



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

March 4, 2004

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

Dear Mr. Chairman:

Enclosed are responses to questions posed to Mr. Michael E. Rolince, Special Agent in Charge of the Counterterrorism Division of the Washington Field Office of the Federal Bureau of Investigation, following Mr. Rolince's appearance before the Committee on June 25, 2003. The hearing concerned the report of the Department of Justice's Office of Inspector General regarding the treatment of post-9/11 detainees.

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

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Patrick J. Leahy
Ranking Minority Member

**Responses of Michael E. Rolince
Special Agent in Charge, Counterterrorism Division
Washington Field Office
Federal Bureau of Investigation
Based Upon June 25, 2003 Testimony
Before the Senate Committee on the Judiciary**

Questions Posed by Senator Hatch

1. It seems to me that, as in any other emergency situation, in the wake of 9/11, the Bureau had to make what were essentially triage decisions. Among the many competing priorities, the Bureau had to decide what to put first. It is clear that what the Bureau did was put preventing another terrorist attack first. And I don't think anyone here would question that decision. But I do want to point out that these days we are asking an awful lot of your agency. Some have criticized the Bureau for not doing more in the war against drugs; while others have suggested that field offices - such as the Washington Field Office should be tasking more agents to investigate white collar crime. So I think it's important to bear in mind that the timely processing of clearance requests was simply one of many competing priorities in the Bureau.

Could you comment on what Bureau personnel were being tasked with when making clearance decisions and what other responsibilities were on their plate? In particular, I am curious as to whether some of these same agents who were conducting the 9/11 detainee clearances were also active in the overall 9/11 investigation?

Response:

The FBI/Immigration and Naturalization Service (INS) Working Group involved in the clearance process included FBI personnel from the Office of the General Counsel (OGC) and the Counterterrorism Division (CTD) at FBI Headquarters (FBIHQ). During this period, OGC employees were also working on other matters such as Foreign Intelligence Surveillance Act (FISA) and undercover reviews, while CTD employees were additionally working on investigative operations relative to the 9/11 hijackers. In addition to FBIHQ, FBI field offices also played a major role in the clearance process. The first step in the clearance process was a background check of the detainees conducted by the field offices and FBIHQ. Clearance of an individual required a formal request from the SAC in the field office advising FBIHQ that the detainee was no longer of investigative interest.

Most of the FBI personnel involved in the clearance process were also assigned numerous other responsibilities. Some agents and support personnel were working on FISA, undercover operations, and other investigative matters. All of the agents involved in the clearance process were also active in the overall 9/11 investigation. A good number of

these FBI agents and support personnel were also actively involved in the Daniel Pearl and anthrax investigations. The Daniel Pearl murder investigation was managed by the Newark Division, where a substantial number of the detainees were being held, so Newark office resources available to handle the detainees were limited. In addition, the FBI's New York Division, which was responsible for processing both the World Trade Center site and 1.8 million tons of remains and debris at the Fresh Kills landfill, was working out of a parking garage. Finally, notwithstanding the emphasis on the 9/11 investigation, the day-to-day business of the FBI went on, and the FBI continued its involvement in trials, grand juries, surveillances, arrests, and other investigative efforts.

2. As you note in your testimony, in the weeks following September 11 attacks, FBI labored under enormous constraints on its resources and was taxed to an extraordinary degree. At a time when the Bureau faced a shortage of trained terrorism agents, it reassigned more than 7,000 employees to track down those who either assisted the terrorists or were attempting to commit additional attacks. It was also investigating the anthrax attacks, the murder of Wall Street journal reporter Daniel Pearl, and providing security for the Winter Olympics—all while searching for evidence among the debris of the World Trade Center. As I understand it, since then the FBI has conducted a massive reorganization and has allocated additional resources to combat terrorism. Can you explain how these additional resources will allow the FBI to respond to future crises with greater efficiency?

Response:

The FBI has reorganized to effectively meet the challenges of the nation's war on terrorism, augmenting counterterrorism resources and making organizational enhancements to focus counterterrorism priorities.

Last year, the FBI began the process of focusing on the counterterrorism analysis program by creating an Analysis Branch within CTD. This new Analysis Branch was assigned the mission of producing strategic assessments of the terrorism threat to the United States. To date, the Analysis Branch has produced nearly 30 in-depth analytical assessments.

Through FY 2004, the FBI's proposed increase in analysts will result in quadruple the number of analysts employed compared with the number prior to September 11, 2001. The FY 2004 proposal represents a 156% increase in funding for analysts in comparison to the FY 2002 budget. Recognizing that the FBI could not hire enough analysts to do the work that needs to be done overnight, the Central Intelligence Agency (CIA) detailed 25 of their analysts to the FBI to provide an immediate infusion of expertise into the FBI program while the Bureau's hiring initiative is underway.

The FBI has also implemented a number of initiatives aimed at enhancing training for its analytical workforce, including creation of the College of Analytical Studies. In conjunction with the CIA, the FBI has begun the use of this College to train new

intelligence analysts. By the end of this year, the FBI expects more than 200 analysts to have completed the six-week training course.

These improvements to the FBI's analytic program had to be made quickly to address immediate needs. The FBI has also taken steps to ensure the ability to collect and analyze intelligence for the long term. As noted above, the centerpiece of this effort is the establishment of an Executive Assistant Director for Intelligence (EAD/I) who will have direct authority and responsibility for the FBI's national intelligence program, overseeing the intelligence programs for the FBI's Counterintelligence, Criminal Investigative, and Cyber Divisions.

The EAD/I will also ensure that the FBI is sharing information with Federal, State, local, and international partners. Furthermore, intelligence units staffed with reports officers will be established in every field office and will function under the authority of the EAD/I. The reports officers will be responsible for identifying, extracting, and collecting intelligence from FBI investigations and sharing that information throughout the FBI and with other national and international law enforcement and intelligence entities.

The FBI has also reorganized its system for threat warnings by establishing a number of specialized counterterrorism units. The CT Watch, a 24-hour Counterterrorism Watch Center, was created to serve as the FBI's focal point for all incoming terrorist threats. The Communications Analysis Section was established to analyze terrorist electronic and telephone communications and identify terrorist associations and networks. The Document Exploitation Unit was initiated to identify and disseminate intelligence gleaned from millions of pages of documents and computer data seized overseas by intelligence agencies. The Special Technologies and Applications Section was formed to provide technical support for field office investigations requiring specialized computer technology expertise and support. And finally, the Terrorist Financing Operations Section (TFOS) was established; TFOS is devoted entirely to the financial aspects of terrorism investigations and liaison with the financial services industry, both at home and abroad. All of these recently created, specialized counterterrorism units have streamlined the FBI's resources to more effectively target terrorism threats.

If we are to defeat terrorists and their supporters, a wide range of organizations must work together. The FBI is committed to the closest possible cooperation with the Intelligence Community, other Federal government agencies, international partners, and its essential partners at the State and local level. Toward that end, the FBI has developed numerous information sharing and operational coordination initiatives and expanded the number of Joint Terrorism Task Forces (JTTFs) from a pre-9/11 number of 35 to 84 today. The JTTFs partner FBI personnel with hundreds of investigators from various Federal, State, and local agencies in field offices across the country and are important force multipliers aiding our fight against terrorism. DHS's Bureau of Immigration and Customs Enforcement is a key player on the JTTFs. By the end of FY 2003, basic counterterrorism training will be provided to an estimated 14,000 Federal, State, and local law enforcement

officers. Beginning in FY 2004, the FBI proposes to provide this training to 27,000 Federal, State, and local law enforcement officers per year.

In July 2002, the FBI established the National JTTF (NJTTF) at FBIHQ, staffed by representatives from 30 Federal, State, and local agencies. The NJTTF acts as a "point of fusion" for terrorism information by coordinating the flow of information between Headquarters and the other JTTFs located across the country, and between the agencies represented on the NJTTF and other government agencies.

The FBI additionally created an Office of Law Enforcement Coordination (OLEC) to enhance the ability of the FBI to forge cooperation and substantive relationships with all of our State and local law enforcement counterparts. The OLEC, which is run by a former Chief of Police, also has liaison responsibilities with the White House Homeland Security Council.

The FBI also established the FBI Intelligence Bulletin, which is disseminated weekly to over 17,000 law enforcement agencies and to 60 Federal agencies. The bulletin provides information about terrorism issues and threats to patrol officers and other local law enforcement personnel who have direct daily contacts with the general public - contacts that could result in the discovery of critical information about those issues and threats.

Furthermore, FBI analysts are making unprecedented efforts to reach out to the intelligence, law enforcement, government, and public sector communities. To prevent terrorists from acquiring weapons of mass destruction (WMD), the FBI is coordinating with suppliers and manufacturers of WMD materials in an effort to facilitate their voluntary reporting of any suspicious purchases or inquiries. In addition to enhancing our relationships with agencies related to WMD, the FBI has established working relationships with a host of agencies whose possible role in and contribution to law enforcement has not traditionally been recognized, including the Army Corps of Engineers and the Bureau of Land Reclamation. The FBI has also expanded its relationships with such groups as the Transportation Security Administration and the U.S. Coast Guard.

To augment local field office investigative capabilities, Flying Squads were established to provide for specialized personnel to respond to fast-breaking situations and provide a surge capacity in support of FBI Rapid Deployment Teams.

Finally, the FBI has made specific efforts with respect to the fusion of intelligence information for analysis. The FBI strongly supports the President's initiative to establish a Terrorist Threat Integration Center (TTIC) that is merging and analyzing terrorist-related information collected domestically and abroad. TTIC is providing all-source, integrated analysis to the FBI, CIA, Department of Homeland Security (DHS), and other Federal agencies (including the Department of State) which, in turn, can quickly share the analysis with State and local law enforcement. The two-way flow of information between Federal and local law enforcement is necessary to sharpen both the collection and analysis of

threat-related information. The FBI JTTFs will provide an effective channel to share the TTIC's analytical products with partners in State and local law enforcement. The FBI is committed to working with DHS to push information and analysis out of the TTIC to other Federal agencies and to State and local officials.

Questions Posed by Senator Kennedy

ARBITRARY ARRESTS

The Inspector General found that the FBI arrested and detained hundreds of foreign nationals in connection with the September 11 attacks on little or no evidence linking them to the attacks. Foreign nationals encountered incidentally in the course of the investigations were placed with the September 11 detainees, despite the fact that they were never linked to a specific terrorist lead.

The report describes a clear example of the arbitrary nature of some of the arrests. Three Middle Eastern men were stopped for a traffic violation. They were arrested because they had plans to a public school in their car. Their boss immediately confirmed that the men should have the plans because they were working on the school's construction. Nevertheless, the three men were held as September 11 detainees.

1. Why couldn't the FBI distinguish between the people arrested as subjects as an investigation lead and those encountered incidentally?

Response:

First, it should be noted that the FBI did not arrest these individuals, the INS (now the Bureau of Immigration and Customs Enforcement (BICE)) made the arrests -- all on administrative immigration charges. Aliens arrested by the INS and placed in removal proceedings are not entitled to release; release on bond during removal proceedings is discretionary.

Second, according to the Inspector General's report, the three men referenced in the question were initially stopped in Manhattan, on September 15, 2002, by New York City police. Although the "boss" advised that these three men were authorized to have the plans, the FBI simply cannot take all statements at face value and thus still needed to conduct our logical investigation of these men to determine if any terrorism nexus existed. We were concerned that releasing aliens, who were illegally in the United States without a thorough investigation could make us vulnerable to another attack. Also, we knew from other Inspector General reports that INS only removed 94 percent of non-detained aliens. With this high rate of absconding, we believed it necessary to err on the side of caution.

More generally, the foreign nationals arrested on immigration charges were in some manner linked to a PENTTBOM-related lead. In some circumstances, a lead was sent requesting an interview and, in the course of interviewing others who lived or worked with this individual, the FBI's JTTF determined that these other individuals had violated their immigration status. In such cases, these individuals were subsequently arrested and counterterrorism investigations were initiated to determine their link, if any, to the main subject of the lead.

2. When it quickly became evident that these sweeping arrests were picking persons with no ties to terrorism, why did the FBI not re-evaluate their classification process? I understand that you were able to clear watchlist errors quickly. Why was this not done with respect to the September 11 detainees?

Response:

It did not "quickly bec[o]me evident" that the individuals who were encountered in connection with the PENTTBOM investigation and detained on immigration-related charges had no link to terrorism. When the FBI was able to determine that an alien was not of interest to the investigation, however, the immigration authorities were notified as soon as possible. But many of the investigations of detainees took much longer, for reasons discussed in the Inspector General's report. During this post-September 11th time frame, the FBI and Department of Justice (DOJ) believed that, in the interests of this country's safety and the protection of our national security interests, we could not risk having potential terrorists, who were in our country illegally, out on the streets while we completed our investigation, and sought to avoid losing potential suspects or witnesses.

3. What steps, if any, did the FBI take to seek a revision of the no bond policy?

Response:

As indicated above, during this post-September 11th time frame the FBI and DOJ believed we could not risk having potential terrorists, who were in our country illegally, out on the streets while we completed our investigation, and sought to avoid losing potential suspects or witnesses. However, the FBI did not oppose the INS decision to not oppose bond after the second immigration hearing if, at that juncture, our investigation had not yielded affirmative evidence.

4. How many people arrested as a result of the September 11 investigation were never charged with terrorism related crimes or terrorism related immigration violations?

Response:

To the best of our knowledge, of the 762 detainees, only one, Zacharias Moussaoui, was

charged with terrorism-related crimes. Others were charged with various white-collar crimes such as credit card fraud, social security card fraud, document fraud, and making false statements. Several others were served with material witness warrants to determine their links, if any, to the PENTTBOM investigation.

5. With your experience as Chief of the FBI's International Terrorism Operations Section, do you believe that arresting hundreds of individuals with scant evidence of links to terrorism was an effective use of resources to combat terrorism?

Response:

The FBI had a duty to pursue thoroughly every lead generated pursuant to the PENTTBOM investigation. Investigating an individual for ties to terrorism is not as simple as conducting database checks. Even if the FBI possessed no specific information that a specific alien had ties to terrorism, it was critical to complete a thorough investigation before reaching the final determination that an alien arrested in connection with the events of September 11 in fact had no ties to terrorism. The detentions were lawful and necessary to protect both the American people and the integrity of the largest criminal investigation in history.

6. What policies would you advise senior FBI officials to adopt to ensure that nationwide, FBI resources are focused on arrests of those most likely to be terrorists?

Response:

The Director of the FBI has already taken numerous steps to use FBI's limited resources to target terrorism. The FBI believes that one of the keys to identifying terrorists and terrorist plots is improving our ability to conduct accurate, proactive analysis of the terrorist threat. A Memorandum of Agreement (MOA) executed by Secretary Ridge and Attorney General Ashcroft on May 13, 2003, provides for a joint, coordinated approach to terrorist financing investigations utilizing the resources and expertise of the FBI and the Department of Homeland Security (DHS), clarifying the roles and responsibilities of each organization and establishing mechanisms to de-conflict overlapping investigations to ensure priority targets are addressed more effectively in a combined effort. Pursuant to the terms of this MOA, the Department of Justice will serve as the "lead law enforcement agency for combating terrorism . . . and terrorist financing," the FBI will take the lead in terrorist financing investigations, and DHS will focus on protecting the integrity of U.S. financial infrastructures.

To address this role, and to give new focus to analysis of the terrorist threat, the FBI created an Analysis Branch in CTD and assigned it the mission of producing strategic assessments of the terrorism threat to the United States. To date, the Analysis Branch has produced nearly 50 in-depth analytical assessments, including the FBI's first

comprehensive assessment of the terrorist threat to the homeland. In addition, our analysts have produced more than 200 articles for the FBI Presidential Report, a product we created for the President and senior White House officials.

We have implemented a number of initiatives aimed at enhancing training for our analytic workforce, including creation of the College of Analytical Studies which, in conjunction with the CIA, has begun training our new intelligence analysts. We also created a corps of reports officers -- an entirely new and desperately needed function for the FBI. These officers will be responsible for identifying, extracting, and collecting intelligence from FBI investigations and sharing that information throughout the FBI and with other law enforcement and intelligence entities.

To improve our system for threat warnings, we have established a number of specialized counterterrorism units. These include a Threat Monitoring Unit which, among other things, works hand-in-hand with its CIA counterpart to produce a daily threat matrix; a 24-hour Counterterrorism Watch to serve as the FBI's focal point for all incoming terrorist threats; two separate units to analyze terrorist communications and special technologies and applications; a section devoted entirely to terrorist financing operations; a unit to manage document exploitation; and others.

To prevent terrorists from acquiring WMD, we have undertaken a number of initiatives. We are coordinating with suppliers and manufacturers of WMD materials in an effort to help them voluntarily report any suspicious purchases or inquiries.

To protect U.S. citizens abroad, we have expanded our Legal Attaché and liaison presence around the world to 46 offices. Our presence has enhanced the FBI's ability to bring investigative resources to bear quickly in the aftermath of terrorist acts, such as the shooting of Laurence Foley (a U.S. Agency for International Development officer in Amman) and the bombing of a disco in Bali. We also assist foreign liaison in following up terrorist leads around the world.

To strengthen our cooperation with State and local law enforcement, we are introducing counterterrorism training on a national level. We will provide specialized counterterrorism training for 224 agents and training technicians from every field division in the country so that they, in turn, can train an estimated 26,800 Federal, State, and local law enforcement officers this year in basic counterterrorism strategies and techniques.

The centerpiece of this effort is the establishment of an Executive Assistant Director for Intelligence (EAD/I) who will have direct authority and responsibility for the FBI's national intelligence program. As discussed further below in response to Senator Hatch's inquiry concerning the FBI's reorganization, the EAD/I will be responsible for ensuring that the FBI has the optimum strategies, structure, and policies in place for our counterterrorism mission. Also critical to this effort, and discussed in more detail below, are the FBI's participation in the TTIC (which is charged with merging and analyzing

terrorist-related information collected domestically and abroad), its cooperation with Federal, State, and local agencies through the FBI's establishment of the NJTTF, and its creation of an FBI OLEC to enhance the FBI's interaction with our State and local law enforcement counterparts.

CLEARANCE LETTERS

As the former Chief of the FBI's International Terrorism Operations Section, you were responsible for clearing detainees from the September 11 rolls, the Inspector General found that often these clearance letters were delayed because the FBI did not dedicate enough people to clearing the detainees. On average, detainees were held for 80 days before you were able to write a clearance letter for them. Some detainees had to wait up 8 months to be cleared. So, while the FBI was quick to arrest people, it was not timely in its release of non-suspects.

This delay in clearing detainees was apparent as early as September 2001. Yet, during the period of the Inspector General study, no changes were made in the clearance process.

7. Why did you and others in charge of detainee clearance not address the issue by devoting more resources to the clearance process or changing the process?

Response:

The FBI's flexibility to devote additional resources was limited because of other matters confronting the FBI. The resources devoted to the clearance process were not, however, insignificant. Personnel from FBI field offices and Headquarters played major roles in clearing the INS detainees as quickly as possible. These resources included OGC attorneys and operational agents at both FBIHQ and in the field. In addition, numerous support employees were detailed to the FBI/INS working group to help with the clearance process. These FBIHQ and field agents, OGC attorneys, and support personnel were also working on numerous legal and operational matters at this time.

8. What changes does the FBI need to make to ensure that the release of non-suspects happens quickly and efficiently?

Response:

Given the creation of DHS, which will typically make initial decisions whether to seek to detain illegal aliens during the course of investigation into possible terrorist ties, the FBI will need to ensure close coordination with DHS in future cases. The FBI is involved in an effort to draft a Memorandum of Understanding (MOU) between the Department of Justice and DHS to govern the detention of aliens who are of interest to the FBI.

FBI CLASSIFICATION OF DETAINEES

The Inspector General found that the FBI's decision to classify arrested people "of interest" in September 11 investigations was a primary determinant of their ability to obtain bond, their treatment in detention, and the length of their detention. Yet, the FBI made these classifications without any objective criteria about what sort of people were "of interest" and what sort of people were not "of interest." Additionally, the report shows that the term "of interest" was loosely applied to people who may never have been connected to any terrorism investigation. The Inspector General recommends developing clear, objective criteria to guide classification decisions. He also recommends that the FBI explicitly classify every detainee, so that those who are not linked to any terrorism investigation may be treated like any other immigration detainee.

9. Why were there no objective standards for classifying detainees as "high interest", "of interest", "interest undetermined", or "no interest"?

Response:

The broad nature of the PENTTBOM investigation left discretion to the field offices and FBIHQ in determining whether an individual detained by the INS was of investigative interest. Each field office remained flexible in its investigative steps as opposed to following overly rigid protocols in evaluating the interest. While each investigation developed its own investigative steps, some general procedures were followed in evaluating the interest. For example, after the arrest, one or more of the following investigative steps were conducted, depending on the circumstances of that case: extensive interviews, background checks, polygraphs, and other information-gathering steps. As a result of these techniques, assigned agents would determine whether further investigation was required in a given case.

10. Are you aware of any changes the FBI has made to respond to the concerns and suggestions of the Inspector General?

Response:

The creation of the new DHS has, by definition, changed the way such a classification situation will be handled in the future. In particular, initial decisions whether to seek to detain illegal aliens during the course of an investigation into possible terrorist ties will be made by DHS. DOJ and the FBI will continue to provide information to DHS to use in that process. It is likely that the role of the FBI in detention determinations will depend on the circumstances involved. If the FBI is best situated, based on ongoing investigations and intelligence information, to provide information to DHS regarding potential threats posed by the release of an individual alien, then it may be best for DHS to defer to information provided by the FBI. However, in other situations, DHS may determine that,

notwithstanding law enforcement and national security concerns of the FBI, normal agency procedures are sufficient. In any case, it is important that all interested agencies and components communicate effectively to determine the best course of action in each situation based on all available and relevant information.

With respect to coordination with DHS, DOJ and DHS have already signed a memorandum of understanding related to information sharing. The FBI and BICE (a component of DHS) work closely together through the FBI's Joint Terrorism Task Forces. DOJ and DHS communicate on many issues of mutual interest. Finally, as noted above, as recommended by the Inspector General, the FBI is working with the Department of Justice to draft an MOU that would govern the detention of aliens of interest to the FBI.

Questions Posed by Senator Feingold

- 1. (a) As we discussed during the hearing, please state the exact number of affidavits you filed in bond proceedings relating to September 11 detainees who were held on immigration violations. Also please provide copies of each affidavit.**

Response:

The FBI did not file affidavits in immigration proceedings, but did provide such affidavits to the INS for use in bond proceedings. As the government has argued in litigation, these affidavits provide identifying information regarding the detainees, often in asylum proceedings, which are confidential. Moreover, they may reveal sources and methods of the government's investigation into the events of September 11th which is ongoing. Therefore, the affidavits cannot be provided at this time. In order to obtain the statistical information requested, the FBI must cull the affidavits from thousands of pages of documents, totaling more than 15 feet at FBIHQ and an unknown number of additional documents at the New York Office. The FBI has begun this task and will provide this information to the Committee when that task has been completed.

- (b) For each case in which you submitted an affidavit, please state the evidence of criminal activity concerning the specific individual whom the Department was seeking to hold without bond.**

Response:

As stated in the response to the previous question, disclosure of the requested information could compromise ongoing government investigations by revealing investigative sources and methods. In addition, affidavits that contain information obtained through grand jury proceedings may not be released because of the grand jury secrecy requirements of Federal Rule of Criminal Procedure 6(e).

(c) How many affidavits did other FBI officials file in bond proceedings for September 11 detainees held on immigration violations? Please provide the names of officials who filed such affidavits, the number of affidavits each official filed, and copies of each affidavit.

Response:

See response to Question 1(a), above.

(d) How many of the September 11 detainees held on immigration violations discussed in the Inspector General's report were eventually convicted of a terrorism offense? Please provide the date of conviction, name of the offender, and the offenses upon which the conviction is based.

Response:

None at this time, although the criminal prosecution of Moussaoui remains pending.

2. At the hearing, you testified that you "on occasion" refused to sign affidavits in bond proceedings because you "just did not feel that we had . . . uncovered enough information."

(a) On how many occasions did you refuse to sign an affidavit relating to a September 11 detainee's bond proceeding?

Response:

To the best of my recollection, I refused to sign affidavits on approximately three or four occasions because I was concerned that they contained insufficient information.

(b) For each case in which you refused to sign an affidavit, please state whether the Justice Department nevertheless proceeded to seek a denial of bond and the outcome of the bond proceeding.

Response:

On the three or four occasions when I refused to sign an affidavit, more detailed information was subsequently provided to me by the FBI field office involved relative to the activities of the individual detained by the INS. Upon receipt of adequate additional information with respect to a detainee, I signed the rewritten affidavit seeking to hold that detainee without bond. Because I signed many affidavits, I do not recall specifically the outcomes of the subsequent bond hearings concerning these three or four detainees.

(c) For each case in which you refused to sign an affidavit, please indicate whether

another FBI or Justice Department official signed an affidavit in support of the Department's denial of bond position. If so, please state the name and title of the official who signed the affidavit(s).

Response:

Please see the response to 2(b) directly above.

3. At the hearing, you described two Russian individuals who were arrested after "filming within either the Lincoln or the Holland Tunnel." Were these two individuals among the 762 individuals held on immigration violations described in the Inspector General's report? If so, how long were they detained without bond? What is the status or the final disposition of their case?

Response:

The two Russians described were among the 762 detainees. Through consultation with the FBI's New York Office and the FBIHQ/INS Working Group, the FBI determined quickly that these individuals were not of investigative interest in the PENTTBOM investigation. The FBI immediately prepared a letter to the INS indicating that the FBI had no investigative interest in these individuals. I have no information as to whether these two individuals were ultimately removed from the United States.

4. At the hearing, you testified that the FBI was never aware of the religious background of any of the September 11 detainees. You said, "No, I did not know that. I should not know that. There is no reason that we should ask that. It did not play any role whatsoever in the September 11 investigation, and I would submit that it should never play any role whatsoever in any FBI investigation, with relatively few exceptions. Maybe in the hate crime area you might want to know that." You also said, "I wouldn't know what religious background they were. We should not ask that question. I don't think we gathered that information."

As you are aware, however, al-Qaeda has used religious ideology to justify its activities and to recruit members. In fact, in its indictment of Zacarias Moussaoui, the Department states that al-Qaeda has an "extremist interpretation of Islam" (paragraph 2), and that it is "dedicated to opposing non-Islamic governments with force and violence" (paragraph 1). (See Moussaoui indictment on the FBI's website at <http://www.fbi.gov/pressrel/speeches/mous.pdf>.) *Newsweek* reported on January 3, 2003, that top aides to Director Mueller had ordered field offices to develop "demographic" profiles of the localities they covered, including the number of mosques. You were one of three officials at a press conference on June 27, 2003, announcing the indictment of 11 individuals charged with membership in Lashkar-E-Jihad, which was repeatedly identified during the press

conference as an Islamic extremist group.

(a) Notwithstanding your statement at the hearing, it seems fair to conclude that the FBI does in fact seek to determine the religious beliefs that may motivate violent criminal organizations like al-Qaeda. Assuming that the FBI seeks some awareness of the religious background of terrorist organizations and its participants, what role has religion played in terrorism investigations?

Response:

We do not single out or target individuals based on their religious beliefs. However, some investigations do involve individuals with ties to various religious establishments that have links to terrorism activities or terrorism fund-raising. My testimony was meant to point out that we do not, and should not, seek to determine a person's religious beliefs as a matter of course, since one's religious affiliation would have a bearing on an investigation only in rare cases. While we are aware that some adhere to a radical interpretation of Islam and the Koran that may involve links to terrorism, we do not use religion as a factor in deciding whether to open an investigation.

(b) What guidance, if any, did the FBI provide to its agents with respect to inquiries about suspects' religious, ethnic or national background during the PENTTBOM investigation? Please provide copies of any documents concerning such guidance. If no written policy existed at the time, please explain how you could state with certainty that questions about religious background were never asked.

Response:

As explained in the response above, the FBI did not target or profile individuals based on their religious beliefs; however, some investigations have revealed that agents of terrorist organizations use religious establishments to conduct their activities.

Via Electronic Communication (EC) dated 09/27/2001, the Director reminded all FBI agents that the FBI does not permit its agents to discriminate unfairly on the basis of race, ethnicity, or national origin, and condemns the use of racial profiling in law enforcement actions. FBI agents were further reminded that the FBI prohibits the use of race, ethnicity, and national origin as the sole basis for stops, searches, and other investigative procedures. However, race, ethnicity, or national origin may be used in combination with other identifying factors in determining whether there is reasonable suspicion that a given individual is associated with criminal activity.

The 9/27/2001 EC follows.

Precedence: PRIORITY

Date: 09/27/2001

To: All Field Offices
All Legats

Attn: Personal Attention ADs
Personal Attention SACs
Personal Attention LEGAT

From: Office of the General Counsel
Investigative Law Unit
Contact: UC Elaine N. Lammert 202-324-5640

Approved By: Mueller Robert S
Pickard Thomas J
Garcia Ruben Jr.
Parkinson Larry R

Drafted By: Steele Charles M

Case ID #: 265D-NY-280350-LEGAL Serial 2

Title: PENTTBOMB;
MAJOR CASE 182;
OO:NY

Synopsis: This communication is written to remind all FBI agents that the FBI does not permit its agents to discriminate on the basis of race, ethnicity, or national origin and condemns the use of racial profiling in law enforcement actions.

Details: As you are all aware, the FBI, as the lead agency in this matter, has the primary authority for the law enforcement response to the terrorist attacks of 09/11/01. We also have the responsibility to ensure that civil rights are safeguarded in the process. Accordingly, this communication serves as a reminder that the FBI does not permit its agents to discriminate on the basis of race, ethnicity, or national origin, and condemns the use of racial profiling in law enforcement actions. The FBI prohibits the use of race, ethnicity, and national origin as the sole basis for stops, searches and other investigatory procedures. Race, ethnicity, or national origin may be used, however, in combination with other identifying factors in determining whether there is a reasonable suspicion that a given individual is associated with criminal activity.

ADs, SACs and LEGATs are to ensure that all their personnel are provided a copy of this communication.

LEAD(s):

Set Lead 1:

ALL RECEIVING OFFICES

All offices are to ensure that all their personnel are provided a copy of this communication.

(c) Please explain how the Department guidelines banning racial profiling by Federal law enforcement agencies issued in June 2003 will apply to the FBI's activities, including its terrorism prevention and investigative efforts.

Response:

The FBI has always condemned the use of racial profiling and will continue to do so. The FBI's investigative activities will be consistent with the guidance issued by the Department in June 2003. As this pertains to the FBI's primary mission to detect and prevent terrorism, any investigative activity in this regard will not consider race or ethnicity except to the extent permitted by the Constitution and the laws of the United States. The Department's guidance recognizes that there is no more compelling interest than the security of the United States and that Federal law enforcement officers must be able to use every lawful tool to protect our nation. The Department's guidance allows Federal law enforcement officers to consider race and ethnicity to the extent permitted by law.

(d) What steps will the FBI take to implement and train FBI agents on the Department's new guidelines?

Response:

The new guidance has been distributed throughout the FBI. As mandated by the Department, FBI field offices and Headquarters Divisions have been instructed to review all their operations, protocols, policies, guidance, and training to ensure consistency with this guidance. To date, the review indicates that FBI operations, protocols, policies, guidance, and training are consistent with this guidance. The FBI's OGC plans to provide a block of instruction on the guidance to all FBI Chief Division Counsel at their annual conference.

(e) The Department's guidelines do not include an enforcement mechanism. What steps will the FBI take to ensure that the guidelines are enforced and that victims of racial profiling will have an avenue for redress?

Response:

FBI agents have been advised of the Department's guidance. Alleged violations reported by victims or others will be addressed either by DOJ's Office of Inspector General, at its discretion, or by the FBI's Office of Professional Responsibility. Intentional or reckless

violations of the guidance will be treated as misconduct. If an action on the part of an FBI employee rises to the level of a criminal violation, the matter will be reviewed by DOJ to determine if prosecution is appropriate.

5. As you know, one criticism of the Department's conduct by the Inspector General Department is the "indiscriminate and haphazard manner" in which immigrants were labeled as possible terrorism suspects. The report found that:

"... the information provided to high-level Department officials suggested that this 'hold until cleared' policy was being applied to persons 'suspected of being involved in the September 11 attacks. In practice, the policy applied much more broadly to many detainees for whom there was no affirmative evidence of a connection to terrorism. This disconnect should have been discovered earlier and should have caused a review of the manner in which detainees were being categorized."

(a) Could you discuss what steps you or other FBI officials took to distinguish terror suspects from those for whom there was no affirmative evidence of a connection to terrorism?

Response:

In the course of the investigation, the FBI came across thousands of individuals who may or may not have been involved in the events of September 11, 2001. The FBI needed to conduct its investigation of these individuals. Investigations take time and entail careful analysis of the information collected. Once the FBI determined that no nexus to terrorism existed as to a given individual, that individual was cleared.

(b) In particular, on what basis were detainees prioritized for clearance?

Response:

Detainees were "cleared" as soon as the FBI was able to determine that they were not of continuing interest to the investigation.

(c) Did the FBI make any effort to focus its clearance investigations on those detainees who were affirmatively suspected of involvement with terrorism?

Response:

At the outset of the PENTTBOM investigation, detention was based on a lead indicating suspicion of terrorist links. As investigations of individual detainees progressed, some indicated no terrorist link. In other cases, the information initially developed indicated an increased likelihood of terrorist links, leading to additional investigative steps.

- (d) Please provide copies of any documents that guided decisions on prioritization of detainees for clearance.

Response:

Several internal communications were drafted to the field offices highlighting the need to address the investigative status of the detainees in their jurisdictions. Due to pending litigation, the FBI cannot release those documents.

6. In a letter to FBI Director Mueller sent earlier this year, Special Agent Coleen Rowley wrote, "after 9-11, [FBI] Headquarters encouraged more and more detentions for what seem to be essentially PR purposes. Field offices were required to report daily the number of detentions in order to supply grist for statements on our progress in fighting terrorism."

- (a) What instructions did you receive from either FBI Headquarters or main Justice about the reporting of the number of detentions in connection with the September 11 investigation?

Response:

I do not recall receiving any instructions personally. I reviewed the daily updates that were provided to and posted in the FBI's Strategic Information and Operations Center (SIOC). My recollection is that the Director asked those working in the SIOC to keep track of the number of detentions so the FBI would have a "centralized" view and a better understanding of how large an undertaking processing, investigating, and clearing the detainees would be.

I do not personally recall anyone from DOJ making requests for these numbers. However, DOJ personnel were present in the SIOC and attended meetings with the FBI where such information was discussed.

- (b) What instructions did you provide to FBI agents or other law enforcement officials concerning the reporting of the number of detentions?

Response:

We instructed field offices to provide status updates on their respective detainee investigations, including a detailed summary of each detainee within their jurisdiction addressing possible terrorist links, relation to other field investigations, prospective time and resources needed to address investigation of the detainee, and whether the field had a strong interest in continued detention.

- (c) Special Agent Rowley also said: "... from what I have observed, particular vigilance may be required to head off undue pressure (including subtle encouragement) to detain or 'round up' suspects — particularly those of Arabic origin." Are you concerned that any FBI agents felt there was "undue pressure" to detain suspects? Would you recommend or have you taken specific steps to ensure that agents do not feel this kind of pressure in the future?

Response:

I do not believe agents were under undue pressure to "round up" individuals. Investigators were concentrating on gathering information concerning the September 11th hijackers, their activities, and the possibility of additional attacks.

7. The FBI recently apologized to eight men of Egyptian origin from Evansville, Indiana. These men were arrested in connection with the September 11 investigation, but the FBI apparently discovered that their arrest was based on a false terrorism tip. Their lives were seriously disrupted. Some of them were included in a national crime registry, even though they were never charged with a crime, which prevented them from boarding planes, renting apartments, and landing jobs.

- (a) Have the names of any of the 762 individuals detained on immigration violations in connection with the September 11 investigation been entered into national crime databases? If yes, how many? If yes, does that include INS detainees who were later cleared of any connection to terrorism?

Response:

A limited number of individuals were entered into national crime databases, including those INS detainees who were eventually removed from the United States prior to the FBI's completion of their investigations.

- (b) Once an individual was cleared of involvement with terrorism by the FBI, did the FBI remove their name from all national crime databases? If not, why not?

Response:

The FBI did not place any INS detainee who was determined to not be of interest with respect to the PENTTBOM investigation in any national crime database.

- (c) Of the terrorism tips received by the FBI as part of the PENTTBOM investigation that turned out to be false, how many falsely reported tips were

investigated for possible prosecution? Please describe the nature of these investigations and their status or final disposition.

Response:

The FBI received thousands of calls regarding the PENTTBOM investigation. The FBI did not, however, maintain statistics regarding false, unverifiable, or outdated tips.

- (d) **How many people have been charged with providing false information? Please describe these cases and their status.**

Response:

As noted in our response to Senator Kennedy's question number 4, some of the 762 detainees were charged with various white-collar crimes, such as credit card fraud, social security card fraud, document fraud, and making false statements. We are currently unable, however, to provide the specific information requested by this question.

- (e) **How many people have been convicted for providing false information? Please describe these cases and their status.**

Response:

Please see the previous response.

Questions Posed by Senator Durbin

Mr. Rolince, you argue persuasively that the FBI has limited resources with which to combat terrorism and that therefore the Bureau must make difficult decisions regarding resource allocation. You conclude therefore that the FBI rightly devoted its time and attention to neutralizing potential threats instead of clearing detainees of links to terrorism.

1. In light of this, in the absence of any affirmative evidence that an immigration detainee is linked to terrorism, isn't it a poor use of resources to attempt to prove a negative - that every detainee has no links to terrorism, instead of focusing on known threats? If not, why not?

Response:

Following the 9/11 attacks, locating and neutralizing potential threats was the FBI's top priority. This does not mean that the FBI failed to devote resources to completing checks of those who were first encountered in connection with investigation of the 9/11 attacks,

identified as in this country illegally, and detained on immigration charges. As noted above, the initial absence of affirmative evidence of terrorist links does not necessarily mean these links will not be revealed with further investigation. "Known threats" are often only "known" after significant investigation. The FBI's ability to assess the threat environment would have been severely compromised if we had "cleared" those encountered in connection with the 9/11 investigation and in this country illegally before we determined whether they had terrorist ties. Accepting the explanations of these individuals without verification would have been an abrogation of the FBI's responsibility.

The Inspector General's report said:

[W]e criticize the indiscriminate and haphazard manner in which the labels of "high interest," "of interest," or "undetermined interest" were applied to many aliens who had no connection to terrorism. Even in the hectic aftermath of the September 11th attacks, we believe the FBI should have taken more care to distinguish between aliens who it actually suspected of having a connection to terrorism as opposed to aliens who, while possibly guilty of violating federal immigration law, had no connection to terrorism but simply were encountered in connection with PENTTBOM lead.

2. Do you agree with this conclusion? If not, why not? Given the FBI's limited resources, wouldn't it have been more efficient to attempt to distinguish carefully between aliens with possible links to terrorism and other aliens so that investigative resources could be focused on the former? If not, why not?

Response:

While the FBI always attempts to conduct investigations as efficiently as possible, it is often difficult distinguish between an alien who is "merely" in the United States illegally and one who has terrorist ties. For example, while a given individual may currently have no clear link to terrorists or terrorist activity, investigation may reveal prior associations with known terrorists, financial or other assistance to terrorists, or education or activities that are inconsistent with the individual's background but consistent with terrorist intent. Once an individual is determined to have no connection to terrorism it may appear, in hindsight, that earlier release would not have posed a threat to the national security, but releasing an individual before we can reach that determination has clear national security risks.

As the Acting Deputy Attorney General explained in his November 20, 2003, Memorandum to the Inspector General in response to the Inspector General's report, the FBI will work with DHS to establish criteria for future investigations (the specific criteria will depend on the nature of the national emergency. In addition, the FBI has taken numerous steps since September 11, 2001, to establish entities such as the FTTTF and the

NJTTF. With these enhancements, we believe that we will have an improved flow of information in the event of another large-scale terrorist attack.

Questions Posed by Unnamed Senator

1. A clearance letter from the FBI was necessary for a "September 11 detainee" to be reclassified as a "normal" detainee, and thus eligible for removal from the country. According to the OIG report, it took 80 days, on average, for the FBI to produce such clearance letters. The OIG report indicates that this period was unnecessarily lengthy because the FBI failed to allocate sufficient resources to the clearance project. Do you agree?

Response:

I testified, and strongly believe, that 80 days is not an excessive amount of time to resolve those illegal aliens who were being lawfully detained. Given all that was going on in the immediate aftermath of the attacks and the work being done by 7,000+ agents (the processing of the crash sites, the search for the "second wave," the lack of power and adequate command post facilities in NYC where many of the detainees resided, the time taken to attend funerals, the processing of 1.8 million tons of remains and debris at Fresh Kills, etc.), the 80-day average is not surprising.

Additionally, as I testified, if leads were outstanding in other agencies, domestically or overseas, the coverage of those leads was out of our control. Adding 100 or more agents would not have had any effect on other agencies' response times.

Finally, when the FBI initiated response to the 9/11 attacks we did not cease the work in which we were engaged prior to the attacks. As mentioned above, the FBI continued its involvement in trials, grand juries, surveillances, arrests, and other investigative efforts.

2. In your testimony before the Judiciary Committee on June 25, 2003, you stated that the FBI utilized the resources of the Joint Terrorism Task Force ("JTTF") by forwarding to the Task Force cases which required more investigation or scrutiny, and that this process took time. What steps did the FBI take to ensure that the JTTF investigation was completed in an expeditious manner? What steps did the FBI take to promptly process the cases of detainees that were not forwarded to the JTTF?

Response:

FBIHQ spoke with the JTTF representatives on a daily basis to ensure that the investigations were being worked in a timely manner. Cases that were not forwarded to the JTTF were most likely cleared when all the necessary background checks were

completed.

3. **The OIG report recommends that the Justice Department, Department of Homeland Security ("DHS"), and the FBI develop clear criteria to determine when an alien is "of interest" for terrorism purposes and establish a time limit during which such a designation must be made. Do you agree with those recommendations? What steps, if any, have already been taken in response to those recommendations? What further steps are planned?**

Response:

In September 2002, DOJ imposed a requirement that the Office of the Deputy Attorney General approve the addition of any new cases to the September 11 special interest detainee list. The addition of new names to the list had to be based on the FBI's representation that the case was clearly linked to the September 11 investigation. As the report indicates, however, there are very few aliens who remain detained who were encountered during the course of the September 11 criminal investigation. As that is the case, we do not anticipate that new individuals will be added to the September 11 detainee list.

With regard to future investigations, we agree with the premise of the recommendation and are working with DHS to establish criteria and procedures for future investigations of alien detainees, including circumstances where a large number of aliens with potential ties to terrorism have been detained. Of course, the specific criteria will depend on the nature of the individual investigation particularly during a national emergency.

4. **Boilerplate affidavits were a key part of the "no bond" policy to oppose release on bond for all 9/11 detainees. Those affidavits indicated that the detainees could not be released because they could have information crucial to the 9/11 investigation. However, the OIG report indicates that, within days of the attacks, investigators had separated the detainees into two groups - (1) those who were of investigative interest and (2) those who were identified incidentally and not subject to the focus of investigators. Do you still stand by your affidavits that were used to oppose bond for that second group of detainees - those who were incidentally identified?**

Response:

At the beginning of this vast investigation, the FBI identified groups of individuals with potential or known associations with possible terrorism-related groups. Thus, we needed to conduct our investigations to determine who had a material association with terrorist groups. We could not take the chance of releasing a potential terrorist while we were conducting our investigations.

5. In your testimony before the Judiciary Committee on June 25, 2003, Senator Feingold asked you to provide greater detail on a subset of the 762 Immigration and Naturalization Service ("INS") cases in which you submitted an affidavit. He asked, "[In] how many of those INS [cases] in which you submitted an affidavit did you have evidence of criminal activity concerning the specific individual whom the department was seeking to hold without bond?" At the time of the hearing, you did not have exact numbers in answer to this question, but indicated the figures were determinable. Please provide these figures to the Committee.

Response:

In order to obtain the statistical information requested, the FBI must cull the affidavits from thousands of pages of documents, totaling more than 15 feet, at FBIHQ and an unknown number of additional documents at the New York Office. The FBI has begun this task and will provide this information to the committee when that task has been completed.

6. In your Testimony before the Judiciary Committee on June 25, 2003, you indicated that "no bond" affidavits were submitted "simply because we were not convinced that we had all the answers to the questions or all the record checks were back." Do you agree that these "no bond" affidavits were based solely on the presence of the unknown, and not based on any evidence of individual criminal activity, and if so, how do you justify this rationale for denying bond?

Response:

Most of the affidavits were drafted based on the possible flight risk and threat to national security posed by these detainees. In many cases, we specifically provided details to enable the immigration judge to render an informed decision on whether a detainee should be held without bond.

7. Department officials acknowledged to the OIG that they realized that many in the group of "September 11 detainees" were not connected to the attacks or to terrorism in general. During the time that you were responsible for issuing clearance letters, did you also realize that many of the September 11 detainees had nothing to do with terrorism? If so, did that realization affect in any way the pace with which the FBI reviewed such cases?

Response:

We realized, after our field offices conducted their investigations, that some of the detainees were not connected to terrorism activities. As soon as we realized that there was no connection, we issued clearance letters.