

**Responses of the Federal Bureau of Investigation  
to Questions for the Record  
Arising from the June 19, 2013, Hearing Before the  
Senate Committee on the Judiciary  
Regarding “Oversight of the FBI”**

**Questions Posed by Senator Whitehouse**

**1. In response to a question from Senator Durbin, you described the upgrades made to FBI computer systems during your tenure. You also noted that the federal contracting process, in which five-year contracts are common, made it a challenge to adapt to rapidly emerging and changing technologies. In light of those comments please specify the contracting provisions that make it a challenge to adapt rapidly to emerging and changing technologies.**

**Response:**

The FBI receives annual and sometimes incremental funding, which can require that we stage major IT procurement projects in multi-segmented phases. This complicates our ability to update existing IT capabilities or adopt new capabilities, because major IT acquisitions are often multi-year projects. Funding major, multi-year capital investments on a year-to-year basis with a budget that depends on receiving additional funding over multiple fiscal years leads to the possibility that certain operations, divisions, or activities will outpace others in terms of technological upgrades. It is sometimes difficult to develop an efficient plan for updating IT capabilities when this must be done in multiple phases and in competition with other FBI funding priorities. As is the case with all federal agencies and departments, IT contracts are further complicated when we operate during part of the year under a Continuing Resolution that restricts funding availability.

**2. At a hearing of the Subcommittee on Crime and Terrorism on April 9, 2013 on “Current Issues in Campaign Finance Law Enforcement,” the Subcommittee examined a pattern of what appear to be material false statements made to the government by 501(c)(4) organizations and organizations seeking 501(c)(4) status. These apparent false statements, which pertain to how much political activity the organizations have engaged in or plan to engage in, were made on IRS forms 1024 (application for exempt status), and 990 (return of exempt organization). On first impression, these false statements would seem to violate both 18 U.S.C. § 1001 (false statements) and 2 U.S.C. § 7206 (fraud and false statements made under penalty of perjury).**

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*These responses are current as of 8/26/13*

**Both the Department of Justice and the IRS have suggested that the Justice Department, and presumably the FBI, would not take an active role in investigating these apparent false statements until specific cases were referred by IRS to the Justice Department. This is in spite of the fact that 18 U.S.C. § 1001 false statement cases are, as Acting Assistant Attorney General for the Criminal Division Mythili Raman described them, “bread-and-butter” cases that investigators and prosecutors handle on a regular basis. Meanwhile, as a number of witnesses and experts have stated, the IRS is ill-equipped to investigate these cases. Neither the Justice Department nor the IRS was able to provide examples of any referrals having been made.**

**a. Is it the case that the FBI does not investigate apparent criminal false statements on IRS forms absent a referral from the IRS, even where the apparent misconduct is already in the public record (such as through news accounts)? If so, what is the basis for this policy?**

**Response:**

The FBI does not routinely initiate these types of investigations based upon news reports. Instead, we receive referrals from the agencies with regulatory or enforcement authorities, which are in the best position to assess the facts and provide them to the FBI for investigative follow up. In the alternative, if, through the course of an existing investigation or assessment, the FBI receives information indicating a possible criminal violation, we would investigate that matter pursuant to our ordinary investigative authorities and procedures.

**b. Are you aware of any referrals from the IRS to the Justice Department or the FBI based on false statements pertaining to political activity?**

**Response:**

The FBI is not aware of any referrals from the IRS to the Department of Justice (DOJ) or the FBI regarding false statements pertaining to political activity.

**c. Does the FBI have the expertise and resources to investigate cases relating to false statements on IRS forms? If not, what impediments to effective investigation exist?**

**d. In the ongoing investigation of improper targeting of 501(c) tax-exempt groups by the IRS, will the FBI also investigate potential underlying criminal conduct by exempt groups, such as material false statements, where evidence of such misconduct appears?**

**Response to subparts c and d:**

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While the IRS does have the authority to investigate this potential criminal conduct, the FBI would be able to assist on a case-by-case basis if the IRS were to request FBI assistance.

### Questions Posed by Senator Grassley

**3. At the hearing, I asked you if you could put to rest the conspiracy theories out there that the FBI or an FBI informant was out in Peck Canyon before Border Patrol Agent Brian Terry was shot. You stated that you didn't believe there was any truth in those theories, but you wanted to go back and make certain that the FBI doesn't have anything that would be supportive of those theories. In going back, did you uncover anything that would be supportive of those theories? Please describe the process you utilized to make this determination.**

#### Response:

In October 2011, senior FBI officials briefed your Congressional staff regarding FBI events related to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) operation called Fast and Furious. In that briefing, your staff was explicitly advised that neither the FBI nor any FBI informant was at the scene of Brian Terry's murder and that there was no truth to this conspiracy theory. Nothing has changed in this regard since that briefing.

**4. At the hearing, I told you I would be submitting a detailed list of questions about a concern the family of Border Patrol Agent Brian Terry has that there was an attempt to cover up the connection between Operation Fast and Furious and the guns found at the scene of his shooting. According to the family, the indications of an attempt to cover up haven't been fully investigated.**

Documents produced by the Justice Department in response to the Congressional investigation into Operation Fast and Furious show that then-U.S. Attorney Dennis Burke, along with then-First Assistant U.S. Attorney (AUSA) Ann Scheel, received an e-mail at 5:19 pm on December 15, 2010, from Shelley Clemens. Ms. Clemens was the head of the Tucson office of the U.S. Attorney's Office for the District of the Arizona (USAAZ). Ms. Clemens had attended the Department of Homeland Security's press conference on Agent Terry's death. She apparently spoke with Nathan Gray, the Special Agent in Charge (SAC) of the Federal Bureau of Investigation (FBI) Phoenix Field Office. Ms. Clemens' e-mail to Mr. Burke and Ms. Scheel read: "Nate Grey [sic] was here and advised that the 2 guns are tied to an on-going Phoenix ATF inv. You will probably get a call from Bill

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Newell.”<sup>1</sup> Two hours later, Burke responded: “Thanks. I just talked to Bill Newell about it. The guns tie back to Emory’s Fast and Furious case.”<sup>2</sup>

When I asked Secretary Napolitano about visiting Arizona shortly after Agent Terry’s shooting, she testified:

When Agent Terry was killed, it was December 14th, I went to Arizona a few days thereafter to meet with the FBI agents and the assistant U.S. attorneys who were actually going to look for the shooters. At that time, nobody had done the forensics on the guns and "Fast and Furious" was not mentioned. But I wanted to be sure that those responsible for his death were brought to justice, and that every DOJ resource was being brought to bear on that topic. So I did have conversations in – it would have December of '09 – about the murder of Agent Terry. But at that point in time, there – nobody knew about "Fast and Furious.”<sup>3</sup>

The Department of Homeland Security Inspector General report on Operation Fast and Furious also stated that no one informed Secretary Napolitano of the connection during her visit to Arizona.<sup>4</sup> The Department of Justice Inspector General report failed to address the issue.<sup>5</sup>

It is difficult to understand why the FBI, which informed the U.S. Attorney’s Office of the connection, would fail to inform Secretary Napolitano of the connection when she visited Arizona in the days after Brian Terry’s murder.

a. When and how did FBI Special Agent in Charge (SAC) Nathan Gray learn of the connection between an ATF investigation and the guns found at the murder scene of Brian Terry?

b. When and how did the FBI Assistant Special Agent in Charge (ASAC) in Arizona learn of the connection between an ATF investigation and the guns found at the murder scene of Brian Terry?

c. When and how did the FBI personnel investigating the Terry murder learn of the connection between an ATF investigation and the guns found at the murder scene of Brian Terry?

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<sup>1</sup> E-mail from Shelley Clemens to Dennis Burke and Ann Scheel (Dec. 15, 2010, 5:19 pm) [HOCR DOJ 005917].

<sup>2</sup> E-mail from Dennis Burke to Shelley Clemens and Ann Scheel (Dec. 15, 2010, 7:21 pm) [HOCR DOJ 005917].

<sup>3</sup> Testimony of Janet Napolitano before the Senate Committee on the Judiciary, “Oversight of the Department of Homeland Security,” October 26, 2011.

<sup>4</sup> U.S. Department of Homeland Security, Office of the Inspector General, “DHS Involvement in OCDEF Operation Fast and Furious” (Mar. 2013), at 10.

<sup>5</sup> U.S. Department of Justice, Office of the Inspector General, “A Review of ATF’s Operation Fast and Furious and Related Matters” (Sep. 2012), at 289.

**d. Which FBI personnel attended and conducted briefings for Secretary Napolitano and U.S. Customs and Border Protection (CBP) Commissioner Alan Bersin in the days after the Brian Terry murder?**

**e. As part of such briefings, did anyone from the FBI brief Commissioner Bersin on the connection of the weapons found at the scene to Fast and Furious? If not, why not?**

**f. Why didn't FBI officials inform Secretary Napolitano that the guns at the scene came from Fast and Furious?**

**g. Given that the possible murder weapons were linked to an ATF operation, did the FBI give the personnel working the Brian Terry murder any guidance or instruction regarding this connection? If so, please describe the guidance or instruction in detail.**

**h. Did Dennis Burke give the FBI any general guidance or instructions the Terry murder investigation and its connection to ATF's Operation Fast and Furious? If so, please describe the guidance or instruction in detail.**

**i. Did Dennis Burke advise, request, or instruct the FBI not to talk about the connection between the Terry murder investigation and ATF's Operation Fast and Furious with Congress or any federal, state, or local officials? If so, please describe the communication in detail.**

**j. At any time was anyone in the FBI instructed to remain silent about the connection of the weapons to Operation Fast and Furious or to refrain from sharing that information with Congress or any federal, state, or local officials? If so, by whom and please provide a detailed description of the communication.**

**Response to subparts a through j:**

When the FBI was assigned to investigate the murder of U.S. Customs and Border Protection (CBP) Agent Terry, the early focus of this investigation was on the identity of the shooter(s) and not on the origin of the weapons used. As has been investigated by DOJ's Office of the Inspector General (OIG) and explained in the September 2012 OIG report (re-issued in November 2012), the FBI was not responsible for determining whether errors in ATF's investigation led to the presence of Fast and Furious weapons at the murder scene. The OIG investigation does not indicate, and we are not aware of any information supporting, any knowledge by the FBI of a link between Agent Terry's murder and ATF's Operation Fast and Furious before this linkage was widely reported.

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**5. In recent responses to questions I asked Attorney General Holder following his last oversight hearing, the Department of Justice advised this Committee that the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, and Firearms have acquired Unmanned Aircraft Systems, commonly known as drones.**

**The Department indicated that these agencies were drawing up plans and procedures for use of drones as well. The responses did not indicate whether the FBI had acquired any drones or whether there were future plans for drone technology use by the FBI. At the hearing, I asked you about the FBI's use of drones and you replied that the FBI currently uses drones in limited circumstances. I would like more information on the use of drones by the FBI and the privacy protections placed on their use.**

- a. When did the FBI begin using drones?**
- b. When did the FBI first use a drone for a domestic purpose?**
- c. How many times has the FBI deployed drones on U.S. soil? Provide dates and locations where drones were utilized.**
- d. Does the FBI have an agreement with any other government agency such as the Department of Defense or Department of Homeland Security to receive the assistance of Drones?**
- e. Does the FBI have agreements in place with the Department of Defense or Department of Homeland Security, or any other agency, to share drone airframes and/or information obtained based upon drone use?**
- f. Has the FBI developed a set of policies, procedures or operational limits on use of drones? If so, who is evaluating the privacy impact on American citizens? If not, why have drones been used before such a policy was in place?**
- g. Has the FBI sought certification and/or prior approval for use of drones on U.S. soil with the FAA? If so, when?**
- h. How many drones does the FBI currently possess? Please provide make and model information as well as the costs for these systems.**
- i. What are the approved uses of drones by FBI agents?**
- j. Who must sign off on the use of drones for surveillance on U.S. soil? What about instances where drones are used abroad?**

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**k. Does the FBI inform the Judicial Branch prior to deployment of drones? If not, why not?**

**l. Does the FBI obtain search warrants or other prior judicial approval before deploying drones on U.S. soil?**

**m. What limitations are placed on the use of drones?**

**n. Are any of the drones utilized by the FBI armed or capable of being armed?**

**o. Are any of the drones utilized by the FBI carrying, or capable of carrying, non-lethal weapons?**

**p. Has the FBI coordinated drone use and tactics with the DEA and ATF? If not, why not?**

**q. Who operates the FBI's drones? Is it a Special Agent trained in search and seizure law, FBI pilot, or another employee of the FBI?**

**r. Who at the Department or FBI authorized the use of drones by the FBI?**

**Response to subparts a through r:**

As we briefed Senate Judiciary Committee staff on July 12, 2013, the FBI uses Unmanned Aircraft Systems (UAS) in limited circumstances when there is a specific, operational need. UAS have been used for surveillance to support missions related to kidnappings, search and rescue operations, drug interdictions, and fugitive investigations. The FBI has conducted surveillance using UAS in eight criminal cases and two national security cases. For example, in 2013 in Alabama, the FBI used UAS surveillance to support the successful rescue of the 5-year-old child who was being held hostage in an underground bunker by Jimmy Lee Dykes. None of the UAS used by the FBI are armed with either lethal or non-lethal weapons, and the FBI has no plans to use weapons with UAS. The FBI does not use UAS to conduct "bulk" surveillance or to conduct general surveillance not related to a specific investigation or assessment.

The FBI only conducts UAS surveillance consistent with Department and FBI rules and regulations for conducting aerial surveillance in our investigations. Specifically, the FBI's use of UAS for surveillance is governed by: the Fourth Amendment of the United States Constitution and Federal laws and policies including the Privacy Act; Federal Aviation Administration (FAA) rules and regulations; the Attorney General Guidelines for Domestic FBI Operations; the FBI's Domestic Investigations and Operations Guide (DIOG) and the FBI's 2011 Bureau Aviation Regulations Manual (BAR), which has

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specific policies for the use of UAS for aerial surveillance. For example, the FBI must obtain a Certificate of Authorization (COA) from the FAA prior to using UAS for surveillance, and must comply with the FAA's guidelines on the use of UAS in the national airspace (this includes significant limits on the area where and altitude at which UAS can be operated). See FAA Interim Operational Approval Guidance, UAS Policy 05-01, "Unmanned Aircraft Systems: Operations in the U.S. National Airspace System" (2008).

Prior to FBI deploying UAS, every request to use UAS for surveillance must also be approved by FBI management at FBI Headquarters and in the relevant FBI Field Office. In addition, requests to use UAS for surveillance are reviewed by FBI legal counsel where there is a belief that an individual may have a reasonable expectation of privacy under the Fourth Amendment. This review is designed to ensure that the proposed use of UAS is consistent with the Fourth Amendment, and that the required privacy and civil liberties analysis is conducted prior to deployment of the UAS. The FBI will not use UAS to acquire information in circumstances in which individuals have a reasonable expectation of privacy except, as is true in non-UAS circumstances, where a warrant has been obtained or an exception to the warrant requirement of the Fourth Amendment exists. To date, there has been no need for the FBI to seek a search warrant or judicial order in any of the few cases where UAS have been used.

**6. On Monday, April 15, 2013, two bomb blasts rocked the Boston Marathon finish line and initiated a five day investigation and manhunt coordinated by the FBI. Late on Thursday night, the investigation shifted focus to two brothers, Tamerlan and Dzhokhar Tsarnaev. Tamerlan Tsarnaev died in Watertown, MA after a chase with Massachusetts police officers and Dzhokhar was apprehended in the same town the following day.**

**Following his death, it was revealed that Tamerlan Tsarnaev had been questioned by the FBI in early 2011 at the request of Russia but the case was not pursued further. This, despite the fact that Tsarnaev traveled to Sheremetyevo, Russia, in January 2012—less than a year after the tip from Russian security services that he was preparing to travel to Russia to join underground group. It was later revealed that in the course of his trip to Russia, during routine surveillance of an individual known to be involved in the militant Islamic underground movement, police witnessed Tamerlan meet the latter at a Salafi mosque in Makhachkala. The travel alone should have raised flags for the FBI, but it is still unclear what was done with the information when the government was notified that he was traveling to Russia.**

**One of the primary purposes of Joint Terrorism Task Forces is to facilitate communication among federal and state law enforcement. At a hearing with Secretary Janet Napolitano in April of this year, she claimed that when the older of the brothers in the Boston bombing left the country to travel to Russia, "the system pinged."**

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**In your hearing last week, you stated, “[the] indication that he was on his way back to Russia did not get acted upon,” but that there has been a correction to your procedures.**

**a. When the system “pinged” upon the older brother’s exit from this country, did DHS notify the FBI?**

**b. If not, why not? What procedures have been corrected to ensure this does not occur again?**

**c. If so, when and how did DHS notify FBI and what did the FBI do with that information?**

**Response to subparts a through c:**

At the request of the FBI case agent assessing information about Tamerlan Tsarnaev (hereafter Tamerlan), the CBP Task Force Officer assigned to the Boston Joint Terrorism Task Force (JTTF) created a record in the Department of Homeland Security (DHS) TECS System regarding Tamerlan. The CBP Task Force Officer received notification of Tamerlan’s outbound travel in January 2012, approximately seven months after the JTTF’s Guardian assessment of Tamerlan was closed. No further investigative steps were taken by the JTTF in response to this notification. While there is no record indicating that the CBP Task Force Officer notified the FBI case agent who handled the Guardian assessment of Tamerlan, such notifications were often made informally among JTTF members. Since the Boston Marathon bombing, procedures have been revised so that, if this situation were to occur now, the CBP Task Force Officer would formally notify the FBI case agent of Tamerlan’s travel to or from the United States.

**7. According to the New York Times, of the 22 most alarming plans for attacks since 9/11 on American soil, 14 involved FBI sting operations using undercover agents and informers who pose as terrorists.**

**a. You said in a House hearing last week that the FBI agents initially investigating the older brother prior to the Boston bombing used the tools available to him at the time. Did the FBI attempt to use the tactic of ‘recruitment’ or a sting operation with him? If not, why not?**

**Response:**

The FBI’s Domestic Investigations and Operations Guide (DIOG) delineates the criteria required for opening the various types of FBI inquiries. Depending on the amount and

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type of predication established, different techniques and different levels of intrusiveness are authorized.

In the case of Tamerlan, the information available to the FBI in 2011 supported the opening of only an assessment, and not a predicated investigation. An assessment requires no particular factual predication, but does require an authorized purpose and clearly defined objective. The use of undercover techniques is authorized only for predicated investigations. Accordingly, the FBI did not use an undercover technique during the assessment of Tamerlan. The FBI did not attempt to "recruit" Tamerlan because the information available to the FBI at the time did not indicate that he would be able to identify other individuals or groups who may pose a threat to national security.

**b. Other than his interview by agents following the warning from Russia, has the FBI had any other contact with the either of the brothers?**

**Response:**

The FBI had no contact with the Tsarnaev brothers between the closing of the Guardian assessment and the events following the Boston Marathon bombing.

**8. It is my understanding that the FBI did not investigate the triple homicide involving one of the bombers friends until learning of a possible connection after the Marathon Bombings. The Massachusetts State Police in Middlesex County were the lead investigative agency in the murder case.**

**a. Did Massachusetts State Police Detectives in Middlesex County have the ability to query FBI databases and discover information about the Russia's warning about the older brother? IF NOT, why not?**

**b. Information about the older brother's radicalization might have placed his potential connection to the triple murder in a totally different light. Why didn't the FBI share the information it received from Russia with local authorities through the Joint Terrorism Task Force process?**

**Response to subparts a and b:**

The Massachusetts State Police, which continues to be the lead investigative agency for the triple homicide in Waltham, Massachusetts, is a member of the local JTTF. All state and local task force officers on the JTTF have access to the FBI's databases, which contain the Guardian assessment of Tamerlan.

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**9. Following the shootout in which a number of rounds were reported to have been fired by the brothers at police officers and the arrest of the younger brother the following day, initial news reports indicated that as many as three guns were recovered in the course of the investigation and manhunt. Reports were later changed to indicate that only one gun was recovered.**

**a. In an effort to clarify the record, how many firearms were recovered that were linked to the investigation?**

**Response:**

The number of guns recovered in the aftermath of the Boston Marathon bombing is a part of the criminal investigation of the bombing. Longstanding DOJ policy generally precludes the FBI from disclosing nonpublic information about ongoing investigations.

**b. Are you aware of the reasons for the discrepancy between the reports?**

**Response:**

The FBI is not in a position to comment on information reported by news agencies unless it was based on an FBI press release or public comment. Such questions are best posed to the news outlets that disseminated the information.

**10. In an oversight hearing thirteen months ago, both Chairman Leahy and I asked you some questions regarding notification of defendants in cases involving faulty FBI crime lab reports. You indicated that you would get back to both of us, and Chairman Leahy and I followed up with a letter on May 21, 2012. However, we did not get a response until December 2012. It did not answer our specific questions about the 1996 review, and no one since then has been willing to provide Chairman Leahy's and my staff with a briefing on that review.**

**a. How many problem cases were identified in the 1996 review?**

**b. In how many cases was the defendant notified?**

**c. Who in FBI or the Justice Department has control of the data produced by the 1996 task force?**

**Response to subparts a through c:**

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DOJ, which is responsible for this review, provided a briefing for Committee Staff on September 27, 2013.<sup>6</sup>

**11. Current law punishes a person who makes an illegal passport or who provides materials for the making of passport. Current law also makes it illegal to use illegal documents. The Immigration Bill S.744 weakens current law by requiring only those who make and distribute illegal passports 3 or more times to be charged with a crime, only those who collect materials that are used for 10 or more passports will be charged with a crime, and the focus of the bill is on the makers of illegal passports, and less so on persons who use illegal documents.**

**a. Will these changes to current law have a negative impact on the counterterrorism and counterintelligence efforts of the FBI?**

**b. Do you agree that this weakening of current law creates a loophole that could allow terrorist groups, such as Al Qaeda or Hezbollah, or foreign spies to more easily operate within the United States?**

**Response to subparts a and b:**

We are aware that S. 744 passed the Senate on June 27, 2013. The FBI typically provides its views of pending legislation to DOJ pursuant to DOJ's role in assisting in the development of the Administration's position, and the Administration has already publicly stated its views of S.744.

**12. I have repeatedly asked you follow-up questions regarding the current status of two FBI Whistleblower cases working their way through the system. Agent Jane Turner, who initially filed her complaint approximately 9 years ago and has yet to receive a final decision and Robert Kobus who has been waiting for approximately 4 years.**

**a. Why has the FBI appealed and fought Special Agent Jane Turner's case for nearly a decade and what action was taken against those persons who participated in the retaliation against Ms. Turner?**

**Response:**

Both sides filed appeals in this case, but the matter has now been fully resolved. DOJ's Office of Attorney Recruitment and Management (OARM) had initially ruled in favor of Ms. Turner in May 2010. Among other things, the FBI appealed OARM's conclusion that Ms. Turner had retired involuntarily and was therefore entitled to back pay. The

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<sup>6</sup> Although these responses are, as a whole, current as of 8/26/13, we have updated this sole response to reflect this 9/27/13 activity.

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matter was remanded to OARM for reconsideration under the correct legal standard. On remand, OARM agreed with the FBI that Ms. Turner had retired voluntarily and was not entitled to back pay. Ms. Turner appealed this decision, which the Deputy Attorney General affirmed. The Deputy Attorney General issued a Final Corrective Action Order (FCAO) on January 12, 2013. The FCAO required the removal of specified items from Ms. Turner's personnel file and the payment of attorneys' fees. The FBI has complied with the FCAO. The Office of the Deputy Attorney General formally closed the case on July 1, 2013. The matter resulted in no disciplinary action because pertinent FBI employees had retired by the time of the final decision.

**b. What is the current status of Robert Kobus' case, and if there has been a ruling by the Office of Attorney Recruitment and Management, why has my office not been provided a copy?**

**Response:**

DOJ's OARM issued a decision on the substantive merits of Mr. Kobus' reprisal claims on February 13, 2013. Within days of OARM's decision, the FBI paid to Mr. Kobus the back pay ordered by OARM. At the time of OARM's decision, Mr. Kobus was already in a supervisory position, as required by the OARM decision. OARM's decision left open for further proceedings a number of other issues, including medical costs, the availability of compensatory damages, and attorneys' fees. OARM directed the submission of additional evidence and legal briefs on these issues, and these issues remain pending before OARM.

**13. A June 6 New York Times article revealed that the FBI had hired actor Michael R. Davis. Mr. Davis was used by the Internal Revenue Service in its Mad Men parody training video, which cost taxpayers tens of thousands of dollars.**

**a. Has the FBI created any training videos similar to those at the IRS which have received such public attention? If so, how many, and what was the cost of each video?**

**b. What was Mr. Davis paid to do for the FBI?**

**c. How does this square with the FBI's statements to Congress in the past that it is underfunded?**

**Response to subparts a through c:**

The FBI's Training Division, which develops video and other training programs both for Training Division use and for the use of the FBI's other divisions, is the most likely FBI entity to employ actors in training programs. Although historically we have not centrally

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tracked all of the FBI's training activities, neither the Training Division nor its video production contractor, Rocket Media Group, has ever hired Michael R. Davis for any FBI project.

According to the New York Times article referenced in the question, the "Mad Men" parody was a 4.5-minute video produced by the IRS that "reaches deep for art-world metaphors to describe how I.R.S. employees can assist confused taxpayers." The FBI has not produced training videos "similar" to this description. We have, however, produced two substantive training videos that use humor to teach serious topics.

The first, entitled, "Procurement Integrity Awareness for Executives and Managers," was created in 2008 and uses a combination of video and computer training to provide managerial personnel who may become involved in the procurement process with substantive instruction on a variety of related topics. The video portion of the training, which is 36 minutes in length, is centered on a parody of the "Twilight Zone" and is called "The Ethics Zone." This video is available online to all FBI personnel but is mandatory each year for FBI managerial personnel. The production begins with an introduction by former DOJ Inspector General Glenn Fine and takes about an hour to complete. The video portion cost approximately \$35,000 to produce.

The second production, called "The Squad," was completed in 2010, consists entirely of video, and is over one hour in length. It, too, takes a humorous approach to a serious subject: ethics and the standards of conduct. Pursuant to U.S. Office of Government Ethics (OGE) regulations, new employees are to receive ethics materials and one hour of duty time to review them; public filers are to receive one hour of verbal training annually that includes the Standards of Conduct; and "other employees," including confidential disclosure filers, are to receive one hour of verbal training every 3 years and in the interim years a sufficient amount of time to review written training. Although the training for public filers and "other employees" is not mandatory for all employees, as a matter of practice the vast majority of FBI employees receive this training because all employees are required to participate in annual "all division" training sessions at which ethics/Standards training is presented. As noted above, some of this training is presented "live" by qualified instructors, but not all of the FBI's 35,000 employees can attend the scheduled sessions and instructors cannot be sent to all locations around the nation and the world where FBI employees are stationed. To supplement the live training, the FBI employs a variety of training aides, including the FBI-specific video called "The Squad," which is available to all employees online. This training film uses a parody of the popular television show, "The Office" to cover a number of ethics/Standards subjects ranging from the acceptance of gifts from outside sources to the use of Government vehicles. The central character, however, is straight-forward and stresses repeatedly the need to seek advice from ethics counselors whenever an employee is confronted with a questionable situation. This production cost approximately \$126,000, primarily because

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it uses a number of actors for its many vignettes. In 2011 the FBI received an "Excellence in Innovation Award" which was, in part, for this production.

Both of these training productions have been used continuously since they were created and we anticipate using both for many more years to come. As noted above, we do not believe either of these productions is "similar to" the questioned IRS "Mad Men" parody. We would be pleased to share these videos with the Committee.

**14. On October 14, 2011, I sent you a letter with questions about the FBI's attempt to hide its relationship with a Boston mobster, Mark Rossetti from the Massachusetts State Police. After initial denials, the FBI finally admitted that it did hide its relationship with this informant from the State Police. The FBI promised a report including recommended policy changes.**

**It has almost a year since this promise. Mr. Rossetti and over twenty of his associates have pled guilty. I have been informed by sources in Boston that all cases linked to Rossetti are finished. Despite this, there is still no report.**

**a. When will the report be ready?**

**Response:**

The FBI's investigation is ongoing. At this time, there is pending litigation in the Commonwealth of Massachusetts that may impact the FBI's investigation. Once these state-level matters have been adjudicated, the FBI's investigation will be completed.

**b. Will you provide it to the Committee?**

**Response:**

Upon completion of the investigation, the FBI would be pleased to brief the results to the Committee.

**c. Have any changes been made to informant policy as a result of this case?**

**Response:**

This investigation has contributed to ongoing efforts to ensure comprehensive oversight of the FBI's Confidential Human Source (CHS) Program. The FBI's CHS Program is under continual review and has already undergone policy changes that include the following: a change in the authority level required to reopen a CHS who was closed for cause; a change in the authority level and oversight required to operate a CHS who has

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engaged in unauthorized illegal activity; and guidance regarding the detection and recognition of suspicious behavior patterns in a CHS. (These CHS Program policy changes do not necessarily pertain to this investigation.)

**15. On September 27, 2012, you sent a letter to the FBI regarding allegations that an undercover agent in the Philippines was ordered prostitutes on multiple occasions himself and other cooperating individuals. Worse, the Government of the Philippines raided one of brothels the prostitutes were allegedly solicited at and rescued 60 victims of human trafficking, 20 of whom were minors.**

**On April 4, 2013, the FBI provided me with a letter regarding historical information on how the FBI has dealt with prostitution. I was surprised at some of the discipline. For example, one GS-14 supervisory agent obtained inappropriate services at a massage parlor on 10 occasions right here in Washington, D.C. He also committed time and attendance abuse and misused his government vehicle. However, that agent is still an FBI employee. Others here in D.C. also obtained inappropriate services at massage parlors in 2010 and 2012, yet received minor suspensions and are still FBI employees.**

**Why were employees like these not terminated?**

**Response:**

Our April 4, 2013 response demonstrates that the FBI takes strong, decisive disciplinary action against employees who engage in sexual misconduct. Although this disciplinary action includes dismissal in appropriate cases, not every case involving sexual misconduct warrants dismissal. In those cases in which we do not dismiss the employee, we nevertheless impose significant disciplinary sanctions. For example, in the case of the GS-14 supervisory agent you cite above, the employee in question received a 60-day suspension, our strongest sanction short of dismissal. A 60-day suspension represents the loss of one-sixth of an employee's annual salary and also means that the employee will not be considered for promotion for at least three years.

**17. The Justice Department Office of Inspector General (OIG) conducted an investigation between October 2012 and March 2013 in which an FBI Supervisory Intelligence Analyst (SIA) had co-ownership of a joint business venture with his ex-wife, had jointly purchased or guaranteed several commercial and residential rental properties, and that they had defaulted on a \$4.1 million commercial loan guarantee. The SIA failed to disclose some of these assets and the default on his FBI security and financial disclosure form, and he failed to report in a timely manner that he was named a defendant in a lawsuit related to the default. Prosecution was declined in the case and the OIG provided its Report of Investigation (ROI) to the Office of Professional Responsibility (OPR) for appropriate action.**

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**a. Did the SIA have the proper paperwork on file authorizing secondary employment?**

**b. If so, who authorized this secondary employment?**

**Response to subparts a and b:**

The investigation by DOJ's OIG did not disclose whether the Supervisory Intelligence Analyst (SIA) had reported "outside employment" related to the SIA's joint ownership of a business venture.

**c. What was the disciplinary decision issued by the FBI's OPR?**

**Response:**

The FBI's Office of Professional Responsibility (OPR) suspended the SIA for 14 days.

**d. What is this employee's current employment status and assignment?**

**Response:**

The employee is currently a non-supervisory Intelligence Analyst assigned to the Las Vegas Division.

**e. Did this employee have a security clearance? If so, what level and what is the status of that clearance presently?**

**Response:**

The employee had and continues to have a Top Secret security clearance.

**18. The OIG also conducted an investigation between October 2012 and March 2013 in which a FBI Assistant Special Agent in Charge (ASAC) was found to be engaged in a personal relationship with a subordinate. The investigation also revealed that the ASAC willfully ignored a former SAC's instruction to terminate the relationship; that the ASAC and subordinate misused an FBI vehicle and FBI-issued Blackberry devices in furtherance of the relationship; and that the ASAC had given the subordinate gifts and money in violation of FBI policy. The ASAC also failed to disclose the relationship during his FBI security re-investigation. The FBI agent was placed on a 60-day suspension and upon his request, was reassigned to a GS-13 position in the same field office.**

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**a. How did the two FBI employees misuse the FBI vehicle in this relationship?**

**Response:**

The Assistant Special Agent in Charge (ASAC) admitted that he misused the FBI vehicle to drive to the subordinate's home on several occasions. Although the investigative record compiled by DOJ's OIG does not indicate the exact mileage involved in the misuse, it suggests that the misuse was minor. The ASAC and the subordinate admitted to engaging in sexual activity in the vehicle on two occasions, once in 2006 and once in 2009.

**b. Did the FBI provide records for the agents' government issued gas cards to the DOJ OIG?**

**Response:**

The case involved only one agent, the ASAC. The subordinate was not an agent. If DOJ's OIG asked the FBI for the ASAC's credit card information, this information would have been provided. The investigative file referred by DOJ's OIG to the FBI's OPR for adjudication did not contain credit card information.

**c. How did the FBI agents misuse their FBI-issued Blackberry devices?**

**Response:**

The ASAC and non-agent subordinate misused their Blackberry devices by sending sexually explicit text messages to each other.

**d. At what financial cost were the above misuses passed to the taxpayer?**

**Response:**

The Blackberry misuse did not result in financial cost. The financial cost of the Bureau vehicle misuse is unknown but is believed to be relatively minor in view of the limited number of trips and distances involved.

**e. How many FBI agents were found to have misused their FBI-issued Blackberry devices in the same timeframe (October 2012-March 2013)?**

**Response:**

Four.

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**f. Was the female subordinate found to have received any bonuses or financial benefits from the FBI during the timeframe of their relationship?**

**Response:**

No.

**g. In what form was the FBI security re-investigation in which the ASAC failed to disclose his relationship done (verbal or written)? Was there ever discussion between the OIG and FBI about prosecuting the ASAC for an 18 USC 1001 charge?**

**Response:**

FBI security reinvestigations contain both written and oral components. Both DOJ's OIG and the FBI's OPR reviewed the security reinvestigation statements made by the ASAC regarding his relationship with a subordinate. The reinvestigation question was whether the ASAC had engaged in activity that could make him vulnerable to pressure, raise questions about his trustworthiness, or cause embarrassment to the federal government. DOJ's OIG, which investigated the matter, found that the ASAC's negative responses constituted a failure to be frank in an official document. The FBI's OPR, which adjudicates misconduct based on the information developed through investigation, credited the ASAC's statement that he answered truthfully and did not recognize the need to disclose his relationship in this context because he did not feel he was vulnerable, untrustworthy, or a cause for embarrassment. OPR noted that the ASAC was not questioned about a specific incident or act of misconduct; rather, he was responding to a broadly worded questionnaire.

The FBI's OPR is not aware of any conversation between DOJ's OIG and the FBI regarding prosecution of the ASAC for a violation of 18 U.S.C. §1001. The OIG did not present its investigative results regarding the ASAC to a U.S. Attorney for prosecution.

**19. Six months ago, I wrote you regarding the resignation of Director of Central Intelligence (DCI) David Petraeus and the involvement by the U.S. Department of Justice (Department), including the Federal Bureau of Investigation (FBI), in uncovering information that revealed an extramarital affair cited by General Petraeus as a reason for his resignation. My letter requested a briefing similar to the one provided to members of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, and Chairman Leahy of the of the Senate Committee on the Judiciary at that time.**

**On June 6, 2013, I received a letter from the Department of Justice stating, "Inasmuch as this is an ongoing investigation and significant individual privacy interests**

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are implicated, we are unable to provide you with a briefing or provide answers to...your letter.” Aside from the issue that the Chairman of the Judiciary *was* provided a briefing despite the reasons listed above while I was not, it is my understanding that there were two investigative inquiries being conducted regarding the Petraeus matter. One inquiry was criminal while the other pertained to matters of National Security.

It is my understanding that the investigation regarding National Security is still ongoing. However, based upon the declination letter sent to Paula Broadwell in December and the statement of Department spokesman William C. Daniels, it appears that the criminal case is closed. According to Daniels, “After applying relevant case law to the particular facts of this case, the United States Attorney’s Office for the Middle District of Florida has decided not to pursue a federal case regarding the alleged acts of ‘cyber-stalking’ involving Paula Broadwell.” Inasmuch as it appears the criminal case is closed, I resubmit my requests regarding the *criminal* matter once again. Please provide:

- a. A timeline of events from initial contact with FBI personnel through the close of the criminal inquiry.
- b. An explanation of how and why the FBI opened the criminal inquiry.
- c. A detailed list of personnel who signed off on the criminal investigation.
- d. A detailed account of the legal authorities used to obtain each of the electronic communications of those involved including NSLs and Exigent Letters, and the role, if any, of any U.S. Attorneys’ Offices.
- e. An explanation of the timing and circumstances of how you first learned of this criminal inquiry and when the White House was notified of the inquiry.
- f. A description of Department employees’ contacts with Congress prior to the election and whether the Department considers those contacts protected whistleblower disclosures.
- g. An explanation of whether the FBI shared information regarding the criminal investigation with investigators or protective security details from various military criminal investigation organizations (including the CIA, Army Criminal Investigation Command (CID), Air Force Office of Special Investigations (OSI), or Navy Criminal Investigative Service (NCIS)) and when that information was shared.
- h. A description of the status of any related reviews being conducted by the FBI Inspections Division, the Office of Professional Responsibility, the Deputy Attorney General's Office, or the Office of Inspector General, including any related to public reports

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of alleged communications between an FBI agent and any witnesses that involved inappropriate photographs or text.

i. An explanation of whether the extramarital affair was uncovered during the initial background investigation conducted by the FBI prior to General Petraeus' confirmation as DCI.

j. An explanation of any legal analysis conducted by any component of the Department, including the FBI, regarding whether you or the FBI Director were obligated by law to report the investigation of DCI Petraeus to the President or any other government official.

**Response to subparts a through j:**

While DOJ may have declined to prosecute Paula Broadwell for specified offenses, this does not mean the Department has reached this determination as to all activities or persons involved. In fact, the criminal investigation is ongoing and, as the question recognizes, DOJ policy generally precludes the FBI from commenting on the status of ongoing investigations and from disclosing nonpublic information about such investigations.

**20. I understand that enforcing the Controlled Substances Act is not the primary mission of the Federal Bureau of Investigation. However, the FBI does have the authority to investigate drugs and drug trafficking and enforce the Controlled Substances Act.**

**As you may be aware the states of Colorado and Washington recently passed ballot measures that legalize the possession of small amounts of marijuana for recreational use. These ballot measures are in direct conflict with the Controlled Substances Act.**

**a. Do you believe the Controlled Substances Act should be enforced?**

**Response:**

Yes. The FBI continues to investigate violations of laws within our jurisdiction, including violations of Title 21 of the U.S. Code, in accordance with DOJ policies. We also continue to collaborate with our partner agencies, including the Drug Enforcement Administration (DEA) and DHS's component agencies, to enforce the laws regarding which we have concurrent jurisdiction.

**b. Do you support the legalization of marijuana for recreational or any other use?**

**Response:**

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The FBI would be pleased to provide its views of possible legislation on this topic to DOJ pursuant to DOJ's role in assisting in the development of the Administration's position.

**c. What do you believe the impact of marijuana legalization is?**

**Response:**

The FBI is not in a position to assess the impact of state laws that legalize and regulate marijuana production, possession, use, sale, or related activities.

**21. Over the past three years, I have sent numerous letters of inquiry to HUD raising concerns about wasteful spending and possible criminal activity at the PHAs across the country. The FBI has investigated fraud and theft of funds by top housing authority executives, managers and even Board members who have used the funds to pad their own pockets, reward their friends and family, and pay off others to look the other way.**

**These investigations have been vital for identifying employees who are abusing the public trust and halting further abuse of federal dollars. While I do not want to interfere with ongoing criminal investigations, I believe that this information must be available to the general public, not just the media, to bring greater transparency to how taxpayer dollars are being spent. Therefore, I am requesting the following information:**

**a. What agreement(s) is(are) in effect between HUD and the FBI that dictate when the FBI may begin a criminal investigation? Please provide a copy of the agreement(s).**

**b. What criteria are required for the FBI to conduct a criminal investigation at a public housing authority?**

**Response to subparts a and b:**

As the primary investigative agency of the federal government, the FBI has the authority to investigate all violations of federal law that are not exclusively assigned to another federal agency. In addition, though, pursuant to the Inspector General Act of 1978 (as amended), the Housing and Urban Development (HUD) OIG conducts and supervises civil and criminal investigations relating to HUD's programs and operations; promotes economy, efficiency, and effectiveness in the administration of HUD programs and operations; and prevents and detects fraud and abuse in HUD's programs and operations, among other things.

The FBI's investigative activities are governed by the Attorney General's Guidelines for Domestic FBI Operations (AGG-Dom) and the FBI's DIOG. The FBI may initiate

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investigative activities as authorized by those guidelines. For example, as a general matter the FBI may open a preliminary investigation to detect, obtain information about, or prevent or protect against federal crimes when an approving official determines there is adequate predication, and we may open a full investigation if there is an “articulable factual basis” concerning possible criminal activity.

**c. Please provide a list of the housing authorities the FBI has investigated during the previous five years, as well as the disposition for each.**

**d. Please document the housing authorities the FBI declined to investigate and why.**

**Response to subparts c and d:**

The FBI does not track the number of public housing agencies, or individuals serving in those agencies, that have been subjects of FBI investigations. As indicated above, we are authorized to engage in investigative activity only if there is adequate predication, as required by the AGG-Dom and the DIOG.

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