changed our -- our -- our -- the definition of our hiring needs. And cyber capabilities was one of those areas that we immediately focused on. And since then, we have brought in any number of persons who were program analysts, software developers, all range of cyber expertise in that particular category; are still recruiting for that category. It is a -- it is a -- a -- I want to say, it's one of the categories that we understand is absolutely essential to get the right people in it, and one that is going to expand.

The other aspect that I -- I do believe is tremendously important is we have a cyber task force -- it is relatively large -- that includes personnel from any number of agencies, so that we tap in, not only to the expertise of the FBI, but also the expertise of the intelligence community, the military and others.

SCHUMER:

Are you having, though, some difficulties in finding enough cyber security experts?

MUELLER:

No.

SCHUMER:

No.

MUELLER:

No.

SCHUMER:

Good. I'm going to ask the GAO to conduct a report on the hiring of cyber security experts, not just in the FBI, but in other parts of the government as well; so we can comprehensively identify any systemic deficiencies and work together to keep our intelligence agencies fully and appropriately staffed.

That's it.

LEAHY:

Thank you.

Director, we're now several minutes into a 10-minute roll call vote. I will recess the hearing now, again with thanks to you. I appreciate -- as I said before, you've always been available when I've had questions. And I appreciate your testimony here today. We -- we share a common interest in -- in law enforcement, in law enforcement we can be proud of.

Again, I compliment you for your speech on the anniversary -- on the FBI's anniversary.

MUELLER:

Thank you.

SCHUMER:

Thank you.

LEAHY:

We're in recess.

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