

A Review of the FBI's Investigative Activities Concerning Potential Protesters at the 2004 Democratic and Republican National Political Conventions



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I. INTRODUCTION

In August 2004, newspaper articles reported that the Federal Bureau of Investigation (FBI) had questioned political demonstrators across the United States in advance of threatened violent and disruptive protests at the July 2004 Democratic National Convention and the August 2004 Republican National Convention.¹ The initial articles stated that “dozens of people” had been interviewed in at least six states, including past protesters and their friends and family members, and that anarchist groups reported being “harassed” by federal agents. The articles also stated that grand jury subpoenas had been issued to several individuals calling for them to appear before the grand jury during the Democratic convention, thereby preventing them from attending the convention.² In these articles, civil liberties groups alleged that the FBI was attempting to chill protesters from exercising their First Amendment rights.³ In response, the Department of Justice (Department or DOJ) suggested that the interviews were largely limited to efforts to disrupt a threatened bombing at the Democratic convention, and law enforcement officials placed the number of interviews at no more than 24.⁴

After publication of the initial news articles, three members of Congress asked the Office of the Inspector General (OIG) to initiate an investigation into “possible violations of First Amendment free speech and assembly rights by the Justice Department in connection with their investigations of possible protests at the Democratic and Republican political conventions in Boston and New York and other venues.”⁵ At the time of the request, the OIG was conducting a review of the FBI’s compliance with the Attorney General’s Investigative Guidelines which govern domestic terrorism, criminal intelligence, and general crimes investigations. We determined that there were authorities available to

¹ See Eric Lichtblau, *F.B.I Goes Knocking for Political Troublemakers*, The New York Times, Aug. 16, 2004; Tom Hays, *FBI Tracks Potential GOP Protesters*, Associated Press, Aug. 16, 2004.

² Eric Lichtblau, *F.B.I Goes Knocking for Political Trouble makers*, The New York Times, Aug. 16, 2004; Eric Lichtblau, *Inquiry Into FBI Questioning is Sought*, The New York Times, Aug. 18, 2004; Tom Hays, *FBI Tracks Potential GOP Protesters*, Associated Press, Aug. 16, 2004. A FOIA request led to the release of some FBI documents relating to the pre-convention interviews. See, e.g., Dan Eggen, *Protesters Subject to ‘Pretext Interviews,’* Washington Post, May 18, 2005; Eric Lichtblau, *Large Volume of F.B.I. Files Alarms U.S. Activist Groups*, The New York Times, July 18, 2005.

³ Tom Hays, *FBI Tracks Potential GOP Protesters*, Associated Press, Aug. 16, 2004; Eric Lichtblau, *Inquiry Into FBI Questioning is Sought*, The New York Times, Aug. 18, 2004.

⁴ Eric Lichtblau, *Protesters at Heart of Debate on Security vs. Civil Rights*, The New York Times, Aug. 28, 2004.

⁵ Letter to Inspector General Glenn A. Fine from Congressmen John Conyers, Jr., Robert C. Scott, and Jerrold Nadler, Aug. 17, 2004.

the FBI to prepare for the 2004 political conventions in addition to the Investigative Guidelines, and we therefore decided to examine the allegations regarding the FBI's convention interviews in a separate review.⁶ This report describes the results of our review of the FBI's interviews and investigative activity related to potential protesters in connection with the 2004 Democratic and Republican national political conventions.

A. Scope and Methodology

This review was conducted by attorneys in the OIG's Oversight and Review Division. The OIG team conducted over two dozen interviews of FBI Headquarters and field personnel, including personnel from the Counterterrorism/Counterintelligence Division and the Office of the General Counsel. The OIG team also examined approximately 10,000 pages of documents produced by the FBI in response to our document requests. Among the information analyzed were FBI investigative case files, information retrieved from FBI databases, correspondence, guidance memoranda, and manuals.

Our review concentrated on the FBI's investigative activities involving persons with an alleged nexus to planned protest activity at the 2004 Democratic and Republican national political conventions. In light of the request from members of Congress, our review also paid particular attention to the FBI's justification for interviews that were widely reported in the press prior to the Republican convention. The FBI identified other threats to the conventions that were addressed pursuant to the FBI's international counterterrorism program, such as threats to the physical security of the convention venues. However, because we identified no convention protester-related interviews arising from the exercise of the FBI's counterterrorism authorities, our review did not include an examination of interviews relating to these different threats.

The FBI does not maintain a centralized database of interviews conducted in relation to a particular special event. Rather, interviews are recorded in various investigative or "Special Event" administrative files that are opened pursuant to the Attorney General Guidelines or other authorities governing that particular activity.⁷ Over the period of this review, the OIG asked the FBI to provide information concerning interviews conducted in connection with the two conventions, whether recorded on the FBI's routine

⁶ The OIG released its report on the Investigative Guidelines in September 2005. The report, entitled *The Federal Bureau of Investigation's Compliance with the Attorney General's Investigative Guidelines*, is available at <http://www.usdoj.gov/oig/special/0509/index.htm>.

⁷ We discuss the FBI's role in connection with specially designated Special Events in Part II of this report.

interview form (FD-302) or elsewhere. At the end of our information-gathering process, the FBI's Weapons of Mass Destruction/Domestic Terrorism Operations Section (DTOS) in the Counterterrorism Division confirmed that we had identified all the interviews the FBI conducted to address protester-related domestic terrorism threats to the 2004 political conventions.

Our review did not examine the role of non-federal law enforcement agencies acting independently of the FBI which, according to press accounts, also engaged in investigative activities such as interviews and surveillance at protest events, including the two 2004 political conventions.⁸

B. Findings

Our review did not substantiate the 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. We concluded that the FBI's interviews of potential convention protesters and others that we reviewed were conducted for legitimate law enforcement purposes. We also determined that the Department's assertion that the FBI's pre-convention interviews were largely limited to efforts at disrupting a single threat to bomb media vans at the Democratic Convention was not correct. Instead, we found that the FBI's interviews of potential convention protesters were based upon a variety of threat information reflecting possible bomb threats and other violent criminal activities.

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. We concluded that the FBI addressed each threat in accordance with the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (General Crimes Guidelines). In addition, our review identified seven terrorism enterprise investigations (TEIs) not initiated in connection with the conventions that generated convention-related criminal intelligence. We 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.

With respect to the protester-related interviews, our investigation revealed that the FBI identified 74 persons and the residents of 3 addresses for

⁸ See, e.g., Larry Neumeister, *Rights Group Challenges NYPD Videotaping of Demonstrators*, Associated Press, Nov. 30, 2005; Jim Dwyer, *NYPD Conducted Covert Surveillance at Protest Rallies*, The New York Times, Dec. 22, 2005.

contact who satisfied the following criteria: 1) they were likely convention demonstrators or, through affiliation with one or more organizations or persons, were individuals with access to information about potential protest activity at the conventions; and 2) they were persons whom the FBI reasonably believed had, or might have, knowledge about planned criminal acts at the conventions. In addition, the FBI contacted and interviewed eight individuals in an attempt to locate persons who satisfied the two criteria above. Of the individuals targeted for contact, the FBI was successful in locating 60 persons in 9 states, 41 of whom consented to interviews and provided the FBI with information. All of these contacts occurred in response to the 17 threats of criminal activity described above.

We describe our findings in greater detail in Section IV of this report. Prior to that, we provide background information on the FBI's Special Events mission, including an overview of the DOJ guidelines that govern investigative and counterterrorism activities relating to such events, followed by a description of the FBI's preparations for the Democratic and Republican national conventions. Our analysis of the FBI's investigative activities prior to and during the two conventions is described in Section V of this report.

II. BACKGROUND ON THE FBI'S SPECIAL EVENTS MISSION

The FBI has responsibilities with regard to security at "special events" that, due to their importance or high public profile, pose attractive targets for terrorist attack.⁹ Presidential Decision Directive (PDD) 39 establishes the U.S. Policy on Counterterrorism, which assigns to the Department of Justice, as delegated to the FBI, lead agency responsibilities for countering threats or acts of terrorism within the United States.¹⁰ As described in more detail below, the FBI has established a Special Events subprogram largely as a result of PDD 39

⁹ The FBI defines a "Special Event" as "a significant domestic or international event, occurrence, circumstance, contest, activity, or meeting which, by virtue of its profile and/or status, represents an attractive target for terrorist attack." Manual of Investigative Operations and Guidance (MIOG) 300-1(2).

¹⁰ PDD 39 was issued by President Clinton on June 21, 1995, and is classified. See also 28 C.F.R. § 0.85(l) ("The Director of the Federal Bureau of Investigation shall . . . [e]xercise Lead Agency responsibility in investigating all crimes for which it has primary or concurrent jurisdiction and which involve terrorist activities or acts in preparation of terrorist activities within the statutory jurisdiction of the United States. Within the United States, this would include the collection, coordination, analysis, management and dissemination of intelligence and criminal information as appropriate.").

and the Antiterrorism and Effective Death Penalty Act of 1996, 18 U.S.C. § 2332b (f) & (g).¹¹ The FBI's responsibilities for Special Events that are designated as National Special Security Events (NSSEs) warranting stringent federal security measures are set forth in another classified PDD.¹² Both the Democratic and Republican national political conventions in 2004 were designated NSSEs.

In addition, the FBI has criminal jurisdiction involving Special Events based upon numerous federal criminal statutes that address crimes such as those involving riots and civil disorders,¹³ solicitation to commit a crime of violence,¹⁴ and interstate and foreign travel or transportation in aid of racketeering.¹⁵

Below we provide a brief overview of the FBI's classification of, and level of involvement with, Special Events, several of the FBI units with Special Events responsibilities, and authorities governing the FBI's activities at Special Events.

A. Types of Special Events Warranting FBI Participation

The FBI employs a Special Events Readiness Level (SERL) rating system to determine the amount of administrative and operational support it should dedicate to Special Events. Each event is classified on a four-part scale based upon several factors, including whether high-level U.S. and foreign government officials will participate, whether previous terrorist incidents are associated with the event or similar events, the degree of media attention, and the current level of domestic and global terrorist activity.

The FBI's SERL system ratings range from I to IV. The highest SERL designation – SERL I – is reserved for Special Events that require the full

¹¹ This Act, 18 U.S.C. § 2332b(f), provides that “the Attorney General shall have primary investigative responsibility for all Federal crimes of terrorism. . . .” More recently, Homeland Security Presidential Directive 5, issued by President Bush in February 2003, describes the FBI's responsibility to coordinate counterterrorism activities: “Generally acting through the Federal Bureau of Investigation, the Attorney General, in cooperation with other Federal departments and agencies engaged in activities to protect our national security, shall also coordinate the activities of the other members of the law enforcement community to detect, prevent, preempt, and disrupt terrorist attacks against the United States.”

¹² PDD 62, issued by President Clinton in May 1998, addresses the coordination of the federal government's counterterrorism resources at events of national interest.

¹³ 18 U.S.C. § 2101 and 18 U.S.C. § 231.

¹⁴ 18 U.S.C. § 373.

¹⁵ 18 U.S.C. § 1952.

support of the U.S. government, and likely require the repositioning of counterterrorism resources. The Attorney General or his or her designee must certify SERL I designations after receiving the recommendation of the FBI Director. In 2004, the G-8 Summit in Sea Island, Georgia was designated a SERL I event. SERL II events require the limited pre-deployment of U.S. government assets related to counterterrorism preparedness. In 2004, the State Funeral of President Ronald Reagan and the Democratic and Republican national political conventions were designated as SERL II events. Each of these 2004 events also were designated as NSSEs.¹⁶ NSSEs, as with SERL I or II events, require extensive security preparations by the U.S. government. PDD 62, which is classified, addresses these security preparations.

In addition to its SERL rating system, the FBI has created a special case management classification code for counterterrorism activities at Special Events – the 300A classification. The FBI’s MIOG provides that this classification is administrative and that no active criminal investigation should be conducted under it. In the event a criminal act occurs at a Special Event, the MIOG provides that a separate investigative file should be opened under the substantive violation. MIOG 300-1(5)(b). Intelligence and investigative information resulting from leads that do not result in the opening of preliminary inquiries or full investigations may be retained under the 300 classification in accordance with applicable guidelines and regulations.

B. FBI Components with Special Events Responsibilities

Many Headquarters units in several FBI Divisions are involved in the planning and provision of security support to Special Events, including investigative, intelligence, technical, tactical, and logistical assistance. The G-8 Summit in Sea Island, Georgia, for example, required the assistance of more than 900 FBI personnel from approximately 20 different FBI components.¹⁷ Both the Democratic and Republican national political conventions required comparable support in 2004. Although our review focused largely on field-level investigative activity carried out by agents assigned domestic terrorism duties at the two political conventions, we reviewed the work of several FBI Headquarters and field components with missions relevant to the FBI’s interviews of protesters and related investigative activities.

¹⁶ The decision to identify an event as an NSSE is made by the Secretary of Homeland Security after consultation with the Homeland Security Council. The first NSSE after the September 11 terrorist attacks was the 2002 Salt Lake City Winter Olympics.

¹⁷ Examples of the FBI components involved include the Crisis Management Unit, the Hostage Rescue Team, the Hazardous Materials Response Unit, and the Bomb Data Center.

At the field level, the FBI's New York and Boston Divisions assigned responsibilities to one or more Joint Terrorism Task Force Squads (JTTFs) comprised of squads of FBI agents and others, such as non-FBI federal, as well as state and local law enforcement personnel, designated as "Task Force Officers," to investigate domestic terrorism matters related to the conventions. These domestic terrorism squads received assistance from the field-based FBI Chief Division Counsel on legal matters, as well as from their respective Field Intelligence Groups (FIGs), which provided intelligence support.¹⁸ The squads also worked in close cooperation with their state, local, and federal law enforcement partners.¹⁹

At the Headquarters level, the FBI's convention support was overseen primarily by the Domestic Terrorism Operations Section (DTOS) in the Counterterrorism Division, the Directorate of Intelligence (DI), and the Office of the General Counsel (FBI-OGC). Within DTOS, the FBI has a specialized unit devoted exclusively to the management of Special Events – the Special Events Management Unit (SEMU). This Unit oversees planning and various administrative tasks related to Special Events, such as identifying the appropriate SERL rating, coordinating threat assessments, and "provid[ing] appropriate Special Event support to the host field division." MIOG 300-1(3). In preparation for the conventions, SEMU organized Headquarters briefings for agents and managers assigned convention-related duties.

With respect to investigations, the Domestic Terrorism Operations Unit (DTOU) provides programmatic and operational oversight in cases that involve threats of domestic terrorism. In the planning for the 2004 conventions, DTOU was heavily involved in forwarding convention-related threat information obtained from ongoing FBI investigations to the domestic terrorism squads.

Intelligence support for Special Events is also provided by the DI, in conjunction with field division FIGs. The Directorate of Intelligence has identified intelligence requirements for Special Events, but it is not involved in planning investigative activities undertaken to fulfill these requirements.

FBI-OGC provides support to the Chief Division Counsel in the FBI's 56 field divisions and responds to requests for legal advice and guidance from FBI personnel. In preparation for the conventions, FBI-OGC assisted with training and providing legal support to the Boston and New York Divisions.

¹⁸ In each FBI field division, a FIG is responsible for the management, execution, and coordination of intelligence functions, including the dissemination of intelligence.

¹⁹ JTTFs, composed of federal, state, and local law enforcement officers, respond to terrorism leads and conduct terrorism investigations. In addition, JTTFs pool the resources and expertise of multiple agencies to collect and share counterterrorism intelligence.

C. Authorities Governing Criminal Investigative and Counterterrorism Activity Related to the FBI's Special Events Mission

Under applicable authorities, including PDDs 39 and 62 and the Attorney General's Investigative Guidelines, and the Attorney General's Guidelines on FBI National Security Investigations and Foreign Intelligence Collection (NSI Guidelines), the FBI is permitted to collect, retain, and disseminate investigative information and criminal and foreign intelligence relevant to its law enforcement mission at Special Events, which includes the detection and prevention of terrorist acts. The Attorney General's Guidelines on General Crimes, which govern investigations of acts of domestic terrorism and crimes such as riots and civil disorders, state that the FBI must be proactive in executing its counterterrorism responsibilities. See General Crimes Guidelines, Part VI.²⁰ The Guidelines also state that investigations initiated to prevent criminal conduct should "not be based solely on activities protected by the First Amendment or on the lawful exercise of any other rights secured by the Constitution or laws of the United States." General Crimes Guidelines, Part I.

FBI field supervisors told the OIG that the FBI's investigative activity related to convention protesters was conducted under the authority of the General Crimes Guidelines and that the FBI did not rely upon its Special Events authorities (such as the PDDs) to fulfill its investigative responsibilities related to the conventions. The General Crimes Guidelines authorize three levels of investigative activity: the "prompt and extremely limited checking out of initial leads," preliminary inquiries, and full investigations. General Crimes Guidelines, Introduction. In addition, the General Crimes Guidelines authorize certain counterterrorism activities that can be conducted in the absence of other authorized investigative activity. General Crimes Guidelines, Part VI.

The first level of investigative activity permitted under the General Crimes Guidelines, the checking of initial leads, may be undertaken after receipt of information indicating that some follow up regarding the possibility of criminal activity is warranted. Leads may be generated from new information coming to the FBI as well as from the analysis of intelligence already in the FBI's possession. Unlike the Guidelines provisions governing preliminary inquiries, the provisions governing leads checking do not expressly prohibit the use of particular investigative techniques, cautioning only that the activity

²⁰ For background on the Attorney General's General Crimes Guidelines, see the OIG report entitled, *The Federal Bureau of Investigation's Compliance With the Attorney General's Investigative Guidelines*, Sept. 2005, referenced in note 6, supra.

must be “prompt and extremely limited.” See General Crimes Guidelines, Introduction, A. Other provisions in the Guidelines authorize use of certain investigative techniques without authorization from a supervisory agent. These techniques include the examination of FBI indices and files, the review of public records, and interviews of the complainant and potential subject. General Crimes Guidelines, § II.B.6. According to the Guidelines, an important objective of pursuing such leads is to determine whether further investigation (either a preliminary inquiry or a full investigation) should be conducted.

The next level of investigative activity authorized under the General Crimes Guidelines is a preliminary inquiry. A preliminary inquiry is authorized when information or an allegation indicates the possibility of criminal activity, and responsible handling requires further scrutiny beyond checking initial leads. See General Crimes Guidelines, Introduction, A. A preliminary inquiry allows the FBI to determine whether a full investigation should be opened. The range of investigative techniques in a preliminary inquiry is broad, and the Guidelines state that the FBI should not hesitate to use any lawful techniques in a preliminary inquiry, even if “intrusive,” where “the intrusiveness is warranted in light of the seriousness of the possible crime or the strength of the information indicating its existence or future commission.” General Crimes Guidelines, § II.B.4.

The third level of investigative activity is the full investigation. The Guidelines define full investigations either as general crimes investigations or criminal intelligence investigations. General crimes investigations may be opened where facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. General Crimes Guidelines, Introduction, B. The standard for initiating a general crimes investigation is “substantially lower than probable cause,” and may be satisfied when the objective of the investigation is to prevent future criminal activity, in addition to investigating a completed criminal act. General Crimes Guidelines, § II.C.1.

The second type of full investigation is a criminal intelligence investigation. There are two types of criminal intelligence investigations: racketeering enterprise investigations (REIs) and terrorism enterprise investigations (TEIs). A racketeering enterprise, which is not pertinent to this review, involves racketeering activity as defined in the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968. A terrorism enterprise investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of: 1) furthering political or social goals wholly or in part through activities that involve force or violence and a federal crime; 2) engaging in terrorism as defined in 18 U.S.C. § 2331(1) or (5) that involves a federal crime; or 3) committing any offense described in 18 § U.S.C. 2332b(g)(5)(B). General Crimes Guidelines, § III.B.1.a.

Part VI of the General Crimes Guidelines authorizes law enforcement activities that can be carried out in the absence of checking leads, or initiating a preliminary inquiry or full investigation. These authorizations involve tools that are available to obtain information about both terrorism and non-terrorism-related crimes. Subpart A of Part VI authorizes the FBI to engage in two types of “counterterrorism activities”: 1) utilizing information systems, which the FBI may operate or participate in, to identify and locate terrorists and alien supporters of terrorist activity; and 2) visiting public places and events on the same terms and conditions as members of the public “for the purpose of detecting or preventing terrorist activities.” In Subpart B, the FBI is authorized to conduct topical research, use online resources “for the purpose of detecting or preventing terrorism or other criminal activities,” and prepare reports and assessments. Prior to issuance of the revised General Crimes Guidelines in May 2002, the FBI’s authority to engage in these activities generally was interpreted to be limited to the investigation of crimes or the collection of criminal intelligence only when agents had a sufficient evidentiary basis to check leads, conduct a preliminary inquiry, or conduct a full investigation.

III. THE FBI’S PREPERATIONS FOR THE 2004 DEMOCRATIC AND REPUBLICAN NATIONAL POLITICAL CONVENTIONS

The FBI’s preparations for the 2004 political conventions were extensive and began nearly two years in advance of the first convention (the Democratic National Convention in July 2004). Based on its past experience, the FBI anticipated that both conventions would likely attract threats from persons seeking to carry out criminal acts in order to disrupt the proceedings and bring attention to extremist political causes. Many of the agents that we interviewed stated that violence and the destruction of property at the conventions were a significant concern, and that the experience gained from recent violent protests, such as those described in the next paragraph, heightened the need for vigilance in identifying and evaluating threat information.

In addition to the threats posed by international terrorists, the FBI was especially concerned about the threats posed by anarchist groups, some of whose members had committed violent acts at demonstrations prior to the 2004 political conventions. These included the 1999 World Trade Organization ministerial meeting in Seattle, Washington, which resulted in violence leading to several hundred arrests and property destruction exceeding \$3 million; the November 2003 annual Free Trade Area of the Americas meeting in Miami, Florida; and the 2000 national political conventions. Through observation and analysis of these and similar events, the FBI identified tactics employed by violent demonstrators that it believed might be utilized at the 2004 national political conventions. These included the use of bombs, incendiary devices, spray canisters filled with caustic liquids, weapons such as bats and sling-

shots, “anti-horse” tactics (e.g., rolling marbles in front of mounted police officers), and telephonic bomb and fire threats.

To improve its intelligence capabilities regarding threats to the conventions, the FBI undertook various preparations, including convening organizational meetings, conducting training, creating planning documents and materials, evaluating threats, and canvassing its agents and databases for available information. As we discuss below, however, the FBI also issued guidance documents concerning the need to ensure that its investigative and data collection activities did not unlawfully impinge upon civil liberties.

Beginning in late 2003, the FBI’s Domestic Terrorism Operations Section organized meetings to prepare for Special Events upcoming in 2004, which included the G-8 Summit in Sea Island, Georgia, and the Democratic and Republican national political conventions. A domestic terrorism squad supervisor told the OIG that an important objective of one of the early meetings was to ensure consistency in the FBI’s approach to the 2004 Special Events. He said that a consensus was reached that the FBI should examine available information on persons with a history of committing violent acts at any demonstration. The agent stated that once this information was identified, field supervisors would decide whether additional investigative activity, such as interviews, was warranted. The agent stated that the FBI’s operational approach with respect to investigative activity related to the conventions was decentralized, and that field supervisors were responsible for determining what preparations were necessary to ensure that intelligence was collected and investigative activity completed to prevent or minimize the potential for acts of violence during those events.

Early in these preparations, some FBI field offices recognized a need for clear guidance and training on legal restrictions concerning the collection, maintenance, and dissemination of law enforcement information related to Special Events. Both the Boston and New York field offices furnished instruction to their personnel regarding the lawful monitoring of First Amendment-related activity in anticipation of the two conventions. In the Boston field office, for example, the domestic terrorism squad assigned to the Democratic convention requested legal instruction on convention intelligence issues over a year in advance of the convention’s start. The requested training was provided in October 2003 by the Boston Division’s Chief Division Counsel and, as described in a memorandum documenting the training, “included a detailed discussion of First Amendment case law, relevant portions of the Privacy Act of 1974, [and the Attorney General Guidelines].” In January 2004, the FBI’s Boston field office provided additional training on legal issues related to criminal intelligence collection to approximately 200 law enforcement

personnel who would be providing protection at the convention. This training was provided in conjunction with the U.S. Secret Service and the Boston Police Department.²¹

The FBI also issued special bulletins in October and November 2003 relating to the potential for violent or terrorist acts in connection with Special Events held prior to the 2004 conventions. The FBI's first bulletin, Intelligence Bulletin No. 89, *Tactics Used During Protests and Demonstrations*, was issued in October 2003, 10 days before expected marches in Washington, D.C. and San Francisco to protest the Iraq war.²² It recounted some of the violent and disruptive tactics used at past demonstrations and stated that "law enforcement agencies should be alert to . . . possible indicators of protest activity and report any potentially illegal acts to the nearest FBI Joint Terrorism Task Force."

In November 2003, the FBI issued a related Intelligence Bulletin, the day before the commencement of the Free Trade Area of the Americas (FTAA) Annual Meeting in Miami.²³ After recounting the history of past FTAA meetings and referencing Intelligence Bulletin No. 89, the bulletin stated:

The FTAA is expected to attract anywhere from 20,000 to 100,000 demonstrators from across the United States. Many of the protestors are openly planning to disrupt the conference through violence rather than merely conducting organized demonstrations. . . . Law enforcement agencies that develop information regarding possible terrorist threats or threats of violent

²¹ One Special Agent who played a prominent role in requesting and organizing training in anticipation of the Democratic National Convention told the OIG that it was difficult to obtain specific guidance from FBI OGC concerning precisely what information agents could collect, maintain, and disseminate. A May 20, 2003, memorandum from this Special Agent in the Boston field office requesting the training described the FBI's focus on those who might try to disrupt the Democratic convention through criminal acts, and specifically asked for training regarding "the Attorney General Guidelines, the Privacy Act and other applicable legal requirements concerning the collection, retention and dissemination of intelligence."

²² The FBI's Intelligence Bulletins pertaining to NSSEs are distributed to agencies charged with securing the event, members of the intelligence community, and law enforcement agencies in the vicinity of the event venue. A newspaper article stated that the FBI had "collected extensive information on the tactics, training and organization of antiwar demonstrators" and had "advised local law enforcement officials to report any suspicious activity at protests to its counterterrorism squads." *F.B.I. Scrutinizes Antiwar Rallies*, The New York Times, Nov. 23, 2003. The FBI publicly disputed these accounts of the FBI's activities in preparation for these events and released on its web site the text of Intelligence Bulletin No. 89.

²³ FBI Intelligence Bulletin No. 94, *Potential for Criminal Activity at Free Trade Area of the Americas (FTAA) Annual Meeting*, Nov. 12, 2003. The FBI has not publicly released this document.

or destructive civil disturbance directed against the FTAA should forward this information to the nearest Joint Terrorism Task Force.²⁴

FBI-OGC and DTOS issued other guidance documents during the Spring of 2004 relating to the surveillance of protest groups. FBI-OGC's guidance, entitled *Protection of Civil Liberties* dated March 19, 2004, identified the circumstances under which agents may attend and conduct surveillance at public events. While the guidance emphasized that agents may perform such activities provided there was an established investigative purpose as set forth in the Attorney General's Guidelines, it also stated that other authorities, such as those supporting the FBI's Special Events mission, may provide the requisite authorization.²⁵ With respect to the protection of First Amendment rights, the guidance repeated the applicable General Crimes Guidelines prohibition on the monitoring of First Amendment activity for that purpose alone: "Agents may not conduct surveillance of individuals or groups solely for monitoring the exercise of rights protected by the First Amendment." FBI-OGC also provided detailed responses to written questions and hypothetical questions posed by the New York Office of Chief Division Counsel in advance of the Republican convention. These questions addressed issues related to permissible investigative activity in advance of a Special Event and the circumstances in which the FBI lawfully could retain information received in preparation for such an event.

²⁴ Shortly after issuance of these bulletins, the OIG received a request from an FBI agent requesting an investigation of whether the two Intelligence Bulletins violated the First Amendment or otherwise unconstitutionally blurred the distinction between lawful protest activity and illegal terrorist acts. In response, the OIG referred these questions to the Department's Office of Legal Counsel (OLC), whose duties include providing legal opinions to Executive Branch agencies. In an April 2004 opinion, which has been publicly released, OLC stated that the bulletins "did not mandate any systematic, covert, or electronic surveillance" but "simply requested reports from various protests on observed public acts that might be illegal . . ." OLC stated that the bulletins limited reports to potentially illegal acts or threats of violence, and they "were limited to criminal activity that falls outside the First Amendment. . ." OLC concluded that, "Given the limited nature of such public monitoring, any possible 'chilling effect' caused by the bulletins would be quite minimal and substantially outweighed by the public interest in maintaining safety and order during large-scale demonstrations." Memorandum for Glenn A. Fine, Inspector General, from Jack L. Goldsmith, Assistant Attorney General, Office of Legal Counsel, Re: Constitutionality of Certain FBI Intelligence Bulletins.

²⁵ Following the conventions, in September 2004, DTOS issued supplemental guidance concerning the monitoring of protest groups. The guidance stated that Field Division legal counsel must review the predication for initiating any domestic terrorism matter that may involve investigation directed at groups or persons who may be planning "criminal or terrorist activity in relation to their exercise of constitutionally guaranteed freedoms." The guidance further provided that the opening communication must fully explain the predication for initiating the case and document legal counsel's concurrence with its sufficiency.

DTOS issued two policy memoranda regarding the 2004 Special Events. The most detailed of the two, entitled *Guidance to Atlanta, Boston and New York Divisions Concerning Information Collection, Maintenance, and Dissemination for G-8, DNC and RNC Special Events, 2004*, dated April 26, 2004, described the legal authority underlying the FBI's collection and use of information pertaining to Special Events. It also identified limitations on this activity imposed by the Privacy Act (5 U.S.C. § 552(a)), and the Attorney General Guidelines. With respect to the types of information that the FBI can collect in preparation for and during Special Events, the guidance concluded:

[I]nvestigative information and criminal and foreign intelligence that is pertinent to and within the scope of the FBI's planning, development, and implementation of its efforts against potential acts of terrorism at Special Events can properly be collected, maintained and disseminated under the Privacy Act.

The second DTOS policy memorandum provided guidance concerning the proactive collection of intelligence related to Special Events. After summarizing relevant provisions of the Privacy Act, the General Crimes Guidelines, and the NSI Guidelines, the memorandum stated that the intelligence requested should be limited in scope to information pertinent to a Special Event or sufficient to predicate an authorized preliminary inquiry or full investigation. The memorandum also stated that leads requesting such information should contain language requesting "positive intelligence from sources with knowledge of planned activity by individuals, domestic or international groups under open preliminary inquiries or full investigations, as well as intelligence from any source indicative of unlawful activity or other acts of violence." DTOS *Guidance to FBI Field Divisions Concerning Information Request, Collection and Dissemination for Special Events*, dated May 14, 2004.

In addition, both the Boston and New York Divisions created planning documents to guide convention security efforts. The Boston field office created a document identifying 33 intelligence initiatives designed "to enhance the ability of the Boston Division to detect terrorism threats to the 2004 Democratic National Convention." The Special Agent who prepared the Boston document said that it functioned as the Boston office's intelligence operations plan for the Democratic convention. The Special Agent told the OIG that he thought it was important to create the document "so that our actions in the end run were measured and done with an analysis as accurate as we thought it could be." Documents generated by the Boston Division's domestic terrorism squad assigned to the Democratic convention showed that the plan played a significant role in guiding the squad's efforts to collect criminal intelligence before and during the convention, and it assisted the squad in attempting to comply with applicable guidelines and procedures.

Prior to the Democratic National Convention, agents in the Boston field office performed checks of FBI databases of persons who had been arrested for criminal activities at demonstrations that had turned violent, including the 2000 national political conventions.²⁶ From this list, the FBI identified persons with a nexus to Boston, including those who resided in, were arrested in, or were known to be traveling to the city for the Democratic National Convention. The Boston field office considered but rejected proposals to contact and interview individuals on this list who had a history of violence at previous demonstrations. According to a Special Agent on the domestic terrorism squad assigned to the convention, nothing more was done with the list because the FBI's analysis showed that there was no threat of the nature that had been seen at other events, such as the desire of particular individuals who had engaged in violence at other demonstrations to attend the convention. The Supervisory Special Agent (SSA) who rejected the proposal to contact and interview individuals solely on the basis of a history of violence at previous demonstrations told the OIG that he made this decision based on his concern that engaging in such work so close to the date of the convention might have a chilling effect on First Amendment rights. The SSA further stated that the agents on his squad did not undertake investigative activity in advance of the Democratic National Convention unless it pertained to a credible threat of violent or criminal activity.

In addition, the FBI sought information from its existing sources about the upcoming conventions. For example, the Special Agent in Charge (SAC) of the Boston field office approved a memorandum that was distributed to the Boston Division in May 2004, and to all FBI field offices, Legal Attaché Offices, and the Counterterrorism Division in June 2004. The memorandum requested field offices to canvass assets and sources for information pertinent to the Democratic National Convention. The memorandum stated that “the intelligence solicited should not pertain solely to threats but encompass any DNC [Democratic National Convention] related information. This approach is being pursued as the significance of a seemingly innocuous piece of intelligence may not be apparent until it is incorporated into the broader intelligence picture.”

This language is broader than the language used in DTOS's May 14, 2004 guidance, which limited source collection to the three categories of information described above. It also is broader than the language contained in DTOS's solicitation for source information related to the conventions, which

²⁶ The Boston office requested 2000 Republican convention arrestee booking data, photographs, and incident reports from the Philadelphia Police Department of arrestees who reported Massachusetts residency.

was limited to criminal intelligence.²⁷ However, we did not identify problems with the broad request for source reporting resulting from Boston's solicitation. Our review of source information that was documented in the FBI's files indicated that the source information provided to the FBI was legitimate law enforcement information pertinent to the FBI's security mission at the conventions.

We found that the New York field office did not distribute memoranda to the field and others seeking intelligence equivalent to Boston's May 2004 memorandum, opting instead to rely upon the earlier memoranda that had been sent by FBI Headquarters. The SSA who supervised the New York counterterrorism squad assigned to the Republican National Convention told the OIG that the New York field office did not actively collect information about groups that were planning on coming to New York to protest, although the office identified persons in the New York area who had a previous history of criminal activity at any demonstration. FBI agents assigned to the FBI's New York field office conducted searches of FBI databases for eight people who were identified as having committed violence at earlier demonstrations. According to the SSA, no interviews were conducted as a result of this research. The FBI contacted the probation officer for one of the eight individuals, however, to determine whether the person had been abiding by the terms of the probation.

According to the New York SSA, the FBI in New York relied upon local law enforcement to address domestic threats posed by persons who were not the targets of open FBI investigations. This reliance on local law enforcement was apparent with respect to the collection and dissemination of intelligence as well. For example, during the Republican National Convention, the FBI did not deploy its own crisis management software (the ICON system) to manage threat and public safety information, but instead relied upon a comparable service maintained by the New York Police Department which connected law enforcement agencies throughout the state.²⁸

Lastly, in the months leading up to the two conventions, DTOS identified threat information from ongoing investigations that was relevant to security at the conventions. For example, in July 2004 it sent a request to all field offices

²⁷ DTOS sent a memorandum in May 2004 to all field offices requesting the offices to forward intelligence "from sources with knowledge of planned criminal activity by individuals, domestic or international groups under preliminary inquiries or full investigations, as well as intelligence from any source indicative of unlawful activity or other acts of violence regarding" the 2004 NSSEs.

²⁸ By contrast, the FBI's Boston Division deployed computer software that facilitated the collection and dissemination of convention security information. The FBI's New York Field Division was prepared to deploy the ICON system to manage the flow of information in the event of a terrorist attack or large scale crisis.

seeking information concerning the movements of subjects of terrorism investigations known to be traveling to Boston or New York during the period of the conventions. The FBI also issued written threat assessments that evaluated potential threats to the conventions and shared intelligence with other law enforcement agencies.

IV. FBI INVESTIGATIVE ACTIVITY RELATED TO POTENTIAL PROTESTERS AT THE 2004 DEMOCRATIC AND REPUBLICAN NATIONAL CONVENTIONS

In this section, we describe the results of our review of the FBI's investigative activity related to potential protesters at the Democratic and Republican national conventions. Our review determined that in addition to the preparatory actions described above, the FBI carried out various domestic terrorism-related investigative activities in advance of and during the conventions that concerned potential violent convention protesters, including name searches in FBI databases, mail covers, interviews, and physical surveillance. We concluded that in each instance the FBI conducted this activity for legitimate law enforcement purposes pursuant to the General Crimes Guidelines which authorize the checking out of leads and the opening of preliminary inquiries and full investigations. We identified no investigations initiated based upon authorities contained in classified PDDs or other legal sources.²⁹

We found that the FBI's investigative activities designed to address domestic terrorism threats to the conventions focused on 17 distinct protester-related threats, 14 of which resulted in interviews of 1 or more individuals. 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 was also 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 FBI's response to the threat information it obtained prior to and during the conventions varied depending on the specificity and seriousness of

²⁹ We exclude from this universe the FBI's routine tapping of existing sources to identify possible threats. The FBI told the OIG that it did not open any new confidential informants solely in connection with addressing threats to the two conventions or otherwise in connection with convention preparations.

the threat. Six of the threats led the FBI to open either a preliminary inquiry or full investigation, while in three instances the FBI opted to address threats through interviews conducted as part of the limited checking of leads. The remaining eight threats were addressed through investigative activity undertaken in ongoing investigations that were not initiated in connection with the 2004 conventions.

With respect to interviews, we determined that the FBI identified 74 persons and the residents of 3 addresses to contact who satisfied the following criteria: 1) they were likely convention demonstrators or, through affiliation with one or more organizations or persons, were individuals with access to information about potential protest activity at the conventions; and 2) they were persons whom the FBI reasonably believed had or might have knowledge about planned criminal acts at the conventions. The FBI also contacted and interviewed an additional eight individuals in an attempt to locate persons who satisfied the two criteria above. Of the individuals targeted for contact, the FBI was successful in locating 60 persons in 9 states, of whom 41 agreed to be interviewed. The following table presents the total numbers of interviews related to the 17 protester-related threats that the FBI investigated.

**Protester-Related Interviews Associated with the
2004 Democratic and Republican National Conventions**

Threat No.	No. of Persons Identified for Interviews	No. of Persons Contacted	No. of Persons Providing Information
Interviews Conducted Pursuant to Preliminary Inquiries and Full Investigations (Threats 1-6)			
1	40	27	16
Address 1	NA	(6)*	(6)*
Address 2	NA	6	0
Address 3	NA	0	NA
Subtotal for Threat 1	40	33	16
2	11	8	8
3	NA	2	2
4	1	1	1
5	2	2	2
6	6	4	4
Subtotal for Inquiries and Investigations	60	50	33
Interviews Conducted Pursuant to Leads Checking (Threats 7-9)			
7	4	4	4
8	2	2	1
9	1	1	1
Subtotal for Leads Checking	7	7	6
Interviews Conducted Pursuant to Terrorism Enterprise Investigations Not Associated With the Conventions (Threats 10-17)			
10-13	6	2	1
14	NA	NA	NA
15	NA	NA	NA
16	NA	NA	NA
17	1	1	1
Subtotal for Other Investigations	7	3	2
TOTAL	74	60	41
TOTAL Less Interviews Conducted to Locate Persons With Knowledge of Potential Criminal Activity	67	52	33

*Six persons identified for interviews concerning Threat 1 were located at Address 1. To avoid double counting, we did not include these six persons in the number of individuals contacted or who provided information.

In one instance that we discuss in more detail below, the FBI and the Department of Justice attempted to compel testimony of three witnesses through a grand jury. The FBI also conducted physical surveillance in eight cases where persons were expected to travel to the conventions and to participate in protest activity. The FBI informed the OIG that it did not initiate any undercover operations directed at the conventions or open new sources for the purpose of infiltrating convention protest groups.

In a limited number of cases the FBI's investigative work on matters not associated with the conventions generated convention-related criminal intelligence that did not result in the opening of an independent inquiry or investigation. An example of this kind of information is source reporting to the FBI regarding persons who were the subjects of ongoing FBI investigations and who intended to attend one or more of the conventions.

The FBI told the OIG that it did not utilize its authority under Part VI.A.2 of the General Crimes Guidelines to attend convention-related public events for the purpose of detecting or preventing terrorist activity. In both Boston and New York, the monitoring of crowd movements and demonstration activities at the conventions was conducted and managed by local law enforcement. However, the FBI had agents pre-positioned at both convention venues, such as hazardous materials response teams, to identify and respond to terrorist threats. We were told by the FBI that their purpose was not to monitor the exercise of First Amendment rights or to engage in activities that are the function of local law enforcement, such as crowd control and public safety.

In the following sections, we describe in greater detail the FBI's investigative activities related to potential convention protesters. For each threat we identify the level of investigative activity (such as checking leads or initiating a preliminary inquiry or full investigation) and the characteristics of the information that prompted the FBI to initiate the investigative actions.³⁰ We first describe convention-related threats that the FBI addressed in one of three ways: 1) through the opening of a new preliminary inquiry or full investigation; 2) through the limited checking of leads; or 3) through ongoing investigations not associated with the conventions. We then examine FBI investigative activities that generated convention-related criminal intelligence (not rising to the level of a threat) from ongoing investigations not associated with the conventions.

³⁰ In this report, because of sensitivity concerns we do not describe the sources and methods that the FBI utilized to identify the protester-related threats to the conventions. We also have limited the information we provide about the targets of the FBI's investigations for privacy reasons and because certain of the investigations described in this Section are ongoing. We therefore present threat information generically (e.g. "Threat 1") rather than identify the source of the threat or target by name.

A. Convention-Related Threats Addressed Through the Opening of a Preliminary Inquiry or Full Investigation

Of the 17 convention-related threats that the FBI investigated prior to or during the Democratic and Republican national political conventions, 6 resulted in the opening of a preliminary inquiry or full investigation in accordance with the General Crimes Guidelines. In each of the cases below (Threats 1-6), the FBI received information indicating that violent criminal activity was being planned for one or both of the conventions. Of the 60 protester interview-related contacts that the FBI initiated, 50 occurred in response to 1 of the 6 threats described below.

1. Threat 1

In June 2004, the FBI learned that a group was planning acts of violence at one or both of the political conventions (Threat 1). The FBI considered the information it received to be credible and the potential for harm serious. After consultations with local law enforcement, the FBI identified 40 persons and the residents of 3 addresses for interviews pertaining to this threat. The FBI eventually located and contacted 33 persons in 3 states, 17 of whom refused to answer questions from the agents, and 16 whom agreed to furnish information. Of all the protester-related interviews that the FBI conducted in advance of the conventions, more than one third were associated with Threat 1. As discussed below, the three primary targets of the FBI's investigation later were subpoenaed to appear before a grand jury following their refusal to cooperate with the FBI.

After the FBI became aware of Threat 1, the Domestic Terrorism Operations Unit (DTOU) at FBI Headquarters coordinated efforts to learn more details about the identities and intentions of the individuals believed to be associated with the threat. Various conference calls and meetings were held between FBI Headquarters and field offices to devise a strategy to obtain more information. In July 2004, an FBI field office initiated a full investigation. In an attempt to identify the scope of the planning, the FBI obtained subpoenas for certain Internet subscriber account information that the FBI believed could contain information about the threat. The decision to initiate interviews was made by the leadership of DTOU in consultation with management of the FBI's Counterterrorism Division and FBI-OGC. Prior to conducting interviews, the FBI, at times in conjunction with the Department of Justice, considered and rejected the use of more intrusive investigative methods.

According to the four FBI agents who were principally involved in investigating Threat 1, the persons who were identified for interviews either were believed to be involved in planning violent acts at the conventions, resided or associated with persons who were believed to be making such plans, or

otherwise reasonably could be expected to be in a position to hear about the plans. The FBI documents we reviewed confirmed that the FBI agents assigned to this matter sought to interview only persons who had, or were believed to have had, information about threats of violence to the conventions. Several of the persons identified for interviews had criminal records associated with violent demonstrations, while others were known to be attempting to acquire firearms. Two persons identified and located for interviews were arrested for outstanding criminal warrants at the time they were interviewed.

The FBI instructed its agents to ask the interviewees associated with Threat 1 three questions that focused exclusively on potential criminal activity. The memorandum to the field July 22, 2004, setting leads for the interviews instructed agents to ask the following three questions:

1. Are you aware of any persons who are planning disruptive behavior, of a criminal nature, at the
 - Democratic National Convention
 - Republican National Convention
 - Presidential Debates
 - Elections
 - Other events?
2. If yes – provide details.
If no – Would you tell me if you were aware of any such plans?
3. Are you aware that persons assisting others in planning or preparing for a criminal act may be charged with a crime?

As its investigation progressed, the FBI learned that three persons were largely responsible for Threat 1. The FBI asked these individuals the questions above, but each declined to provide any information.

Because the FBI considered the threats posed by the three individuals to be serious, the FBI initiated physical surveillance of the three and sought assistance from an Assistant United States Attorney (AUSA) to compel their testimony before a grand jury. One FBI agent told us that a conference call was held between DTOU and several FBI field offices to assess what to do given the threat and the targets' refusal to talk to the FBI. The call took place at the end of the week preceding the Democratic National Convention, which started the week of July 26, 2004.

The AUSA in the district which initiated the full investigation of this threat told the OIG that he thought it was his idea to bring the three individuals before a grand jury. The AUSA stated that the return date on the subpoenas for testimony was set for the earliest possible open appearance time

before the grand jury, because time was of the essence. The AUSA also said that it was not his goal or that of the FBI to prevent the three from attending the Democratic National Convention by requiring their testimony before the grand jury. He said that the FBI and DOJ wanted to be able to assess the threat before it had an opportunity to develop at the convention. The subpoenas, along with target letters, were issued and served on the three individuals on Monday, July 26, the same date that the Democratic National Convention began. The subpoenas required the three to appear before the grand jury on Thursday, July 29 at 11:00 a.m. All three came to the grand jury and declined to testify citing their Fifth Amendment privilege against compelled self-incrimination. The FBI continued its surveillance until it was satisfied that the three were not traveling to Boston during the Democratic National Convention.

Following this investigation, in anticipation of the Republican National Convention, the FBI initiated preliminary inquiries on four other persons who were believed to be familiar with the above-described plans to disrupt one or both conventions. One of these individuals was interviewed by the FBI.

2. Threat 2

The FBI received information indicating that a group of individuals planned to gather from around the country at several locations near a metropolitan area to plan activities in preparation for travel to one of the political conventions. The information also indicated that persons participating in these gatherings would be preparing to engage in criminal activities at the convention. The FBI earlier was made aware that one of the expected participants had made public statements to the effect that he intended to organize events to disrupt the convention, such as by harassing delegates, damaging property, and conducting cyber attacks. Based on this information, the FBI opened a preliminary inquiry. Agents interviewed the individual prior to the convention, and he stated that he did not intend to engage in activity other than peaceful demonstrations.

The FBI conducted physical surveillance of the gathering sites and several locations which the participants were believed to frequent. As a result of investigative activity conducted during the gatherings, local law enforcement arrested three participants on various charges, including vandalism and theft of property from local retail establishments. Property stolen during the gatherings was recovered and returned to its owners. The FBI also became aware that one of the participants had acquired PVC pipe and a flammable liquid and had made statements that he intended to build a pipe bomb. That person was interviewed by the FBI and local law enforcement.

3. Threat 3

The FBI received information indicating that an individual with a lengthy arrest record for civil disobedience was planning to travel to one of the conventions. The FBI was also made aware that this individual had been contemplating committing a violent act to draw attention to a particular political cause. Based on this information, the FBI opened a preliminary inquiry. The FBI initiated physical surveillance of the individual, and agents and task force officers interviewed the individual and one of his colleagues in the convention city.

4. Threat 4

The FBI field office in one of the 2004 convention cities learned that an individual with a history of committing serious crimes, including acts of domestic terrorism, was meeting with persons who were believed to be planning for criminal activity at the convention. The FBI also received information that the individual was attempting to acquire a weapon for his “self defense” and to “safeguard” his associates. Based on this information, the FBI opened a preliminary inquiry. The local Joint Terrorism Task Force conducted surveillance of the individual, and task force officers interviewed him during the week of the convention.

5. Threat 5

The FBI received information about an individual with a mental illness who had told an acquaintance that he planned to protest at one of the conventions and expected in the near future to sustain life-threatening physical injuries. The individual had a history of participating in demonstrations across the United States and at one time was known to have made inquiries about the properties of an incendiary material. The FBI opened an investigation and interviewed the individual and a relative.

6. Threat 6

The FBI in one of the convention cities learned that a group of persons was attempting to violently disrupt the upcoming convention. This group was the subject of an ongoing domestic terrorism investigation. The FBI initiated physical surveillance and employed other investigative techniques targeted at the group during its investigation. As a result of this work, the FBI learned that an individual who associated with the group had made statements indicating an intention to carry out criminal acts at the convention. The FBI interviewed the individual prior to the convention. In addition, based on information provided by a local police department, the FBI directed agents to locate three persons whom the police believed could be preparing to carry out

violent acts at the convention. The FBI visited the residence of two of the suspects but did not locate them there.

7. OIG Analysis

Each of the threats described above resulted in the FBI's initiation of a preliminary inquiry or full investigation after determining that the information showed either the possibility of criminal activity at one or more of the conventions or reasonably indicated that a federal crime had been, was being, or would be committed. For each case, we reviewed the opening documentation that identified the basis for the inquiry or investigation and the information that the FBI relied upon to establish the necessary predication. Our review concluded that the information supporting the opening of these cases was particularized and appeared to be based on established or otherwise reliable sources.

The most resource-intensive threat was Threat 1, which accounted for more than half of all the protester interview-related contacts the FBI conducted in advance of the conventions. Shortly after learning about this threat, the FBI started a full investigation under the General Crimes Guidelines. The basis for opening the investigation was information indicating that persons were planning acts of violence at one or more of the political conventions. We believe this information satisfied the "reasonable indication" standard of the Guidelines. The persons subsequently identified for interviews during the investigation were believed by the FBI to possibly have knowledge concerning the identified threat. According to the FBI, as documented in its files, the persons identified for interviews either were believed to be involved in planning violent acts at the conventions, residing or associated with persons who were believed to be making such plans, or otherwise reasonably could be expected to be in a position to hear about the plans. This last group of persons consisted of persons whom the FBI believed were acquainted with the targets of the investigation and would be likely to hear about any plans for violence either directly or indirectly through social contacts. In all, the FBI identified 40 persons and the residents of 3 addresses for interviews, and eventually located and contacted 33 persons in 3 states. These interviews yielded information suggesting that further investigative activity was warranted.

Likewise, we found no evidence indicating improper investigative activity arising from the FBI's and the Department's decision to subpoena the targets and compel their appearance before a grand jury the week of the Democratic convention. The AUSA assigned to the matter stated that the return date on the grand jury subpoenas was set for the earliest possible open appearance time before the grand jury after he learned that the targets would not cooperate with the FBI's interviews.

Threat 2 also involved multiple interviews, all of which were conducted pursuant to a preliminary inquiry opened under the General Crimes Guidelines. As with Threat 1, the FBI received information indicating that certain individuals might have been planning violent, criminal activity at one or both conventions. Interviews for Threats 3 through 5 were focused on three individuals on whom the FBI had opened two preliminary inquiries and one full investigation. In each case, the FBI obtained information that the individuals possibly were involved in preparing for violent, criminal activity at one of the conventions. Threat 6 involved a group that was the subject of a domestic terrorism investigation. Our review of the FBI's records in this investigation revealed that one of the interviews conducted was of an associate of the group after the FBI learned that the person had made statements indicating an intention to commit criminal acts at one of the conventions. For Threats 2 through 6 we determined that the FBI had information establishing a reasonable indication of criminal activity warranting the initiation of investigative activity under the General Crimes Guidelines.

We also determined that the FBI employed physical surveillance in all but one of the cases described above. The documentation describing these surveillances indicated that they were related to the objectives of the investigations.

B. Convention-Related Threats Addressed Through the Checking of Leads

The following three threats (Threats 7-9) did not result in the opening of a preliminary inquiry or full investigation. In each matter the FBI responded to information it obtained by contacting the persons who were the primary subjects identified from the information. The limited checking of leads revealed that no further investigative activity was warranted with regard to threats directed at one of the 2004 conventions.³¹ Of the 60 domestic terrorism-related contacts initiated in advance of or during the conventions, 7 were undertaken in connection with one of the 3 threats described below.

³¹ With respect to leads that did not result in interviews, we also identified situations where field personnel determined from the checking of leads that the threat of criminal activity was not present and thereafter refrained from further investigative activity. For example, in one matter we found that field personnel contemplated conducting an interview of an individual because the FBI had received information that he was providing training to others to commit criminal acts at one of the conventions. After receiving additional information indicating that the individual was not providing this training, the field personnel decided not to proceed with an interview. The FBI stated in a memorandum November 8, 2004, that “[s]ince no evidence of potential criminal and/or violent activity was apparent, [the individual] was not interviewed.”

1. Threat 7

The FBI field office in one of the convention cities was contacted by the local U.S. Attorney's Anti-Terrorism Advisory Council regarding the arrest by local law enforcement of three persons at a location away from the convention venue. According to the FBI, materials found on the individuals raised concerns with the arresting officers that the individuals might have been involved in planning acts of domestic terrorism at the convention. The FBI interviewed the individuals and an acquaintance who assisted them. Based on the results of the interviews, the FBI took no further action with respect to the possible threat against the convention.

2. Threat 8

An FBI field office obtained information indicating that representatives of an organization that was the subject of an ongoing FBI terrorism enterprise investigation would be attending one of the conventions. The organization was known to provide instruction in violent demonstration techniques and was believed to have trained an individual who resided in one of the convention cities in preparation for the convention. The FBI learned that the individual had a criminal arrest record resulting from a recent demonstration and was believed to be associating with an individual who, according to the FBI, was affiliated with domestic terrorist groups and had a long history of violent activity. FBI agents told the OIG that agents contacted the person because the person could have information about planning for criminal activity at one or more of the conventions, or be intending to participate in such activity. The FBI also wanted to determine if the person would share knowledge, which was believed to be extensive, about groups that were involved in significant violence at some of their demonstrations, and whose members were expected to attend the conventions. The person did not agree to be interviewed. The FBI also contacted and interviewed an acquaintance of that person to determine the circumstances surrounding the person's prior criminal activity at a recent demonstration. The FBI took no further action on this lead.

3. Threat 9

The FBI was aware that a convicted felon with a lengthy arrest record that included crimes of violence had made public statements calling for criminal activity at one of the conventions. During the convention, the FBI obtained information indicating that the individual may have been near the site of the convention preparing to commit crimes. The FBI contacted the

individual at his residence to confirm his location.³² The FBI took no further action on this lead.

4. OIG Analysis

The FBI addressed these three threats through the checking out of leads. We reviewed the information available to the FBI when it decided to interview the subjects and agree that the information pointed to possible criminal activity. Based on our review, we believe that the FBI's actions in these matters were in conformity with the General Crimes Guidelines.

C. Convention-Related Threats Addressed Through Investigations Not Associated with the Conventions

Unlike matters that prompted the initiation of preliminary inquiries or full investigations focused on specific threats to the conventions, in several instances the FBI's investigative efforts were conducted as part of ongoing investigations that were initiated prior to the time the FBI learned of possible links to the 2004 conventions. These account for eight of the threats that the FBI addressed prior to and during the conventions.

1. Threats 10-13

Threats 10 to 13 concerned potential threats posed by four violent groups. All four groups were the subjects of ongoing terrorism enterprise investigations. The FBI received information indicating that extremists related to the groups were planning to attend one of the conventions. Based on past actions of the groups, the FBI was concerned that their members would attempt to violently disrupt the convention. In light of the information it had received, the FBI in one of the convention cities directed agents to investigate whether local chapters of the four groups and their leaders posed a threat to the convention. Of the six persons identified for contact, the FBI located two prior to the convention, one of whom provided information while the other declined to be interviewed. All of the investigative activity related to these individuals was conducted pursuant to terrorism enterprise investigations that previously had been opened on the four groups.

³² A preliminary inquiry was later opened on this individual concerning conduct the FBI believed could constitute solicitation to commit an act of violence in accordance with 18 U.S.C. § 373. The basis for the inquiry was not related to the individual's earlier potential appearance at one of the conventions.

2. Threat 14

The FBI was made aware that a group of individuals associated with an organization with an extensive criminal history was preparing to engage in violent confrontations with the police at one of the conventions. Agents from an FBI field office conducted physical surveillance of the individuals as part of its ongoing investigation of the group.

3. Threat 15

During its investigation of a group for possible violations of numerous federal criminal statutes, including manufacturing explosive material without a license and solicitation to commit a crime of violence, the FBI learned that one of the group's members was traveling to a location near one of the convention sites. The FBI initiated physical surveillance of the individual as part of its ongoing investigation of the group.

4. Threat 16

The FBI learned that a convicted felon likely had been in possession of a firearm and was contacting persons who were either under investigation by the FBI for domestic terrorism offenses or had previously been convicted of crimes of violence. The FBI opened an investigation on the individual and subsequently learned that he attended an event where plans were discussed to violently disrupt one of the conventions. The FBI initiated physical surveillance of the individual and conducted other investigative activities.

5. Threat 17

The FBI was aware that an individual had made public statements calling for criminal activity at various public events. The individual had a lengthy arrest record and was believed to have formed an organization that supported the use of violence to achieve its goals. The FBI interviewed an acquaintance of the individual after opening a preliminary inquiry and asked whether he had left the area to attend one of the conventions.

6. OIG Analysis

The FBI addressed eight threats pursuant to open investigations that were not initiated in connection with the two 2004 political conventions. For each of these threats the FBI had information indicating either that criminal acts were being planned or were possible in light of the actions of the targets of the investigation. Of the eight cases, six were terrorism enterprise investigations (TEI) of groups that advocated violent tactics to advance particular political causes. The evidence indicates that these investigations were properly predicated and that the purpose of the FBI's convention-related

investigative activity was reasonably related to the goals of the underlying investigation. The investigative techniques employed by the FBI to address the threats posed to the conventions were undertaken in a manner consistent with the requirements of the General Crimes Guidelines. The remaining threats involved the activities of two convicted felons, and the FBI's investigative activity of them also fit within the scope of the underlying investigations and the requirements of the General Crimes Guidelines.

D. Convention-Related Criminal Intelligence Generated from Investigations Not Associated with the Conventions

Our review of the FBI's investigative work in preparation for the Democratic and Republican national political conventions also identified five terrorism enterprise investigations not associated with the conventions that generated convention-related criminal intelligence not warranting the opening of a separate inquiry or investigation. The focus of much of this intelligence was on the identities of persons who were subjects of, or referenced in, ongoing FBI investigations who were planning to attend the conventions. None of these matters resulted in interviews or physical surveillance by FBI agents of persons intending to demonstrate at the conventions.

Two other terrorism enterprise investigations generated intelligence that contributed to the opening of a preliminary inquiry and a full investigation respectively. These matters both concerned threats to the conventions described in Section IV.A above and involved interviews and physical surveillance of potential convention protesters.³³

For all seven terrorism enterprise investigations, we identified no investigative technique that generated convention-related criminal intelligence that was undertaken in violation of the applicable Attorney General Guidelines.

E. Alleged Pretext Interviews of Potential Convention Protesters

Another aspect of the FBI's investigative activities that generated controversy was the alleged use of "pretext interviews" in the period immediately preceding the Democratic National Convention. Citing documents released in civil litigation, a news article reported in May 2005 that members of "leftist protest groups" had been subjected to "pretext interviews" by the FBI before the two 2004 national conventions.³⁴

³³ There were 24 protester-related interviews conducted in these 2 domestic terrorism matters.

³⁴ Dan Eggan, *Protesters Subject to 'Pretext Interviews,'* Washington Post, May 18, 2005. As reported in the article, according to the American Civil Liberties Union, the FBI's anti-terrorism task forces were "collecting information about peaceful protestors and dissenters and (continued)

The term “pretext” in common parlance can have a pejorative connotation, and several individuals contacted for interviews by the FBI were quoted in news articles questioning whether the FBI had singled them out for an interview for improper purposes, such as to prevent them from traveling to the conventions to protest peacefully or to exercise other protected First Amendment rights.

In response to these concerns, the FBI stated:

The interviews reflected in these isolated documents were based on a specific and credible threat received by the FBI regarding potential violent and criminal activity that could have caused death or serious bodily injury and was to occur during the Democratic National Convention. . . . It is the FBI’s top priority to prevent any act of terrorism, which requires special agents of the FBI to thoroughly investigate every credible threat received.³⁵

The term “pretext interview” is not defined in the FBI’s current Manual of Investigative Operations and Guidelines (MIOG) or in any recent guidance issued by the FBI-OGC. However, guidance on file with FBI-OGC from 1980 states that “[a] pretext interview is a legal and proper investigative technique used when it is necessary to accomplish an investigative end without disclosing the FBI’s interest and the reasons for the inquiry.”³⁶ The current version of the MIOG references the acceptable use of “pretext interviews” in several contexts, including domestic terrorism cases.³⁷

Our review examined several documents that referred to the use of a “pretext” when the FBI contacted individuals to be interviewed in connection with the 2004 conventions. The first, an EC dated July 22, 2004, from the St. Louis field office, set leads for interviews, stating:

Additional Anarchist affiliated persons would be interviewed in Missouri, Kansas, and Colorado. The pretext of the interview will be to gain general information concerning possible criminal activity

targeting people for attention on the basis of constitutionally protected association and advocacy.” Id.

³⁵ Id.

³⁶ FBI-OGC Guidance, dated April 9, 1980.

³⁷ See §§ 58-5(3)(Predication); 194-4(3)(Predication); and 266-1(4)(c)(Acts of Terrorism – Domestic Terrorists). Pretext interviews are to be distinguished from interviews in which someone falsely claims to be an officer or employee of a department or agency of the United States in violation of 18 U.S.C. § 912. FBI-OGC Guidance, dated April 9, 1980.

at the Democratic National Convention, Republican National Convention, Presidential debates, and the election. The purpose of the interviews will be to increase intelligence in this area and discourage the interviewees from traveling to any of the above to criminally disrupt the event.

The second reference to the term “pretext” we found was in a memorandum responding to the St. Louis EC. In its August 2, 2004, response, the Denver field office explained that it had covered several leads and repeated the St. Louis EC’s characterization that the interviews requested by the St. Louis field office were “pretext interviews:” “Referenced EC set several leads for the Denver Division to conduct pretext interviews to gain general information concerning possible criminal activity at the upcoming political conventions and presidential elections.”

Following the Republican National Convention and press coverage concerning the FBI’s interviews of potential convention protesters, FBI-OGC prepared an analysis in September 2004 related to the pretext interview issue.³⁸ The FBI-OGC memorandum noted that the leads set by the St. Louis field office for “pretext” interviews had three objectives: to seek intelligence about criminal activity, to prevent individuals from carrying out their plans to commit criminal acts at the Democratic National Convention, and to protect FBI sources and methods. The memorandum stated:

The interviews conducted in this case served several purposes. In the referenced [July 22, 2004] St. Louis EC, the interviews are described as “pretext” interviews, suggesting that they were conducted for purposes other than to seek the requested information. Even though pretext interviews are an authorized technique and would have been justified for the second and third reasons stated [above], it appears that they were only pretext in part. The interviews did seek valuable information from persons who were reasonably believed to possess it. Therefore, although they served an ulterior purpose as well, they were not purely pretextual in nature.

We determined that the agents conducting the interviews in response to the St. Louis lead did not use a false identity or false pretense to hide the fact that they were seeking convention-related threat information. The FBI Special Agent who drafted the July 22, 2004, St. Louis EC told the OIG that the “main objective” of the interviews was to gather information about a potential threat

³⁸ FBI-OGC memorandum entitled *Investigative Law Unit - Constitutional Rights Control File*, dated September 16, 2004.

to the conventions. The EC's explanation that "the pretext of the interview will be to gain general information concerning possible criminal activity at the [conventions]" therefore is not accurate because the gathering of such information was the primary purpose of the interviews, not a "pretext." The agent told the OIG that, in hindsight, his use of the word "pretext" in the St. Louis EC was a "poor choice of words" and was not accurate. In his view, a pretext interview is one in which the FBI does not reveal the "real reason for the interview," and this was not the case with respect to the reported interviews. Rather, the leads that he set required agents to pose specific questions that revealed that the interviews were being conducted to ask specific questions in order to collect information about possible criminal or terrorist activity at the conventions.

The Special Agent who drafted the St. Louis EC stated, however, that the interviews could be understood to be a "pretext" since the questions that the agents posed did not reveal the extent of the FBI's knowledge of the threats under investigation or the sources of their information, but instead were cast as general questions about potential criminal activity. Both the St. Louis lead and the FBI-OGC memorandum describe how the requested interviews could serve to protect FBI sources and methods. The St. Louis Special Agent stated that in his view the "pretext" of the requested interviews was to conceal how the FBI was acquiring intelligence about a threat to the convention. This interpretation was shared by the author of the September 2004 FBI-OGC memorandum, who explained in the memorandum that the interviews were "pretext in part" because agents were justified in relying upon a pretext (pretending not to know specific details about the potential threats) in order to conceal the sources and methods that prompted them to conduct the interviews.

FBI documentation of the interviews set by the St. Louis lead also used the term "pretext" in referencing a possible consequence of the planned interviews: to deter people who may have been planning violent or other criminal activity from carrying out criminal acts. This interest also was not explicitly disclosed by the FBI when interviewing people before the Democratic National Convention in response to the St. Louis lead. However, the FBI-OGC memorandum recognized the FBI's interest in deterring criminal activity as justification for use of a "pretext" in the interviews.

Although the interviews may have resulted in preventing individuals from traveling to the DNC, the interviews were not conducted for the purpose of preventing the exercise of protected First Amendment activity, but rather, were focused on the prevention of criminal activity.

The Special Agent who drafted the St Louis EC similarly told us that a benefit of interviewing persons who planned on committing criminal acts at the

Democratic convention “was the hope that . . . if they are confronted about it [i.e., the criminal activities], they wouldn’t do it.”

What generated controversy regarding the FBI’s reliance on “pretext interviews” in advance of the political conventions was the concern that agents were illegitimately conducting interviews in order to chill potential protesters from exercising their protected First Amendment rights. Based on our review, we do not believe that the interviews conducted by the FBI in response to the St. Louis EC were “pretext interviews,” either as defined to us by FBI-OGC or as understood colloquially to mean the improper use of interviews to chill exercise of the interviewees’ First Amendment rights. FBI agents did not use false identities during the interviews and made no attempt to conceal the fact that they were seeking information about possible criminal or terrorist activities at the conventions. In addition, they interviewed persons they had reason to believe possessed relevant information about potential criminal or terrorist activity.

Our review determined that the interviews were conducted because the FBI was addressing what it believed was a serious threat of violence, and that but for that credible threat the interviewees would not have been approached by the FBI. We also found no evidence that the FBI was attempting by these interviews to prevent anyone from traveling to the conventions to exercise protected First Amendment rights. As explained elsewhere in this report, the FBI’s investigative activities, including these interviews, were focused on the prevention of criminal and terrorist acts at the two conventions.

That said, the various references we identified in FBI documents to “pretext interviews” were confusing and inconsistent and, given the pejorative connotation of the term, understandably generated concern about whether the FBI had impermissibly violated First Amendment rights. In a vacuum, without understanding that agents were attempting to conceal the sources and methods it used to obtain this threat information, the references could be misconstrued to refer to the fabrication of a reason to approach the interviewees. However, based on our interviews and examination of FBI documents, we concluded that the reference to “pretext” referred to the FBI’s efforts to protect the way it was collecting intelligence about a particular convention threat in order to prevent criminal or terrorist acts at the conventions. In sum, we concluded that these interviews were not conducted for any improper purpose.

V. CONCLUSION

Our review examined the FBI’s investigative activity leading up to and during the 2004 Democratic and Republican national political conventions, including interviews, physical surveillance, and other investigative techniques.

The evidence indicated that the FBI engaged in these investigative activities because the threat of criminal activity existed. We found that the FBI's conduct was consistent with the applicable Attorney General Guidelines. We also found no evidence that the FBI's actions were undertaken for the purpose of discouraging the exercise of First Amendment rights. We concluded that all of the interviews we reviewed were conducted for legitimate law enforcement purposes.

Nearly all of the FBI's protester-related investigative activity was devoted to addressing 17 distinct threats to the conventions. The nature of these threats was diverse, though all involved the potential for violence, including potential bombings. In response to six of the threats, the FBI opened a preliminary inquiry or full investigation after determining that the information presented showed either the possibility of criminal activity at the conventions or reasonably indicated that a federal crime had been, was being, or would be committed.

The FBI addressed eight other threats pursuant to open investigations that were not initiated in connection with the political conventions. For each convention-related threat in this category, the FBI had information indicating either that criminal acts were being planned, or were possible, if not likely, in light of the actions of the targets of the investigation.

The FBI addressed three threats through the checking of leads that resulted in interviews. Our review found no cases where the FBI improperly continued investigative activity after determining that the threat of violent, criminal activity was absent or unsubstantiated.

In addition to investigative activity directed to the 17 threats described above, our review of the FBI's preparations for the Democratic and Republican national political conventions identified 7 terrorism enterprise investigations (TEIs) not initiated in connection with the conventions that generated convention-related criminal intelligence. The investigative techniques utilized to obtain this intelligence appeared to be a logical outgrowth of the underlying investigation. We also found no indication that the intelligence was collected in a manner inconsistent with applicable DOJ guidelines and policies.

We were also informed by the FBI that it did not rely upon its counterterrorism authorities in Part VI.A.2 of the General Crimes Guidelines to visit public places and attend public events at the conventions for the purpose of detecting or preventing terrorist activities. Officials in the FBI's New York and Boston field offices told us that monitoring of crowd movements and demonstration activities at the conventions was managed by local law enforcement.

In sum, our review did not substantiate the 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. We concluded that the FBI's interviews of potential convention protesters and its related investigative activities were initiated and conducted for legitimate law enforcement purposes and did not violate applicable Attorney General Guidelines.