



Office of the Inspector General
United States Department of Justice

Statement of Glenn A. Fine
Inspector General, U.S. Department of Justice

before the

House Committee on the Judiciary
Subcommittee on Crime, Terrorism,
and Homeland Security

concerning

Recent Inspector General Reports Concerning the
Federal Bureau of Investigation

February 24, 2010

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Mr. Chairman, Ranking Member Gohmert, and Members of the Subcommittee on Crime, Terrorism, and Homeland Security:

Thank you for inviting me to testify about recent Office of the Inspector General's (OIG) reports related to the Federal Bureau of Investigation (FBI).

The FBI faces significant challenges in handling its many critical duties. After the terrorist attacks of September 11, 2001, the FBI has reoriented its focus to make counterterrorism its top priority, but at the same time it must continue to address its many pressing traditional law enforcement responsibilities.

As part of the OIG's ongoing oversight work, we have reviewed a variety of important FBI programs. At the request of the subcommittee, I will mainly focus my testimony on three recent OIG reviews: (1) coordination between the FBI and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in explosives investigations; (2) the FBI's foreign language translation program; and (3) the FBI's and the Department of Justice's coordination of efforts to combat gang violence.

Within the past year we have also issued several other reports on important FBI programs. My testimony briefly summarizes the findings of some of these reviews. Finally, my testimony highlights several ongoing OIG reviews of FBI programs.

I. Explosives Investigation Coordination Between the FBI and ATF

In October 2009, the OIG issued an audit report that examined the coordination between the FBI and ATF in explosives investigations, and the Department of Justice's oversight of these coordination efforts.

Our audit found that FBI and ATF were not adequately coordinating explosives related operations, and the Department's management of the FBI

and ATF's coordination efforts was ineffective. We found that conflicts continued to occur throughout the country about whether the FBI or ATF would be the lead agency for federal explosives investigations and about their differing explosives-handling techniques.

Federal law gives the FBI and ATF concurrent jurisdiction over most federal explosives crimes. Yet, the FBI and ATF have developed separate and often conflicting approaches to explosives investigations and related activities such as explosives training, information sharing, and forensic analysis.

As discussed in our report, after ATF was transferred from the Department of the Treasury to the Department of Justice in 2003, the Attorney General issued a Memorandum (the 2004 Attorney General Memorandum) that attempted to define the roles of the FBI and ATF in explosives investigations and related activities. However, our audit found that the Department, the FBI, and ATF did not implement the 2004 Attorney General Memorandum's procedures for explosives information sharing, database consolidation, training, and coordination of laboratory resources.

In addition, the 2004 Attorney General Memorandum contained ambiguous directives for determining which agency had lead authority for explosives matters. We also found that a subsequent 2008 Memorandum of Understanding between the FBI and ATF did not adequately clarify investigative jurisdiction and instead reiterated many of the ambiguous elements of the 2004 Attorney General Memorandum.

Based on our survey of ATF and FBI explosives specialists, field managers, and state and local bomb squads, as well as over 100 interviews of ATF and FBI employees in the field, we found that conflicts continue to occur between the FBI and ATF throughout the country regarding which agency should lead federal explosives investigations and which techniques should be used to neutralize explosives. For example, 33 percent of ATF explosives specialists and 40 percent of FBI bomb technicians who responded to our survey reported having disputes with their counterparts at explosives incidents in fiscal years 2007 and 2008.

Our audit also found that the FBI and ATF explosives investigators sometimes raced to be the first federal agency on the scene of an explosives incident, and disputes have occurred when one agency arrived first and the other agency believed the explosives incident fell within its lead agency authority. Some FBI and ATF agents candidly acknowledged to us that they operated under the assumption that "possession is nine-tenths of the law," meaning that they believed their agency would have lead authority if they arrived first at the scene.

We found that these disputes can delay investigations, interviews, and crime scene processing; can confuse local first responders about which federal agency is the federal lead on explosives matters; and can undermine federal and local relationships. In fact, over three-quarters of explosives specialists at both ATF and the FBI who responded to our survey believed that the other agency had duplicated capabilities already at the explosives scene, resulting in delayed decision-making.

Our audit also found that the FBI and ATF each maintain distinct explosives-incident reporting databases to manage laboratory forensic reports, incident reporting, and technical explosives-related information and intelligence. In particular, although the 2004 Attorney General Memorandum required the FBI and ATF to consolidate their records of criminal explosives incidents reported by federal, state, and local agencies into ATF's Bombing and Arson Tracking System (BATS), the FBI only provided a one-time transfer of its explosives-incident data, and the FBI had not reported any subsequent explosives-incident information to BATS since 2004. The separate FBI and ATF explosives databases result in a duplication of effort and the inability to accurately determine trends in explosives incidents.

Further, the majority of state and local bomb squad commanders responding to our survey reported that they rarely or never entered incident information into BATS or queried BATS to obtain information. As a result, BATS is not the comprehensive resource envisioned for reliably determining trends and providing useful explosives-related statistics.

The 2004 Attorney General Memorandum also directed ATF to coordinate all DOJ post-blast explosives training. However, our audit found that the FBI and ATF did not implement this directive. Instead, the FBI and ATF continue to separately operate their respective explosives-training facilities and programs and run uncoordinated post blast training programs. In particular, the FBI and ATF have not worked together to establish joint explosive-training priorities, such as identifying what training is needed, who has the most pressing need for the training, and who can provide such training.

The FBI and ATF also continue to maintain separate laboratories that perform explosives-related analyses. The 2004 Attorney General Memorandum required a Laboratory Review Board to examine laboratory resources and workloads and make recommendations for the most productive allocation of DOJ laboratory resources. Yet, we found no evidence that the Board fulfilled this requirement, issued any report regarding potential consolidation, or developed any guidance on how resources and workloads should be allocated between the two agencies' laboratories.

We also found that ATF does not participate in the majority of Joint Terrorism Task Forces led by the FBI. Likewise, the FBI does not fully participate in ATF-led Arson and Explosives Taskforces.

In April 2009, in accord with the President's Homeland Security Presidential Directive (HSPD)-19, the Department of Justice established an inter-departmental Joint Program Office (JPO). This office, led by the FBI, was designed to bring resolution to issues among agencies not resolved by other mechanisms, and to serve as a resource for policy, planning, and decision support. When responding to our report, the FBI and the Department asserted that the JPO has recently been successful in resolving some of the issues identified in our report, specifically citing the development of community-wide consensus standards for training of explosive-detection canine teams, which will be published in a guidelines document for implementation nationwide.

Yet, as our audit report noted, the JPO was not designed to function as a deciding authority on roles and responsibilities for the FBI and ATF in handling explosives incidents, but instead was conceived to be a formalized inter-agency discussion forum. Moreover, the JPO cannot impose consensus on components with opposing policy positions, who continue to make decisions independently. We concluded that absent forceful leadership from the Department of Justice to resolve differences between the FBI and ATF, the long history of FBI and ATF competition over explosives-investigations activities is likely to persist.

Our audit made 15 recommendations to the Department, FBI, and ATF to improve explosives-related coordination, including considering establishing a Department directive that clearly defines jurisdiction between the agencies; establishing a formal procedure for the Department to resolve jurisdictional disputes; requiring reviews of the most efficient uses of Department explosives training programs and laboratory resources; and issuing new agency guidelines to promote explosives-incident reporting and information sharing by both agencies.

At the time our audit was issued, the Department said it agreed in concept with our recommendations, although it did not respond individually to each in its initial response to our report.

On January 29, 2010, the Department provided the OIG with an updated response which stated that the Department was committed to ensuring that the concerns raised in our report were resolved clearly and conclusively. This updated response also described the Department's plans for addressing the recommendations in our report. In particular, the response stated that the Department has established four working groups, composed of representatives from the Deputy Attorney General's Office, the FBI, and ATF, to address the

recommendations of our report. The response also described the steps the working groups were taking to either reach consensus on appropriate steps to resolve the recommendations, or options for a decision by the Department on actions that should be taken to resolve the recommendations.

We believe the Department's updated response indicates it is taking our recommendations seriously, and we plan to carefully monitor the Department's progress in addressing the important issues identified in our report. We also believe that it is critical for the Department to promptly address these issues, both to avoid confusion and duplication of effort, and also to ensure the best use of the Department's resources in explosives investigations.

II. The FBI's Foreign Language Translation Program

Over the past five years, the OIG has issued three audit reports on the FBI's Foreign Language Translation Program (FLP) – the first report in 2004, the second report in 2005, and the most recent report in October 2009.

Our first audit in 2004 found that significant amounts of audio material collected for FBI counterterrorism and counterintelligence operations were awaiting translation, including material collected for the FBI's highest priority cases. Our second audit in 2005 found that while the FBI had made some improvement in several areas of its foreign language translation program, significant deficiencies remained. For example, the 2005 audit determined that the FBI's backlog of audio material awaiting translation had increased since the 2004 audit, and that the FBI was not prioritizing the translation of high priority material in accordance with its national priorities and its overall mission. In addition, the FBI still did not have a comprehensive statistical collection and reporting system to accurately report backlog statistics. The 2005 audit also concluded that the FBI needed to improve the management of its linguist resources by developing linguist hiring goals.

In October 2009, we issued our third audit examining the FBI's foreign language program. The 2009 audit determined that the FBI still cannot accurately determine the amount of foreign language material it collects and the amount of material that remains unreviewed because the FBI still lacks a consolidated, accurate collection and statistical reporting and evaluation system. While the FBI is consolidating several of its systems, it still relies on its field offices to manually report workload data, which often results in inconsistent and inaccurate statistics.

Our 2009 audit also showed that the FBI continued to have significant amounts of unreviewed audio and electronic files that it collected for its counterterrorism, counterintelligence, and criminal investigations between fiscal years (FY) 2006 and 2008.

The exact volume of unreviewed materials is not precise because of deficiencies in the FBI's collection systems and its procedures for accounting for materials. However, the FBI's data shows that the amount of unreviewed material is large. For example, the number of unreviewed electronic files has increased significantly.

With regard to one area of unreviewed materials – audio material in counterterrorism cases – the FBI's raw data indicates that the amount of unreviewed counterterrorism audio material increased from about 8,600 hours in FY 2003 to nearly 47,000 hours through FY 2008. The FBI asserted in response to our report that there has been a 40 percent reduction in the FBI's counterterrorism audio backlog. The FBI based this assertion on its consideration of “refined” data from one collection system, which we call Collection System A in our report. The FBI believes that Collection System A contains almost all of the counterterrorism audio collections. By refining what it believes to be anomalies in Collection System A's backlog, such as duplicate audio recordings, audio associated with an expired court order and inactive cases, or audio with only English language recorded, the FBI calculated that its backlog of counterterrorism audio material awaiting translation was 4,770 hours as of September 2008.

However, while we agree with some of the FBI's reasons for deleting audio material from Collection System A's backlog totals, we have concerns about the refinement process, and the refined data has not been verified. Moreover, the FBI's calculation of 4,770 is limited only to manually refined data from one system, Collection System A. While our report acknowledged that the actual backlog of unreviewed counterterrorism audio is lower than the 47,000 raw number from the FBI's data system, we also believe that the true number is likely higher than the 4,770 refined figure advanced by the FBI.

In addition, it is important to note that this statistic relates to only one category of unreviewed materials – audio material in counterterrorism cases – and does not relate to the significant amounts of unreviewed counterintelligence audio, and unreviewed counterterrorism and counterintelligence electronic files. We also found that the FBI did not have a strategy for guiding its foreign language translation program to keep pace with its growing collection of electronic files.

Our audit concluded that not translating or reviewing counterterrorism and counterintelligence materials can increase the risk that the FBI will not detect information that may be important to its counterterrorism and counterintelligence efforts.

Our audit analyzed the FBI's quality control over its foreign language translations. Our report determined that the FBI has made improvements in this area. For example, the FBI created a unit dedicated to quality control of

FBI translations and also established a tracking system capable of monitoring compliance with quality control guidelines. However, we identified some continued deficiencies in the management and oversight of the quality control process, such as the FBI's not ensuring that linguists who had Not Satisfactory ratings for their translations received follow-up assessments.

Our audit also analyzed the FBI's progress in hiring linguists. We found that the number of linguists performing translations for the FBI had decreased since our last audit, from 1,338 in March 2005 to 1,298 in September 2008. We also found that the FBI did not achieve the linguist hiring goals for languages it identified as critical to FBI operations. For example, in FY 2008 the FBI only met its hiring target for 2 of the 14 critical languages for which it set goals.

We concluded the FBI's inability to meet its hiring goals affects its ability to translate the materials it collects and to reduce the backlog of unreviewed material, including material for high priority cases.

The FBI's process to hire linguists remains slow. In our audit, we determined that from FYs 2005 through 2008 it took the FBI approximately 19 months to hire a contract linguist, an increase from the 16-month period we found in our 2005 audit. The security clearance adjudication processes and proficiency testing accounted for the longest periods of time in applicant processing.

In our audit report, we made 24 additional recommendations to help the FBI improve its management of its foreign language translation program. For example, we recommended that the FBI report accurate, comprehensive data on the backlog of unreviewed foreign language audio material from all audio collections, not solely from Collection System A, and we recommended that the FBI develop a proactive strategy for keeping pace with translating and reviewing its increasing collection of electronic files.

The FBI agreed with our recommendations and stated that it is taking steps to implement them. We will continue to monitor the FBI's performance in this important area.

III. Review of the Department's Intelligence and Anti-Gang Coordination Centers

In November 2009, the OIG issued a report that examined two anti-gang centers the Department established in 2006 to help combat gang-operated criminal networks in the United States: (1) the National Gang Intelligence Center (NGIC); and (2) the National Gang Targeting, Enforcement, and Coordination Center (GangTECC).

The FBI is responsible for administering NGIC, which is designed as a multi-agency center to develop and share gang-related information. The Department's Criminal Division is responsible for supervising GangTECC, which is intended to coordinate overlapping gang investigations, ensure that tactical and strategic gang intelligence is shared between law enforcement agencies, and serve as a central coordinating and deconfliction center for multi-jurisdictional gang investigations involving federal law enforcement agencies.

However, our report concluded that the two centers have not significantly improved the coordination and execution of the Department's anti-gang initiatives and have not made a significant impact on the Department's anti-gang activities.

For example, we found that NGIC has not established a centralized gang information database for collecting and disseminating gang intelligence because of technological limitations and operational problems. In addition, the communications infrastructure that would allow NGIC to access gang-related information from state databases has not progressed beyond the development phase. We also determined that NGIC has few regular users outside of the FBI and GangTECC, receives few requests for information, and produces reports that are of limited usefulness. State, local, and tribal law enforcement agencies averaged only 3 requests per year to NGIC, and submitted only 13 of the 213 total requests for information from NGIC's inception in 2006 to February 2009.

In our discussions with NGIC and GangTECC personnel and other law enforcement officials about why NGIC was not used more frequently by law enforcement agencies, we found that NGIC was not perceived as an independent, multi-agency center by many law enforcement personnel. Rather, it was repeatedly referred to as being "FBI-centric" in the products it generates and the intelligence analysis it provides.

With regard to GangTECC, our review found that GangTECC has a broad, multi-purpose mission but no operating budget. The lack of an operating budget has prevented GangTECC managers from taking actions essential to its operations, including hosting case coordination meetings and conducting effective outreach to the law enforcement community. In addition, GangTECC has not established itself as the central coordination and deconfliction entity as envisioned because GangTECC's member agencies and federal prosecutors are not required to inform GangTECC of their gang-related investigations and prosecutions.

Most important, in examining the relationship between NGIC and GangTECC, we found that the two entities have not worked together effectively. While the two centers share an office suite, their co-location has not led to the

anticipated partnership between NGIC and GangTECC, and communication between the two centers remained limited and ad hoc.

Our report made 15 recommendations to help improve the Department's anti-gang efforts, including that the Department consider whether to merge NGIC and GangTECC under common leadership. We believe that a merger could improve their ability to support and coordinate the Department's anti-gang initiatives on a national level. In response to the report, the Department stated that it concurred in concept with the 15 recommendations and was in the process of evaluating and formulating measures to respond to the recommendations.

On February 3, 2010, the Department provided us with an updated response to the recommendations in our report. This response described organizational changes the Department is considering implementing to improve the effectiveness of NGIC and GangTECC. In particular, the Department stated that it is considering establishing a partnership between NGIC, GangTECC and the Organized Crime Drug Enforcement Task Force Fusion Center and the Special Operations Division. The Department also stated that it has begun considering whether to merge GangTECC and the Criminal Division's Gang Unit into a single Criminal Division component to ensure better coordination, although it stated its belief that a partnership will likely effectively address the concerns underlying this recommendation.

In our opinion, because of the importance of anti-gang efforts, and the prevalence of gang violence, it is critical that the Department of Justice take swift action to improve the coordination of its anti-gang initiatives.

IV. Other Completed OIG Reports Regarding the FBI

In addition to the three reviews described above, the OIG has recently issued several other reports on significant issues concerning FBI operations. In this section of my testimony, I briefly discuss some of those recently completed reviews.

Oversight of the FBI's Sentinel Case Management Project

In November 2009, we issued the fifth in a series of OIG audit reports examining the FBI's ongoing development of its Sentinel case management project, which is intended to upgrade the FBI's information technology tools by providing the FBI a fully electronic case management system and an automated workflow process.

Our audit found that the FBI's development of Sentinel continues to progress. However, our November 2009 report identified several new areas of concern with the overall progress of Sentinel and, in particular, the

implementation of Phase 2 of the project. Phase 2 originally was intended to deliver to the FBI eight electronic forms, implement more efficient work processes, and begin the migration to Sentinel of administrative case data currently in the FBI's Automated Case Support (ACS) system. Our audit found the FBI and the contractor, Lockheed Martin, encountered considerable challenges in deploying the new electronic forms and has deferred deployment of the forms to later stages of the Sentinel project.

Moreover, our report found that while the FBI's estimate of Sentinel's overall cost had not increased from the initial \$451 million, the overall project completion date was extended to September 2010, three months later than the FBI had estimated at the time of our last audit report and nine months later than originally planned.

Given our concerns at the completion of our fifth Sentinel report, we immediately initiated another review of the Sentinel project. This ongoing review has raised additional concerns about the progress of Sentinel, including the timing for its completion. Recently our auditors were briefed by FBI officials regarding the status of Sentinel's Phase 2 and the planning for the final phases of the project. We were informed that while Phase 2 of Sentinel was conditionally accepted by the FBI on December 2, 2009, it has yet to be deployed, and testing of Phase 2 products is ongoing because of performance and usability issues. Additionally, due to delays in deploying Phase 2 of Sentinel, the FBI acknowledges that its schedule for completion will have to be extended again and that the costs for the project as a whole are likely going to increase above Sentinel's budget of \$451 million. The FBI has not received or determined a new estimated completion date.

Our reviews of Sentinel will continue, and we will continue to evaluate and report on the progress of this critical information technology upgrade.

Review of the FBI's Use of Exigent Letters and Other Informal Requests to Obtain Telephone Records

In January 2010, the OIG released a report examining in detail the FBI's improper use of exigent letters and other informal requests to obtain telephone records without legal process. For example, the report identified various informal methods the FBI used to obtain telephone records improperly, such as requests by e-mail, face-to-face requests, on post-it notes, or by telephone. In addition, the report examined the accountability of FBI employees, supervisors, and managers who were responsible for these flawed practices.

We understand that the findings in this report will likely be the subject of a separate hearing by a subcommittee of the House Committee on the Judiciary, and at suggestion of the Committee I do not address our findings

from that review in my testimony today. We look forward to discussing this report at that hearing.

The FBI's Terrorist Watchlist Nomination Practices

In May 2009, we issued an audit report that examined the FBI's practices for making nominations to the consolidated terrorist watchlist. This watchlist is used by frontline government screening personnel to determine how to respond when a known or suspected terrorist is encountered while seeking entry into the United States or is encountered by law enforcement officers inside the United States. The failure to place appropriate individuals on the watchlist, or the failure to place them on the watchlist in a timely manner, increases the risk that they are able to enter and move freely within the United States.

The OIG audit found that the FBI had failed to nominate many known or suspected terrorists to the consolidated terrorist watchlist in accordance with FBI policy, did not nominate many others in a timely manner, and did not update or remove terrorist watchlist records as required. The OIG made 16 recommendations to the FBI regarding nominations to, modifications of, and removal of identities from the consolidated terrorist watchlist, and the FBI agreed to implement these recommendations.

FBI Discipline

In May 2009, we issued a report examining whether the FBI's disciplinary system had imposed consistent, reasonable, and timely discipline on its employees who committed misconduct. We concluded the FBI's investigations of misconduct generally were thorough and were conducted in a consistent manner, and the timeliness of these investigations has improved.

However, we found that potential misconduct by FBI employees was not consistently reported, as required by FBI policy, to FBI headquarters or to the OIG. In addition, while FBI disciplinary decisions generally were reasonable, some of the decisions about which penalties to impose contained inconsistencies that could not be explained by the record in the case files. We also determined that the FBI did not ensure that employees who were suspended for misconduct actually served their suspensions. Moreover, with regard to allegations of a double standard of discipline in the FBI, we found that, although the number of substantiated cases on FBI Senior Executive Service (SES) employees that were appealed during our entire review period was small, the evidence indicated that SES employees were treated more leniently on appeal than non-SES employees, and that this more lenient treatment was not justified.

Our report made 16 recommendations to help the FBI improve its disciplinary system, including ensuring that FBI employees report misconduct to FBI headquarters or the OIG, requiring the FBI to better document in the case files the information it considers when making disciplinary decisions, documenting the consideration of precedent in disciplinary decisions, ensuring that FBI policies are applied consistently to all levels of employees at all stages of the disciplinary process, and reviewing the files of suspended employees to ensure that they served their suspensions. The FBI concurred with most of our recommendations and has stated that it has begun taking steps to address them.

The FBI's Weapons of Mass Destruction Coordinator Program

In September 2009, we issued a report evaluating the FBI's efforts to prepare for weapons of mass destruction (WMD) threats, including how the FBI ensures that WMD Coordinators in FBI field divisions identify WMD threats. The FBI has established a WMD Coordinator position in each of its field divisions to serve as the point-person on WMD matters. We concluded that the WMD Coordinators need to be more involved in the process used by each field office to identify and forecast WMD threats and vulnerabilities.

Our report made 13 recommendations for the FBI to enhance the responsibilities and training of its WMD Coordinators and to help improve field division WMD-related efforts. For example, we recommended that the FBI enhance day-to-day coordination between WMD Coordinators and field office Intelligence Analysts. Additionally, we recommended that the FBI develop qualification standards and training plans for field division personnel charged with preventing and detecting WMD threats. The FBI agreed with our recommendations and stated that it would implement them.

V. Ongoing OIG Reviews in the FBI

The OIG is conducting ongoing reviews on a variety of important FBI programs. The following are some examples of ongoing OIG reviews.

Follow-up Audit of the FBI's Casework and Resource Allocations.

This review is the fourth in a series of OIG audits examining the FBI's management of its personnel resources and the FBI's reprioritization of these resources. In particular, the audit will describe how the FBI has allocated and utilized its personnel resources between FYs 2005 and 2009 and will also examine whether the FBI has improved its processes for assessing its investigative human resource needs and assigning resources to its national priority areas. Further, our audit examines trends in the types of cases the FBI is working.

Review of the FBI's Investigation of Certain Domestic Advocacy Groups. The OIG is examining allegations that the FBI targeted certain domestic advocacy groups for scrutiny based upon their exercise of rights guaranteed under the First Amendment. This review will include an examination of allegations regarding the FBI's investigation of these groups, and the predication for any such investigations.

Review of the FBI's Forensic DNA Sample Backlog. The OIG has initiated an audit of the FBI's forensic DNA sample backlog. Our audit is designed to determine the length of time the FBI takes to process and forward forensic DNA sample test results to FBI field offices and law enforcement partners, to identify the number of forensic DNA samples that remain unprocessed by the FBI Laboratory, and to evaluate the FBI's efforts to reduce any backlog of forensic DNA submission samples.

VI. Conclusion

In conclusion, the FBI faces challenges in addressing its wide-ranging responsibilities. Our reviews have examined many FBI programs and provided specific recommendations for improvement. We appreciate the Subcommittee's focus on these issues, and we will continue to provide oversight in these important areas.

That concludes my statement and I would be pleased to answer any questions.