

Testimony of

# The Honorable Glenn A. Fine

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Statement of Glenn A. Fine  
Inspector General, U.S. Department of Justice,  
before the  
Senate Committee on the Judiciary  
concerning  
Oversight of the Federal Bureau of Investigation  
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Mr. Chairman, Senator Leahy, and members of the Committee on the Judiciary:

Thank you for inviting me to testify about the Office of the Inspector General's (OIG) oversight work related to the Federal Bureau of Investigation (FBI). As the FBI continues its transformation after the September 11 attacks, the OIG continues to devote extensive resources to examining FBI programs and operations. We have conducted many reviews in critical areas, including the FBI's efforts to upgrade its information technology systems (IT); its hiring, training, and retention of critical employees; its efforts to share information with its federal, state, and local law enforcement and intelligence partners; its allocation of investigative resources; its counterespionage and internal security challenges; and its management of the FBI laboratories. In addition, we continue to review allegations of civil rights and civil liberties abuses involving FBI and Department employees.

In this written statement, I first will make several general comments on the key challenges that the FBI continues to face. I will then describe in more detail reviews the OIG has conducted related to these issues. I base my general comments on the numerous FBI reviews conducted by the OIG, as well as my more than 11 years in the OIG reviewing FBI programs, the last 5½ during which I have served as the Inspector General.

When assessing the FBI, I believe it is important first to acknowledge the dedication and talent of its employees. The FBI attracts patriotic individuals who are committed to the FBI's important mission. These employees deserve recognition for the sacrifices they make in carrying out their critical responsibilities.

Their task is difficult, and the FBI is under regular and probing scrutiny by Congress, the OIG, and other oversight entities. That is as it should be. Given the importance of its mission and the impact the FBI has on safety, security, and civil rights in the United States, such scrutiny is warranted. But I have found that its leaders, particularly Director Mueller, understand the value of such independent scrutiny.

In general, I believe the FBI has made some progress in addressing some of its critical challenges, but more progress is clearly needed. The first area where additional progress is needed is the ongoing effort to upgrade the FBI's information technology systems. For too long the FBI has not had the modern IT systems it needs to perform its mission as efficiently and effectively as it should. The FBI's IT systems must give its employees the ability to effectively analyze, share, and act on the vast amount of information the FBI collects. However, the FBI's failed Virtual Case File effort was a major setback - in both time and money - with regard to the FBI's urgent need for IT modernization.

While the FBI has made progress in other IT areas, as Director Mueller has pointed out in his written statement, the FBI still does not have a modern, effective case management and records system. As I discuss in more detail below, the OIG believes the FBI has learned painful and expensive lessons from its setbacks on the Virtual Case File as it

works to develop a new case management system in the Sentinel project. As of now, Sentinel appears to be on the right track, although we have identified several important issues the FBI needs to address as it moves from pre-acquisition planning to development of the Sentinel system. The OIG plans to aggressively monitor the Sentinel project, and we will raise any additional concerns with the FBI and this Committee as the project moves forward.

A second challenge for the FBI is to aggressively pursue its law enforcement and intelligence-gathering missions while at the same time safeguarding civil rights. Pursuant to the OIG's responsibilities under Section 1001 of the Patriot Act, the OIG has investigated allegations of civil rights and civil liberties abuses, and we have also performed various reviews to assess whether the FBI is complying with guidelines that regulate its investigative activities. Examples of recent OIG reviews touching on civil rights and civil liberties include our review of the FBI's compliance with the Attorney General's investigative guidelines, our review of reports of possible intelligence violations forwarded to the President's Intelligence Oversight Board, and our review of the FBI's interviews of protesters connected to the 2004 Democratic and Republican National conventions. Currently, we are conducting other reviews relating to civil rights issues, including the FBI's use of National Security Letters and subpoenas for records under Section 215 of the Patriot Act.

A third critical challenge for the FBI is to recruit, train, and retain skilled individuals in its many critical occupations. The FBI has little difficulty attracting talented special agents. But its success in recruiting, training, and retaining individuals in other positions, such as intelligence analysts, linguists, and technology positions, is mixed. Moreover, the FBI also has continuing challenges with turnover in key management positions at FBI Headquarters and in the field. In my view, rapid turnover in these critical positions reduces the FBI's effectiveness.

Fourth, in large part the FBI's success depends on its ability to share information, both internally within the FBI and externally with its federal, state, and local partners. The FBI is part of the larger intelligence and law enforcement community, and it must share and receive information from its partners in an effective and efficient manner. The ongoing challenge is to ensure that the right people have access to the right information. Without effective information sharing, the FBI's impact in its counterterrorism, counterintelligence, and criminal missions will be reduced.

Fifth, while there is little dispute that the FBI must transform itself to place counterterrorism as its highest priority, the FBI cannot neglect other investigative areas where it has a critical and unique role to play. In this regard, the OIG has conducted a series of reviews analyzing the FBI's allocation of investigative resources after the September 11 terrorist attacks. We have identified areas where the FBI has reduced its investigative efforts and where other federal, state, and local law enforcement agencies have been able to step into the gap. Yet, in other areas - such as financial institution fraud, telemarketing fraud, and drug cases outside metropolitan areas - we found that investigative gaps remain. We believe the FBI and the Congress need to continually monitor the FBI's allocation of resources to ensure that important investigative areas are not unduly affected by the FBI's reallocation of resources.

Sixth, as the Robert Hanssen case demonstrated so tragically, the FBI must remain vigilant in its internal security and counterespionage efforts. It would be folly for the FBI to believe that the Hanssen case was a unique event that is unlikely to ever occur again. After the Hanssen case, the OIG and the Webster Commission made numerous recommendations to improve the FBI's internal security. The OIG is now conducting a follow-up review to assess the FBI's progress in improving its internal security. Certainly, the FBI must balance security measures with the need to share information efficiently. But the FBI can never afford to become complacent about the continuing threat of espionage, from both inside and outside the FBI.

Seventh, the FBI is a leader in a variety of forensic science disciplines, and its Laboratory is world-renowned. But mistakes in the FBI Laboratory can have dramatic consequences, as demonstrated by the Laboratory's fingerprint misidentification in the Brandon Mayfield case. The Mayfield matter highlighted the fact that the FBI faces a continuing challenge to ensure the reliability of its scientific methods. The OIG has performed various audits to monitor quality control issues in the Laboratory, including its DNA analysis and management of Combined DNA Index System (CODIS). The FBI must be vigilant to ensure that Laboratory is not vulnerable to mistakes or willful abuse.

Based on the many reviews of the FBI conducted by the OIG, I believe these issues represent some the most critical challenges confronting the FBI.

In the remainder of this statement, I discuss OIG reviews in these general areas and describe in more detail what they found.

## I. FBI INFORMATION TECHNOLOGY

Over the years, the OIG has reviewed and monitored the FBI's efforts to upgrade its information technology systems. The most recent effort is the FBI's Sentinel program, a project to replace the FBI's antiquated Automated Case Support (ACS) system with a modern case management system.

In March 2006, the OIG released the first in a series of audits that will monitor the FBI's development and implementation of the Sentinel project. Sentinel is the successor to the \$170 million Virtual Case File project that the FBI ended unsuccessfully after 3 years. Reviews by the OIG found that the Virtual Case File project failed for a variety of reasons, including poorly defined and slowly evolving design requirements, weak information technology investment management practices, weaknesses in the way contractors were retained and overseen, the lack of management continuity at the FBI on information technology projects, unrealistic scheduling of tasks, and inadequate resolution of issues that warned of problems in project development.

In light of these issues, the OIG's March 2006 audit evaluated the FBI's progress on the Sentinel project. We assessed the FBI's pre-acquisition planning for Sentinel, including the approach, design, cost, funding sources, time frame, contracting vehicle, and oversight structure. The OIG found that the FBI has taken important steps to help prevent the types of problems encountered in the Virtual Case File project. In reviewing the management processes and controls the FBI has applied to the pre-acquisition phase of Sentinel, the OIG found that the FBI has developed information technology planning processes that, if implemented as designed, can help the FBI successfully complete Sentinel.

In particular, the OIG found that the FBI has made improvements in its ability to plan and manage a major IT project by establishing Information Technology Investment Management processes, developing a more mature Enterprise Architecture, and establishing a Program Management Office dedicated to the Sentinel project.

However, the OIG identified several continuing concerns about the FBI's management of the Sentinel project: (1) the incomplete staffing of the Sentinel Program Management Office, (2) the FBI's ability to reprogram funds to complete the second phase of the project without jeopardizing its mission-critical operations, (3) Sentinel's ability to share information with external intelligence and law enforcement agencies and provide a common framework for other agencies' case management systems, (4) the lack of an established Earned Value Management process, (5) the FBI's ability to track and control Sentinel's costs, and (6) the lack of complete documentation required by the FBI's Information Technology Investment Management processes.

The OIG's prior reviews of the Trilogy IT project found that the FBI lacked an effective, reliable system to track and validate the project's costs. In our March 2006 review of Sentinel, we noted that although the FBI stated that it is evaluating a tool to track Sentinel project costs, potential weaknesses in cost control is a continuing project risk for Sentinel.

In addition, while the FBI has considered its internal needs in developing Sentinel's requirements, the OIG review expressed concern that the FBI had not yet adequately examined or discussed Sentinel's ability to connect with external systems in other Department of Justice components, the Department of Homeland Security, and other intelligence community agencies. If such connectivity is not built into Sentinel's design, other agencies could be forced into costly and time-consuming modifications to their systems to allow information sharing with the Sentinel system.

The OIG will continue to monitor and periodically issue audit reports throughout the FBI's development of the Sentinel project in an effort to track the FBI's progress and identify any emerging concerns related to the cost, schedule, technical, and performance aspects of the project. Last week, the OIG initiated its second audit of the Sentinel project. This review will examine the \$305 million contract recently announced with Lockheed Martin to determine, among other things, if the FBI has established the necessary work requirements, benchmarks, and other provisions to help ensure the success of the project.

## II. CIVIL RIGHTS AND CIVIL LIBERTIES

In a recent speech, Director Mueller rightly stated that "As we recognize the necessity of intelligence gathering, we must also recognize the need to protect our civil rights. It has always been my belief, that in the end, we will be judged not only on whether we win the war against terrorism, but also on how we protect the civil rights we cherish." During the past year, the OIG completed a series of reviews that either directly or indirectly examined the impact of FBI activities on civil rights and civil liberties issues.

1. Section 1001 Responsibilities: Section 1001 of the USA PATRIOT Act (Patriot Act) directs the OIG to undertake a series of actions related to claims of civil rights or civil liberties violations allegedly committed by Department of Justice (DOJ) employees. In March 2006, the OIG released its eighth semiannual report to Congress required by Section 1001. The report described the OIG's activities during the last 6 months related to civil rights and civil liberties complaints and the status of OIG and DOJ investigations of allegations of civil rights and civil liberties abuses by Department employees.

In addition to summarizing investigations and reviews undertaken by the OIG in furtherance of our Section 1001 responsibilities, the March Section 1001 report described the results of an OIG review of the FBI's reporting to the President's Intelligence Oversight Board (IOB) of possible intelligence violations. Our report detailed the types and percentages of violations reported by the FBI to the IOB in fiscal years (FY) 2004 and 2005, and the process used by the FBI to report such violations. Under the FBI's process, FBI employees self-report potential violations to the FBI's Office of the General Counsel, which reviews the possible violations to determine whether reporting to the IOB is required. Among the authorities the FBI used during this period that prompted reports to the IOB were the Foreign Intelligence Surveillance Act of 1978 (FISA), including FISA authorities that were expanded by the Patriot Act; the Attorney General's Guidelines for FBI National Security Investigations and Foreign Intelligence Collection; and various statutory authorities used to issue National Security Letters to obtain information from third parties.

Examples of the violations that the FBI reported to the IOB in FYs 2004 and 2005 include FBI agents intercepting communications outside the scope of the order from the FISA Court; FBI agents continuing investigative activities after the authority for the specific activity expired; and third parties providing information that was not requested by the National Security Letter. Not all possible violations were attributable solely to FBI conduct. According to the data we reviewed, third parties such as telephone companies were involved in or responsible for the possible violations in approximately one-quarter of the cases in both years we examined. The OIG's Section 1001 report also provided detailed information that summarized the percentages of possible violations reported to the IOB, broken down by specific intelligence activity. We intend to continue to review these potential IOB violations and report on our findings in future reports.

2. FBI Interviews of Potential Protesters at the 2004 Democratic and Republican National Conventions: Last Friday, the OIG completed a review that examined the FBI's investigative activities concerning potential protesters at the 2004 Democratic and Republican national political conventions. The OIG initiated this investigation in response to reports that dozens of potential protesters had been interviewed prior to the conventions, including past protesters and their friends and family members, and that anarchist groups reported being "harassed" by federal agents.

The OIG review did not substantiate allegations that the FBI improperly targeted protesters for interviews in an effort to chill the exercise of their First Amendment rights at the 2004 Democratic and Republican national political conventions. The report concluded that the FBI's interviews of potential convention protesters and other related interviews, together with its related investigative activities, were conducted for legitimate law enforcement purposes and were based upon a variety of information related to possible bomb threats and other violent criminal activities.

The OIG found that nearly all of the FBI's protester-related investigative activity was devoted to addressing 17 distinct threats to the conventions falling within the FBI's domestic terrorism program. The nature of these threats varied. For example, in four cases the FBI received information indicating that persons who intended to demonstrate in Boston or New York also were planning on bombing sites at the conventions. The FBI also was made aware that a group with an extensive criminal history was known to be planning violent confrontations with police in one of the convention cities. In another matter, a convicted domestic terrorist was believed to be attempting to obtain a dangerous chemical, potentially for use against the police. The report concluded that the FBI addressed each threat in accordance with the

Attorney General Guidelines, whether in the course of checking initial leads or conducting preliminary inquiries or full investigations.

In addition, the review identified seven terrorism enterprise investigations not initiated in connection with the 2004 conventions that generated convention-related criminal intelligence. As to these seven investigations, the OIG concluded that the investigative techniques utilized to obtain this intelligence were a logical outgrowth of the underlying investigations and that the investigative activity was undertaken in a manner consistent with the requirements of the General Crimes Guidelines.

3. The FBI's Compliance With Attorney General Investigative Guidelines: Since the Committee's last FBI oversight hearing, the OIG also completed its examination of the FBI's compliance with four sets of Attorney General Guidelines that govern the FBI's principal criminal investigative authorities with respect to investigations of individuals and groups, and its use of confidential informants, its undercover operations, and its warrantless monitoring of verbal communications (also known as consensual monitoring). The Attorney General Guidelines provide guidance on the opening of FBI investigations, the permissible scope of investigations, and the law enforcement techniques the FBI may use. The Guidelines were last revised in May 2002.

In sum, while the OIG found many areas in which the FBI complied with the Attorney General Guidelines, the OIG also found significant non-compliance with the Guidelines governing the operation of confidential informants, failure to notify FBI Headquarters and DOJ officials of the initiation of certain criminal intelligence investigations, and failure to consistently obtain advance approval prior to the initiation of consensual monitoring.

Specifically, the OIG found one or more Guidelines violations in 87 percent of the confidential informant files we examined. The OIG review determined that required approvals for the use of informants were not always obtained, assessments designed to assess the suitability of individuals to serve or continue as confidential informants were not made or were incomplete, documentation of required instructions to informants were missing, descriptions of "otherwise illegal activity" by informants were not sufficient, and required notifications to FBI Headquarters or U.S. Attorneys' Offices were not made or documented. The OIG report noted that Guidelines violations can jeopardize DOJ prosecutions of criminals and also can lead to civil liability claims against the government.

The OIG review found, in contrast to the FBI's non-compliance with the Confidential Informant Guidelines, the FBI generally was compliant with the Undercover Guidelines, and the Headquarters unit supporting undercover operations was well managed and effective. The FBI also generally adhered to the provisions of the General Crimes Guidelines and the Consensual Monitoring Guidelines, although the OIG identified several deficiencies, particularly with regard to the Guidelines' requirements for supervisory authorization of the consensual monitoring.

The OIG report offered 47 recommendations designed to promote greater accountability for Guidelines violations by field supervisors; to use existing technology to track Guidelines violations; to enhance training on Guidelines requirements and the consequences of Guidelines violations to FBI investigations and DOJ prosecutions; to require supervisory approval and more systematic recordkeeping on the FBI's use of new authorities to visit public places and attend public events for the purpose of detecting and preventing terrorist activities; and to prepare a comprehensive implementation strategy for the next Guidelines revisions. The FBI concurred with 43 of the 47 recommendations, and concurred partially with the 4 remaining recommendations.

4. Terrorism Screening Center: Within the past 11 months, the OIG completed two reviews examining various aspects of the Terrorist Screening Center (TSC), a multi-agency effort to consolidate the federal government's terrorist watch lists and provide 24 hour, 7 day-a-week responses for screening individuals against the consolidated watch list. Prior to establishment of the TSC, the federal government relied on multiple separate watch lists maintained by a variety of agencies to search for terrorist-related information about individuals who, among other things, apply for a visa, attempt to enter the United States through a port of entry, travel internationally on a commercial airline, or are stopped by a local law enforcement officer for a traffic violation.

As part of our reviews, the OIG examined the accuracy of the TSC's watchlists and the TSC process for correcting erroneous entries on the watch lists. The OIG concluded that the TSC had not ensured that the information in that database is complete and accurate. For example, the OIG found instances where the consolidated database did not

contain names that should have been included on the watch list and inaccurate or inconsistent information related to persons included in the database.

The OIG's June 2005 report offered 40 recommendations to the TSC to address areas such as database improvements, data accuracy and completeness, call center management, and staffing. The TSC generally agreed with the recommendations and in some cases provided evidence that it has taken action to correct the weaknesses that the audit identified.

Since issuance of the audit, the TSC has initiated a record-by-record review of the terrorist screening database to ensure accuracy, completeness, and consistency of the records. TSC staff informed the OIG it is focusing first on the records deemed most important. According to the TSC, review of the entire database, which contains more than 235,000 records, will take several years.

#### Ongoing reviews

5. FBI Observations of and Reports Regarding Detainee Treatment at Guantanamo Bay and other Military Facilities: The OIG currently is examining FBI employees' observations and actions regarding alleged abuse of detainees at Guantanamo Bay, Abu Ghraib, Afghanistan, and other venues controlled by the U.S. military. The OIG is investigating whether FBI employees participated in any incident of detainee abuse in military facilities at these locations, whether FBI employees witnessed incidents of abuse, how FBI employees reported observations of alleged abuse, and how those reports were handled by the FBI.

As part of this ongoing review, the OIG has interviewed detainees, FBI employees, and military personnel at Guantanamo. In addition, the OIG has administered a detailed questionnaire to approximately 1,000 FBI employees who served assignments at military detention facilities. The questionnaire requested information on what the FBI employees observed, whether they reported observations of concern, and how those reports were handled.

6. The FBI's Use of Certain Patriot Act Authorities: As required by the USA Patriot Improvement and Reauthorization Act of 2005 (Reauthorization Act), the OIG is reviewing the FBI's use of two authorities amended by the Patriot Act: (1) the FBI's authority to issue National Security Letters to obtain certain categories of records from third parties, including telephone toll and transactional records, financial records, and consumer reports; and (2) the FBI's authority to obtain business records from third parties by applying for ex parte orders issued by the Foreign Intelligence Surveillance Court pursuant to Section 215 of the Patriot Act.

The Reauthorization Act directs the OIG to review the extent to which the FBI has used these authorities; any bureaucratic impediments to their use; how effective these authorities have been as investigative tools and in generating intelligence products; how the FBI collects, retains, analyzes, and disseminates information derived from these authorities; whether and how often the FBI provided information derived from these authorities to law enforcement entities for use in criminal proceedings; and whether there has been any improper or illegal use of these authorities. See Sections 106A and 119 of the Conference Report No. 109-333 (December 8, 2005). Our reviews, which we have recently begun, will include examination of FBI investigative files, interviews of FBI and other DOJ officials, and visits to FBI field offices.

7. Review of the Filiberto Ojeda Rios Shooting in Puerto Rico: At the request of the FBI Director, the OIG initiated an investigation of an FBI shooting incident in Puerto Rico that resulted in the death of Filiberto Ojeda Rios. Ojeda was a founder and leader of Los Macheteros, a pro-independence organization in Puerto Rico. Ojeda was arrested in 1985 in connection with a major bank robbery in Connecticut, but had been a fugitive since fleeing in 1990 while released on bail. During the FBI's attempt to arrest Ojeda at a rural residence in western Puerto Rico on September 23, 2005, an FBI agent was wounded and Ojeda was shot and killed. The OIG examined the circumstances surrounding the shooting and the FBI's entry into the residence, and we are in the process of drafting our report of investigation.

### III. FBI HUMAN CAPITAL

The FBI faces continuing challenges to attract, train, and retain employees in some FBI positions, such as analysts, translators, IT specialists, scientists, and other support staff. Moreover, in various OIG reviews and investigations in

the FBI, the OIG has witnessed significant turnover in supervisory employees. For example, the OIG's review of the FBI's Trilogy IT project found that the FBI had 15 different key IT managers, including 5 CIOs or acting CIOs and 10 individuals serving as project managers for various aspects of the project, which undermined the FBI's ability to successfully complete the Trilogy project. We also witnessed rapid turnover in important Headquarters and field supervisors' positions. As a recent NAPA report described, turnover in FBI leadership positions is extensive, with a median tenure of 15 months for Special Agents-in-Charge and 13 months for senior executives at Headquarters.

Reducing the turnover in key supervisory positions, and effective hiring, training, and retaining of FBI employees in key positions are some of the most important challenges facing the FBI. Without more stability, the FBI's effectiveness is diminished.

The OIG has conducted a series of reviews over the past several years that examine various aspects of this human capital issue. Two of those, with regard to intelligence analysts and linguists, are briefly discussed below.

1. Intelligence Analysts: In May 2005, the OIG issued an audit report that examined FBI efforts to hire, train, and retain intelligence analysts. After the September 11 terrorist attacks, the FBI focused on hiring, training, and retaining more fully qualified intelligence analysts. Yet, the OIG report found that while the FBI had made progress in hiring and training intelligence analysts, the FBI fell short of its hiring goals. Although the audit found that the analysts that the FBI hired generally were well qualified, the FBI has made slow progress toward developing a quality training curriculum for new analysts. The initial basic training course offered to analysts was not well attended and received negative evaluations, and the FBI replaced it with a revised 7-week training course.

FBI analysts who responded to an OIG survey indicated that generally they were satisfied with their work assignments, believed they made a significant contribution to the FBI's mission, and were intellectually challenged. However, newer and more highly qualified analysts were more likely to respond negatively to OIG survey questions on these issues. For example, 27 percent of the analysts hired within the last 5 years reported dissatisfaction with their work assignments, compared to 13 percent of the analysts hired more than 5 years ago.

Further, the intelligence analysts reported on the survey that work requiring analytical skills accounted for about 50 percent of their time. Many analysts reported performing administrative or other non-analytical tasks, such as escort and phone duty. In addition, some analysts said that not all FBI Special Agents, who often supervise analysts, understand the capabilities and functions of intelligence analysts.

The OIG report made 15 recommendations to help the FBI improve its efforts to hire, train, and retain intelligence analysts, including recommendations that the FBI establish hiring goals for intelligence analysts based on the forecasted need for intelligence analysts and projected attrition; implement a better methodology for determining the number of intelligence analysts required and for allocating the positions among FBI offices; and assess the work done by intelligence analysts to determine what is analytical in nature and what general administrative support of investigations can more effectively be performed by other support or administrative personnel. The FBI agreed with the OIG recommendations.

Last month, the OIG initiated a follow-up review to examine the progress made by the FBI since completion of our last review.

2. The FBI's Foreign Language Translation Program: The OIG also has examined the FBI's progress in improving its ability to translate foreign language materials. Two OIG reviews, issued in 2004 and 2005, found that the FBI's collection of material requiring translation had outpaced its translation capabilities, and the FBI could not translate all its foreign language counterterrorism and counterintelligence material. The audits also found that the FBI had difficulty in filling its need for additional linguists. The audits also concluded that the FBI was not in full compliance with the standards it had adopted for quality control reviews of the work of newly hired linguists, as well as for annual reviews of permanent and contract linguists.

#### IV. INFORMATION SHARING

The need for effective information sharing among intelligence and law enforcement entities has been a key finding of several national reviews convened after the September 11 terrorist attacks. Consequently, the OIG continues to review FBI's efforts to enhance information sharing and coordination with its law enforcement and intelligence partners. However, several reviews completed during the past year highlight the gaps that remain.

1. Seaport Security: Last month the OIG released an audit report that examined the FBI's efforts to protect U.S. seaports from terrorism. The United States has more than 360 seaports, and 95 percent of overseas trade flows through these ports or inland waterways, which often are located near major population centers. The protection of U.S. seaports is a shared responsibility among the Department of Homeland Security's (DHS) U.S. Coast Guard, the U.S. Customs and Border Protection, and the FBI. The Coast Guard protects and enforces laws at seaports while the Customs and Border Protection enforces import and export laws and inspects cargo at seaports. The FBI, as the lead federal agency for preventing and investigating terrorism, has an overarching role in protecting the nation's seaports, which includes gathering intelligence on maritime threats and maintaining well-prepared tactical capabilities to prevent or respond to maritime-based terrorism. Because of the number of different agencies involved with the nation's seaport security efforts, the issue of efficient and effective information sharing takes on vital importance.

The OIG review of the FBI's efforts to protect the nation's seaports found that since the September 11 attacks, the FBI has taken steps to enhance its capability to identify, prevent, and respond to terrorist attacks at seaports. For example, the FBI has created a centralized maritime security program at FBI Headquarters and, in addition to its counterterrorist tactical teams, has placed enhanced maritime SWAT teams in the FBI field offices closest to 14 of the nation's strategic seaports. Further, most of the FBI's 56 field offices have Maritime Liaison Agents responsible for coordinating with other federal agencies on maritime security.

However, we found that the FBI does not always assign these agents according to the threat and risk of a terrorist attack on a given seaport. For example, an FBI field office with six significant seaports in its territory has only one maritime liaison agent while another FBI field office with no strategic ports in its area has five maritime liaison agents.

Furthermore, the OIG review found that the FBI and the Coast Guard have not yet resolved issues regarding their overlapping responsibilities, jurisdictions, and capabilities to handle a maritime terrorism incident. We believe a lack of jurisdictional clarity could hinder the FBI's and the Coast Guard's ability to coordinate an effective response to a terrorist threat or incident in the maritime domain. Specifically, the report expressed concern about how confusion over authorities will affect the two agencies' ability to establish a clear and effective incident command structure in response to a terrorist attack on a seaport. In our judgment, unless such differences over roles and authorities are resolved, the response to a maritime incident could be confused and potentially disastrous.

The OIG report made 18 recommendations that focus on specific steps that the FBI should take to improve its counterterrorism efforts regarding seaport and maritime activities, including resolving overlapping responsibilities with the Coast Guard before a terrorist incident occurs; leading more interagency maritime-related exercises involving likely terrorism scenarios; preparing and using after-action reports after these exercises in order to identify lessons learned; and assessing the threat and risk of maritime terrorism compared to other threats and assigning resources accordingly.

2. Department of Justice Counterterrorism Task Forces: In a 2005 report, the OIG examined the operation of DOJ Counterterrorism task forces and assessed whether gaps, duplication, or overlap existed in the task forces' work. Three of the five groups we examined - the Joint Terrorism Task Forces (JTTFs), the National Joint Terrorism Task Force, and the Foreign Terrorist Tracking Task Force - are led by the FBI.

The OIG review concluded that the terrorism task forces generally functioned well, without significant duplication of effort, and that they contributed significantly to the Department's goal of preventing terrorism. However, the OIG review identified a series of management and resource problems affecting the operation of the task forces. These included the need for more stable leadership among the task forces, better training for participants, and additional resources. For example, many JTTF members stated that frequent turnover in leadership of the JTTFs affected the structure and stability of the JTTFs and their terrorism investigations. We also found that the FBI has not defined the roles, responsibilities, and information-sharing protocols with all of the agencies participating on the task forces.



The OIG report provided 28 recommendations to help the FBI and the Department improve the operations of its various counterterrorism task forces. The FBI generally agreed with the recommendations and agreed to take corrective action.

#### Ongoing reviews

3. Status of IDENT/IAFIS Integration: The OIG is completing a sixth review that examines efforts to integrate the federal government's law enforcement and immigration agencies' automated fingerprint identification databases. Our reviews concluded that fully integrating the automated fingerprint system operated by the FBI (IAFIS) and the system operated by the DHS (IDENT) would allow law enforcement and immigration officers to more easily identify known criminals and known or suspected terrorists trying to enter the United States, as well as identify those already in the United States. The current OIG review is assessing the actions the FBI and DOJ have taken since the December 2004 report to achieve full interoperability of the FBI and DHS fingerprint systems.

4. Criminal Task Force Coordination: Another ongoing OIG review is examining, among other issues, information-sharing efforts among four DOJ task forces: the FBI's Safe Streets Task Forces, ATF's Violent Crime Impact Teams, the DEA's Mobile Enforcement Teams, and the USMS's Regional Fugitive Task Forces. In addition to assessing information sharing among the task forces, the review will evaluate whether investigations conducted by these DOJ task forces are well coordinated; whether they avoid duplication of effort; and whether they assist state, local, and tribal efforts to reduce crime.

### V. ALLOCATION OF FBI INVESTIGATIVE RESOURCES

While the FBI has worked to transform itself after the September 11 attacks from a reactive law enforcement agency into an agency whose top priority is protecting the United States against terrorist attacks, the FBI maintains responsibilities for investigating criminal conduct. Given finite resources, striking an appropriate balance between its law enforcement and counterterrorism intelligence missions is a continuing challenge for the FBI.

The Effects of the FBI's Reprioritization Efforts: The OIG has issued several reviews that examined various aspects of the changes in the FBI's allocation of its investigative resources since the September 11 terrorist attacks. The most recent review, issued in September 2005, assessed how the FBI's reprioritization efforts and the shift of resources from more traditional criminal investigative areas, such as drugs and white collar crime, to counterterrorism has affected other federal, state, and local law enforcement organizations. We determined that between FY 2000 and FY 2004, the FBI had formally reallocated 1,143 field agent positions away from investigating traditional criminal matters and placed these resources primarily in terrorism-related programs. In addition to the formal reallocation of positions, we found that the actual number of agents used to investigate criminal matters was significantly less than the FBI had allocated. The FBI actually utilized almost 2,200 fewer field agents to investigate these more traditional criminal matters in FY 2004 than it had in FY 2000. According to FBI officials, the additional agents were reassigned from criminal investigative areas to terrorism-related matters as needs arose.

The OIG review also found that the FBI opened 28,331 fewer criminal cases in FY 2004 than it had in FY 2000, a 45 percent reduction. Furthermore, we found that the FBI reduced the number of criminal-related matters referred to U.S. Attorneys' Offices by 6,151, or 27 percent, between FYs 2000 and 2004.

Our interviews and surveys of federal, state, and local law enforcement officials regarding the impact of the FBI's changes in their jurisdictions found that, overall, the effects of the FBI's shift in priorities and resources on other law enforcement agencies' operations varied from agency to agency, and often from crime area to crime area. Most law enforcement agencies had not been significantly affected by the FBI's shift in investigative resources, although their caseloads had increased. But our review identified specific crime areas, such as financial institution fraud, in which other law enforcement officials said the FBI's reduced investigative activity has hurt their ability to address the crime problem in their area and has left an investigative gap. Our review also recommended that the FBI seek a more coordinated approach with other law enforcement agencies in certain investigative areas, including identity theft and human trafficking.

### VI. FBI INTERNAL SECURITY

## Ongoing Reviews

1. Follow-up Review of the FBI's Response to the Robert Hanssen Case: The espionage case of Robert Hanssen exposed long-standing problems with the FBI's internal security efforts. Hanssen was the most damaging spy in FBI history, and he betrayed some of this nation's most important counter-intelligence and military secrets, including the identities of dozens of human assets, at least three of whom were executed. The OIG review of the FBI's performance in detecting, deterring, and investigating the espionage activities of Hanssen was issued in August 2003. Our report concluded that Hanssen escaped detection for so long not because he was extraordinarily clever and crafty, but because of long-standing systemic problems in the FBI's counterintelligence program and a deeply flawed internal security program. We found that there was little deterrence to espionage at the FBI, and the FBI's personnel and information security programs presented few obstacles to Hanssen's espionage.

We concluded that what was needed at the FBI is a wholesale change in mindset and approach to internal security. We recommended that the FBI recognize and take steps to account for the fact that FBI employees have committed espionage in the past and will likely do so in the future. We recommended that a unit at the FBI must be responsible for asking every day whether there is evidence that the FBI has been penetrated, and the FBI's internal security program must shift from a program relying on trust to a program based on deterrence and detection. We made 21 recommendations to the FBI to improve its internal security and its ability to deter and detect espionage in its midst.

The OIG is now conducting a follow-up review to assess the FBI's progress in implementing the recommendations contained in the OIG's report on Hanssen.

2. The FBI's Handling of Chinese Intelligence Asset Katrina Leung: Another matter that exposed weaknesses in the FBI's handling of counterintelligence operations was the case of Katrina Leung, an asset in the FBI's Chinese counterintelligence program who had a long-term intimate relationship with her FBI handler, former Special Agent James J. Smith. At the request of the FBI Director, we are assessing the FBI's performance in connection with the handling of Leung. Our review is examining a variety of performance and management issues related to the FBI's handling of Leung, and whether there were problems in the way she was handled that the FBI should have acted upon sooner. The OIG is in the process of completing a classified report outlining the findings in this case. In addition, the OIG will attempt to create an unclassified executive summary of the report that can be publicly released.

## VII. FBI LABORATORY

The FBI's forensic laboratories process a wide range of evidence ranging from DNA to firearms, and the work of the laboratories is critical to the successful investigation of a variety of crimes. Because of the increasing reliance law enforcement places on forensic laboratories, particularly DNA testing to solve crimes, and the increasing sophistication of the science involved, the OIG has focused on quality control and procedural issues in the FBI Laboratory to help ensure the reliability of its scientific methods and to guard against abuse.

1. FBI's Handling of the Brandon Mayfield Matter: In March 2006, the OIG released a 273-page report that examined the FBI's handling of the Brandon Mayfield case. Mayfield, a Portland, Oregon, attorney, was arrested by the FBI in May 2004 as a material witness after FBI Laboratory examiners identified Mayfield's fingerprint as matching a fingerprint found on a bag of detonators connected to the March 2004 terrorist attack on commuter trains in Madrid, Spain, that killed almost 200 people and injured more than 1,400 others. Mayfield was released 2 weeks later when the Spanish National Police identified an Algerian national as the source of the fingerprint on the bag. The FBI Laboratory subsequently withdrew its fingerprint identification of Mayfield.

We found several factors that caused the FBI's fingerprint misidentification. The unusual similarity between Mayfield's fingerprint and the fingerprint found on the bag confused three experienced FBI examiners and a court-appointed expert. However, we also found that FBI examiners committed errors in the examination procedure, and the misidentification could have been prevented through a more rigorous application of several principles of latent fingerprint identification. For example, the examiners placed excessive reliance on extremely tiny details in the latent fingerprint under circumstances that should have indicated that these features were not a reliable support for the identification. The examiners also overlooked or rationalized several important differences in appearance between

the latent print and Mayfield's known fingerprint that should have precluded them from declaring an identification. In addition, we determined that the FBI missed an opportunity to catch its error when the Spanish National Police informed the FBI on April 13, 2004, that it had reached a "negative" conclusion with respect to matching the fingerprint on the bag with Mayfield's fingerprints.

2. DNA Reviews: Within the past 2 years, the OIG completed two reviews examining various aspects of DNA issues. In the first review, completed in May 2004, the OIG examined vulnerabilities in the protocols and practices in the FBI's DNA Laboratory. This review was initiated after it was discovered that an examiner in a DNA Analysis Unit failed to perform negative contamination tests, and the Laboratory's protocols had not detected these omissions. The OIG's review found that certain of the FBI Laboratory's DNA protocols were vulnerable to undetected, inadvertent, or willful non-compliance by DNA staff, and the OIG report made 35 recommendations to address these vulnerabilities. The FBI agreed to amend its protocols to address these recommendations and to improve its DNA training program.

In addition, the OIG continues to audit laboratories that participate in the FBI's Combined DNA Index System (CODIS), a national database maintained by the FBI that allows law enforcement agencies to search and exchange DNA information. The OIG's CODIS audits identified concerns with some participants' compliance with quality assurance standards and with their uploading of unallowable and inaccurate DNA profiles to the national level of CODIS. The OIG currently is analyzing findings from DNA laboratory audits - both OIG-conducted audits and external quality assurance audits - to determine if they reveal global trends and vulnerabilities. We also are assessing the adequacy of the FBI's administration of CODIS, including its oversight of the national DNA database, and evaluating its implementation of corrective actions in response to the original report.

#### VIII. CONCLUSION

In sum, while the FBI has made progress in addressing its changed priorities since the September 11 terrorist attacks, significant challenges and deficiencies remain, as various OIG reports have found. The FBI needs more improvement in critical areas such as upgrading its IT systems; balancing aggressive pursuit of its law enforcement and intelligence-gathering missions while safeguarding civil rights; hiring, training, and retaining skilled employees in a variety of critical occupations; sharing information effectively within and outside the FBI; monitoring its allocation of resources between its law enforcement and intelligence functions; maintaining vigorous internal security and counterespionage efforts; and ensuring the reliability of its scientific methods. These are not easy tasks, and they require constant attention and oversight. To assist in these challenges, the OIG will continue to attempt to conduct vigorous oversight of FBI programs and provide recommendations for improvement.

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