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FEDERAL BUREAU OF INVESTIGATION LEGAL ATTACHÉ PROGRAM

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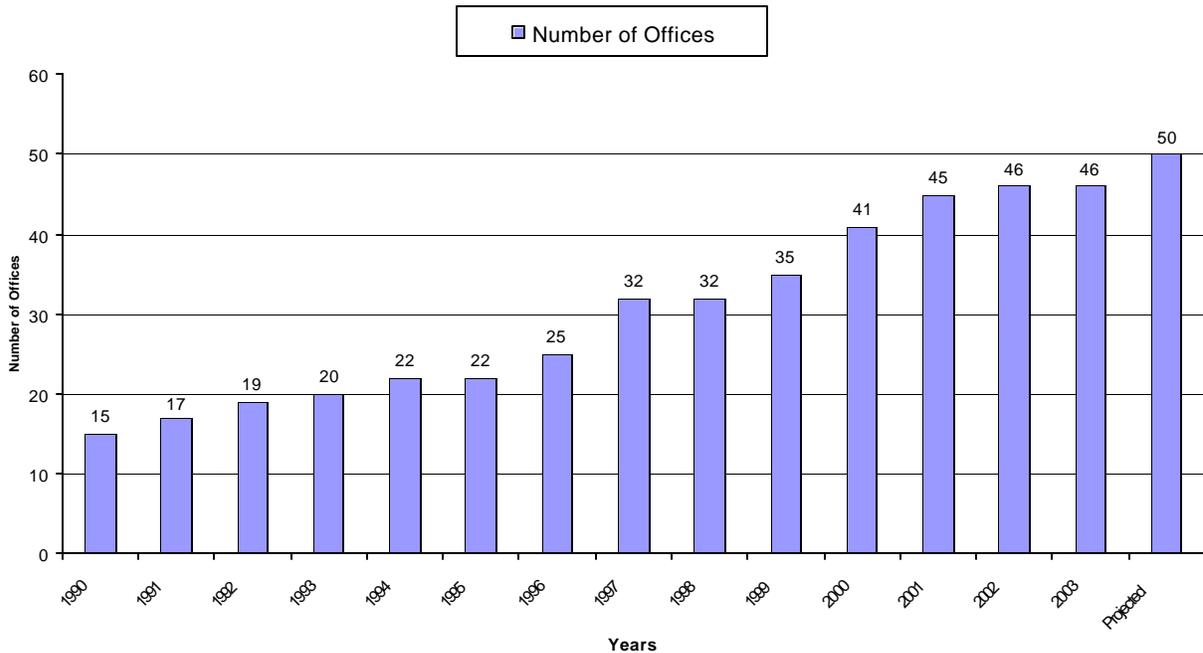
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FEDERAL BUREAU OF INVESTIGATION LEGAL ATTACHÉ PROGRAM *

EXECUTIVE SUMMARY

The Federal Bureau of Investigation (FBI) operates offices known as Legal Attachés (Legats) in 46 locations around the world.¹ Special agents assigned to these offices work with their counterparts in foreign countries to obtain information for the FBI on crimes and criminals that could harm U.S. citizens or interests. The globalization of crime and terrorism in recent years, as well as congressional expansion of the FBI's extraterritorial authority, has resulted in a significant growth in the FBI's overseas operations in the last decade.

GROWTH IN LEGAL ATTACHÉ OFFICES



¹ During the data collection portion of our review, the FBI had 45 Legal Attaché offices abroad and a liaison office in Miami, Florida, which covered certain areas of Central America and the Caribbean. For purposes of this report, we included the Miami liaison office in the total of 46 Legal Attaché offices. Effective October 1, 2003, the Miami liaison office was closed.

* BECAUSE THIS REPORT CONTAINED INFORMATION CLASSIFIED AS "SECRET" BY THE FEDERAL BUREAU OF INVESTIGATION, WE REDACTED (WHITED OUT) THAT INFORMATION FROM THE VERSION OF THE REPORT THAT IS BEING PUBLICLY RELEASED. WHERE SUCH INFORMATION WAS REDACTED IS NOTED IN THE REPORT.

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The 46 Legat offices are staffed by 119 special agents and 75 support personnel. Most offices are staffed by a Legal Attaché, one Assistant Legal Attaché, known as an ALAT, and one Office Assistant, although a few of the larger offices have ten or more permanent staff. Fiscal year 2003 expenditures for the Legal Attaché program totaled \$43.7 million, up from \$27.6 million for fiscal year 1997, or an increase of about 58 percent. Plans are under way to expand the FBI's overseas presence. Five new Legat offices and three sub-offices in existing Legats are in the process of being opened or are under consideration and additional staff have been added to other offices.

The Office of International Operations (OIO) at FBI Headquarters oversees the Legal Attaché program. OIO provides managerial oversight as well as administrative and logistical support to Legal Attaché offices and employees and their dependents. In addition, it maintains contact with other federal agencies operating in the international arena, INTERPOL, and foreign police and security officers assigned to embassies (diplomatic missions) in the United States.²

This audit examined the type of activities performed by Legal Attaché offices, the effectiveness of the offices in establishing liaisons with foreign law enforcement agencies and coordinating activities with other U.S. law enforcement and intelligence agencies stationed overseas, the criteria and process used by the FBI to determine the placement of offices, the oversight and management of existing offices, and the processes for selecting and training FBI personnel for Legat positions. We reviewed Legat operations at FBI Headquarters in Washington, D.C. and at Legal Attaché offices in Berlin, Germany; Ottawa, Canada; Pretoria, South Africa; and Tokyo, Japan.

Legal Attaché Mission and Priorities

The primary mission of Legal Attachés is to facilitate and support FBI investigative interests in the overseas arena that pertain to threats against the United States, its persons or interests. The Legal Attachés establish, maintain, and enhance liaison with foreign law enforcement agencies in order to accomplish this mission. By working cooperatively with foreign police agencies, the Legal Attaché offices seek to build

² INTERPOL — the International Criminal Police Organization, with headquarters in Lyon, France facilitates cooperation among international police authorities.

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networks that prevent crime or, alternatively, that ensure access to the information the FBI needs to locate and extradite international criminals and terrorists and obtain evidence for their prosecution.

Legal Attaché staff may become directly involved in specific investigations, but they have no law enforcement authority in foreign countries. Thus, investigations are usually conducted jointly with foreign law enforcement agencies in accordance with local laws and procedures established by the host country. In addition, because investigative activities could have a potential impact on the conduct of U.S. foreign relations, these investigations must be coordinated with the U.S. Department of State.

Legal Attachés also are expected to coordinate their investigative activities with other U.S. law enforcement and intelligence agencies, such as the Drug Enforcement Administration (DEA) and the Central Intelligence Agency (CIA), that operate in the same country or regions to exchange information and to avoid duplication and overlap.

In addition, Legal Attachés provide or arrange for training for foreign police officials in locations such as the FBI National Academy in Quantico, Virginia, and the International Law Enforcement Academy in Budapest, Hungary. Programs offered at these two locations are designed to strengthen ties between U.S. and foreign law enforcement officials. For example, graduates of the National Academy have an international alumni network and Legal Attachés are expected to maintain close contact with the alumni in their territory.

The investigative priorities of Legal Attaché offices mirror those of the FBI as a whole. The FBI's strategic plan identifies three functional areas, or tiers, that prioritize the variety of threats it must address.

- Tier One encompasses foreign intelligence, terrorist, and criminal activities that directly threaten the national or economic security of the United States.
- Tier Two encompasses crimes that affect the public safety or undermine the integrity of American society.
- Tier Three encompasses crimes that affect individuals and crimes against property.

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Legal Attachés' investigative efforts abroad cover all of these tiers, but similar to the FBI as a whole since the terrorist attacks of September 11, 2001, their number one priority is counterterrorism investigations and activities.

Legal Attaché Offices Reviewed

Although in a broad sense the mission of each Legat office is the same, the specific activities of offices vary because of the differing political and cultural settings and the nature of the criminal activity that occurs in the countries or regions in which they operate. Thus, no single Legat office can be considered typical. Consequently, we selected Legats Ottawa, Berlin, Pretoria, and Tokyo in order to obtain a cross section of offices, taking into consideration factors such as the number of staff assigned, number of countries covered, geographic location, workload, the nature of the criminal activity, and ongoing terrorism-related work.

The Legat office in Ottawa has responsibility for FBI liaison matters in Canada, the second largest country in the world in terms of land area. Legat Ottawa's workload is the highest of all Legal Attaché offices due primarily to the common, lengthy, and largely unguarded border with the United States. The Legal Attaché office in Berlin has responsibility for liaison matters in the Federal Republic of Germany. Because one of the key terrorist cells responsible for the September 11, 2001, attacks was located in Hamburg, a significant portion of Legat Berlin's workload involved the PENTTBOM investigation.³ The Legat office in Pretoria, South Africa, has responsibility for FBI liaison matters in 15 countries in southern Africa and focuses on counterterrorism matters, organized crime, and fugitive extraditions. Legat Tokyo has responsibility for liaison matters in Japan and the Republic of China (Taiwan). Historically, organized crime has been the top priority of the Tokyo Legat, but in recent years the priority has been counterterrorism and counterintelligence.

³ PENTTBOM is the FBI's term for its investigation of the Pentagon-World Trade Center bombings on September 11, 2001.

Legal Attaché Office Workload

A key function of the FBI's Legal Attaché offices involves handling requests for investigative assistance, referred to as investigative leads, from FBI headquarters and field offices. These requests range from simple tasks such as tracing telephone numbers or obtaining copies of documents to more complex and time-consuming activities such as tracking financial transactions, locating suspected criminals and terrorists, or interviewing individuals as part of an investigation.

In recent years, the number of investigative leads handled by Legats has grown significantly. In the 5-year period between fiscal years 1998 and 2002, the number of leads rose from 20,267 to 53,105, an increase of about 162 percent. This increase is primarily due to the growth of international crimes and terrorism, but also because the number of Legat offices has grown. Overall, Legats appear to have been able to handle the increasing workload. Legat Ottawa, however, has a significant volume of pending leads — a longstanding problem that the FBI has not addressed adequately.

Legat Ottawa has a heavy workload and receives a large volume of leads relative to other Legat offices because its proximity to the United States results in it playing a substantial role in supporting many FBI investigative matters. This heavy workload has resulted in a backlog of pending leads; as of June 30, 2003, Legat Ottawa had 1,134 leads pending, the highest number of pending leads of any Legal Attaché office.⁴ In contrast, the other Legat offices averaged 104 pending investigative leads as of the same date. Previous reviews conducted of the Ottawa Legal Attaché office by the FBI's Inspection Division have reported that the office was having difficulty addressing its heavy workload.

The FBI has attempted to manage the workload in Ottawa primarily through the use of short-term temporary duty (TDY) staff, but the backlog of pending leads remains. In addition, the use of TDY staff, in our opinion, does not appear to be an effective solution. Most of the temporary personnel are assigned for 30 to 60 days. The high turnover is disruptive to the operation because, for example, agents often return to the United States before completing work on many of

⁴ As of December 31, 2003, Legat Ottawa had 1,335 pending leads.

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their leads. In 2001, the FBI opened a sub-office in Vancouver and has been approved to open another sub-office in Toronto. While these sub-offices may help alleviate some of the workload in Ottawa, they also are likely to generate additional work as new liaisons are established. In FY 2002, an additional staff person was reallocated from the Mexico City Legal Attaché office to Legat Ottawa and a second staff person is expected to be added in FY 2004 for a total of ten permanent positions. However, we are not optimistic the increased staffing will be sufficient to reduce the backlog.

Controls Over Temporary Duty Travel

By statute and Presidential Directive, the U.S. Ambassador has responsibility for the actions of all U.S. government officials in the country in which he or she is accredited. As part of carrying out this responsibility, Department of State rules require that all U.S. government employees obtain approval from the U.S. Ambassador before traveling to a foreign country to conduct official business. This approval is known as a country clearance. Legal Attachés are responsible for keeping Ambassadors informed of all FBI employees traveling to their countries, but we found that both Legat Ottawa's and Berlin's records of country clearances were incomplete. In addition, the failure of some FBI staff to obtain appropriate country clearances has been a longstanding problem and, on at least two occasions since 2000, the FBI has issued memoranda to its employees emphasizing the importance of obtaining country clearances. Our review of travelers to Canada between October 2001 and April 2003 indicates that the problem persists. The FBI could not locate country clearances for 135, or 32 percent, of the 422 FBI employees who traveled to Canada during that period. We also found that the FBI could not locate country clearances for nine FBI staff who had traveled to Germany.

Effectiveness of Liaison Activities

Based on our interviews with officials from numerous law enforcement and security agencies in Canada, Germany, Japan, and South Africa, we concluded that the Legal Attachés in these countries were maintaining effective foreign liaisons. Most of the officials we interviewed were complimentary of the Legal Attachés and the working relationship that existed between their respective offices. Many provided examples of how they personally, or their agencies in general, had worked with the Legal Attaché staff to solve international crimes. Officials in the two countries where English was not the

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primary language — Japan and Germany — often noted how impressed they were with the ability of Legal Attaché staff to communicate fluently in the native language and emphasized the positive impact this ability had on fostering a close working relationship. In addition, many officials spoke highly of the training provided or arranged by the Legal Attachés. The following examples illustrate their points.

- Legat Ottawa's primary liaison contacts in Canada are with the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS). Officials from the RCMP, the national police force in Canada, told us they had a close working relationship with the Legat and his staff, especially since the BORDERBOM case and the September 11 terrorist attacks.⁵ [CLASSIFIED INFORMATION REDACTED].
- Representatives from Legat Berlin's primary liaison contacts in Germany — the Bundeskriminalamt (BKA), the [CLASSIFIED INFORMATION REDACTED], and the Berlin Landeskriminalamt (LKA) — were complimentary of the Legat staffs' professionalism and responsiveness and emphasized appreciation for the FBI staffs' language proficiency.
- Legat Pretoria's primary law enforcement contact was the South African Police Service (SAPS), South Africa's national law enforcement agency. Officials from SAPS' Crime Intelligence Division told us they worked closely with the Legat and had conducted traces and compiled profiles on individuals, and performed telephone record checks.

Officials from the National Central Bureau component of SAPS that maintain liaison with INTERPOL stated that they worked closely with the Legat office on extradition matters, shared information on criminals, and conducted criminal checks for the Legat. They commented that the Legat personnel were very professional, accessible, and responsive.

⁵ BORDERBOM was the term the FBI gave to its investigation of Ahmed Ressay, the Algerian national who was arrested by U.S. authorities in Port Angeles, Washington, in December 1999, while attempting to bring explosive materials into the United States from Canada.

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- Japanese law enforcement and intelligence officials advised that they had frequent contact and worked closely with Legat Tokyo staff on law enforcement matters. Officials from the Public Security Investigative Agency, a component of the Ministry of Justice responsible for monitoring potentially dangerous domestic terrorist groups, [CLASSIFIED INFORMATION REDACTED]. Officials from the Japanese National Police Agency told us that the Legat and his staff had been very helpful and responsive in providing needed information on the activities of Yakusa, a Japanese organized crime group, in the United States. Officials from both agencies were highly complimentary of the Legat and the ALAT's proficiency in Japanese.

Not all the comments from foreign officials were positive, however. Some German and Canadian officials we interviewed were critical of the FBI's heavy use of temporary duty personnel. For example, the head of the BKA's Terrorism Division told us that in contrast to other foreign law enforcement agencies, [CLASSIFIED INFORMATION REDACTED]. Similarly, CSIS officials in Canada pointed out that the Legat appeared to be short-handed and, as a result, often relied on temporary FBI personnel to fill in the gaps. They added that reliance on TDY staff inhibited the establishment of long-term relationships that they believed were especially important in the intelligence business. Thus, they were not as comfortable sharing information with FBI personnel on temporary duty and with whom they had not developed such a relationship.

One difference between Legat Ottawa and the other Legats we visited is that, because of Canada's proximity to the United States, FBI field offices near the border have for many years worked closely with Canadian police agencies. This creates a potential for problems if the Legat, who is responsible for all FBI activities in Canada, is not kept apprised of what the FBI domestic field offices are doing.

The Chief of the Toronto Police Service told us that over the years he had developed a strong working relationship with the FBI's Buffalo, New York, field office and, consequently, preferred to deal with agents from that office rather than the Legat staff in Ottawa. The Legat told us that in the past the Buffalo field office had nominated Toronto law enforcement officials to participate in FBI National Academy training programs without his input or concurrence. The Buffalo field office, however, sought his input after he raised that concern. Nevertheless, the Legat said he still believed he was, in

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effect, competing against the Buffalo field office in providing training slots at the FBI National Academy for Canadian law enforcement officials. FBI Headquarters officials told us that the recent establishment of a Border Liaison Officer in the Buffalo field office is designed to ensure that appropriate coordination occurs between Buffalo and Legat Ottawa.

Determining whether the Buffalo field office appropriately coordinated its contacts in Canada with the Legat was beyond the scope of our review. However, the police chief's comments raise a concern. In our opinion, the role of the Legat could be diluted if Buffalo field office personnel are not coordinating their activities in Canada with the Legat. Further, if the Toronto sub-office is ultimately opened, the FBI could be perceived by Canadian authorities as being disjointed if both the Legat sub-office and Buffalo staff are meeting with the same Canadian authorities and not coordinating their efforts. In addition, other FBI field offices near the Canadian border may have similar contacts with their Canadian counterparts, all of which, in our opinion, should be coordinated with Legat Ottawa.

Coordination with Other U.S. Agencies Overseas

Legal Attaché personnel are considered part of the U.S. Embassy staff, and the Legal Attaché office is physically located on the premises of a U.S. Embassy. As part of their duties, FBI Legal Attachés often need to interact with Ambassadors and their staff, as well as with representatives of other U.S. law enforcement and intelligence agencies that station personnel abroad. Besides FBI Legal Attaché staff, an embassy may have law enforcement representatives from agencies such as the DEA; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the Secret Service; and Immigration and Customs Enforcement. [CLASSIFIED INFORMATION REDACTED].

Overlapping interests and jurisdictions among these agencies could be harmful to U.S. interests and run the risk of antagonizing the host government. Moreover, a lack of coordination among law enforcement agencies abroad could be detrimental to the ability of the United States to effectively combat international crime and terrorism. To avoid such problems, statutes as well as agreements between agencies typically delineate their responsibilities overseas, and U.S. Ambassadors are responsible for ensuring that overall law enforcement activities are coordinated. In addition, the FBI's Legal Attaché Manual emphasizes the importance of maintaining effective liaisons with other U.S. law enforcement and intelligence agencies abroad.

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In the four countries where we reviewed Legat operations, the Ambassadors, their staff, and representatives from selected U.S. law enforcement and intelligence agencies uniformly described their interactions with the Legal Attaché offices as positive. The consensus among the officials we interviewed was that Legat personnel in these four countries readily collaborated and shared information on law enforcement matters. Law enforcement representatives told us that especially since the terrorist attacks on September 11, 2001, they were working closer with their counterparts in the embassies than ever before. Some pointed out that even before September 11 the rivalries that based on their experiences seemed common among law enforcement agencies in the United States appeared much less prevalent in an embassy setting. None of the U.S. law enforcement officials we spoke with expressed concerns about duplication of effort between Legat activities and their agencies' activities.

FBI Oversight of Legal Attaché Program

Based on our review, we found that the FBI periodically assesses the need for offices abroad and adequately justifies the opening of new Legal Attaché offices and expanding existing Legat offices. The FBI's assessments consider factors such as specific terrorist and criminal activity in a country or region that threatens the United States, commitment of the host country to cooperate with the FBI, analysis of workloads in existing offices, and the availability of funding. Assessments of the location and composition of Legat offices are an ongoing and normal part of headquarters' oversight of the Legat program. These assessments have resulted in the opening of new offices in areas previously covered by existing offices, adding staff to existing offices to address the workload, and consolidating offices when the workload no longer justified keeping an office open.

Periodically, Congress has asked the FBI to provide justifications for existing and planned Legal Attaché offices. We reviewed reports that were provided to Congress in 1999 and 2003 and found them to be comprehensive and, for the four Legats we reviewed, consistent with what we found when we reviewed these offices. For example, the 2003 report concluded that the staffing levels in Legats Pretoria and Tokyo were adequate for the workload. In contrast, the heavy use of temporary duty personnel in Legats Berlin and Ottawa was expensive and did not provide needed continuity in more complex investigations. Thus, the report proposed increasing the permanent staff at both locations to better cope with the workload.

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The FBI uses various methods to monitor and oversee Legat offices. For example, each Legal Attaché office is required to prepare and submit a Legal Attaché Annual Accomplishment Report (LAR). The LAR reports provide detailed information about the office's operations and accomplishments. To better keep abreast of Legats' workload, OIO recently began analyzing each Legat office's pending leads on a quarterly basis. The results of the analysis are provided to the applicable Legat office and problems identified must be explained or resolved.

OIO officials told us they maintain regular telephone and e-mail contact with Legat offices. OIO managers also meet regularly to discuss significant issues or problems pertaining to Legat offices. They obtain feedback on Legat offices from Ambassadors and domestic and foreign law enforcement and intelligence personnel visiting FBI Headquarters. In addition, OIO hosts an annual conference in Washington, D.C., attended by all the Legal Attachés, to discuss relevant topics, including Legat performance expectations.

The FBI's Inspection Division conducts in-depth reviews of the activities of individual Legal Attaché offices, normally on a 3-year cycle. The inspections include a review of management issues, staffing, administration, liaisons, workload, and training matters. The reports comment on the effectiveness and efficiency of the Legal Attachés. We followed up on 26 of the 31 findings from the latest Inspection Division reviews of Legats Ottawa, Berlin, Pretoria, and Tokyo. We concluded that the FBI had taken appropriate corrective action for most of the findings, with the exception of a finding related to the staffing problems in Ottawa. In addition, documentation was lacking that corrective action had been taken related to changing safe combinations in Ottawa and conducting unannounced cash counts of the imprest fund in Tokyo.

OIO managers told us that they made site visits to the Legat Attaché offices to review operations. However, these reviews were conducted sporadically. We found documentation supporting OIO site visits for only two of the four offices we visited. OIO officials acknowledged that site visits needed to be conducted more systematically and said they were developing a plan to review offices on a regular basis starting in FY 2004.

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Legat Selection and Training

According to OIO officials, the FBI seeks candidates for Legat and ALAT positions who have broad knowledge of FBI programs and who are skilled supervisors. Among other things, the individuals should possess sound judgment and common sense and require minimal guidance and direction from FBI Headquarters. In addition, these individuals should be proficient in one or more languages used in an office's assigned territory.

Applicants for Legat openings are ranked by a Legat Screening Panel (LSP) consisting of FBI senior managers and analysts against the qualifications contained in the vacancy announcement. The top-ranked candidates are referred to a second panel, known as the Special Agent Mid-Level Management Selection (SAMMS) Board. The SAMMS Board may agree with the LSP rankings or come up with its own ranking based on a review of the candidates. The SAMMS Board recommends to the FBI Director the top three candidates in rank order. The FBI Director interviews one or more of the Legat or ALAT candidates and makes the final selection. We reviewed the files for 13 recent Legat and ALAT vacancy announcements and concluded that the FBI was following its procedures.

FBI officials told us that in the past when the Legat program was growing rapidly, some individuals who did not have sufficient management or supervisory experience were selected for Legat positions. Officials believed that the current selection process, which places considerable weight on supervisory experience, should help avoid some of the problems that occurred in the past. Nevertheless, misconduct by some Legat employees is a concern. An FBI Office of Professional Responsibility (OPR) official remarked that, in his opinion, the number of OPR investigations of Legat personnel was higher than would be expected given their small number and attributed this problem to past staffing decisions. This official added that Legat staff represent the FBI overseas and should be role models rather than subjects of OPR investigations. OPR officials identified 13 staff against whom 12 investigations were initiated during the 3-year period

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between September 1999 and September 2002.⁶ Our review of the files on these investigations, which included allegations of voucher fraud, misuse of position, and security violations, revealed that they resulted in five suspensions, three letters of censure, two counseling, one dismissal, and one resignation.

The FBI Director has commented that he wants future top managers in the FBI to have international experience. In our discussions with officials and employees in FBI Headquarters and the four Legat offices we reviewed, many said that historically Legat positions were not considered career enhancing. This perception appears to be changing, as more agents are being sent overseas to work on major investigations and gain first-hand experience about the nature of a Legat's work. In FY 2003, according to OIO officials, 40 returning Legat staff were promoted — a significantly higher number than had occurred in the past.

Because the FBI's Inspection Division was conducting a detailed review of the pre-deployment training program for newly selected Legat staff concurrent with our audit, we limited our work in this area. We asked selected Legat staff at the four offices we reviewed about the training they had received in preparation for their assignment and in general they had positive comments about this training. These views were in contrast to what the FBI Inspection Division was told by a focus group of both former and current Legat staff as reported in its July 2003 report on the pre-deployment training program.⁷ Focus group participants expressed dissatisfaction with briefings they had received as part of the training from headquarters operational divisions. The focus group participants also indicated that they did not believe the pre-deployment training program adequately prepared newly selected Legat staff for the difficulties of adjusting to life overseas. Other issues noted in the FBI's Inspection report included that funding for the pre-deployment training was insufficient and

⁶ Subsequent to our exit conference another OPR official provided us with a list of 17 additional cases that had been opened on 15 Legat personnel during our review period. In addition, the OIG Investigations Division, which also can investigate allegations against FBI personnel, provided us with allegations against two more Legat personnel. We did not review the case files for these additional cases.

⁷ FBI Inspection Division Report: Legal Attaché Pre-deployment Training: An Evaluation of the Preparation of FBI Personnel for Overseas Assignment, Reengineering Project Number 35, July 2003.

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training facilities were inadequate. The FBI's Inspection Division made 12 recommendations to improve pre-deployment training for Legat staff.

Based on our observations in Legat Tokyo, language proficiency is critical in fostering close relationships with foreign liaisons. According to a Language Services Section official, employees selected for Legat positions typically have about 3 months to work on language training before they are transferred to a Legat office. In our opinion, three months is not sufficient time to learn a foreign language, a view echoed in the FBI Inspection Division's July 2003 report. Our analysis of the language skills of the 97 FBI staff stationed in countries where English is not the primary or secondary language revealed that 22 of the staff, or about 23 percent, had no language skill applicable to the host country or the territory covered by the Legat office. In addition, 14 agents had some language skills pertaining to that area, but did not meet the oral language goals as stated in the FBI's Legal Attaché Manual. In total, 36, or over one-third, of the 97 Legat staff assigned to these countries did not meet the FBI's language goals.

Tours of Duty

To ensure that FBI personnel do not lose contact and familiarity with the changing practices and priorities of the FBI, as well as concerns that extended tours of duty abroad could result in a security risk, the FBI places limits on the length of time staff can remain abroad. FBI personnel are limited to no more than five consecutive years abroad in one location or six consecutive years in two locations, although exceptions to these limits are permitted when necessary to meet the needs of the FBI. Further, according to an OIO official, prior to 1997, no tour of duty limits existed for support staff.

Our analysis found that some Legat staff have remained abroad for long periods of time. We examined the tours of duty for 370 FBI agents and support personnel assigned to Legat offices since October 1, 1996. Our analysis indicates 21 FBI employees had remained overseas for more than 6 consecutive years. An additional eight Legat staff will be overseas for more than 6 years if they complete their current tours of duty.

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Conclusions and Recommendations

Increasingly, crimes and terrorist acts that occur abroad impact the United States and its citizens, and the FBI's Legal Attaché program plays a key role in detecting, deterring, and investigating these crimes. Based on our review and first-hand observations at four Legat offices, we believe that the Legat program in general and the four offices we reviewed in particular make a significant contribution in these efforts.

The many law enforcement and intelligence officials we spoke with in these countries gave the Legats high marks for fostering strong relationships. In addition, Legats appeared to coordinate effectively with their U.S. law enforcement counterparts stationed in U.S. embassies and were highly regarded by all four U.S. Ambassadors.

There has been a significant increase in the number of leads directed to Legat offices in the past five years. While most Legat offices have been able to cope with the workload, Legat Ottawa has consistently had a high volume of pending leads. The FBI's efforts to alleviate this problem, primarily through temporary duty staff, has had marginal success. In addition, our review of FBI personnel traveling to Canada on temporary duty assignments indicated that stronger controls are needed to ensure that required country clearances are obtained and complete records of these clearances are maintained.

Based on our review, the FBI's process for assessing the need for new Legat offices and realigning or closing existing offices appears adequate. The FBI also monitors the offices' operations and activities and is taking steps to strengthen this oversight. In addition, the FBI has a reasonable process in place for selecting agents for Legat positions. But both the FBI Inspection Division and our review indicate that improvements are needed in the training program for newly selected Legat staff. We noted that over one-third of Legat staff did not meet the FBI's foreign language proficiency goals as stated in the Legal Attaché Manual. Finally, we found that some Legat staff have remained abroad for long periods of time. While extensions to tour of duty limits may sometimes be necessary, we believe these extensions should be kept to a minimum.

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Based on the issues identified in this report, we offer six recommendations to improve the operation of the Legal Attaché program. Among the recommendations are that the FBI should:

- Analyze the staffing level and workload in Legat Ottawa to determine if additional permanent resources are needed to resolve the backlog of pending leads.
- Strengthen controls to ensure that country clearances are obtained, develop a system to ensure that complete records of these clearances are maintained, and direct the Inspection Division to review compliance with country clearance requirements during its inspections.
- Implement the FBI Inspection Division's 12 recommendations contained in their July 2003 report on pre-deployment training for Legat staff.
- Require adherence to the FBI's limits on overseas tours of duty and keep tour-of-duty extensions to a minimum.

FEDERAL BUREAU OF INVESTIGATION
LEGAL ATTACHÉ PROGRAM

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CHAPTER 1: INTRODUCTION

The Federal Bureau of Investigation (FBI) serves as the principal investigative agency of the federal government, responsible for investigating crimes against the United States and performing other duties connected with national security. FBI headquarters in Washington D.C. provides program direction and support to 56 field offices, approximately 400 satellite offices known as resident agencies, and 4 specialized field installations.

Although the FBI is a domestic law enforcement agency, it has stationed special agents abroad for many years in foreign posts known as Legal Attaché (Legat) offices. Special agents assigned to 46 Legal Attaché offices and 5 sub-offices abroad work with their police counterparts in foreign countries to obtain information for the FBI on crimes and criminals that could harm U.S. citizens or interests.⁸ The globalization of crime and terrorism in recent years has resulted in a significant expansion in the FBI's overseas operations. Fiscal year 2003 expenditures for the Legal Attaché program totaled \$43.7 million, up from \$27.6 million for fiscal year 1997, or an increase of about 58 percent.

History of the Legal Attaché Program

The FBI began assigning agents abroad during World War II. These agents were assigned initially to Central and South America to monitor activities of German agents operating in the area as well as individuals and organizations in the large German émigré community believed to be loyal to the Nazi regime. By the end of World War II, agents also were posted to American embassies in Europe and Asia. In subsequent years, the FBI opened and closed offices abroad depending on factors such as political conditions, changing criminal priorities, and FBI finances. In 1953, there were 6 Legat offices; this rose to 12 by 1968. By 1971, the number had increased to 17 offices and the justifications for the increase included a general rise in terrorism and airline hijackings, growing numbers of deserters and draft resisters overseas, and increases in drug trafficking.

⁸ At the time of our review, the FBI had 45 Legal Attaché offices abroad and a liaison office in Miami, Florida, which covered certain areas of Central America and the Caribbean. For purposes of this report, we included the Miami liaison office in the total of Legal Attaché offices. According to FBI officials, the Miami liaison office was closed effective October 1, 2003.

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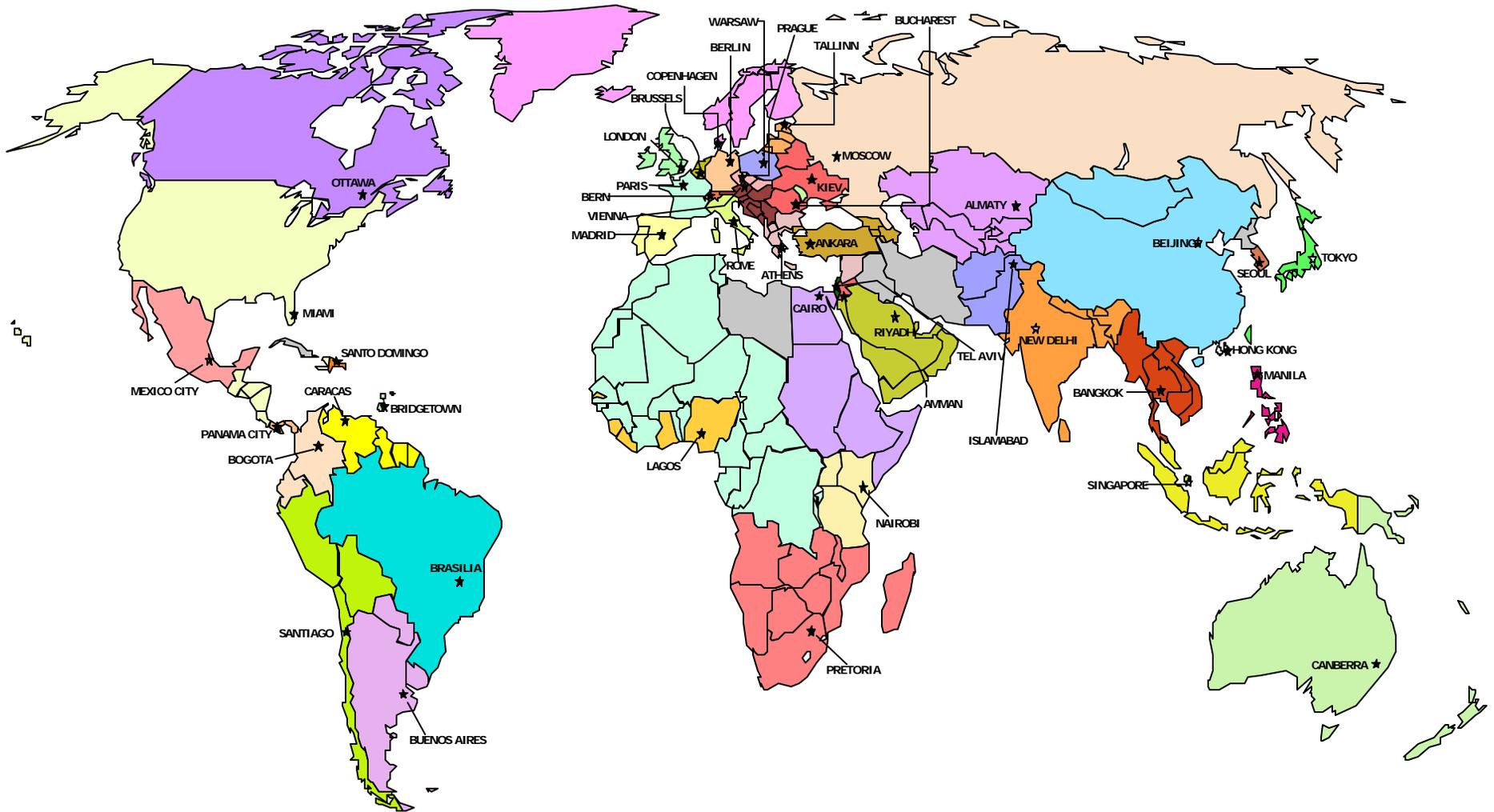
The number of Legat offices continued to rise during the 1980s and 1990s, spurred by the increasing globalization of crime. For example, the end of the Cold War and the collapse of Communist regimes opened borders and created a flood of organized criminal activity in those countries and the United States. Likewise, the increasing flow and speed of international bank transfers, a liquid world-wide financial market, and loosened restrictions on the export of capital allowed large sums of money to be moved and concealed with ease by drug traffickers and white collar criminals. By 1996, the FBI had 25 offices abroad. Since then, the number has doubled due in part to the threat of international terrorism directed against the United States.

The increasing FBI presence overseas in the last two decades has also been fostered by changes in statutory authority. Historically, the FBI's criminal jurisdiction was largely limited to domestic investigations and activities. The United States rarely asserted criminal jurisdiction beyond its borders and, consequently, most criminal behavior that occurred outside the country could not be prosecuted in U.S. courts. In response to the rise in international crime and terrorism, however, Congress, through express statutory language, has extended federal jurisdiction "extraterritorially" to protect U.S. citizens and interests abroad. According to a 1996 FBI report entitled The FBI's Presence Overseas: The Need for FBI Agents Abroad to Better Protect the United States From International Crime and Terrorism, federal law covered nearly 50 types of offenses that could have an overseas element, double the number of crimes that existed before 1980.

The Legal Attaché Program Today

The map in Exhibit 1-1 and the table in Exhibit 1-2 show the locations of the 46 Legal Attaché offices open as of September 30, 2003, the year they were opened, and the geographic areas and countries they cover. As the map also details, this geographic coverage extends to all countries in the world with the exception of Cuba, Iran, Libya, and North Korea—countries with which the United States has no formal diplomatic relations. In addition, FBI agents from the FBI's Counterterrorism Division are currently on temporary duty in Iraq, but these agents are not part of the Legat program. Almost two-thirds of the Legat offices have opened since 1990. In order to open a new Legat office or modify staffing levels in existing offices, the FBI must obtain Department of Justice, Department of State, Office of Management and Budget, and Congressional approval.

EXHIBIT 1-1
LOCATION OF FBI LEGAL ATTACHÉ OFFICES



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**EXHIBIT 1-2
LISTING OF FBI LEGAL ATTACHÉ OFFICES, YEAR OPENED,
AND COUNTRIES COVERED**

| Legal Attaché Office | Date Opened⁹ | Countries |
|-----------------------------|--------------------------------|--|
| Almaty, Kazakhstan | 2000 | Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan |
| Amman, Jordan | 2001 | Jordan |
| Ankara, Turkey | 2000 | Armenia, Azerbaijan, Georgia, Turkey |
| Athens, Greece | 1993 | Albania, Bulgaria, Cyprus, Greece, Lebanon, Macedonia, Syria |
| Bangkok, Thailand | 1990 | Burma, Cambodia, Laos, Thailand, Vietnam |
| Beijing, China | 2002 | Mongolia, Peoples Republic of China |
| Bern, Switzerland | Pre-1970 | Liechtenstein, Switzerland |
| Berlin, Germany | 1998 ¹⁰ | Germany |
| Bogotá, Colombia | Pre-1970 | Colombia, Ecuador |
| Brasília, Brazil | 1999 | Brazil |
| Bridgetown, Barbados | 1988 | Anguilla, Antigua and Barbuda, Barbados, Dominica, French West Indies, Grenada, Guadeloupe (Islands of St. Barthelemy and French St. Martin), Martinique, Montserrat, Netherlands Antilles (Islands of Saba, St. Eustatius, and Dutch St. Maarten), St. Christopher, St. Kitts/St. Nevis (British West Indies), St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago |
| Brussels, Belgium | 1989 | Belgium, Luxembourg, The Netherlands |
| Bucharest, Romania | 2001 | Moldova, Romania |
| Buenos Aires, Argentina | 1997 | Argentina, Paraguay, Uruguay |
| Cairo, Egypt | 1996 | Djibouti, Egypt, Eritrea, Ethiopia, Somalia, Sudan |
| Canberra, Australia | Pre-1970 | Australia, Christmas Island, Cook Islands, Fiji, French Polynesia (includes Austral Islands, Bora Bora, Marquesas Islands, Moorea, Society Islands, Tahiti), Kiribati (includes Canton, Caroline, Flint, Gilbert Islands, Malden, Phoenix, Starbuck, Vosttok), Nauru, New Caledonia, Papua New Guinea, New Zealand, Niue, Pitcairn Island, Solomon Islands, Tokelau, Tonga, Tuvalu, Vanuatu, Wallis and Futuna Islands (French), Samoa |
| Caracas, Venezuela | 1992 | Aruba, French Guiana, Guyana, Netherlands Antilles (islands of Bonaire and Curacao), Suriname, Venezuela |
| Copenhagen, Denmark | 1999 | Denmark, Greenland, Finland, Iceland, Norway, Sweden |
| Hong Kong, SAR, China | Pre-1970 | Hong Kong, Macau |
| Islamabad, Pakistan | 1996 | Afghanistan, Pakistan |
| Kiev, Ukraine | 1997 | Belarus, Ukraine |

⁹ The year opened for most pre-1970 offices was not readily available.

¹⁰ Before 1998, the Legat in Germany was located in the city of Bonn.

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| Legal Attaché Office | Date Opened⁹ | Countries |
|---------------------------------------|--------------------------------|---|
| Lagos, Nigeria | 1999 | Gambia, Ghana, Liberia, Nigeria, Sierra Leone |
| London, England | Pre-1970 | United Kingdom (England, Scotland, Wales, Northern Ireland), Republic of Ireland, Channel Islands (Jersey, Guernsey) |
| Madrid, Spain | 1991 | Andorra, Cape Verde, Equatorial Guinea, Gibraltar, Portugal, Spain |
| Manila, Philippines | 1988 | Philippines |
| Mexico City, Mexico | Pre-1970 | Mexico |
| Miami, United States (Liaison Office) | Not Determined | Bahamas, Belize, Bermuda, Cayman Islands, Costa Rica, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Turks and Caicos Islands, Haiti |
| Moscow, Russia | 1994 | Russia |
| Nairobi, Kenya | 2001 | Kenya, Tanzania, Uganda |
| New Delhi, India | 2000 | Bangladesh, Bhutan, India, Maldives, Nepal, Sri Lanka |
| Ottawa, Canada | 1942 | Canada |
| Panama City, Panama | Pre-1970 | Panama |
| Paris, France | Pre-1970 | Algeria, Benin, Burkina, Faso, Burundi, Cameroon, Central African Republic, Chad, Republic of Congo, France, Gabon, Guinea, Guinea-Bissau, Cote d'Ivoire (aka Ivory Coast), Mali, Mauritania, Monaco, Morocco, Niger, Rwanda, Senegal, Togo, Tunisia, Western Sahara, Democratic Republic of Congo, Zaire |
| Prague, Czech Republic | 2000 | Czech Republic, Slovakia |
| Pretoria, South Africa | 1997 | Angola, Botswana, Comoros, Diego Garcia (British Indian Ocean Territory), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Swaziland, Zimbabwe, Zambia |
| Riyadh, Saudi Arabia | 1997 | Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, U.A.E., Yemen |
| Rome, Italy | Pre-1970 | Italy, Malta |
| Santiago, Chile | 1994 | Bolivia, Chile, Peru |
| Santo Domingo, Dominican Republic | 2001 | Dominican Republic |
| Seoul, South Korea | 2000 | South Korea |
| Singapore, Singapore | 2000 | Brunei, East Timor, Indonesia, Malaysia, Singapore |
| Tallinn, Estonia | 1997 | Estonia, Latvia, Lithuania |
| Tel Aviv, Israel | 1996 | Israel |
| Tokyo, Japan | 1954 | Japan, Taiwan |
| Vienna, Austria | 1992 | Austria, Bosnia, Croatia, Herzegovina, Hungary, Slovenia, Yugoslavian Republic (Serbia and Montenegro) |
| Warsaw, Poland | 1997 | Poland |

EXHIBIT 1-2 CONTINUED

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Plans are underway to expand the FBI's overseas presence. Five new offices are in the process of being opened in Georgia, Malaysia, Morocco, the United Arab Emirates, and Yemen. In addition, the FBI has received congressional approval to establish three sub-offices in existing Legats in Bonn, Germany (Legat Berlin); Milan, Italy (Legat Rome); and Toronto, Canada (Legat Ottawa). Finally, the FBI has augmented staff to the Legats in Amman, Jordan; Islamabad, Pakistan; Manila, Philippines; Ottawa, Canada; Riyadh, Saudi Arabia; and Cairo, Egypt.

The Office of International Operations (OIO) at FBI Headquarters oversees the Legal Attaché program. OIO provides managerial oversight as well as administrative and logistical support to Legal Attaché offices, employees, and their dependents. In addition, it maintains contact with other federal agencies operating in the international arena, INTERPOL, and foreign police and security officers assigned to embassies (diplomatic missions) in the United States.¹¹

Legal Attaché Staff

The title "Legal Attaché" was established by the Department of State for the special agent designated to be in charge of an FBI liaison office abroad. These agents are typically senior managers with many years of experience in handling criminal investigations. Additional agents assigned to the office are generally referred to as Assistant Legal Attachés, or ALATs. Office Assistants provide administrative support. The typical office has a Legal Attaché, one ALAT, and one Office Assistant although some of the larger offices have 10 or more permanent staff. The Legal Attachés are generally temporary Grade 15s, and the ALATs are temporary Grade 14s for the term of their assignment. In total, at the end of fiscal year 2003, the Legat offices were staffed with 119 special agents and 75 administrative support personnel.¹² Legal Attaché personnel are considered part of the U.S. Embassy staff and the Legal Attaché office is located in a

¹¹ INTERPOL—the International Criminal Police Organization, with headquarters in Lyon, France, facilitates cooperation among international police authorities.

¹² See Appendix IV for a breakdown of personnel by office.

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controlled access area within the diplomatically protected premises of a U.S. embassy or consulate.¹³

As needed, additional personnel are assigned to Legal Attaché offices on a temporary duty (TDY) basis to help manage the workload. In addition, unless otherwise directed by FBI headquarters, Legal Attachés have authority over and are held responsible for all other FBI personnel who are in the country or region to work on specific investigations, attend conferences, or conduct training.

FBI and Legal Attaché Priorities

The intent of the Legal Attaché program is to create a network of law enforcement relationships that can work together to address the rising tide of international crime and terrorism. Ultimately, the goal of the program is to detect, deter, and investigate international crimes against United States citizens and interests. The FBI believes that placing agents overseas provides the most reliable, effective, and timely means to combat international crime and prevent it from reaching the United States.

In its 5-year strategic plan issued in May 1998, the FBI has identified three functional areas, or tiers, that describe the variety of threats that it must address to realize the goal of enhanced national and individual security. Tier One encompasses foreign intelligence, terrorist, and criminal activities that directly threaten the national or economic security of the United States. Tier Two encompasses crimes that affect the public safety or undermine the integrity of American society. Tier Three encompasses crimes that affect individuals and crimes against property. Legal Attachés' investigative efforts cover all of these tiers, but much like the FBI as a whole since the September 11, 2001, terrorist attacks, their number one priority is the prevention of terrorist attacks against the United States and its interests. As a result, the bulk of the Legats' workload centers on counterterrorism activities.

¹³ A controlled access area is a specifically designated area within an embassy where classified information up to a secret level may be handled, stored, discussed, or processed.

Activities of Legal Attachés

The activities of FBI staff assigned to Legal Attaché offices vary to some degree depending on the country or region where the office is located and the nature of the criminal threats to the United States. In general, however, the primary function of Legal Attachés is to establish, maintain, and enhance liaison with foreign law enforcement agencies. Legal Attachés serve as a conduit between FBI headquarters and field offices needing investigative assistance or information from foreign countries and law enforcement officials in those countries. At the same time, foreign law enforcement agencies transmit their requests for investigative assistance in the United States via Legal Attaché offices to FBI domestic offices. By working cooperatively with foreign police agencies, the Legal Attaché offices seek to build networks that prevent crime or, alternatively, that ensure access to the information the FBI needs to locate and extradite international criminals and terrorists and obtain evidence for their prosecution. Most Legal Attachés have liaison responsibilities for multiple countries, so they often spend a significant portion of their time traveling.

In some instances, Legal Attaché staff may become directly involved in specific investigations and may be assisted in these investigations by FBI personnel sent from the United States. However, Legal Attaché personnel have no law enforcement authority in foreign countries; they have no arrest powers and usually are not allowed to carry weapons. Thus, investigations are usually conducted jointly with foreign law enforcement agencies in accordance with local laws and policies and procedures established by the host country. In addition, because investigative activities could have an impact on the conduct of U.S. foreign relations, these investigations must be coordinated with the State Department.

Legal Attachés also facilitate the rapid deployment of FBI personnel in response to major cases such as the attacks on U.S. embassies in East Africa, the bombing of the U.S.S. Cole in Yemen, and the September 11, 2001, terrorist attacks (PENTTBOM).¹⁴ The number of agents and other FBI personnel that have been sent abroad temporarily to work on such investigations is significant. For example,

¹⁴ PENTTBOM is the FBI's term for its investigation of Pentagon-World Trade Towers bombings on September 11, 2001.

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according to recent congressional testimony, in the aftermath of the September 11 attacks and throughout the following year, about 700 FBI personnel were temporarily assigned overseas to work on PENTTBOM.¹⁵

Another key function of Legal Attachés is to coordinate their activities with other U.S. law enforcement and intelligence agencies that operate in the same country or regions to exchange information and to avoid duplication and overlap. These include the Bureau of Diplomatic Security within the State Department, whose agents, known as Regional Security Officers (RSOs), protect U.S. embassy facilities; the Central Intelligence Agency (CIA); the Drug Enforcement Administration (DEA); the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Immigration and Customs Enforcement (ICE);¹⁶ and in countries where the U.S. military maintains installations, U.S. military investigative and intelligence services. Legal Attachés also participate on embassy law enforcement teams, consisting of representatives of the federal law enforcement agencies assigned to the embassy, which advise the Ambassador and share information on law enforcement matters.

Providing or arranging for training for foreign police officials is another important activity of Legal Attachés. For example, Legats make presentations at training sessions and seminars and arrange for technical assistance from FBI headquarters when needed or requested by the host country. In addition, they interview candidates from among their foreign police contacts to attend law enforcement training programs in the United States and abroad. This training includes the FBI National Academy in Quantico, Virginia, which mid-level managers from state, local, and foreign police agencies receive training, and the International Law Enforcement Academy in Budapest, Hungary. Programs like these are designed to strengthen ties between United States and foreign law enforcement officials. Graduates of the FBI

¹⁵ Testimony of Roderick L. Beverly, Special Agent in Charge, Office of International Operations, before the House Judiciary Subcommittee on Immigration, Border Security, and Claims, May 13, 2003.

¹⁶ On March 1, 2003, the law enforcement and investigative functions of the Immigration and Naturalization Service in the Department of Justice and the Customs Service in the Department of Treasury were transferred to Immigration and Customs Enforcement in the Department of Homeland Security.

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National Academy have an international alumni network and about 10 percent of National Academy students come from overseas. Legal Attachés are expected to maintain close contact with graduates of the National Academy in their territory, meet with them regularly on matters of mutual interest, and hold periodic training sessions for the graduates.

Audit Approach

We initiated this audit because of the growing importance and significance of the FBI's Legal Attaché program. The objectives of our review were to examine the Legal Attaché program to determine: 1) the type of activities performed by Legal Attaché offices, 2) the effectiveness of the offices in establishing liaisons with foreign law enforcement agencies and in coordinating activities with other U.S. law enforcement and intelligence agencies stationed overseas, 3) the criteria and process used by the FBI to determine the placement of offices including oversight and management of existing offices, and 4) the processes for selecting and training FBI personnel for Legat positions.

We conducted work primarily at FBI Headquarters in Washington, D.C. and at Legal Attaché offices in Berlin (and its sub-office in Frankfurt), Germany; Ottawa, Canada; Pretoria, South Africa; and Tokyo, Japan.

At FBI Headquarters we interviewed officials from the Office of International Operations; the Office of Professional Responsibility (OPR); Language Services Section; and the Criminal, Counterterrorism, Inspection, Finance, Security, and Administrative Services Divisions. We reviewed policies, procedures, manuals, correspondence, and other documents related to the Legal Attaché program. We also reviewed Legal Attaché annual accomplishment reports, Inspection Division reports, workload data, OPR cases, vacancy packages and language scores, and information on TDY travel to selected foreign locations.

At the Legal Attaché offices, we interviewed the Legal Attaché and selected staff assigned to the office. At each embassy, we also interviewed the Ambassador and selected embassy staff including representatives of other U.S. law enforcement and intelligence agencies. In addition, we interviewed officials at the American Consulates in Toronto, Canada, and Cape Town, South Africa (see Appendix III for a list of our contacts at the embassies and consulates

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visited). We also interviewed numerous representatives from law enforcement and security agencies in the countries we visited (see Appendix II for a list of the foreign agencies). At the Legal Attaché offices, we examined various records, files, and documents, observed physical security, followed up on selected FBI Inspection Division findings, and examined a judgmental sample of open requests for assistance from domestic FBI offices. Further details of our scope and methodology are presented in Appendix I.

CHAPTER 2: LEGAT OFFICE AND COUNTRY INFORMATION

The following sections in this chapter present background information on each Legal Attaché office we reviewed and the country or region covered by these offices. We selected these locations judgmentally to obtain a cross section of offices, taking into consideration factors such as the number of staff assigned, number of countries covered, geographic location, workload, crime problems, ongoing terrorism-related work, and prior inspection findings. Although the mission of each Legat office is the same, the activities of offices vary because of the differing political and cultural settings in which they operate and because of the nature of the crime problems that exist in the host country or region that have a connection to the United States. Thus, no single Legat office can be considered typical.

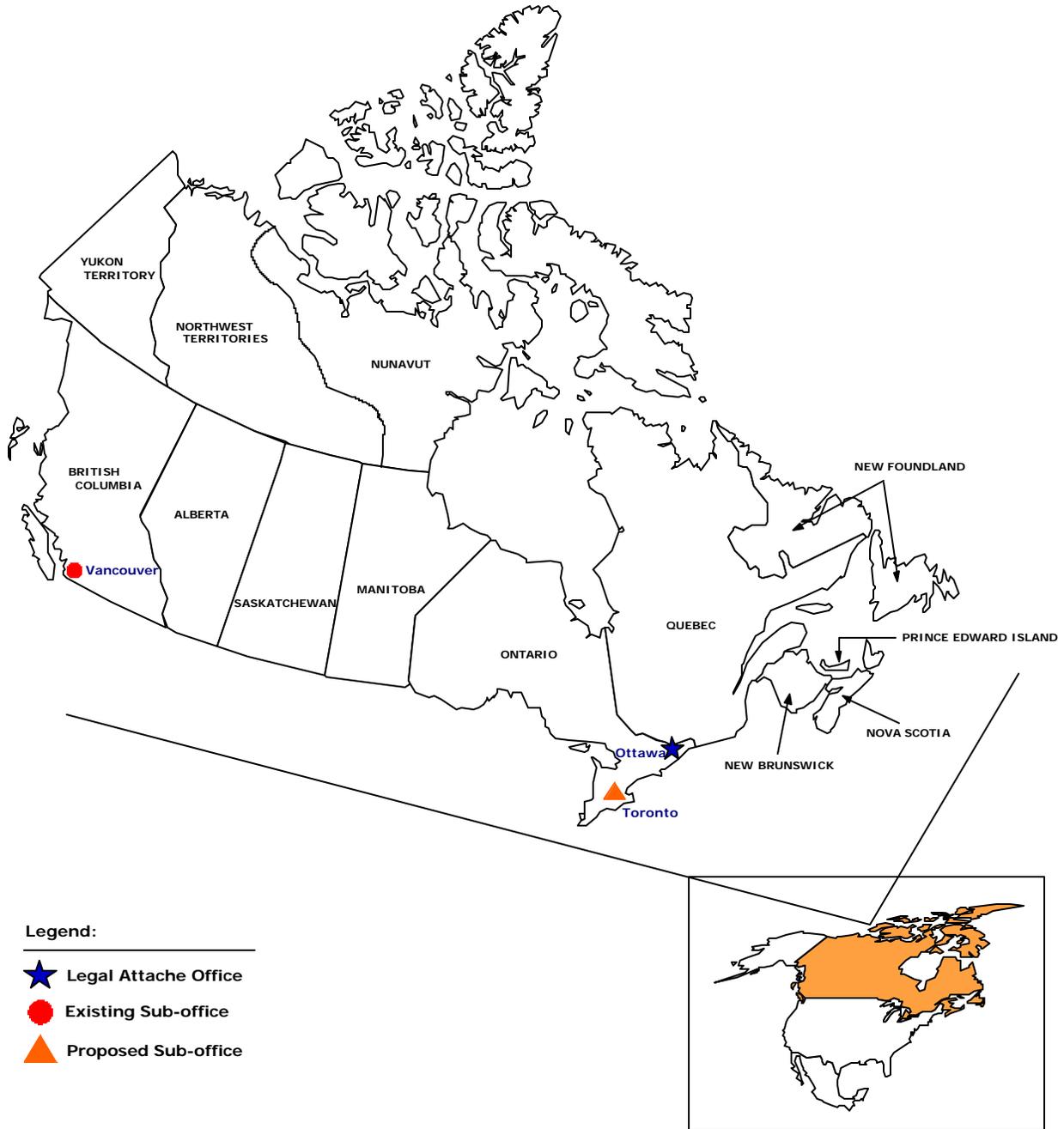
Legat Ottawa

The Legat office in Ottawa has responsibility for FBI liaison matters in Canada (see Exhibit 2-1). Canada is the second largest country in the world in terms of land area. It is comprised of ten provinces and three territories spanning five time zones and has a population of over 31 million. About 80 percent of the population lives within 100 miles of the U.S. border. Canada's major population centers are Montreal, Quebec; Toronto, Ontario; and Vancouver, British Columbia. Ottawa, the capital, is located in the St. Lawrence Valley between Montreal and Toronto. The official languages in Canada are French, spoken primarily in the Province of Quebec, and English, the dominant language for the rest of the country. According to a Department of State Background Note, the bilateral relationship between Canada and the United States is probably the most extensive in the world as evidenced by the \$1.4 billion in daily trade and the 200 million people who cross the border annually.¹⁷

The Legal Attaché office in Ottawa, opened in 1942, is one of the oldest of the FBI's foreign offices. As of April 2003, it was staffed by a Legat, four ALATS, and four office assistants. Because of the heavy

¹⁷ Background Notes are issued by the Department of State and contain information on countries with which the United States has relations.

EXHIBIT 2-1
LEGAT OTTAWA TERRITORY
EXISTING AND PROPOSED LEGAT LOCATIONS IN CANADA



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workload, additional personnel are frequently assigned on temporary duty. A sub-office, staffed by one ALAT and one Office Assistant, was established in Vancouver in May 2001 and covers the Province of British Columbia and the Yukon Territory. The FBI has been authorized to open an additional 3-person sub-office in Toronto.

Most of Legat Ottawa's workload before and after September 11, 2001, has been focused on addressing terrorism matters. According to Legat Ottawa's September 30, 2002, Annual Accomplishment Report, the PENTTBOM investigation alone generated more than 7,000 requests for assistance from FBI headquarters and field offices. The office receives many other requests relating to national security, national infrastructure protection/computer intrusion, telemarketing fraud, organized crime, drugs, money laundering, Canadian-based car theft rings, and fugitives.

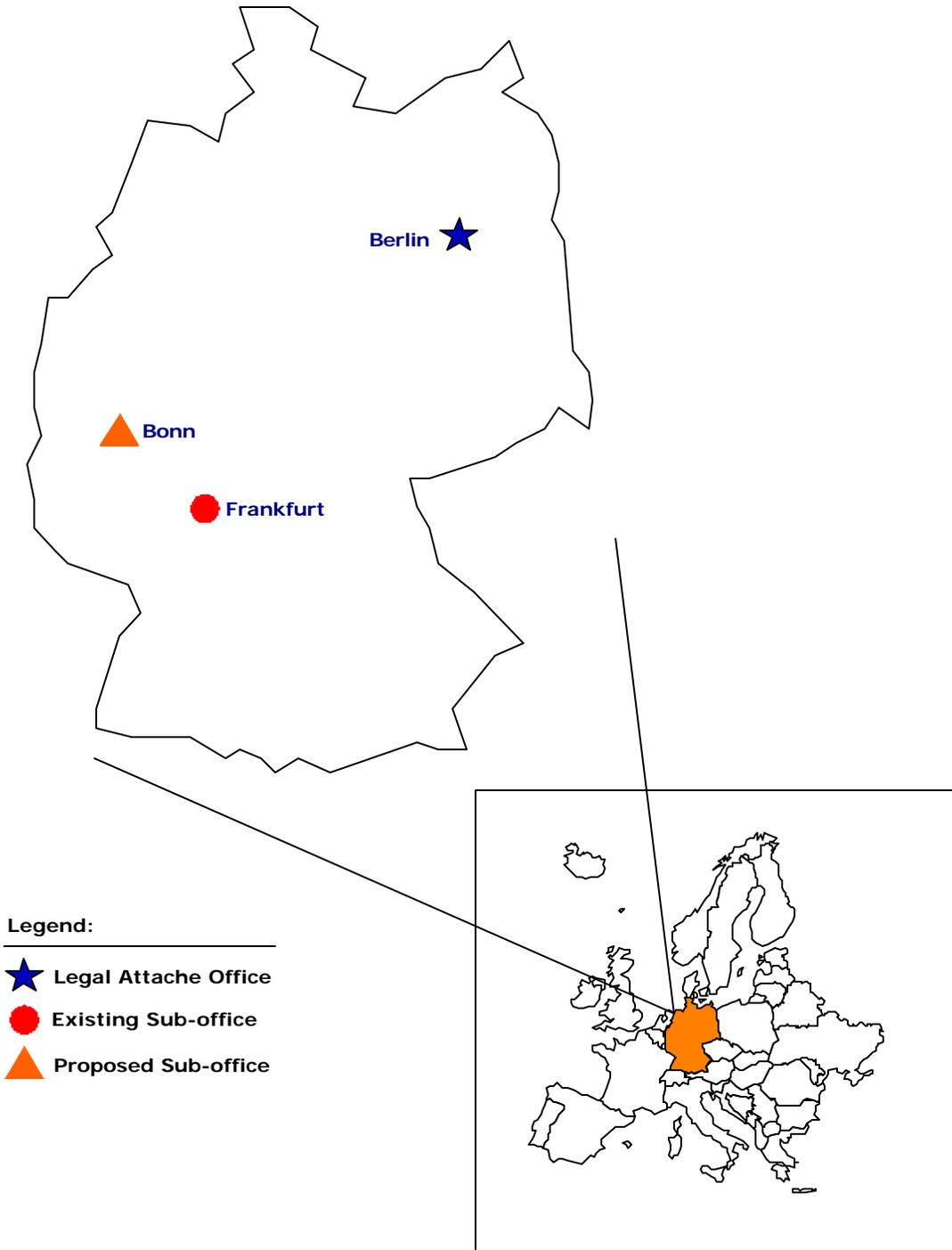
Legat Ottawa's workload is the largest among all Legal Attaché offices due largely to the country's proximity to the United States. The common, lengthy, and largely unguarded border makes it relatively easy for crime to traverse the two countries. [CLASSIFIED INFORMATION REDACTED].

Legat Berlin

The Legal Attaché office in Berlin has responsibility for liaison matters in the Federal Republic of Germany (see Exhibit 2-2). Germany consists of 16 federal states, 5 of which comprise the former German Democratic Republic. It has a population of over 83 million inhabitants, the largest in Europe after Russia. It also has the largest economy in Europe. Germany's land area is comparable in size to Montana.

The Legal Attaché office used to be located in Bonn, the former capital of West Germany. Shortly after the reunification of Germany in 1990, the German government designated Berlin as the new capital and later, the American Embassy and the Legal Attaché office moved to Berlin. Various German law enforcement agencies maintain headquarters offices in cities other than Berlin, thereby requiring Legat staff to travel throughout the country. In addition, there are a large number of U.S. military facilities located in the country.

EXHIBIT 2-2
LEGAT BERLIN TERRITORY
EXISTING AND PROPOSED LEGAT LOCATIONS IN GERMANY



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As of June 2003, the Berlin Legat was staffed by a Legat, one ALAT, and two Office Assistants. The Legat and the ALAT were fluent in German. The Legat told us that most of the discussions with their liaisons are carried out in German. At the time of our visit, a special agent was also assigned on temporary duty to this office for a 6-month period; this agent had been previously detailed to the office several times and was also fluent in German.

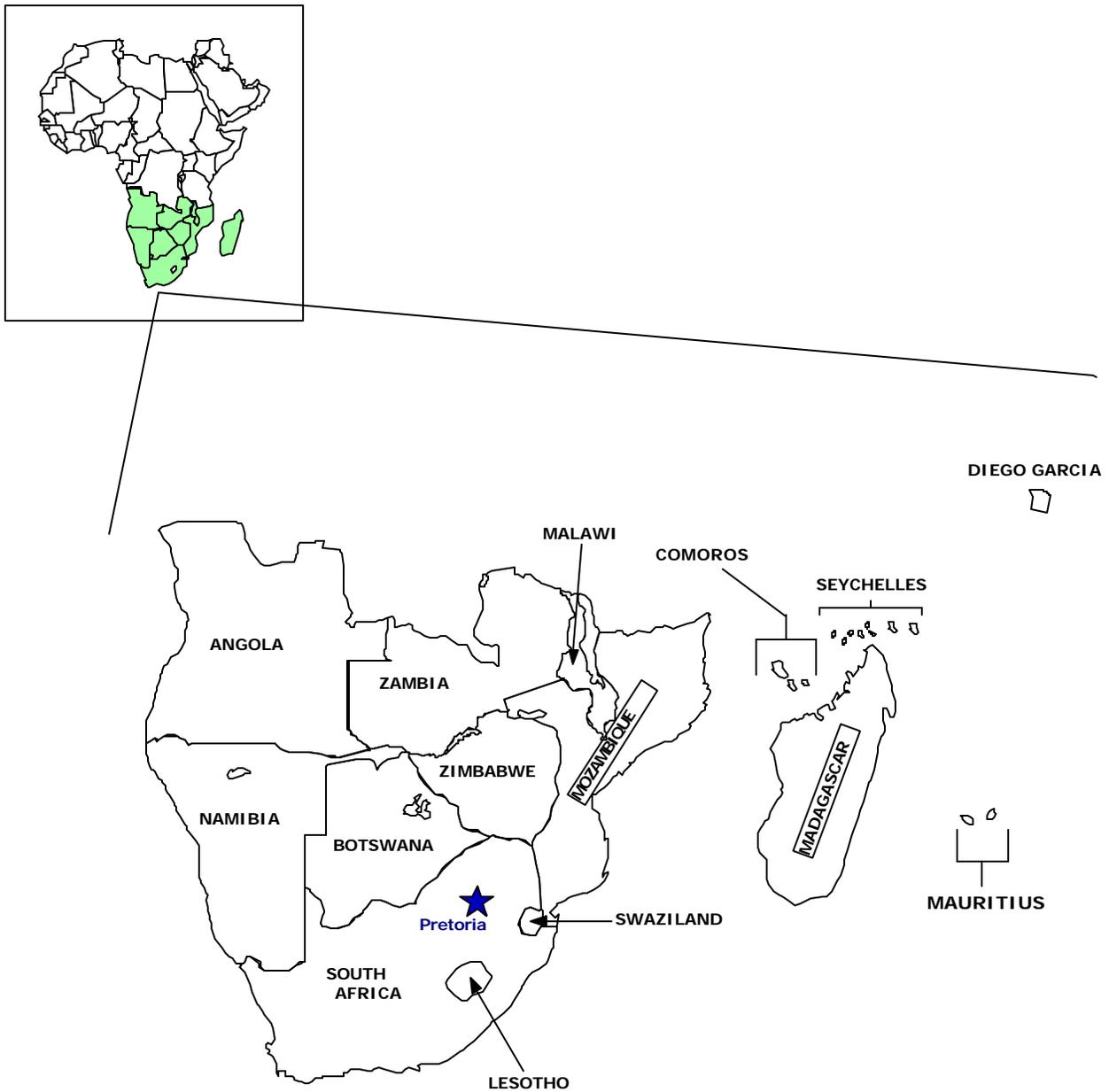
A Legat sub-office is located in Frankfurt and, at the time of our review, was staffed by two ALATS, two Office Assistants, and one analyst on temporary duty assignment. The two ALATS were conversant in German. There were also two special agents who were on temporary duty assignment at a German counterterrorism center in Meckenheim. One ALAT from Frankfurt supervises these two special agents. A sub-office is expected to open in Bonn in the near future, and the FBI expects to staff it with two ALATs and one Office Assistant.

Terrorism matters are the number one priority worked by Legat Berlin and because one of the key terrorist cells responsible for the September 11, 2001, attacks was located in Hamburg, a considerable amount of the office's time was spent on the PENTTBOM investigation. According to the FY 2002 Legal Attaché Annual Accomplishment report for Berlin, the office processed over 1,400 requests for assistance during the first month of this investigation, and about 100 FBI personnel were sent on temporary duty to Germany in support of the PENTTBOM investigation during calendar year 2002. The Legat office also works other requests relating to terrorism, foreign counterintelligence, organized crime, and fugitive cases.

Legat Pretoria

The Legat office in Pretoria, South Africa has responsibility for FBI liaison matters in 15 sub-Saharan countries in Africa: Angola, Botswana, Comoros, Diego Garcia, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Zambia, and Zimbabwe (see Exhibit 2-3). The closest country—Botswana—is 150 miles away, and Diego Garcia, an island in the Indian Ocean, is over 3,000 miles away. Flights to some of these countries are few in number and travel can be arduous because most of the region is in a third world state of development, and has

EXHIBIT 2-3
LEGAT PRETORIA TERRITORY IN SOUTHERN AFRICA



Legend:

★ Legal Attache Office

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unstable governments, inadequate communication services, erratic public transportation, unfavorable economic conditions, and an escalating rate of violent crime. English is the predominant language in most of the countries with the exceptions of Angola, Mozambique, Comoros, Lesotho, and Madagascar, where other languages including Portuguese, Arabic, Sesotho, and French are spoken.

South Africa is a developing nation about twice the size of the state of Texas. The country enjoys a reasonably well-established infrastructure, access to world financial markets, and abundant natural resources. Between the 1970s and the early 1990s relations between the United States and South Africa were adversely affected by South Africa's racial policies. In 1994, South Africa became a democracy when Nelson Mandela was elected President of the new South Africa, bringing the era of apartheid to an end.

The Legat Pretoria office became operational in June 1997. It is located in the capital city of Pretoria, South Africa, and, at the time of our review, was staffed by a Legat, one ALAT and one Office Assistant. Legat Pretoria does not have any sub-offices in its territory.

According to the FY 2002 Legal Attaché Annual Accomplishment Report, the Legat has visited every country in his territory at least once with the exception of Diego Garcia and Lesotho. The Legat told us that he would like to make more frequent liaison trips to the other countries in his region, but that other work priorities and travel budget constraints limited the number of visits made. Further, much of the Legat's work pertains to South Africa; thus the need for contact with most of the other countries is relatively infrequent. The Legat stated that he is usually able to get needed information from countries in his territory either through his own contacts in police departments or by working with the Regional Security Officers at the U.S. embassies in these other countries.

Besides high rates of HIV/AIDS, a 30 percent unemployment rate, and illiteracy, crime is one of the most pressing societal problems facing South Africa today. The incidence of rape, for example, is reportedly one of the highest in the world. Murders, car jackings, and home invasions are common occurrences and cross all economic classes. According to the FY 2002 Legal Attaché Annual Accomplishment Report, there has been an influx of Russian, Eurasian, Italian, and Asian criminal syndicates because of the availability of modern transportation, communication, and banking systems in South Africa.

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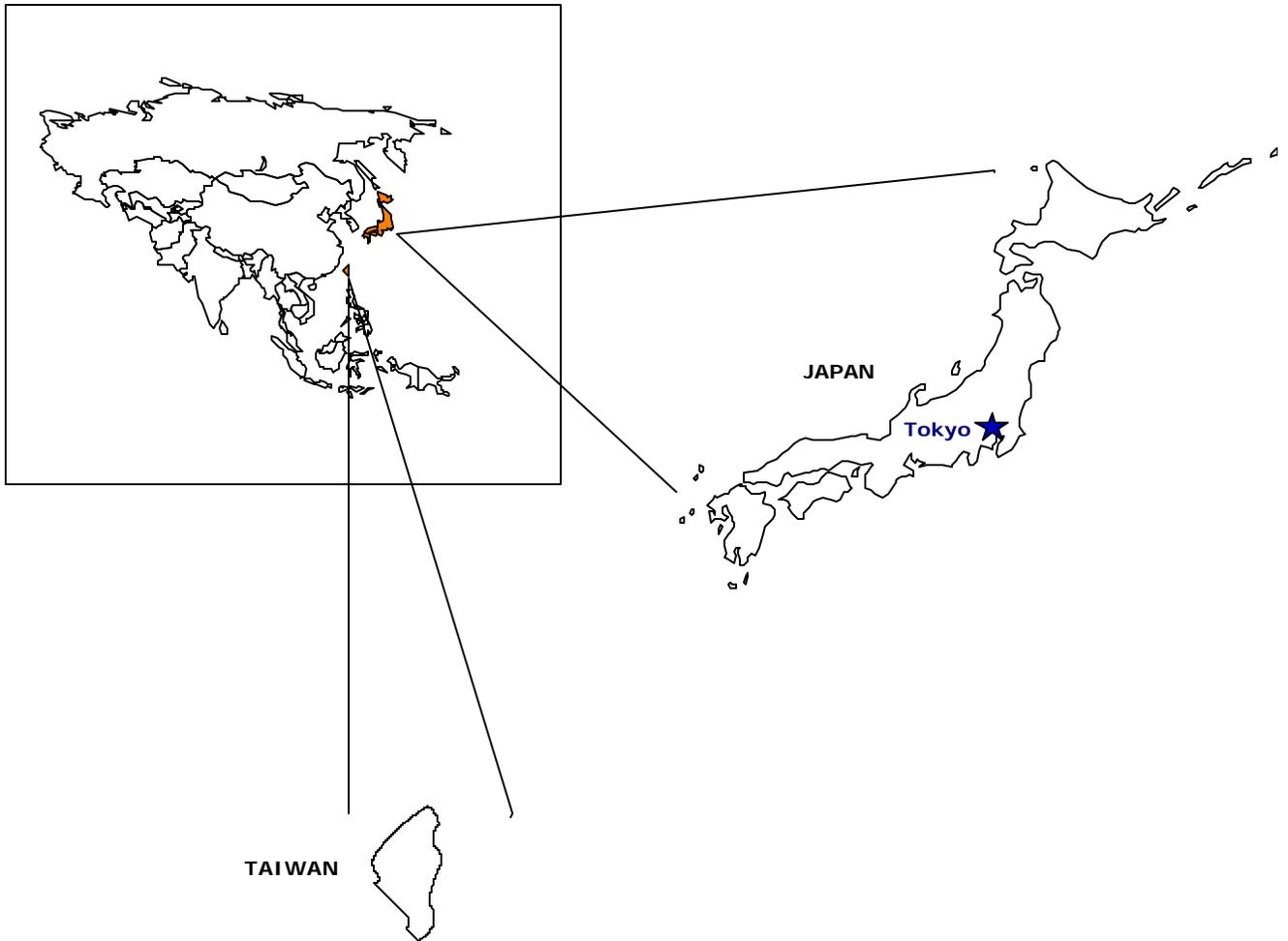
Also, according to the 2002 Legal Attaché Annual Accomplishment Report, the cumulative effect of several bombings that occurred in the region, domestic right wing activity in South Africa, and requests for assistance related to investigations pertaining to chemical/biological materials [CLASSIFIED INFORMATION REDACTED]. The office also receives requests for assistance related to organized crime and the extradition of fugitives.

Legat Tokyo

Legat Tokyo has responsibility for liaison matters in Japan and the Republic of China (Taiwan) (see Exhibit 2-4). Japan is slightly smaller than the state of California and has a population of about 126 million. It is a major economic power in the region and globally. The Japan-United States alliance is considered the cornerstone of U.S. security interests in Asia, and Japan provides bases, material, and support to about 50,000 U.S. troops stationed in the country. Tokyo is the capital and the largest city and has a population of over 14 million. Taiwan is one of the most densely populated countries in the world with a population of about 23 million in an area about the size of West Virginia. The U.S. government does not officially recognize the government of Taiwan. Rather, the American Institute of Taiwan, a nonprofit corporation incorporated in the Commonwealth of Virginia, functions like a U.S. Embassy without diplomatic status and pursues U.S. interests. Taipei, the capital of Taiwan, is located about 1,300 miles from Tokyo. The primary languages spoken in Japan and Taiwan are Japanese and Mandarin Chinese, respectively—limited English is spoken in both countries.

Legat Tokyo opened in 1954 and like Legat Ottawa is one of the oldest Legat offices. At the time of our review, it was staffed by a Legat, an ALAT, and two Office Assistants. The current Legat was also an ALAT in Tokyo between 1987 and 1992. Both the Legat and the ALAT are fluent in Japanese. At the time of our visit, a special agent was on a 30-day temporary assignment to help manage the workload while the Legat and ALAT were traveling and on leave. This individual was also fluent in Japanese.

EXHIBIT 2-4
MAP OF LEGAT TOKYO TERRITORY
JAPAN AND TAIWAN



Legend:

★ Legal Attache Office

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According to the Legat, about 75 percent of the office's workload involves Japan, and most of his liaisons are with Japanese officials in Tokyo. He periodically makes visits to Japanese law enforcement officials outside the Tokyo area. The Law for International Assistance in Investigation (LIAI) in Japan governs and limits how requests for information from the FBI to Japanese law enforcement agencies are handled and, according to the Legat, there are many legal restrictions on the ability of the FBI to obtain information.

Compared to Japan, there are fewer restrictions on the ability of the FBI to obtain information in Taiwan. The Legat told us that distance and travel budget constraints limit visits to Taiwan to about six times per year. However, he maintains frequent contact with law enforcement and intelligence authorities in Taiwan through telephone and written correspondence. In addition, some representatives of these agencies are posted to Tokyo. Because the United States does not officially recognize Taiwan or its government, the Legat cannot meet with these officials in their offices or on the premises of the U.S. Embassy. Thus, the Legat periodically meets with them in public places in Tokyo.

Historically, according to the Legat, organized crime was the top priority of the Tokyo Legat, but this has been overshadowed in recent years by counterterrorism and counterintelligence issues. Nevertheless, organized crime, particularly in Japan, remains a threat to U.S. interests and the Legat has maintained a longstanding cooperative relationship with Japanese law enforcement officials who investigate organized crime matters. The Japanese organized crime syndication known as Boryokudan, or the Yakusa, has approximately 80,000 members and consists of many groups and subgroups. Boryokudan groups reportedly participate in criminal activity in the United States through money laundering, drug trafficking, gun smuggling, and a wide variety of financial fraud. In Taiwan, organized crime has been growing in recent years. The major organized crime groups in Taiwan are the Triads, consisting of about 45-50 gangs, the largest of which operate internationally, including major metropolitan areas of the United States.

While counterterrorism matters are Legat Tokyo's top priority, its September 30, 2002, Legal Attaché Annual Accomplishment Report indicated that the threat of terrorism in Japan and Taiwan was low, in part, because of their small Muslim/Middle Eastern populations. However, the large U.S. military and business presence in Japan

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coupled with the country's support of the war on terrorism makes Japan an attractive target for terrorist acts, according to the report. As a result, a significant amount of the Legat's liaison efforts with Japanese law enforcement and intelligence agencies have centered on terrorism matters and PENTTBOM-related leads. In the foreign counterintelligence area, both Japan and Taiwan are very developed countries and, as a result, they offer numerous opportunities for economic espionage. In addition, the U.S. military presence in Japan is always a target for foreign counterintelligence operations.

CHAPTER 3: LEGAT INVESTIGATIVE ACTIVITIES

A key function of the FBI's Legal Attaché offices involves responding to requests for investigative assistance, known as investigative leads, from FBI headquarters and field offices. These requests range from simple tasks such as tracing telephone numbers or obtaining copies of documents to more complex, time-consuming activities such as tracking financial transactions, locating suspected criminals and terrorists, or interviewing individuals in connection with a matter under investigation. Because the Legats lack the jurisdiction to carry out investigations in foreign countries, they rely on their role as an intermediary to obtain cooperation and assistance from their foreign police liaisons, which in turn conduct the inquiries on behalf of the FBI.

In recent years, the number of leads handled by Legats has grown significantly primarily due to an increase in international crimes and terrorism but also because the number of Legat offices has grown. Overall, Legats appear to have been able to cope with the increasing workload. Legat Ottawa, however, has a significant volume of pending leads—a longstanding problem that the FBI has not addressed adequately. In addition, we found that controls over temporary duty travel by FBI personnel to Canada needs strengthening. Specifically, the FBI could not provide us with documentation showing that required Ambassador approval, known as a country clearance, had been obtained for 135 of the 422 personnel who traveled to Canada during a 19-month period between October 2001 and April 2003.

Legats' Process for Responding to Investigative Leads

When a federal crime occurs, the FBI office in the vicinity of the crime must decide whether to open an investigation.¹⁸ If it decides to do so, the office is known as the Office of Origin and the investigation is referred to as a case. When the Office of Origin needs assistance on a case from another field office, FBI headquarters, or a Legal Attaché office, it prepares a request, which is known as a lead. At the time we began our fieldwork, there were two categories of leads:

¹⁸ These decisions are based on a variety of factors including priorities set by headquarters, knowledge of the local criminal environment, interest of other federal agencies in the jurisdiction, and the prosecution threshold of the local U.S. Attorney's Office.

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administrative, which involve non-investigative tasks and investigative, which are case-related tasks; in this review we focused on investigative leads.¹⁹ Legats receive leads when an investigation by the Office of Origin identifies issues that need to be pursued in a country in the Legat's assigned territory. Leads are a significant component of the Legal Attaché office's workload, and prompt resolution of the leads can be critical to the FBI's investigations in the United States.

When an Office of Origin initiates an investigation, the case is entered into the Automated Case Support (ACS) system, the FBI's centralized records and case management system. The case is assigned an identification number and an investigative program. An investigative program, such as Counterterrorism or Violent Crimes Major Offenders (VCMO) program, provides oversight for the investigation of particular groupings of classifications. For example, when a "272C" case is opened (money laundering), it is assigned to the VCMO program.

When an Office of Origin determines that leads need to be pursued by other offices, such as Legats, it prepares an electronic communication (EC) within ACS.²⁰ The request typically includes background information on the investigation, priority level,²¹ and instructions on what action is required from the receiving office. For example, the request may ask the Legat to identify the subscriber of a telephone number, identify and track financial transactions, locate suspects, or conduct interviews. The amount of work involved in responding to these requests can vary widely depending on the nature of the request.

¹⁹ Effective March 1, 2003, the investigative and administrative lead categories were replaced by three new lead categories: "Action Required," "Discretionary Action," and "Information Only."

²⁰ An electronic communication is a standardized communication component of the ACS system, which is used to create letters, memoranda, and other internal FBI documents.

²¹ Leads are assigned one of four priority levels (immediate, priority, routine, and deadline) according to the speed of service required. For example, an immediate priority lead requires prompt action while a routine priority lead requires information or action within the normal course of business.

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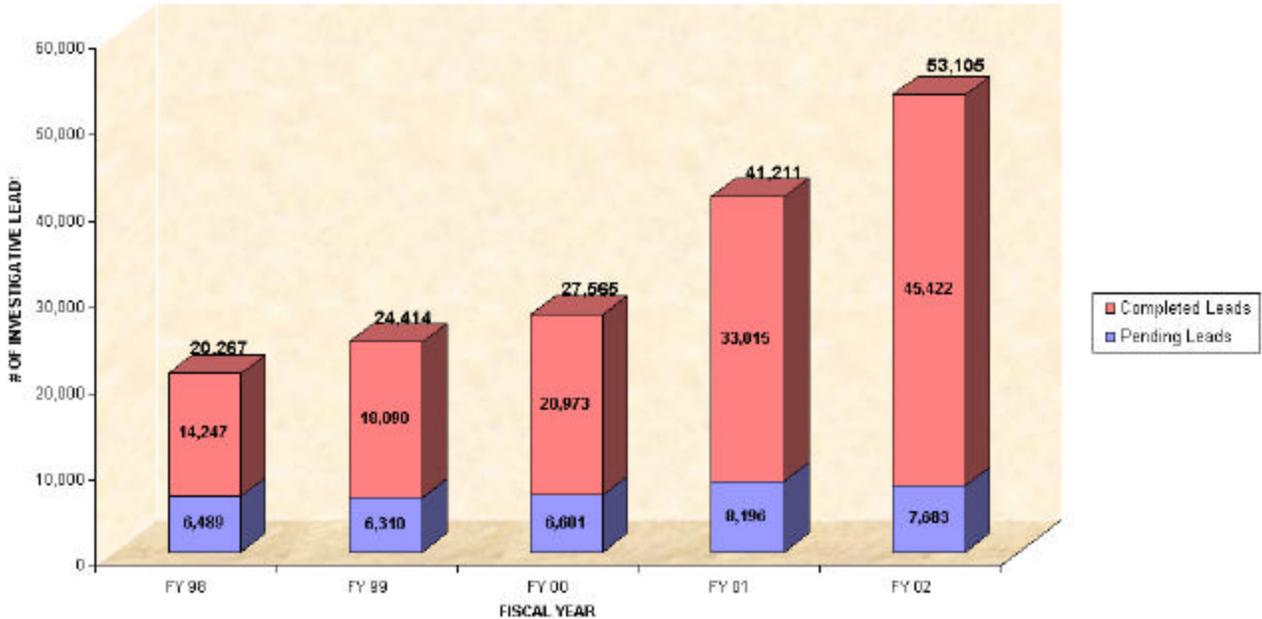
An Office Assistant in each Legat office checks ACS to determine if any new leads have been assigned to their office. The applicable ECs are printed and assigned to investigative personnel. At the Legal Attaché offices we reviewed, the leads were usually assigned to individual agents by investigative program, such as Counterterrorism or Violent Crimes Major Offenders. Legat staff at the four Legal Attachés we reviewed confirmed that their offices' top priority was to address leads pertaining to counterterrorism matters and, thus, counterterrorism leads are typically worked before others.

Investigative personnel review the action requested and determine which foreign law enforcement or intelligence agencies can provide the needed assistance. They then prepare a request to the law enforcement agency or agencies and either hand deliver, facsimile, or mail the request. The Legat personnel cannot undertake these investigations on their own because they do not have law enforcement jurisdiction in foreign countries. Thus, they rely on their law enforcement contacts in the foreign country to obtain an answer to the lead. Legat personnel keep track of their assigned leads and follow up when necessary. Once an answer is received in whole or in part, the Legat staff analyzes the information and sends a response to the Office of Origin.

Legats Have Coped With Sizeable Rise in Leads

As Exhibit 3-1 shows, investigative leads handled by Legal Attaché offices have increased significantly. In the 5-year period between FYs 1998 and 2002, the number of leads rose from 20,267 to 53,105, an increase of about 162 percent. The increase in investigative leads assigned to Legats is largely attributable to the surge in international crime and terrorism, especially leads related to the terrorist attacks on September 11, 2001. Another contributing factor is that the FBI opened 14 new Legal Attaché offices and 2 sub-offices during this period. As these offices develop relationships with their foreign law enforcement counterparts, additional leads are generated. As Exhibit 3-1 also shows, despite the sharp increase in leads, the number of pending leads has remained relatively stable, increasing from 6,489 in FY 1998 to 7,683 in FY 2002, or about 18 percent. Compared another way, the data shows that pending leads as a percent of total leads have decreased from 32 to 14 percent during the 5-year period as Exhibit 3-2 illustrates.

**EXHIBIT 3-1
INVESTIGATIVE LEADS BY FISCAL YEAR
FOR ALL LEGAL ATTACHÉ OFFICES**



Note: The overall totals for FY 1998, 1999, and 2000 do not reconcile to the totals for completed leads and pending leads. We obtained these numbers from the ACS Leads Summary report and FBI staff have not been able to explain the discrepancies. For example, the data provided by the FBI showed that leads totaled 20,267 in FY 1998, but pending leads (6,489) and completed leads (14,247) totaled 20,736, or a difference of 469 leads.

Source: FBI, Legat – Leads Summary, Administrative Report Recap

**EXHIBIT 3-2
PENDING LEADS AS A PERCENT OF TOTAL LEADS**

| FISCAL YEAR | PERCENT |
|-------------|---------|
| 1998 | 32 |
| 1999 | 26 |
| 2000 | 24 |
| 2001 | 20 |
| 2002 | 14 |

Source: OIG calculation based on data from FBI, Legat – Leads Summary, Administrative Report Recap

Exhibit 3-3 shows investigative lead data for the four Legal Attaché offices we reviewed. Similar to the data for the Legat offices as a whole, these four offices have also experienced significant

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increases in the number of leads received, completed, and pending from FYs 1998 to 2002.

EXHIBIT 3-3 INVESTIGATIVE LEADS BY FISCAL YEAR FOR THE FOUR LEGAL ATTACHÉ OFFICES REVIEWED

| INVESTIGATIVE LEADS | FISCAL YEAR | | | | |
|---------------------|-------------|-------|-------|-------|-------|
| | 1998 | 1999 | 2000 | 2001 | 2002 |
| Berlin | | | | | |
| Leads Received | 1,192 | 1,060 | 900 | 1,466 | 2,554 |
| Completed | 956 | 929 | 749 | 1,119 | 2,274 |
| Pending | 131 | 131 | 151 | 347 | 280 |
| Ottawa | | | | | |
| Leads Received | 2,255 | 2,667 | 2,902 | 3,709 | 4,545 |
| Completed | 1,257 | 1,788 | 1,725 | 2,634 | 2,974 |
| Pending | 1,007 | 880 | 1,177 | 1,075 | 1,571 |
| Pretoria | | | | | |
| Leads Received | 38 | 382 | 586 | 729 | 648 |
| Completed | 28 | 252 | 378 | 630 | 551 |
| Pending | 52 | 130 | 210 | 99 | 97 |
| Tokyo | | | | | |
| Leads Received | 597 | 586 | 634 | 731 | 836 |
| Completed | 556 | 474 | 568 | 669 | 727 |
| Pending | 45 | 112 | 66 | 62 | 109 |

Note: Leads received minus leads completed do not always equal leads pending for FYs 1998, 1999, and 2000. We obtained these numbers from the ACS Administrative Report Recap for each office for these years and FBI staff have not been able to explain the discrepancies.

Source: FBI, Legat – Leads by Office, Administrative Report Recap

Review of Pending Leads at Four Offices

We judgmentally selected and reviewed a sample of open investigative leads at Legat Ottawa, the first location we reviewed, because the volume of pending leads was significant in that office and because we were told that the files for closed leads were not readily available due to space limitations within the Embassy. To be consistent, we also reviewed judgmentally selected samples of pending leads at the other three Legats. Consequently, because our samples of pending leads were judgmentally selected and because we did not review closed leads, our results are not necessarily representative of how the offices responded to their leads overall.

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As Exhibit 3-4 shows, we reviewed 114 leads that were pending at the time of our review of these offices. We identified minor discrepancies at all four of the offices involving 28 leads, which remained open in ACS, yet all the work had been completed. The Legal Attachés acknowledged that these leads should have been closed. In addition, we found that two offices, Ottawa and Pretoria, were sometimes slow to either initiate work on a lead, conduct follow up, or respond to the Office of Origin. The Legal Attachés in these two offices acknowledged the delays but explained that they occurred because the offices concentrated on higher priority matters.

**EXHIBIT 3-4
PENDING LEADS REVIEWED AND EXCEPTIONS
AT THE FOUR LEGAL ATTACHÉ OFFICES**

| LEGAT OFFICES | LEADS SAMPLED | EXCEPTIONS | |
|---------------|---------------|-------------------|-------------------|
| | | NOT CLOSED IN ACS | UNTIMELY RESPONSE |
| Berlin | 32 | 2 | 0 |
| Ottawa | 33 | 9 | 22 |
| Pretoria | 25 | 2 | 9 |
| Tokyo | 24 | 15 | 0 |
| TOTALS | 114 | 28 | 31 |

The following are examples of some of the delays we identified during our review of Pretoria and Ottawa’s open investigative lead files.

- The New York field office asked Legat Pretoria on August 9, 2001, to investigate certain individuals and interview them if necessary regarding allegations that had been made about weapons and explosives bound for the United States. The lead was designated routine by the Office of Origin meaning that action was required within “the normal course of business.” However, no action had been taken on this lead more than 16 months later when we reviewed it in January 2003. According to the ALAT, the lead was overlooked and added that he would follow up.
- On September 25, 2001, the Buffalo field office asked Legat Ottawa to conduct a background check on an individual who had sent photographs of the World Trade Center destruction to a former co-worker and to conduct a follow-up investigation if necessary. This lead was designated routine. The lead was assigned to an agent on May 14, 2002, almost 8 months later, at which time action was taken to initiate requests to Canadian

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law enforcement authorities. Subsequent follow up action was not taken until another 10 months later, when second letters were sent to the Canadian law enforcement agencies. According to the Legat, the office was understaffed and was busy addressing higher priority PENTTBOM leads.

- On January 11, 2001, the New York field office requested that Legat Ottawa contact Canadian authorities in an effort to obtain current information relative to possible terrorist and or criminal activities of two subjects in Canada. This request was designated as a priority lead meaning that action needed to be initiated within 24 hours. However, the Legat did not send requests to the Canadian Security Intelligence Service (CSIS) and the Royal Canadian Mounted Police (RCMP), until March 8, and April 6, 2001, respectively. CSIS responded on June 6, 2001, and Legat Ottawa forwarded their information to the New York field office and kept the lead open pending a response from the RCMP. However, action was not taken to follow up with the RCMP until September 24, 2002, over 17 months later.

Backlog of Pending Leads in Ottawa

According to FBI officials, Legat Ottawa has a heavy workload and receives a large volume of leads relative to most other offices because its proximity to the United States results in its playing a substantial role in supporting many FBI investigative matters. This heavy workload has resulted in a backlog of pending leads. As Exhibit 3-5 shows, as of June 30, 2003, Legat Ottawa had 1,134 leads pending, the highest number of pending leads of any Legal Attaché office.²² In comparison, the other Legat offices averaged 104 pending investigative leads on the same date. According to the Ottawa Legat, about one-half of the backlog consisted primarily of white-collar criminal matters such as telemarketing fraud, child pornography, organized crime, and Internet scams.

²² As of December 31, 2003, Legat Ottawa had 1,335 pending leads.

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EXHIBIT 3-5 PENDING INVESTIGATIVE LEADS BY LEGAL ATTACHÉ OFFICE AS OF JUNE 30, 2003

| LEGAL ATTACHÉ OFFICE | PENDING LEADS |
|--|---------------|
| Almaty, Kazakhstan | 35 |
| Amman, Jordan | 39 |
| Ankara, Turkey | 68 |
| Athens, Greece | 65 |
| Bangkok, Thailand | 89 |
| Beijing, China | 20 |
| Bern, Switzerland | 179 |
| Berlin, Germany | 167 |
| Bogotá, Colombia | 48 |
| Brasilia, Brazil | 56 |
| Bridgetown, Barbados | 45 |
| Brussels, Belgium | 97 |
| Bucharest, Romania | 39 |
| Buenos Aires, Argentina | 33 |
| Cairo, Egypt | 63 |
| Canberra, Australia | 71 |
| Caracas, Venezuela | 29 |
| Copenhagen, Denmark | 59 |
| Hong Kong, SAR, China | 45 |
| Islamabad, Pakistan | 48 |
| Kiev, Ukraine | 64 |
| Lagos, Nigeria | 69 |
| London, England | 450 |
| Madrid, Spain | 83 |
| Manila, Philippines | 116 |
| Mexico City, Mexico | 339 |
| Miami, United States (Liaison Office) | NA |
| Moscow, Russia | 169 |
| Nairobi, Kenya | 22 |
| New Delhi, India | 69 |
| Ottawa, Canada | 1,134 |
| Panama City, Panama | 22 |
| Paris, France | 465 |
| Prague, Czech Republic | 42 |
| Pretoria, South Africa | 89 |
| Riyadh, Saudi Arabia | 399 |
| Rome, Italy | 165 |
| Santiago, Chile | 21 |
| Santo Domingo, Dominican Republic | 71 |
| Seoul, South Korea | 96 |
| Singapore, Singapore | 173 |
| Tallinn, Estonia | 32 |
| Tel Aviv, Israel | 92 |
| Tokyo, Japan | 83 |
| Vienna, Austria | 108 |
| Warsaw, Poland | 24 |
| TOTAL | 5,692 |

Source: ACS Administrative Recap Report for the 9 months ending June 30, 2003.

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The Legat also told us that several factors account for the backlog. Many pending investigative matters could not be fully addressed between 1999 and 2001 because a majority of the personnel assigned to the Ottawa Legal Attaché office were working full-time on the BORDERBOM case. Soon thereafter the September 11 terrorist attacks occurred, which resulted in a huge upsurge in investigative leads—more than 7,000—that had to be pursued before any others. Because of the heavy workload associated with the BORDERBOM and PENTTBOM investigations, the office had a difficult time keeping up with other lower priority, but still important leads.

In addition, the Legal Attaché told us that Canadian authorities were sometimes slow to respond to the FBI's requests partly because of the significant volume of requests that were submitted to them. Officials from a component of the CSIS, one of Legat Ottawa's primary liaisons, for example, told us that the number of requests they received from the Legat office after September 11 increased by 300 percent, and each request had to be researched. They added that the increased volume of these requests presented a major challenge for their agency.

We believe another contributing factor to the office's backlog could be the process it used for requesting and obtaining information from Canadian law enforcement and intelligence authorities. The process was paper intensive and time consuming, especially given the volume of leads. Ottawa staff advised that they spent considerable time typing requests for assistance and often a lead required requests to both of the Legat's primary liaisons.

CSIS officials told us that the hard-copy correspondence they received from the Legat slowed down their ability to respond because CSIS was highly automated and operated in a virtually paperless environment. Consequently, preparing hard-copy responses to the Legat's requests was time consuming. [CLASSIFIED INFORMATION REDACTED].

The Legat acknowledged the inefficiency of the office's process for requesting information from the foreign liaisons and told us in October 2002 that plans were underway to establish an electronic link with CSIS and the RCMP. During a follow up visit to Ottawa in April 2003, the Legat told us an electronic link had been set up with CSIS that now allows the office to transmit its requests and receive responses electronically and we were provided with a demonstration of

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the process. The Legat added that he hoped to establish a similar electronic link with the RCMP in the near future. As of October 2003, this had not yet occurred.

Ottawa Backlog Previously Reported by FBI Inspection Division

The last two reviews conducted of the Ottawa Legal Attaché Office by the FBI's Inspection Division reported that the office was having difficulty addressing its heavy workload. For example, the July 1998 inspection noted that the number of leads assigned to Legat Ottawa had increased by 122 percent since a previous inspection in 1993, yet the staffing level had remained the same. The report added that because of the excessive workload in the office, investigative personnel were unable to properly follow up on the large number of outstanding leads. The report recommended that Ottawa's staffing levels be reviewed. In response, FBI headquarters officials said they would dispatch TDY personnel to Ottawa until the workload was brought to a manageable level and would monitor the office's workload and provide continued TDY assistance until a permanent solution was found.

A subsequent inspection of the Ottawa Legat in July 2001 indicated that the backlog of pending leads persisted and concluded that the office's staffing level was inadequate to address the workload. The report noted that during the inspection period 31 special agents and 15 support employees were detailed to the Legat to help with the workload. The report went on to say, however, that this short-term strategy of assigning TDY personnel on a continuing basis to address the huge backlog of leads was not cost effective and did not lend itself to the assignment of long-term complex matters to TDY personnel. The inspection report recommended that the FBI consider assigning permanent rather than temporary staff to reduce the backlog.

Actions Taken by FBI Have Yet to Fully Address the Backlog

In response to the Inspection reports, the FBI has continued to send staff to Legat Ottawa on a temporary basis. For example, since the last Inspection in July 2001 through the end of fiscal year 2002, a total of 47 additional special agents and support personnel were assigned to help reduce the office's workload. Temporary staff continued to be sent in FY 2003, including two agents from the Criminal Division specifically tasked to work on the unaddressed white-collar crime leads.

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The FBI's heavy reliance on short-term temporary duty staff has had limited success, however, in reducing the backlog of pending leads in Ottawa and, in our opinion, the use of TDY staff does not appear to be an efficient or effective solution. According to the Legat, most of the temporary personnel are assigned for 30 to 60 days, which is disruptive to the operation because it is not enough time to master the process for requesting assistance from Canadian law enforcement authorities or work on complex matters. For example, the Legat said that TDY agents often initiate requests with Canadian law enforcement authorities but return stateside before a response is received, thus necessitating someone else, usually another TDY agent, to become familiar with the matter and to prepare the response to the Office of Origin. The use of TDY staff is also disruptive, the Legat said, because each new temporary employee needs training and closer supervision than permanently assigned staff.

In 2001, the FBI opened a sub-office in Vancouver staffed by one ALAT and one Office Assistant. A second sub-office to be located in Toronto, and staffed by two ALATs and one Office Assistant, was approved in 2003. OIO officials told us in November 2003, however, that the sub-office was unlikely to be opened due to difficulty locating suitable space in a controlled access area. The establishment of the sub-office in Vancouver and the one in Toronto, if opened, could alleviate some of the workload in Ottawa but these sub-offices will likely create additional work as new liaisons are established.

At the end of FY 2001, the Ottawa Legat had four agents and four office assistants. During FY 2002, an additional ALAT position was reallocated to Ottawa from the Mexico City Legal Attaché Office and the FBI plans to fill an additional ALAT position during FY 2004 for a total of two additional agents. Therefore, in FY 2004, Legat Ottawa will be staffed with 10 permanent positions.

Controls Over Temporary Duty Travel Need Improvement

Department of State rules require that all U.S. government employees obtain approval from the U.S. Ambassador before traveling to a foreign country to conduct official business. This approval is

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known as a country clearance.²³ By Memorandum of Understanding (MOU) signed by the Department of Justice and the Department of State, the FBI has agreed to keep the U.S. Ambassadors informed beforehand of all FBI employees and their activities in the Ambassadors' territories. At the same time, it is also critical for the Legal Attachés to be aware of all FBI personnel who are traveling on official business in their assigned countries or regions.

Requests for overseas travel must be approved by the Special Agent in Charge of the appropriate field office, the Assistant Director in Charge of the Field Division, the Assistant Director of the corresponding headquarters division, and the Legal Attaché who obtains the country clearance from the U.S. Ambassador of the destination country. Requests vary depending on the circumstances and the country to be visited, but at a minimum are expected to include such things as the name of the traveler(s), purpose and nature of the trip, name of country to be visited, identity of persons or entities to be contacted, proposed itinerary, and estimated travel costs. Requests and approvals of country clearances are normally processed electronically within the ACS system. We were told, however, that sometimes clearances are processed outside the ACS system and that no mechanism is in place to ensure that the required clearances are obtained.

On at least two occasions since 2000 the FBI has issued memoranda to its employees emphasizing the importance of obtaining country clearances. In a July 2000 memorandum, OIO reported instances where FBI personnel had traveled to foreign countries without obtaining the required country clearances. Without identifying the countries involved, the July 2000 memorandum stated that some FBI personnel traveled repeatedly without obtaining country clearances, and as a result a U.S. Ambassador denied the FBI permission to travel to or through the foreign country until discussions were held at the highest levels of the FBI and the Department of State. In other instances, the memorandum noted that an Ambassador denied country clearances when the requests for country clearances were presented late. The memorandum emphasized that

²³ FBI personnel traveling abroad on official business are also required to travel on official, rather than personal, passports issued by the Department of State Passport Office. The travelers may also be required to obtain a visa—a permit, affixed on the passport, which allows the bearer to transit through or enter into a foreign country for a specified period of time.

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the failure to obtain country clearances was more than a breach of etiquette; it violated the Departments of Justice and State Memorandum of Understanding requiring the FBI to keep U.S. Ambassadors informed of all activities and operations of FBI employees within the Ambassadors' territories.

In March 2002, the FBI Director issued a memorandum to all Special Agents in Charge noting that Legats were continuing to encounter inappropriate actions on the part of domestic agents who apparently were unaware of international rules. The Director pointed out that FBI employees must contact the appropriate Legat and request and obtain country clearance before traveling to any country as a representative of the Executive Branch of the U.S. government.

The Ottawa Legal Attaché told us that he believed that some FBI personnel were traveling into Canada on official business without his knowledge and, therefore, without the required country clearances. Because this appeared to be a continuing problem and because we noted that country clearances were not an area covered during FBI inspections of Legat offices, we requested that the Travel Advance and Payment Unit in the FBI's Finance Division identify all personnel who had traveled on official business to Canada between October 1, 2001, and April 17, 2003. After adjusting the list for travel that either had not occurred, was listed in error, or involved duplicate entries, we determined that 422 people on the list had traveled to Canada during this period.²⁴

We compared the Travel Unit's list to the Legat's list of personnel who had received country clearances. According to the Legat's records, only 173 of these FBI employees had been granted country clearance. However, the Legat acknowledged that his list was not necessarily complete and said that some country clearances could have been overlooked and not added to the list, especially soon after

²⁴ Because the information we were seeking was not readily available, the Travel Unit ran a special program to query the database of travel vouchers to identify travelers to Canada during this period using data from the FBI's Financial Management System. The query included all the major cities in Canada and the term "Canada" and therefore should have captured most FBI personnel who traveled to Canada during the period. According to the Travel Unit Chief, however, this list may not be complete for various reasons such as incomplete travel destination information on the travel vouchers or because of data input errors. We also obtained similar data for Germany.

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September 11. At FBI headquarters, we asked OIO staff to research the remaining 249 names for evidence of country clearance. Through research of the ACS system, OIO found approved country clearances for 75 personnel who were not on the Legat's list and claimed that 39 others had attended a conference in Toronto and had received a blanket country clearance. For the remaining 135 personnel, OIO was unable to locate a record of either a country clearance request or approval in ACS. Subsequent to our exit conference, OIO officials directly contacted some of these travelers and were told by some that they had copies of their country clearances. While the number of travelers without country clearances may decrease somewhat as a result, the fact that OIO had to contact individuals, rather than obtaining this information from a centralized source, in our opinion, demonstrates an absence of internal control over these records.

We recognize that our review period started on October 1, 2001, shortly after the September 11 terrorist attacks. Given the national emergency and the need for an immediate response by the FBI, we can understand why many FBI personnel might have traveled to Canada without obtaining country clearances beforehand. Indeed, according to the information provided by the Travel Unit, 18 of the 135 FBI employees lacking country clearance traveled to Canada between October and December 2001 and 94 traveled during 2002. Nevertheless, our analysis also indicates that some FBI personnel have continued to travel to Canada long after the September 11 attacks without a country clearance. Of the 135 people lacking country clearance, 23 traveled between January 2003 and April 2003. In our opinion, the continued lack of compliance with FBI procedures and Department of Justice and State agreements is not defensible.

We also found discrepancies between the Travel Advance and Payment Unit's list of 183 FBI employees who had traveled to Germany between October 2001 and June 2003 and Legat Berlin's records of country clearances; 58 of the travelers had not obtained a country clearance according to the Legat's records. We asked OIO staff to research the ACS system for evidence of country clearances, and based on the documentation or the explanation subsequently provided we concluded that for 9 travelers the FBI had no record of a country clearance.

Conclusions

Legal Attaché offices generally appear to have been able to cope with the sharp increase in investigative leads in the last five years. But backlogs of investigative leads have been a longstanding problem at the Ottawa Legat and efforts to reduce the backlog with temporary personnel have not been effective. The FBI's efforts to enhance the permanent staffing of the Ottawa Legat appears to be a step in the right direction although we are not sure that the addition of two agents will be sufficient to significantly reduce the office's backlog. Nevertheless, this approach could help alleviate the problems associated with the use of TDY personnel. The establishment of the sub-offices in Vancouver and Toronto (if opened) could also alleviate some of the workload in Ottawa but these sub-offices will likely create additional work as new liaisons are established.

It is important for U.S. Ambassadors to be aware of all federal employees who are traveling in a foreign country on official business. The Ambassadors rely on FBI Legal Attachés to keep them informed through the country clearance process of all FBI employees, both permanent and temporary, who are assigned to the Legat's territory. Legal Attachés can do this only if FBI personnel follow procedures for requesting country clearances before traveling abroad and if accurate and complete records of country clearances are maintained.

Based on the results of our testing in Canada and to a lesser extent in Germany, it appears that some FBI personnel traveling on official business have not obtained appropriate country clearances. Previous OIO memoranda apparently have not been sufficient to eliminate this problem. In addition, both Legat Ottawa and Berlin's records of country clearances were incomplete and further research by OIO personnel did not provide documentation for all of the remaining discrepancies. Consequently, we believe the FBI needs to take stronger measures to ensure that country clearances are obtained as required, and develop a system that ensures that complete records of country clearances are maintained. In addition, the FBI's Inspection Division should include compliance with country clearance requirements as part of its reviews of FBI offices.

Recommendations

We recommend that the FBI:

1. Analyze the staffing level in Ottawa and initiate action to adjust the permanent staff levels commensurate with the workload.
2. Implement a process that ensures that FBI personnel obtain country clearances before they travel to foreign countries on official business, and develop a system that ensures complete records of these clearances are maintained.
3. Direct the Inspection Division to review compliance with country clearance requirements during its inspections.

CHAPTER 4: LIAISON ACTIVITIES WERE EFFECTIVE AT THE LEGAL ATTACHÉ OFFICES REVIEWED

We concluded that the Legal Attachés in Canada, Germany, Japan, and South Africa were maintaining effective foreign liaisons. Most of the officials we interviewed were complimentary about the Legal Attachés and the working relationship that existed between their offices. Many provided examples of how they personally, or their agencies in general, had worked with the Legal Attaché to solve international crimes. Officials in the two countries where English was not the primary language—Japan and Germany—often noted how impressed they were with the ability of Legal Attaché staff to communicate fluently in their language and emphasized the positive impact this ability had on fostering a close working relationship. In addition, many officials spoke highly of the training provided or arranged by the Legal Attaché.

We had limited information in advance of our trips regarding the law enforcement structure of the countries we visited or the Legal Attachés liaison contacts in these countries, so we relied on the Legal Attachés to identify their key foreign law enforcement liaisons and arrange the meetings with officials from these and other agencies. While an argument could be made that such a selection might be biased in favor of the FBI, we have no reason to believe this was the case. We found the discussions to be frank and open and the comments were not always positive. We also were able to satisfy ourselves that the agencies we contacted provided a cross-section of the Legats' liaison activities.

The Legal Attachés or their staff sometimes introduced us to their foreign liaisons, which provided us with an opportunity to observe firsthand their interaction with these officials. However, Legat staff did not attend our meetings with the foreign liaisons. When the services of translators were needed, we either hired them or used translators provided by the foreign agency.

Details of Liaison Activity and Accomplishments by Office

The following sections present information on the law enforcement structure in the countries visited, the views of foreign officials at the agencies we contacted, and examples of specific

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investigations that were worked in conjunction with foreign law enforcement agencies. The examples were obtained primarily from fiscal year 2001 and 2002 Legal Attaché Annual Accomplishment Reports and from discussions with Legat staff.²⁵ In most instances our meetings with foreign agencies were with high-level officials and so we generally did not discuss specific investigations. Rather, these discussions focused on broader issues such as:

- The nature of their relationship with the Legal Attaché, including the type and frequency of contact.
- The types of investigations, support, and information provided to the Legal Attachés' office.
- Restrictions or obstacles that limited their ability to provide information to the Legal Attaché office.
- Responsiveness of the Legal Attaché to their requests for information, assistance, or training.
- The types of training provided or arranged by the Legal Attaché.
- Their views on the effectiveness of the Legal Attaché office.

Legat Ottawa - The Legat Ottawa's primary liaison contacts in Canada are with the Royal Canadian Mounted Police (RCMP) and the Canadian Security Intelligence Service (CSIS), both of which are components of the Office of the Solicitor General. A significant amount of the Legat's time is spent making requests for information to these two agencies and furnishing the results to the requesting FBI field offices or FBI headquarters. In addition, Legat staff participate in joint investigations with Canadian law enforcement agencies and serve as liaison with Canadian law enforcement for FBI personnel from the United States who are in Canada working on investigations.

The RCMP is the national police force in Canada; it provides police services to most of the Canadian provinces and territories and is the local police force for about 200 municipalities. The RCMP is Legat Ottawa's primary point of contact for most law enforcement issues in

²⁵ The Legal Attaché Accomplishment reports provide detailed information about the office's operations and accomplishments for the past year.

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Canada. We interviewed officials from the RCMP's International Operations, Financial Crimes, and Immigration and Passport Branches at the agency's headquarters in Ottawa. All stated that they had a productive and close working relationship and frequent contact with the Legat and his staff and mentioned that some of their officers had attended the FBI's National Academy. The RCMP officials praised the Legat's counterterrorism efforts since the BORDERBOM case and the September 11 terrorist attacks, but expressed concern that the Legat's heavy counterterrorism workload had created a gap in the Legat's ability to pursue other serious crimes with a connection to Canada.

Legat Ottawa's other principal liaison is with the Canadian Security Intelligence Service (CSIS), which is engaged in intelligence gathering and investigations involving threats to Canadian security such as [SENSITIVE INFORMATION REDACTED] and sabotage, foreign-influenced activities, political violence and terrorism, and subversion. CSIS is not a law enforcement agency and if the information it collects indicates possible criminal activity, the RCMP has jurisdiction. CSIS is a domestic intelligence agency, [CLASSIFIED INFORMATION REDACTED]. CSIS is headquartered in Ottawa and has regional offices throughout Canada.

We interviewed representatives from the Counter Intelligence, Counter Terrorism, Counter Proliferation, and the Foreign Liaison and Visits Branches of CSIS. [CLASSIFIED INFORMATION REDACTED] in Washington, D.C. On the other hand, they pointed out that the Legat appeared to be short-handed and, as a result, often relied on temporary FBI personnel to fill in the gaps. Several of the officials indicated that long-term relationships were especially important in the intelligence business. Thus, they were not as comfortable sharing information with FBI personnel on temporary duty and with whom they had not developed such a relationship.

Officials from the Office of the Solicitor General, roughly the Canadian equivalent of the U.S. Department of Justice, told us they frequently dealt with the Legal Attaché on political and policy matters, such as the logistics associated with Solicitor General or DOJ officials' trips to each others' countries. They said that the Legat was always helpful and responsive in dealing with the many details involved in such trips. On the other hand, these officials said there was a lot of misunderstanding on the part of the public and some government officials in Canada regarding the FBI's presence, especially because this presence was growing. While these officials thought the Legat had

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made a reasonable effort to explain the rationale for the FBI's presence, they felt he could do more to "market" the program.

Representatives from the Ottawa Police Service and the Police Chief of the Toronto Police Service indicated they had little direct contact with the Legal Attaché office because the FBI typically went through the RCMP for information. Nevertheless, Ottawa police officials said they knew the Legal Attaché and did not hesitate to contact him when necessary. They mentioned a burglary of a Canadian Immigration office that occurred just prior to a visit by the President of the United States in which several uniforms were stolen. The Deputy Police Chief said she immediately notified the Legal Attaché of the incident.

One difference between Legat Ottawa and the other Legats we reviewed was that, because of Canada's proximity to the United States, FBI field offices near the border have for many years worked closely with Canadian police authorities. This creates a potential for conflict if the Legat, who is responsible for all FBI activities in Canada is not kept apprised of what contacts field offices are making in Canada. However, the Chief of the Toronto Police Service told us that over the years he had developed a strong working relationship with the FBI's Buffalo, New York field office and, consequently, preferred to deal with agents from that office rather than the Legat staff in Ottawa.

We discussed the Chief's comments with the Legat and he told us that in the past the Buffalo field office had nominated Toronto law enforcement officials to participate in FBI National Academy training programs without his input or concurrence. After he had raised his concerns about the practice, the Buffalo field office began to seek his input. Nevertheless, he still believed he was, in effect, competing against the Buffalo field office in providing training slots at the FBI National Academy for Canadian law enforcement officials.

We brought this issue up with FBI Headquarters officials at the exit conference and they subsequently provided documents which discussed the establishment of a "Border Liaison Officer" position in the Buffalo field office. Such positions have been in existence on the Mexican border and in the Caribbean since the early 1990s and are designed to help FBI field offices deal with the myriad of criminal activity occurring across the border with Mexico and the Caribbean. According to the documents provided, the Buffalo Border Liaison Officer is responsible for coordinating contacts with Canadian law

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enforcement and intelligence agencies in the Buffalo/Niagara border region and keeping Legat Ottawa apprised of these contacts.

Determining whether the Buffalo field office appropriately coordinates its contacts in Canada with the Legat was beyond the scope of our review. However, the police chief's comments raise a concern. In our opinion, the role of the Legat could be diluted if Buffalo field office personnel are not coordinating their activities with the Legat. Further, if the Toronto sub-office is ultimately opened, the FBI could be perceived by Canadian authorities as being disjointed if both the Legat sub-office and Buffalo staff are meeting with the same Canadian authorities and not coordinating their efforts. In addition, other FBI field offices near the Canadian border may have similar contacts with their Canadian counterparts, all of which, in our opinion should be coordinated with Legat Ottawa.

The following are examples of Legat Ottawa's liaison efforts and accomplishments in Canada obtained primarily from the Annual Accomplishment Reports.

- Legat Ottawa worked extensively with the RCMP on the BORDERBOM case. In December 1999, an Algerian national, Ahmed Ressam, was arrested by U.S. authorities on the Canadian border in Washington State while attempting to bring explosives into the United States. It was subsequently learned that he had intended to bomb Los Angeles International Airport. FBI agents from the United States were detailed to Ottawa and Vancouver to pursue leads on the case and the Legat supported the effort both administratively and operationally. [CLASSIFIED INFORMATION REDACTED].
- In late 2002, an American citizen was arrested by the RCMP for drunken driving in Inuvik, North West Territories. Soon afterwards, the sheriff in Montgomery County, North Carolina, ran a name check through the NCIC on a suspect in the murder of Jennifer Short, a 9-year old girl whose body had been found on a property in Stoneville, North Carolina, in September 2002. When the sheriff's office learned that the RCMP had arrested the suspect, the Sheriff's investigators on the case were ordered to travel to Canada to interview the subject and search his van, apparently under the erroneous assumption that the North Carolina search warrant would be valid in Canada. When the Legat learned of the situation, he attempted to get the local FBI office to intercede with the Sheriff and cancel the trip. When

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that failed he sent the Vancouver ALAT to Inuvik in advance of the investigative team's arrival to ensure that evidence was obtained in accordance with Canadian law and the Mutual Legal Assistance Treaty with Canada and that positive relations were maintained with the RCMP. According to the Legat, the lack of experience and training in handling international investigations on the part of the local sheriff could have jeopardized the case.

- The Legat is assisting FBI headquarters and the New York and Detroit field offices in tracking the movements of members of the [CLASSIFIED INFORMATION REDACTED] across the U.S./Canada border by continually tracking leads and setting up conferences and meetings with its Canadian law enforcement and intelligence contacts to exchange information.
- Over 150 murders have been attributed to motorcycle gangs such as the Hell's Angels and the Outlaws in the Province of Quebec. The gangs are also well established in the maritime and western pacific provinces and their influence is spreading to Ontario. Ontario police authorities have expanded their enforcement efforts against the gangs and the Legat facilitated the attendance of Canadian law enforcement officials at an FBI conference on outlaw motorcycle gangs in August 2002. The Legat also facilitated a meeting between RCMP and FBI headquarters officials to discuss the exchange of information and targeting of cross border motorcycle gang activity.

Legat Berlin – Legat Berlin's primary liaison contacts in Germany are with the German federal criminal police— Bundeskriminalamt (BKA); the [CLASSIFIED INFORMATION REDACTED]; and state police agencies, known as Landeskriminalamts (LKA). We interviewed several of the Legat's foreign liaison contacts in these agencies in Berlin, Cologne, and Meckenheim, Germany. These officials were complimentary of the Legat staffs' professionalism and responsiveness and emphasized appreciation for their language proficiency.

The BKA is the German federal criminal police. It has three locations consisting of a headquarters office in Wiesbaden which includes all criminal case operations, a branch office in Meckenheim for all counterterrorism and espionage matters, and a branch office in Berlin for protective responsibilities. The BKA is the Legat's primary law enforcement contact in Germany and is responsible for all investigative and liaison relationships between Germany and foreign

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federal law enforcement agencies. The Legat contacts the BKA concerning all criminal investigative requests, counterterrorism matters where either a specific threat situation exists or a prosecution is imminent, and [SENSITIVE INFORMATION REDACTED] matters where there is evidence to be obtained for presentation in court. The BKA reviews the requests, determines which technical unit within the BKA should respond and, if necessary forwards the request to the appropriate LKA for investigation at the state level.

The official in charge of the Terrorism Division stated that the BKA has law enforcement officers from several countries besides the United States working in their Counterterrorism Center. The personnel from the other countries are permanently assigned to this location. In contrast, FBI Legat personnel are temporary and, according to this official, temporary duty staff are not on site long enough to establish effective liaisons with BKA staff. The official was pleased, however, that the Legat staff, including those on temporary assignment, spoke German. When we discussed this with OIO officials, they agreed that a permanent presence was desirable. However, they stated that additional permanent positions abroad have not been funded and, as a result, a permanent presence in the Counterterrorism Center would have to come from existing resources.

Two of the BKA officers we spoke with supervised and worked on the Hamburg task force that investigated the terrorist cell whose principals were involved with the attacks of September 11, 2001. The FBI and the BKA, along with numerous other agencies, worked closely together on this investigation, they said. Nevertheless, the BKA officers stated that while they were empowered to share information with the FBI, this information sharing was often one-way. Authority to give out information seemed to vary from one FBI agent to another and some FBI agents had to check repeatedly with FBI headquarters to determine if they could pass information to the BKA. In the BKA officials' opinion, this situation was disruptive to the investigation.

[CLASSIFIED INFORMATION REDACTED]

[CLASSIFIED INFORMATION REDACTED]

We interviewed two high-level officials from the Berlin LKA (similar to the state police in the United States). Both were graduates of the FBI's National Academy. Both officials stated that at their level, their contacts with the Legat office were nominal, but one of these officials stated that his staff worked closely with Legat personnel. He

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also commented that it was absolutely necessary for the FBI to have a presence in Germany, especially after the events of September 11.

The LKA processed over 38,000 pieces of data related to the September 11 hijackers and helped with tracing their movements from Hamburg.

The following are examples of Legat Berlin's accomplishments from their 2002 Annual Accomplishment report.

- Legat Berlin staff worked extensively with the BKA, [CLASSIFIED INFORMATION REDACTED], and numerous state police agencies on matters relating to PENTTBOM, especially on the investigation related to the terrorist cell in Hamburg. From a search of visa application records at the U.S. Embassy, Legat staff identified several applications with Hamburg addresses related to individuals thought to be connected to the terrorist attacks. The addresses were immediately passed to the BKA for follow up. Working with the German police, Legat staff helped identify over three dozen subjects who were either directly or indirectly involved in the September 11 attacks, served multiple arrest and search warrants, initiated over 130 wiretaps, and interviewed hundreds of persons. Through daily interaction with the German police, the Legat was able to provide real time intelligence and evidence relating to key subjects involved with the September 11 attacks to FBI Headquarters and field offices.
- Legat Berlin obtained key evidence in Germany that allowed the U.S. government to indict Zacharias Moussaoui in connection with the terrorist attacks of September 11. The indictment alleges that Moussaoui received funding from sources in Germany.
- Legat Berlin forwarded information to appropriate U.S. military criminal investigators about two subjects who were planning to use one of the subject's access to military installations to detonate an explosive device. As a result of the Legat's and the criminal investigator's activities, the German police searched the subjects' residences and located explosive devices and materials. Both subjects were arrested and remain in custody pending German prosecution.

Legat Pretoria - The Legat's primary law enforcement contact in South Africa is with the South African Police Service (SAPS). SAPS

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is a national police force that also performs many of the functions that are performed by local and state police in the United States. It is headed by a National Police Commissioner and has its headquarters office in Pretoria. Each of the nine provinces in South Africa also has its own SAPS office that is headed by a Provincial Police Commissioner, who in turn reports to the National Police Commissioner. We interviewed officials from the SAPS' Crime Intelligence Division, the National Central Bureau, and the Training Division. We also met with the SAPS Provincial Commissioner and his Deputy in Cape Town.

The Crime Intelligence Division (CID) within SAPS conducts crime analysis relating to terrorism, organized crime, various other crimes, and intelligence matters. The officials stated that their Division receives many requests for assistance from the Legat Attaché office. Their liaison efforts with the Legat office focus on organized crime and terrorism issues. They have conducted traces and compiled profiles on individuals, and performed telephone record checks for the Legat office. After CID logs in the Legat's request, it is sent out to the individual provinces for investigation and action when applicable. CID then receives and finalizes the response and forwards it to the Legat office. The officials discussed an anthrax-related investigation that was worked jointly with the FBI, which required many interviews. The officials stated that it was a good learning experience for their SAPS officers to see firsthand how the FBI operates, and that this investigation was handled very professionally.

Officials from the National Central Bureau component of SAPS that maintains liaison with INTERPOL said that they worked closely with the Legat office on extradition matters, shared information on criminals, and conducted criminal checks on behalf of the FBI. The officials also said they had helped Legat staff establishing contacts with law enforcement officials in other countries in Southern Africa. They commented that the Legat personnel were professional, always accessible, and responsive.

The Deputy Commissioner of the SAPS Training Division told us that SAPS has been sending selected senior officers to the FBI's National Academy since 1996; and upon their return, the officers are expected to train other police officers in order to share their newly obtained knowledge. He added that, in his opinion, if the FBI did not have agents "on the ground" in South Africa, the communication between the two agencies would be poor. He also stated that he was a graduate of the FBI's National Training Academy. He added that he

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was working closely with the Legat on developing a refresher course for FBI's Academy graduates from African countries.

The SAPS officials we spoke with in Pretoria did not identify any concerns about their interactions with the Legat during our discussions. However, when we interviewed the Provincial Commissioner and his Deputy in Cape Town, they remarked that the Legat staff had ignored established protocol on at least two occasions by meeting and seeking assistance from subordinate staff on investigative matters without first seeking their permission. One of the incidents, involving an investigation of a Finnish businessman suspected of selling arms to Iraq, had potential international repercussions, yet neither their own staff nor the Legat staff had informed them of the matter, the Provincial officials said. We discussed these comments with the Legat and ALAT. They explained that they had met with SAPS police officers in Cape Town after another U.S. law enforcement official mentioned that the police had information regarding the Finnish businessman's alleged activities. The Legat staff said they quickly determined that the information did not warrant further investigation and said they told the SAPS police officers to inform their superiors about the meeting. The Legat staff said they had not seen a need to contact the Provincial Commissioner themselves.

The following are examples of Legat Pretoria's liaison efforts and accomplishments partially based on information contained in Legat Pretoria's 2002 Annual Accomplishment Report.

- In connection with the AMERITHRAX investigation in the United States, Legat Pretoria was asked by the FBI's AMERITHRAX task force to identify all laboratories and universities in South Africa that handled live anthrax or had the capability of handling live anthrax.²⁶ The Legat was also requested to obtain telephone subscriber information and educational and employment information on a potential subject who had lived in southern Africa. In addition, the Legat coordinated and set up interviews with 26 individuals who had contact with the subject and assisted staff from the task force and the FBI's Washington field

²⁶ AMERITHRAX is the FBI investigation of the mailing of at least four letters in the United States during September through November 2001 that contained Anthrax.

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office in conducting the interviews. In assisting on this investigation, the Legat coordinated with the U.S. Ambassador in Zimbabwe to allay the concerns of Zimbabwe government officials about an FBI investigation being conducted in their country.

- Legat Pretoria worked closely with SAPS on the arrest and extradition of fugitive James Kilgore. Kilgore was a former member of the Symbionese Liberation Army who was wanted for murder in a 1975 bank robbery in California.²⁷ He had been hiding out in Cape Town under the name Charles Pape until the FBI tracked him down. Based on information provided by the Legat, SAPS arrested Kilgore in November 2002. He was extradited to the United States and in May 2003 pled guilty to murder and was sentenced to six years in prison.

Legat Tokyo - Our review of Legat Tokyo's liaison activities was limited to Japanese law enforcement and intelligence authorities. The Legat's primary law enforcement contacts in Japan are with the Public Security Investigative Agency, the Japan National Police Agency, and the Tokyo Metropolitan Police Department. According to the Legat, contacts with representatives from these agencies occurred frequently, often on a daily basis, and involve counterterrorism, foreign counterintelligence, organized crime, and other criminal matters, such as computer and financial crimes and fugitive apprehensions.

The Public Security Investigative Agency (PSIA) is a component of the Ministry of Justice responsible for monitoring potentially dangerous domestic terrorist groups. It gathers intelligence on organizations that have the potential for violent subversive activities and disseminates the information to law enforcement agencies. We interviewed officials from the Legat's contact within PSIA, the International Division. These officials advised that they worked closely with the Legat and readily exchanged information on terrorist threats. [CLASSIFIED INFORMATION REDACTED].²⁸ International Division officials were also complimentary of the Legat and ALAT's fluency in Japanese, their willingness to make presentations at the agency, and their ability to obtain slots for PSIA officials at the FBI Academy.

²⁷ The Symbionese Liberation Army was a group of individuals that advocated the violent overthrow of the U.S. government during the 1970's.

²⁸ [CLASSIFIED INFORMATION REDACTED]

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The Japan National Police Agency (NPA) is the central law enforcement agency in Japan. Its many duties include supervising and controlling prefecture police departments, police training and standards of recruitment, coordinating efforts to combat trans-prefectural organized crime, and providing international criminal investigative assistance.²⁹ We interviewed representatives from NPA's Second Organized Crime Control Division, Second International Affairs Division, and the Foreign Affairs Division, Security Bureau. Second Organized Crime Control Division officials told us that the Legat and his staff had been very helpful and responsive in providing needed information on the Yakusa's contacts in the United States. Similar to PSIA officials, NPA officials were also highly complimentary of the Legat and ALAT's command of the Japanese language adding that this ability was very helpful in communicating with NPA officials and facilitated getting things done. Representatives from the other two NPA components made similar comments adding that, although they had their own liaison in Washington, D.C. in order to obtain information from U.S. law enforcement agencies, they often submitted requests through the Legat office because the Legat provided a quicker response.

The International Criminal Investigation Division (ICID) of the Tokyo Metropolitan Police investigates crimes committed by foreigners in Tokyo. The Superintendent of the ICID told us he had frequent contact with the Legat because many of the crimes the Division investigated had a connection to the United States and because the Legat was a frequent guest at FBI National Academy alumni events. Since 1977, he said about 90 Japanese law enforcement officers had graduated from the FBI Academy and about one-half of the graduates worked in the Tokyo Metropolitan Police Department, many in high-level positions. The Legat also had made a number of presentations at the Metropolitan Police Department and at the Japanese National Police Academy.

The following are examples of Legat Tokyo's liaison efforts and accomplishments in Japan taken primarily from the Legal Attaché Annual Accomplishment report.

²⁹ Japan is divided into 47 prefectures, or administrative divisions, comparable to U.S. states.

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- The Legat has obtained the cooperation of NPA and the Japanese Ministry of the Treasury in locating and freezing assets of persons and organizations suspected of conducting financial transactions with Al Qaeda-related organizations.
- In connection with the AMERITHRAX investigation, the Legat has contacted numerous scientific research and educational institutions in Japan and Taiwan to obtain information on these facilities' experience with various biological and chemical agents.
- In conjunction with the Cleveland FBI field office, the Legat was involved in an economic espionage investigation of a Japanese scientific researcher employed at the Cleveland Clinic in Cleveland, Ohio. The researcher, along with another individual, was alleged to have engaged in the unauthorized removal of the contents of test tube ampules and replaced the contents with water. The contents were being used in the search for a cure for Alzheimer's disease and were sent to a Japanese scientific research laboratory where the suspect was hired after he completed his assignment at the Cleveland Clinic. An arrest warrant was issued in May 2001 and the Legat has participated in efforts to have the subject extradited to the United States for trial, including taking statements from numerous witnesses under supervision of the Tokyo District High Court in June 2002. At the time of our visit to the Legal Attaché office, no decision had been made by the Japanese government regarding the extradition request.
- In preparation for a World Cup Soccer event held partially in Tokyo in the summer of 2002, the Legat worked with NPA to exchange intelligence information regarding the security arrangements for the event. The Legat also helped arrange NPA visits to FBI headquarters and the Salt Lake City field office so Japanese officials could view the security arrangements that had been undertaken there for the February 2002 Winter Olympic Games.

Conclusion

Based on our review of the Legal Attachés in Canada, Germany, Japan, and South Africa, we believe that the Legal Attaché program is an important tool in the fight against terrorism and in helping the FBI investigate and solve crimes that have an international connection.

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Generally, the offices we reviewed appeared to be effectively establishing liaisons and working cooperatively with foreign law enforcement agencies. In our opinion, the FBI would likely experience more difficulty obtaining needed information on international-related investigations if it did not have Legal Attachés stationed abroad. In our discussions with foreign law enforcement officials, it was readily apparent that the ability of Legats to speak the host country's language as well as their ability to offer FBI National Academy training slots greatly facilitated their standing in those countries and helped foster effective liaisons.

One difference between Legat Ottawa and the other Legats we reviewed was that, because of Canada's proximity to the United States, FBI field offices near the border have for many years worked directly with Canadian police authorities. This creates a potential for conflict if the Legat, who is responsible for all FBI activities in Canada, is not kept apprised of what field offices are doing. The Legat told us that such a situation had occurred in the past; specifically, the Buffalo field office had nominated Toronto police officials for training at the FBI National Academy without his knowledge or input. FBI headquarters officials provided documents after the exit conference which discussed the establishment of a Border Liaison Officer in the Buffalo field office. The Border Liaison Officer's responsibility includes ensuring that appropriate coordination occurs between Buffalo and Legat Ottawa. Determining whether the Buffalo field office appropriately coordinates all contacts in Canada with the Legat was beyond the scope of our review. However, in our opinion the role of the Legat could be diluted if Buffalo field office personnel are not coordinating their activities with the Legat. Further, if the Toronto sub-office is ultimately opened, the FBI could be perceived by Canadian authorities as being disjointed if both the Legat sub-office and Buffalo staff are meeting with the same Canadian authorities and not coordinating their efforts. In addition, other FBI field offices near the Canadian border may have similar contacts with their Canadian counterparts, all of which, in our opinion should be coordinated with Legat Ottawa.

Recommendation

We recommend that the FBI:

4. Ensure the Buffalo field office and all FBI field offices coordinate their training and investigative activities involving Canadian authorities with the Ottawa Legat.

CHAPTER 5: LEGAL ATTACHÉ OFFICES COORDINATE ACTIVITIES WITH OTHER U.S. LAW ENFORCEMENT AGENCIES OVERSEAS

Besides the FBI, many other U.S. law enforcement and intelligence agencies station personnel overseas and, as part of their official duties, FBI Legal Attachés often interact with these individuals. Overlapping interests and jurisdictions among these agencies could be harmful to U.S. interests and run the risk of antagonizing the host government. Moreover, a lack of coordination among law enforcement agencies abroad could be detrimental to the ability of the United States to effectively combat international crime and terrorism. To avoid such problems, statutes as well as agreements between agencies typically delineate their responsibilities overseas. In addition, U.S. Ambassadors are responsible for ensuring that overall law enforcement activities are coordinated. In addition, the FBI's Legal Attaché Manual emphasizes the importance of maintaining effective liaisons with other U.S. law enforcement and intelligence agencies abroad.

To determine if FBI Legal Attachés were appropriately coordinating their activities, we interviewed the Ambassadors, their staff, and representatives from selected U.S. law enforcement and intelligence agencies in Canada, Germany, Japan, and South Africa. These officials uniformly described their interactions with the Legal Attaché offices as positive and they mentioned that the Legat personnel readily collaborated, shared information, and coordinated their activities with them to avoid duplication of effort.

U.S. Law Enforcement Presence in American Embassies

The U.S. law enforcement presence in an embassy abroad is often significant. Embassies have special agents from the Bureau of Diplomatic Security within the State Department assigned to embassies and consulates as Regional Security Officers (RSOs). They advise the Ambassador on all security-related matters and manage programs for dealing with threats to the embassy from criminals, terrorists, and hostile intelligence agencies. They also serve as a liaison with the host country's law enforcement agencies and conduct law enforcement investigations on behalf of other U.S. law enforcement agencies—typically agencies that do not have their own agents posted to the host country.

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The number of other law enforcement agencies assigned to a diplomatic mission varies, depending on the law enforcement issues in that country or region. In addition to an FBI Legal Attaché, an embassy may have law enforcement representatives from agencies such as the Drug Enforcement Administration (DEA) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) within DOJ and Immigration and Customs Enforcement (ICE), the Secret Service, and the Transportation Security Administration (TSA) from the Department of Homeland Security. In addition, the Central Intelligence Agency (CIA) collects intelligence information and carries out counterintelligence activities in foreign countries [CLASSIFIED INFORMATION REDACTED]. Finally, the U.S. military often has investigative and counterintelligence agents in countries, such as Germany and Japan, where it maintains military installations.

Overlapping Jurisdictions Create a Potential for Conflict

Many law enforcement agency functions and activities are authorized by Executive Order or Congressional mandate and this authority sometimes results in more than one law enforcement agency having jurisdiction for the same crime. Overseas, these overlapping interests create a potential for separate, uncoordinated contacts with the same host country law enforcement and intelligence authorities that could adversely affect U.S. foreign relations and could harm overall U.S. efforts to fight crime and terrorism. Thus, the responsibilities of Legal Attachés and other U.S. law enforcement and intelligence agencies overseas must be clearly defined and their activities need to be coordinated.

Various statutory mandates and agency agreements delineate law enforcement and intelligence responsibilities abroad. For example, by Executive Order 12333, dated December 4, 1981, the CIA is responsible for the conduct of counterintelligence activities outside the United States and the coordination of counterintelligence activities by other agencies abroad, including the FBI. Thus, Legal Attachés are required by the Order to conduct their counterintelligence activities in coordination with the CIA. Similarly, while both the FBI and the DEA have authority under Title 21 of the Code of Federal Regulations to investigate violations of the drug laws, the DEA is responsible for conducting drug investigations in foreign countries. Consequently, requests for foreign assistance on FBI drug investigations must be coordinated with the DEA.

The Role of the U.S. Ambassador

By statute and Presidential Directive, the U.S. Ambassador has complete responsibility for the actions of all U.S. Executive Branch officials and organizations, including law enforcement agencies such as the FBI Legal Attaché office, in the country to which he or she has been accredited.³⁰ All law enforcement personnel are considered part of the U.S. Embassy staff, and the senior representative from each law enforcement agency that has personnel assigned to an embassy reports to the Ambassador.

Ambassadors play a key role in helping to ensure that the sometimes overlapping interests of law enforcement and intelligence agencies are appropriately coordinated. Law enforcement agencies having employees in a country are required by Section 207(b) of Public Law 96-465 to keep the Ambassador to that country fully and currently informed of all activities and operations of its employees and to comply fully with all applicable directives of the Ambassador. To coordinate law enforcement activities, Ambassadors have a team, consisting of the senior representatives of the federal law enforcement agencies assigned to the embassy and usually chaired by the Deputy Chief of Mission, to provide a forum in which to share law enforcement information and coordinate efforts to combat terrorism. Members of the team participate in duties including emergency action committees to organize embassy response to terrorist threats and incidents, and formulation of the components of the embassy's mission performance plan that coordinate embassy activities related to law enforcement and terrorism issues.

Legal Attachés Coordinate and Collaborate With Other U.S. Law Enforcement Representatives

In the four Legat territories we reviewed, we interviewed the Ambassadors, other embassy officials, selected representatives from law enforcement agencies stationed in the embassies, [CLASSIFIED INFORMATION REDACTED], and in Germany and Japan, officials from U.S. Military investigative agencies.³¹ The consensus among these officials was that the Legats and their staff in these countries readily

³⁰ Ambassadors do not have authority over those personnel who are under the command of a U.S. area military commander.

³¹ See Appendix III for a listing of our contacts at each location.

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collaborated and shared information on law enforcement matters. Law enforcement representatives told us that especially since the terrorist attacks on September 11, 2001, they were working closer with their counterparts in the embassies than ever before. Some pointed out that even before September 11, the rivalries that based on their experiences seemed common among law enforcement agencies in the United States appeared much less prevalent in an Embassy setting. None of the officials we spoke with expressed concerns about duplication of effort between Legat activities and their agencies' activities.

We also attended two law enforcement team meetings, one in Ottawa, Canada, and the other in Tokyo, Japan, to observe the process; no meetings were scheduled at the other two embassies while we were there. The Deputy Chief of Mission, the FBI Legal Attaché, and representatives from other law enforcement agencies and the [CLASSIFIED INFORMATION REDACTED] attended. We observed that participants briefed the group on significant events, activities, or investigative and intelligence issues within their jurisdiction.

The following are examples of the comments made by U.S. officials we interviewed in Canada, Germany, Japan, and South Africa regarding the nature and frequency of their working relationships with the FBI Legal Attachés and their opinions on how well the Legats coordinated activities and shared information with them.

U.S. Ambassadors – The U.S. Ambassadors to Canada, Germany, Japan, and South Africa had uniformly positive views of the Legal Attaché offices operating out of their respective embassies. The Ambassador to Canada, for example, described the working relationship and cooperation between the Legal Attaché, other U.S. law enforcement agencies in Canada, and their Canadian counterparts as seamless. Such cooperation was absolutely essential, he said, given the lengthy border between the two countries and the extensive amount of trans-border crime. The Ambassador added that the Legat kept him apprised of the status of major FBI investigations affecting Canada.

In Germany, the U.S. Ambassador told us that the Legat kept him informed on important law enforcement issues, such as the activities of the numerous FBI agents sent to Germany in the aftermath of September 11. The Ambassador to Japan was especially complimentary of the Legat's knowledge of law enforcement structure and crime problems in Japan. During a meeting with several Japanese

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businessmen, the Ambassador was told about certain underworld figures involved in the Japanese banking industry. Needing more information he consulted with the Legat, who promptly delivered a detailed paper on the issue.

The U.S. Ambassador to South Africa told us that the Legat readily shared information with the other law enforcement agencies represented in the Embassy. The Legat, the Ambassador said, was an active participant on the Law Enforcement Team, often had the most information to share, and typically went out of his way to offer assistance to other members of the group.

Regional Security Officers (RSO) – The RSOs we interviewed advised that they had regular, often frequent contact with the Legal Attachés, sometimes provided assistance on leads and cases, and said that they readily exchanged information with each other. Some RSOs mentioned, for example, that visitors to the Embassy sometimes provided information on terrorism or criminal matters and such information was promptly forwarded to the Legat. The RSO at the American Consulate in Cape Town, South Africa, stated he sometimes assisted staff from the Pretoria Legat by putting them in contact with appropriate officials in Cape Town or by following up on leads in the Cape Town area on their behalf. The Deputy RSO in Tokyo indicated that while both he and the Legat in Tokyo maintained liaisons with the Tokyo Police, the contacts and issues were different. Because the RSO office was primarily concerned with the protection of the Ambassador and the Embassy, its contacts were mostly with Tokyo police in the precinct where the Embassy was located, while the Legat typically maintained liaisons with higher-level officials in the police department involving broader criminal matters.

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DEA – The DEA's mission overseas is to conduct drug investigations that impact the United States. To do this, DEA Country Attachés conduct liaison with the organized crime and narcotic units of foreign law enforcement agencies. By agreement between the FBI and the DEA, the DEA is the first point of contact for drug investigations in foreign countries and the DEA officials we interviewed in Canada,

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Germany, and Japan all agreed that the FBI Legal Attaché offices were appropriately coordinating with their offices on drug-related matters or investigations.³² However, they also indicated that such referrals were relatively infrequent because since the events of September 11, 2001, the FBI had been focused on counterterrorism and had little time to pursue drug crimes.

Other Law Enforcement Agencies – An ICE agent from the former U.S. Customs Service in Germany stated that the FBI and ICE meet with different law enforcement entities in Germany, so the two agencies have little overlap. The ATF Country Attaché in Canada stated that the ATF worked well together with the FBI in the Ressam case. ATF was one of the first agencies to respond in this case and afterwards they met daily with the FBI and U.S. Customs officials to share information on this investigation. ATF also worked together with the FBI on a case involving a person who wanted to blow up the Alaskan pipeline. An ICE agent from the former INS in Canada stated that his office had an outstanding working relationship with the Legat staff, and communicated almost daily with them. He added that they work closely together, and share information on a “need to know” basis. The TSA Civil Aviation Security Liaison Officer in Japan, stated that he contacts the Legat office about three or four times a week with questions or to provide information. The two agencies would work together in hijacking cases and in cases where DOJ evidence was being transported through Japanese airspace. They would also conduct a joint interview initially if a “person of interest” who was on a “no fly” list arrived in Japan. A Secret Service agent assigned to the Embassy in Berlin commented that he relays threat information to the Legat office, and coordinates with the Legat office about the arrival of visiting dignitaries.

U.S. Military Agencies - A special agent with the U.S. Air Force Office of Special Investigations (OSI) in Germany stated his office was working three counter-intelligence cases with the FBI, and the FBI Legat office had always been very responsive to their requests for assistance. Also, the military commanders in the area liked having “instant” access to the FBI. In Japan, an Air Force OSI official stated that his office had worked well together with the Legat office on a code breaker case. He said that the Legat dropped everything to get the

³² The DEA Country Attaché we met with in South Africa had recently arrived in the country and, consequently, had had little interaction with FBI Legat staff.

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information that OSI needed quickly. Officials from the U.S. Naval Criminal Investigation Service in Japan indicated they did not have a lot of interaction with the Legat office because the investigations of the two agencies tended to be mutually exclusive. Nevertheless, they had collaborated on several espionage cases and had worked cooperatively with FBI agents from other Legat offices in Australia and the Philippines.

Conclusion

Many U.S. law enforcement and intelligence agencies maintain a presence abroad and FBI Legat staff often need to interact with representatives from these agencies. Because law enforcement and intelligence agencies often have overlapping interests and jurisdictions, it is critical that they coordinate their activities. A lack of coordination among law enforcement agencies abroad could be detrimental to the ability of the United States to effectively combat international crime and terrorism. In addition, the FBI's Legal Attaché Manual emphasizes the importance of maintaining effective liaisons with other U.S. law enforcement and intelligence agencies abroad.

Based on our discussions and observations in the embassies we visited, it appears that the FBI Legat staff worked cooperatively and appropriately coordinated their activities with other U.S. law enforcement and intelligence agencies. Based on our review at these four sites, it also appeared that there was little or no duplication of effort between the Legats' activities and the other law enforcement agencies in these embassies.

CHAPTER 6: FBI OVERSIGHT OF THE LEGAL ATTACHÉ PROGRAM APPEARS ADEQUATE

Based on our discussions with FBI headquarters personnel and our limited review of office justifications and reporting processes, the FBI's overall oversight of the Legal Attaché program appears to be adequate. The FBI periodically reassesses the need for offices abroad and justifies the need for new Legal Attaché offices or changes in the staffing or territories of existing offices. Once a Legal Attaché office is opened, the FBI monitors the activities of the office through periodic inspections, site visits, and various reports.

FBI Justification for Establishing and Maintaining Offices

According to OIO officials, determining whether new Legal Attaché offices should be opened or existing offices should be expanded, realigned, or closed is an ongoing and normal part of headquarters oversight. Among the factors considered in making location and staffing decisions are:

- threat assessments of specific terrorist or criminal activity in a country or region that threatens the United States;
- the strategic location of the host country from a geographic, political, and economic perspective and the country's respect for the rule of law;
- the commitment of the host country to cooperate with the FBI to advance investigations of unilateral and bilateral interest;
- analysis of workloads in existing offices and the ability of staff in these offices to cover areas beyond the specific country in which they are located;
- difficulty and cost of travel within a given territory;
- U.S. Ambassador or congressional interest in having a Legal Attaché office in a particular region; and
- the funding and resources available to the FBI to fulfill its mission.

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Based on this ongoing review process, the FBI has opened new offices or sub-offices or added staff to existing offices to address the workload. For example, the FBI opened a Legat in Seoul, South Korea, in 2000 because distance made it difficult for Legat Tokyo to maintain the frequent face-to-face contact with Korean law enforcement authorities that was necessary because of investigative caseloads. In addition, in FY 2002 an ALAT position was reallocated from the Mexico City Legat to the Ottawa Legat to help Ottawa manage its backlog of pending leads (previously discussed in Chapter 3). The same review process has been used to consolidate offices when workload no longer justified keeping an office open. For example, the FBI closed the Legal Attaché office in Montevideo in 1999 because the workload in that office was not sufficient to maintain a presence in Uruguay. The positions in that office were reallocated to the Legat office in Brasilia, which opened that same year and had a greater amount of criminal activity affecting the United States.

Once the FBI determines a need for a new Legal Attaché office or a change needs to be made to the staffing level in an existing office, it must seek approval from the appropriate U.S. Ambassador, the Departments of Justice and State, the Office of Management and Budget (OMB), and Congress. The process begins with informal discussions with the Ambassador to determine if the Ambassador will support the FBI's proposal. If the Ambassador is supportive, the FBI prepares a National Security Determination Directive 38 (NSDD 38) proposal and submits it to the Department of State.

Under NSDD 38, agencies must seek approval from the Ambassador for any changes in size, composition, or mandate of personnel operating under their authority at each diplomatic post. Staffing changes include permanently increasing or decreasing the staffing size at a given location, as well as establishing new offices or shutting down existing operations. The NSDD 38 proposal specifies the location of the proposed staffing change, titles and grades of the positions, justification statements, and any support and cost implications for the post. The FBI's NSDD 38 proposals are reviewed by the Department of Justice's Office of International Affairs, the Department of State, and the respective U.S. Ambassador. The FBI initiates staffing of the Legat office once the NSDD-38 process has been completed, providing that congressional approval and funding are forthcoming. If funding is not approved, the FBI may reallocate the needed positions from another Legat office. Subsequently, a Memorandum of Understanding is entered into between the respective U.S. Embassy and the FBI.

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In 1999, in response to a congressional request, the FBI submitted assessments for existing and planned Legal Attaché offices. The assessments identified specific criminal activities in the Legats' territory that affected the United States, analyzed the impact of criminal activity on U.S. interests and persons, and justified the presence and/or need for enhancement of FBI resources. In our opinion, these assessments were comprehensive and, along with other information, identified the crime problems in the foreign countries that had a connection to the United States.

Later, the House Conference report 107-593, which accompanied the "2002 Supplemental Appropriations Act For Further Recovery from and Response to Terrorist Attacks on the United States" directed the FBI to submit a report to the Congress on proposed new Legal Attaché offices and existing offices to ensure that resources were being deployed to the highest priority locations. The FBI's report provided a synopsis for each Legal Attaché office and included the FBI's conclusions about the staffing level at each location. While we did not assess the conclusions for each office, based on our review of the Legats in Berlin, Ottawa, Pretoria, and Tokyo, we agreed with the reports conclusions for those four offices. According to the report, the staffing levels in Legats Pretoria and Tokyo were adequate for the workload. In contrast, the heavy use of temporary duty personnel in Legats Berlin and Ottawa was expensive and did not provide needed continuity in more complex investigations—which was consistent with what we found when we reviewed these two offices. Thus, the report proposed increasing the permanent staff at both locations to better address the workload.

Oversight of Offices

With Legat offices located all over the world, headquarters oversight can be a challenge. Time zone differences can make it more difficult to communicate and making site visits can be expensive and time consuming. Nevertheless, it is critical that FBI headquarters monitor the overall program. Legats are required to provide periodic reports on their activities and respond to inquiries. In addition, both OIO and Inspection Division staff periodically make on-site reviews of Legat operations.

FBI Headquarters requires each Legal Attaché office to prepare and submit a Legal Attaché Annual Accomplishment Report (LAR). The LAR reports provide detailed information about the office's operations and accomplishments for the past year. For example, the reports

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include information on the law enforcement structure of the host country; the Legats' liaison contacts; detailed threat assessments; major case information; FBI personnel temporarily assigned to the office; and travel, personnel, and other matters handled throughout the year. In addition, the LAR identifies the offices' goals and objectives for the upcoming year. OIO officials use these reports to monitor offices' accomplishments and told us they were currently examining ways to make these reports more consistent and useful. For example, OIO officials said that some of the information in the LAR could not be easily summarized in order to respond to congressional requests for information on the Legat program.

To better keep abreast of Legats' workload, OIO, starting in May 2003, began analyzing each Legat office's pending leads on a quarterly basis. The results of the analysis are provided to the applicable Legat office and problems identified must be explained or resolved. For example, the Legats are required to provide explanations of their efforts to resolve leads pending for more than 360 days.

OIO officials told us they maintain regular telephone and e-mail contact with Legat offices. Every Monday morning, OIO managers meet to discuss significant issues or problems that have arisen in Legat offices over the weekend that need their attention. OIO officials also told us they obtain feedback on Legat offices from the [CLASSIFIED INFORMATION REDACTED], Ambassadors, Regional Security Officers, and foreign law enforcement officials visiting FBI headquarters.

Annually, OIO hosts a conference in Washington, D.C. attended by all the Legal Attachés. We attended the conference held in November 2002. A variety of topics were covered including recent changes in the FBI and the impact of these changes on the Legat program, counterterrorism, criminal, and security issues relevant to operations abroad, and Legat performance expectations and career development.

The FBI's Inspection Division conducts in-depth reviews of the activities of individual Legal Attaché offices, normally on a 3-year cycle. We noted that this cycle was adhered to for three of the four offices we reviewed—Berlin, Ottawa, and Tokyo. Pretoria, the fourth office was opened in 1997 and was inspected in 1999. A subsequent inspection was scheduled for 2003, but was postponed due to other

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Bureau commitments and a pending assessment of the inspection process for Legat offices.

The inspections include a review of management issues, staffing, administration, liaisons, workload, and training matters. The reports comment on the effectiveness and efficiency of the Legal Attaché. When an inspection is completed, a report is issued with recommendations that must be addressed in writing by either the Legal Attaché or, in some instances, FBI headquarters.

OIO managers told us that in the past, Inspection Division reviews of Legat offices were conducted using the same guide used for reviewing domestic offices. Consequently, some of the areas covered during these inspections were not relevant to Legat operations. Recognizing this problem, OIO met with staff from the FBI's Inspection Division in order to revise the guide used for foreign operations. As of November 2003, OIO officials told us that the Inspection Division had recently tested the revised guide at two Legat offices.

We followed up on 26 of the 31 findings from the latest Inspection Division reviews of Legats Berlin, Ottawa, Pretoria, and Tokyo. These findings involved noncompliance with FBI requirements in areas such as security, financial management, property management, personnel, and administration. We concluded that the FBI had taken appropriate corrective action for most of the findings, with the exception of a finding related to the staffing problems in Ottawa, which we previously discussed in Chapter 3. However, we found no evidence to confirm that corrective action had been fully implemented related to changing safe combinations in Ottawa and conducting unannounced cash counts of the imprest fund in Tokyo.

Apart from the more formal inspection process, OIO managers told us that they made site visits to the Legal Attaché offices where they reviewed such matters as staffing levels and management and administrative issues. They also spoke with U.S. embassy and foreign law enforcement personnel about the Legal Attaché's liaison efforts. However, these reviews were not conducted on a regular basis. We found documentation supporting OIO site visits for only two of the four offices we reviewed. OIO officials acknowledged in November 2003 that their managers needed to make more systematic site visits. They said they were in the process of developing a schedule of OIO site reviews so that either the Inspection Division or OIO would review each office every 18 months.

Conclusion

The assessment of the number, location, and staffing of Legat offices is an ongoing process that takes into account multiple factors. Based on these assessments, the FBI has expanded, realigned, and even closed Legat offices. Any such changes cannot be made without approval from the Departments of Justice and State, the Office of Management and Budget, and Congress. Once a Legal Attaché office is opened, the FBI provides oversight and monitors the activities of the office through periodic inspections, site visits, and various reports. In addition, FBI management officials said that they were taking additional steps to improve oversight of the program. Based on our limited review, we believe that the FBI justifications substantiated their location decisions for Legat offices and their oversight of these offices seemed adequate.

CHAPTER 7: SELECTION AND TRAINING OF LEGAL ATTACHÉ STAFF

The individuals selected for Legat Attaché and ALAT positions are the FBI Director's personal representatives abroad. The Special Agents selected for these positions are highly visible and shoulder considerable responsibility, which if not managed appropriately could result in an international incident and potentially harm the FBI's credibility. In addition, Legats and their staff must quickly adjust to living and working in a foreign culture that may be much different from conditions they are used to in the United States. Further, in some countries working and living conditions may be highly stressful and their personal safety may be at risk. Thus, the FBI not only needs highly skilled and experienced agents but also agents who can function independently and effectively in often stressful foreign environments.

Process for Selecting Candidates for Legat Positions

According to OIO officials, persons selected for Legat positions need to possess certain characteristics and skills. OIO seeks personnel with a proven history of working in a multi-cultural, multi-task force environment who are skillful in dealing with personnel issues. They also should be seasoned investigators with broad-based knowledge of the FBI's programs and skilled managers preferably with field office supervisory experience. These individuals should be self-motivated, versatile, possess exceptional interpersonal and liaison skills, and be able to work with a wide variety of people in a foreign environment. Individuals should demonstrate good judgment and common sense and need minimal guidance and direction from FBI headquarters. In addition, the FBI requires individuals to have proficiency in one or more languages used in an office's assigned territory.

When an opening occurs for a Legat or ALAT position, a vacancy announcement is prepared and posted on ACS. The announcement identifies the position and the location, application instructions, and the deadline for applying. It also specifies minimum and preferred qualifications. For example, the minimum qualifications for eligibility to apply for any Legat position are 3 years FBI investigative experience, one-year relief supervisory experience,³³ and a current

³³ A relief supervisor in the FBI is a agent who serves as a backup for a supervisor.

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“meets expectations” performance appraisal.³⁴ The preferred qualifications include such factors as broad-based investigative experience, supervisory experience, language proficiency, communication skills, previous overseas experience, and FBI Inspection Division experience. These preferred qualifications can be ranked differently based on the particular needs of an overseas office.

Applicants are asked to submit a description of their experience that addresses the minimum and preferred qualifications along with a recommendation letter from their division head or the Special Agent in Charge. The letter must indicate whether the division head recommends, highly recommends, or does not recommend the candidate and it also must include comments on the candidate’s qualifications for the job advertised as well as the individual’s leadership ability, interpersonal skills, and potential for advancement.

Application packages are reviewed by a Legat Screening Panel (LSP). The panel, consisting of senior FBI managers and analysts from various FBI divisions, reviews the applicants’ packages and ranks the candidates against the qualifications contained in the vacancy announcement, submitting the top ranked candidates to a second panel, known as the Special Agent Mid-Level Management Selection (SAMMS) Board. The SAMMS Board, whose members include the Deputy Assistant Directors of the Criminal Investigative, Counterintelligence, Counterterrorism, Cyber, and Inspection Divisions, may agree with the LSP rankings or come up with its own ranking based on review of the candidates. The head of OIO can appeal to the SAMMS board if he or she disagrees with the Board’s rankings.

The SAMMS Board recommends the top three candidates in rank order to the FBI Director. The Director interviews one or more of the Legat or ALAT candidates and makes the final selection. Reflecting the growing importance of the Legat program, the Director has commented that he wants his future leaders to have international experience.

Between January 2001 and April 2003, a total of 84 vacancy openings for Legat or ALAT positions were announced. To determine if

³⁴ FBI agents are evaluated on a pass/fail basis with “meets expectations” signifying acceptable performance.

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the FBI was selecting agents for Legat and ALAT positions in accordance with its procedures, we judgmentally selected the files for 13 of these vacancies. We reviewed the vacancy packages to determine whether the applicants met minimum qualifications, the degree to which they met preferred qualifications, whether the LSP and the SAMMS board appropriately ranked the candidates, and whether these ranking decisions were appropriately documented. Based on our review, we concluded that the FBI was following its procedures.

According to an OIO official, the FBI is implementing a new agency-wide promotion system starting in FY 2004. Applicants for any GS-14 position, including an ALAT, or non-Assistant Special Agent in Charge GS-15 position, such as a Legat, must take and pass a test which will measure their aptitude and abilities to handle managerial positions.

FBI Acknowledged Some Past Staffing Decisions Could Have Been Better

Officials from OIO told us that in prior years, when the Legat program was growing rapidly, some mistakes were made in staffing Legat positions. While not providing specific examples, the officials told us that some agents selected for positions abroad lacked the management skills and judgment needed to handle overseas assignments properly. In some instances, individuals were selected who did not have management or supervisory experience. Instead, they were picked primarily because they spoke the language of the host country. This lack of experience sometimes resulted in poorly managed offices. In some cases, incidents occurred that were serious enough to cause the employees to be recalled to the United States, while others were not granted extensions to their tours of duty. Moreover, relationships with Embassy officials and foreign law enforcement agencies sometimes needed to be repaired. Officials believed that the current selection process, which places considerable weight on supervisory experience, should help avoid some of the problems that occurred in the past.

Misconduct by Some Legat Staff is a Concern

An Office of Professional Responsibility (OPR) official stated that, in his opinion, the number of OPR investigations of Legat personnel was higher than would be expected given their small number and attributed this problem to past staffing decisions. This official added that Legat staff represent the FBI overseas and should be role models rather than subjects of OPR investigations. Another OPR official attributed the situation to the fact that the Legats operate independently and tend not to be closely supervised by headquarters. In contrast, an OIO official said he did not believe OPR investigations of Legat staff were any more prevalent than for any other FBI division. However, during a conference for Legal Attachés held in Washington D.C. in November 2002, this same OIO official stated before the group that he was spending too much time dealing with OPR-related issues.

To obtain an understanding of the kinds of allegations involving Legat staff, we asked OPR to provide us with the investigative files opened on Legat staff between September 1999 and September 2002. OPR provided us with 12 cases. Officials said they did not know if these were all the cases opened during this period because their database did not identify the position held by the person under investigation. Consequently, OPR officials relied on their recollection to identify investigations involving Legat employees.³⁵

These 12 OPR investigations involved 24 alleged offenses against 13 employees. All but one of these employees was either a Legat, ALAT, or Office Assistant. The remaining individual was an employee on temporary duty. The following table summarizes the allegations and the examples provide more details.

³⁵ Subsequent to our exit conference another OPR official contradicted what we were originally told stating that the OPR's databases do identify Legat staff who have been subject to an investigation. As a result, OPR provided a list of 17 additional cases that had been opened on 15 Legat personnel involving 34 alleged offenses during our review period. In addition, the OIG Investigations Division, which has first priority in investigating allegations against certain FBI personnel, provided us with allegations against two more Legat personnel. We did not review the case files for these additional cases.

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EXHIBIT 5-2 ALLEGATIONS AGAINST LEGAT STAFF INVESTIGATED BY OPR BETWEEN SEPTEMBER 1999 AND SEPTEMBER 2002

| ALLEGATION | NUMBER OF INSTANCES |
|--------------------------------------|---------------------|
| Security violations | 8 |
| Inappropriate relationships | 4 |
| Waste, misuse of government property | 2 |
| Inappropriate release of information | 2 |
| Voucher fraud | 5 |
| Misuse of position | 1 |
| Violation of rules/regulations | 2 |
| TOTAL | 24 |

Source: OPR investigative files.

- A Legat obtained a \$40,500 advance from the FBI for educational expenses for his children at the foreign post in October 2000. Later, he submitted a request to the Department of State (DOS) seeking payment for the same tuition and DOS paid \$32,520 directly to the educational institutions in January 2001. OPR opened an investigation after learning of the duplicate payment. The Legat did not return the advance to the FBI until August 2001 after he had been reminded to do so on two occasions. As a result of the OPR investigation, the Legat received counseling and was warned to avoid similar situations in the future that could reflect negatively on him, and by extension the FBI.
- Another Legat was alleged to have misused his government credit card and submitted fraudulent travel vouchers. The Legat routinely requested reimbursement for taxi rides in the amounts of \$15 to \$19 above actual incurred costs for a total of \$360 over a 2-year period. OPR officials advised us that the allegations were substantiated and the Legat was in the process of being dismissed.
- Allegations against an ALAT included misuse of his government credit card, disclosure of sensitive and classified information to non-FBI officials, failure to report contacts with foreign nationals, commingling of personal and Bureau funds, borrowing money from the office imprest fund, and sending classified information

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over an unsecure facsimile machine. Because of these allegations, the ALAT was returned to the United States and he subsequently resigned from the FBI.

As of October 2003, all of these investigations had been completed and 19 of the 24 allegations were substantiated against 12 employees. These OPR investigations resulted in five employee suspensions, three letters of censure, two employees receiving counseling, one dismissal, and one resignation.

Increasing Recognition of the Value of Legat Experience

In our discussions with FBI personnel, some said that historically the perception was that employees assigned to Legat offices were part of a "wine and cheese circuit," that did not involve substantive investigative work. Others remarked that Legats had sometimes been appointed to these positions as a consolation for not being promoted to other positions, or as a reward for long service near the end of their careers. Because of the perception of the Legat program, some Legat staff had difficulty finding career enhancing positions after they returned to the United States, according to one OIO official.

However, this perception appears to be changing. The growth in international crime and terrorism in recent years has resulted in more FBI agents being sent overseas to work on major investigations and these agents often interact and work closely with the Legat staff. The FBI agents sent on temporary assignment are increasingly realizing that the Legat work is demanding, substantive, and essential, according to OIO and other headquarters officials. As more FBI agents experience first-hand the importance and value of the Legat's work, they are increasingly applying for Legat positions. An official from the Counterterrorism Division, who also sits on the SAMMS Board, agreed that more employees are applying for Legat vacancies than ever before and, as a result, the FBI has a better pool of candidates from which to choose.

In addition, an increasing number of returning Legat staff are being selected for leadership positions in the FBI, according to OIO officials. For example, they said 37 ALATs and Legats received permanent promotions at the GS-14 and 15 levels, respectively, in FY 03. In addition, three returning Legats were promoted to Assistant Special Agent in Charge positions. These promotions were significantly higher than what has occurred in the past and the officials believed

this success was partially attributable to their intensified efforts to promote the value of the Legat experience.

Pre-Deployment and Foreign Language Training for Legat Staff

When we initiated this audit, officials from the FBI's Inspections Division told us that they were beginning an in-depth review of the pre-deployment training program, including language training for newly assigned Legat staff. Consequently, we limited our review of the training program to understanding what type of training is provided and interviewing selected Legat staff in the four offices we reviewed to obtain their views about the training. We also determined the extent to which Legat employees had proficiency in a foreign language.³⁶ At the time of our audit, over one-third of Legat staff did not meet the FBI's foreign language proficiency goals. The FBI Inspection Division's analysis identified similar issues with language training as well as other problems with pre-deployment training and made 12 recommendations for improvement (see Appendix V).³⁷

Pre-Deployment Training - The FBI has a 3-week pre-deployment training program for agents and support staff who have been selected for assignment to Legal Attaché offices. The first week of the training is designed to provide newly appointed Legat personnel with administrative information, and policies and procedures associated with working in a Legat office and living in a diplomatic mission overseas. Topics covered this first week include personnel and housing matters, overseas allowances and vouchers, Legat computer equipment and applications, Department of State billings and payments, security, extraterritorial guidelines for informants, language services and programs, evidence control, employee conduct, and the roles and responsibilities of the Department of Justice's Office of International Affairs, the FBI's Inspection Division, Office of Professional Responsibility, and Health Services Unit.

Also during the first week of training, the Legats and the ALATS receive individual briefings from the substantive units at FBI headquarters about programs and investigations that may have an

³⁶ We obtained language test scores for Legat staff as of March 27, 2003.

³⁷ FBI Inspection Division Report: Legal Attaché Pre-deployment Training: An Evaluation of the Preparation of FBI Personnel for Overseas Assignment, Reengineering Project Number 35, July 2003.

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impact on their geographic area of responsibility. For example, they may receive briefings from the Counterterrorism Division if terrorism matters are prevalent in their region. While these briefings occur for the agents, the office assistants receive detailed briefings about administrative matters, such as the field support account, property inventory records, and diplomatic pouch preparation techniques. In addition, if the support staff lacks sufficient familiarity with the ACS system, arrangements are made for additional training in using the system.

During the second week of training, agents and support staff attend a Legat Security Awareness course in Quantico, Virginia. Spouses are also encouraged to attend this class. The training includes discussions and exercises relating to surveillance detection; terrorist threat recognition; hostage survival; defensive tactics; and vehicle, residential, and hotel security.

During the final week, Legat staff attend a 2-day training class at the Department of State's Foreign Service Institute called Introduction to Working in an Embassy. The course includes presentations on working in an embassy or consulate, the role of the ambassador, working with foreign service nationals, embassy protocol, administrative support within an embassy, and crisis management. Agents also receive detailed briefings from analysts and desk officers at the Department of State [CLASSIFIED INFORMATION REDACTED] related to the economic, political, and leadership of the countries and areas to which they will be assigned.

In addition to the 3-week pre-deployment course, agents are encouraged, but not required to take other classes offered by the Foreign Service Institute. Further, newly selected agents who have not worked overseas before and will be assigned to a newly established office are normally required to complete a temporary duty assignment in an established office where they receive on-the-job training. Agents assigned to existing Legat offices normally do not complete a temporary duty assignment, even if they have no overseas experience, because they receive on-the-job training at the existing office.

We asked selected Legat staff at the four offices we reviewed about the training they had received in preparation for their assignment. One office assistant told us that the State Department training on the automated systems used in an embassy environment was too cursory. In general, however, both the agents and support

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had positive comments about the training. These views were in contrast to what the FBI Inspection Division was told by a focus group of both former and current Legat staff as reported in its July 2003 report. The inspection report noted that the focus group participants expressed disappointment with most briefings they had received from FBI headquarters operational divisions. These briefings, which were supposed to address the crime problems and investigative concerns in the countries and territories to which the agents were to be assigned, were described as short, generic, and superficial. Some focus group participants added that the briefings were often provided by persons with little knowledge of these countries and, as a result, the information was of little use once they arrived at their office of assignment.

According to the inspection report, the focus group participants also indicated that they did not believe the pre-deployment training program adequately prepared newly selected Legat staff for the difficulties of adjusting to life overseas. This was especially true in hardship posts where the quality of life was very poor relative to the United States. Not all Legat personnel or their dependents were able to adapt quickly or easily to a foreign environment and those who did not often felt isolated, lonely, and depressed. The consensus among the focus group participants was that the FBI's Employee Assistance Program was not doing enough to reach out to Legat employees, not only before they departed overseas but also during their tours of duty.³⁸

Other issues were noted in the FBI's inspection report. Funding for the pre-deployment training was noted as insufficient and training facilities were inadequate. As an example of the latter, the report said that Inspection staff had witnessed agent and support employees receiving computer training in a room about the size of a walk-in closet, with some employees having to sit in the doorway while the instructor demonstrated Legat office computer operations. Another issue related to the temporary duty assignments provided to certain agents selected for positions in newly established offices. The inspection report suggested, based on focus group comments, that these assignments be expanded to others who had been selected for Legat assignments. This would not only provide them with on-the-job

³⁸ An Employee Assistance Program is a professional counseling and referral service designed to help employees with personal, job, or family problems.

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training but also gives OIO the opportunity to determine how well the employees performed in a foreign environment before they were posted overseas.

Language Training – FBI employees selected for Legat positions where proficiency in a foreign language is considered necessary can obtain language training through OIO's Language Service Section. A Language Services official told us this training can take various forms including self-study materials, formal classroom training, and tutors. While intensive courses are available from the Defense and State Departments and the CIA, FBI agents seldom attend because the courses are lengthy and not enough time is available between the time staff are selected and when they transfer overseas. According to this official, Language Services typically has about 3 months on average to work with newly selected Legat staff on foreign language training before they are transferred overseas, but the staff also have the opportunity to receive further training while in the foreign country.

In our opinion, three months does not appear to be sufficient time to learn a foreign language. This view was echoed by the Inspection Division's July 2003 report. The report concluded that Legat personnel were not selected far enough in advance to successfully complete a course in foreign language training that would enable them to conduct business at a functional level in the host country language. Depending on the complexity of the language, anywhere from 9 months to 2 years of full-time training was needed to attain proficiency, according to Language Services officials interviewed by the Inspection Division. Other agencies contacted by the Inspection Division, such as the State and Defense Departments and DEA, reported providing more extensive language training for staff assigned overseas and more lead time to complete it. For example, selections for DEA country attaché positions in Asia and the Middle East are made at least 18 months in advance to permit at least 1 year of language training, the Inspection report noted.³⁹

Foreign language ability is measured according to the federal Interagency Language Roundtable Skill Level Description, or IRL scale

³⁹ DEA Country Attachés carry out investigative and liaison activities in foreign countries related to U.S. drug laws.

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level. The IRL scale measures foreign language ability in areas of listening, reading, speaking, and writing on a scale of zero to five, with five being the highest rating. For example, a person with a level 2 speaking proficiency would have sufficient capability to meet routine social demands and limited job requirements. A person with a level 4 speaking ability, on the other hand, would be able to use the language fluently and accurately on all levels normally pertinent to professional needs. According to the FBI's Legal Attaché Manual, the foreign language requirements for a Legat and ALAT are a level 2+ or above. While no proficiency level is specified for support personnel, the Manual states that they should have foreign language qualifications relevant to the office to which they are applying. In contrast the FBI's Manual of Administrative Operations and Procedures, Part 1, Section 22-2.5.1, states that the foreign language proficiency goals for Legats and ALATs in speaking, listening, and reading are levels 3, 3, and 2, respectively. For office assistants, the goals are level 2 for speaking and listening and level 1 for reading. However, according to a Language Services official, Legat staff currently are only tested for their speaking skills.

To see how closely the FBI was meeting these goals, we obtained information from the CIA's World Factbook on the official languages spoken in the 46 countries where the FBI has Legat staff.⁴⁰ In 11 of these countries, English is considered one of the official languages, while in 11 others English is spoken by some elements of the population. For the remaining 24 countries where the FBI has Legat staff, English was not identified as one of the languages spoken. Thus, it is these countries where a mastery of the host country language by Legat staff is most likely to be necessary in order to effectively carry out their duties.

We also obtained information on the language skills of the 97 FBI staff stationed in the 24 countries where English is not the primary or secondary language. Our analysis of this data using the criteria specified in the Legal Attaché Manual showed that 22 of the staff, or about 23 percent, had no speaking skill applicable to the language of the host country or the territory covered by the Legat office. In addition, 14 agents had some language skills pertaining to that area, but did not meet the oral language goals as stated in the

⁴⁰ The World Factbook, prepared by the Central Intelligence Agency, provides information on foreign countries for use by U.S. government officials.

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FBI's Legal Attaché Manual. In total, 36, or over one-third, of the 97 Legat staff assigned to these countries did not meet the FBI's language goals.

Vacancy announcements for Legat and ALAT positions in non-English speaking countries usually include language proficiency as a qualification factor. However, language is almost never the most important selection factor, according to OIO officials, because other factors such as investigative and supervisory experience are considered more essential. OIO officials added that if documents or tapes of conversations need to be translated, they could be sent to Language Services for transcription or translators or linguists (with the appropriate security clearances) could be hired.

While the use of translators and linguists may sometimes be unavoidable, we believe that the FBI's priority should be to ensure that staff selected for Legat positions who lack appropriate languages skills are given sufficient time and training to acquire them. We observed the value of language proficiency firsthand during our visit to Japan. The Legat and ALAT were fluent in the Japanese language. Based on our discussions with Japanese officials and our observations of the Legat staffs' interaction with these officials, it was apparent the agents' mastery of the Japanese language went a long way in fostering strong relationships and cooperation. One Japanese law enforcement official remarked, for example, that current Legat personnel were more proficient in the Japanese language than their predecessors and, as a result, a strong level of rapport had been developed.

Some Legat Staff Remain Abroad For Long Periods of Time

To ensure that FBI personnel do not lose contact and familiarity with the changing practices and priorities of the FBI as well as concerns that extended tours of duty abroad could result in a security risk, the FBI places limits on the length of time staff can remain out of the country. FBI personnel are limited to no more than five consecutive years abroad in one location or six consecutive years in two locations. However, exceptions to these limits are permitted when, according to the Legal Attaché Manual, the needs of the FBI would best be served by an extension. Duration of such an extension should not exceed two years. In addition, according to an OIO official, prior to 1997, there was no tour of duty limit for support staff.

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We examined the tours of duty for 370 FBI agents and support personnel assigned to Legat offices since October 1, 1996. Our analysis indicates that 29 employees have remained abroad for long periods of time. Specifically, we found 21 agents and support staff who had remained overseas for more than 6 consecutive years. Of these, five employees had remained abroad for more than 10 consecutive years. In addition, 8 agents and support staff will have been overseas for more than 6 years if they complete their current tours of duty.

OIO officials recognized that some Legat staff had been abroad too long and said that some Legat staff had recently been denied extensions. Further, they acknowledged that, in the past, the tour of duty limits were not always enforced. However, in the "post-Hanssen era" concerns have been raised by the FBI's Security Division about FBI employees remaining abroad too long and becoming a security risk.⁴¹ In addition, an OIO official said he was concerned about personnel becoming too complacent and overly familiar in their relationships with foreign officials when they stay abroad for extended periods of time in one location. Nevertheless, at the exit conference an OIO official said that exceptions would still need to be made in exigent circumstances with the concurrence of the Security Division.

Given the need to reduce the risk of personal security exposure inherent in long tours of duty abroad and the apparent increasing interest and exposure among FBI employees in the Legal Attaché program, which is likely to attract more candidates, we believe that extending tours of duty beyond established limits should be kept to a minimum.

Conclusion

Legal Attachés and their staff represent the FBI abroad and have increasing responsibility in accomplishing the FBI's mission given the globalization of crime and terrorism. Staff selected for these positions need to be highly skilled and experienced and should be able to

⁴¹ FBI agent Robert Hanssen, who was discovered spying for the former Soviet Union and then for Russia, pled guilty to 15 counts of espionage and conspiracy in July 2001 and was subsequently sentenced to life in prison without parole. In the wake of the Hanssen case, the FBI has begun to implement stricter security requirements.

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function independently and effectively in stressful foreign environments. Currently, the FBI has an adequate process in place for selecting qualified agents for Legat positions, but acknowledged that in the past some poor staffing decisions had been made.

The Legat program was previously perceived by many within the FBI as a position that was not career enhancing. However, this perception appears to be changing as more FBI agents spend time overseas on investigative activities and realize the demanding, substantive, and essential nature of Legat work. In addition, the FBI Director has stated that he wants future FBI executives to have overseas experience and a clear understanding of international operations.

The FBI provides pre-deployment and language training for staff selected for Legat positions before they arrive at their posts of duty. Our review of this training was limited because the FBI's Inspection Division had initiated an in-depth review of these areas. We noted that over one-third of Legat staff did not meet the FBI's foreign language proficiency goals as stated in the Legal Attaché Manual. The FBI's Inspection Division's analysis identified similar issues with language training as well as other problems with pre-deployment training.

For security reasons and to ensure that FBI personnel do not lose contact and familiarity with the changes in the FBI and the United States, the Bureau places limits on the length of time staff are to remain abroad. Our analysis indicates that some Legat staff have remained abroad for long periods of time. The FBI has acknowledged this as a problem and is taking steps to limit tours abroad by not granting extensions in some cases. While we understand that exceptions to tour of duty limits may need to be made in certain circumstances, we believe these exceptions should be kept to a minimum.

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Recommendations

We recommend that the FBI:

5. Implement the FBI Inspection Division's recommendations contained in their July 2003 Report: Legal Attaché Pre-Deployment Training and Evaluation of the Preparation of FBI Personnel for Overseas Assignment (see Appendix V), and provide us with details about the actions taken.
6. Adhere to its limits on overseas tours of duty and keep exceptions to these limits to a minimum.

STATEMENT ON MANAGEMENT CONTROLS

In planning and performing our audit of the Legal Attaché Program, we considered the FBI's control structure over the Legal Attaché program for the purpose of determining our audit procedures. This evaluation was not made for the purpose of providing assurance on the FBI's management control structure as a whole. However, we noted certain matters involving management controls that we considered to be reportable conditions under Government Auditing Standards.

Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operations of the management control structure that, in our judgment, could adversely affect the FBI's ability to effectively administer the Legal Attaché program. As discussed in the report, we identified the following deficiencies: 1) the FBI has not fully addressed workload problems in Legat Ottawa, and 2) the FBI lacks controls to ensure that staff assigned overseas on temporary duty obtain required country clearances and that Legat offices maintain complete records of these clearances.

Because we are not expressing an opinion on the FBI's management control structures as a whole, this statement is intended for the information and use of the FBI in managing the Legal Attaché Program.

**STATEMENT ON COMPLIANCE WITH
LAWS AND REGULATIONS**

We have audited the FBI's management of the Legal Attaché Program. In connection with the audit, as required by the standards, we reviewed management processes and records to obtain reasonable assurance about the FBI's compliance with laws and regulations that, if not complied with, in our judgment, could have a material effect on FBI operations. Compliance with laws and regulations applicable to the FBI's management of the Legal Attaché Program is the responsibility of the FBI's management.

Our audit included examining, on a test basis, evidence about laws and regulations. The specific laws and regulations against which we conducted our tests are contained in the relevant portions of:

- Title 21, United States Code, Section 871;
- Title 28, United States Code, Section 533;
- National Security Determination Directive 38; and
- Executive Order 12333.

Our audit did not identify areas where the FBI was not in compliance with the laws and regulations referred to above. With respect to areas that were not tested, nothing came to our attention that caused us to believe that the FBI management was not in compliance with the laws and regulations cited above.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Audit Objectives

The objectives of the audit were to determine: 1) the type of activities performed by Legal Attaché offices; 2) the effectiveness of Legal Attaché offices in establishing liaison with foreign law enforcement agencies and coordinating activities with other law enforcement and intelligence agencies stationed overseas; 3) the criteria and process used by the FBI to determine the placement of Legal Attaché offices, including oversight and management of established offices; and 4) determine the processes used for selecting and training FBI personnel for Legat positions.

Scope and Methodology

We performed our audit in accordance with Government Auditing Standards, and included tests and procedures necessary to accomplish the audit objectives. Generally, our audit emphasized Legat program activities that occurred during fiscal years 2001 through 2003. However, some of our tests required us to use data from prior fiscal years.

To accomplish our objectives, we conducted work at FBI Headquarters, and interviewed various officials from: OIO's International Operations Section and Language Services Section; Administrative Services Division; Criminal Investigation Division; Counterterrorism Division; Finance Division; Inspection Division; Drug Section; Security Division, and the Office of Professional Responsibility. We also interviewed officials from other Department of Justice components including the Justice Management Division, Drug Enforcement Administration, and the Office of International Affairs. In addition, we obtained documents from the Department of State's Office of the Inspector General.

We conducted reviews of four Legal Attaché offices, which we judgmentally selected. We included offices that had varied staffing levels and workloads. In addition, we included offices that covered one country as well as offices that covered multiple countries; English speaking and non-English speaking locations; and offices in different geographical areas. We reviewed the Legal Attaché Annual

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Accomplishment reports for 2001 and the latest FBI inspection reports for all of the Legal Attaché offices, and took this information into account when making our site selections.

The Legat offices we selected and reviewed were located in: Berlin, Germany; Ottawa, Canada; Pretoria, South Africa; and Tokyo, Japan. We also conducted limited work in Cape Town, South Africa; Toronto, Canada; and Cologne, Frankfurt, and Meckenheim, Germany. While at these locations we interviewed Legal Attaché personnel, United States Embassy and Consulate officials and staff, and selected foreign liaison contacts of the Legal Attachés' from various police and intelligence agencies. See Appendix II for a listing of foreign agencies contacted, and Appendix III for a listing of U.S. agency representatives contacted abroad.

We also performed various tests at the Legat offices. During our fieldwork, we reviewed the files for a sample of judgmentally selected leads and cases to determine what actions were taken by Legat personnel in response to requests for assistance from other FBI offices, and reviewed the timeliness of these actions in order to assist us in addressing objectives 1 and 3. Further, we followed up on key findings contained in the FBI Inspection Division's reports for the four offices to determine if corrective actions had been taken, and reviewed other documents and records as needed.

We also determined if individuals who had traveled for official reasons on behalf of the FBI to selected locations in Canada and Germany had country clearances. At our request the FBI's Travel Advance and Payment Unit, Finance Division, identified these individuals using information from the FBI's Financial Management System. The printouts we received identified persons who had traveled to selected Canadian destinations between October 1, 2001 and April 17, 2003, and between October 1, 2001 and June 4, 2003 for the German locations.

Furthermore, we reviewed FBI manuals, policies and procedures, memorandum, correspondence, and electronic communications related to the Legat Program. We also reviewed various records and documents as needed, including: financial documents, Legal Attaché Annual Accomplishment Reports, workload data, OPR case files, vacancy packages, and records pertaining to the Legat staff's tours of duty and language proficiencies as well as reports provided to Congress.

Prior Reviews

The Office of Inspector General has not performed any prior reviews of the FBI's Legal Attaché Program. We also did not identify any General Accounting Office reviews of the program. The FBI's Inspection Division conducts periodic reviews of individual Legal Attaché offices and we reviewed these reports as part of our process for selecting offices for review.

LISTING OF FOREIGN AGENCIES CONTACTED

CANADA

Office of the Solicitor General

Royal Canadian Mounted Police (RCMP)
International Operations Branch
Financial Crimes Branch
Immigration and Passport Branch

Canadian Security Intelligence Service (CSIS)
Counter Intelligence Branch
Counter Terrorism Branch
Counter Proliferation Branch
Foreign Liaison and Visits Branch

Ottawa Police Department

Toronto Police Service

GERMANY

Landeskriminalamt

Bundeskriminalamt

[CLASSIFIED INFORMATION REDACTED]

SOUTH AFRICA

South African Police Service
Crime Intelligence Division
Training Division
Interpol Division
Western Cape Province

National Prosecuting Authority
Directorate of Special Operations

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JAPAN

Ministry of Justice, International Affairs Division

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National Police Agency (NPA)

Second Organized Crime Control Division

Second International Affairs Division

Foreign Affairs Division, Security Bureau

Public Security Investigation Agency (PSIA), International Division

Tokyo Metropolitan Police, International Criminal Investigation Division

**LISTING OF U.S. AGENCIES CONTACTED AT
U.S. EMBASSIES AND CONSULATES**

| | Canada | | Germany | Japan | South Africa | |
|---|--------|---------|---------|-------|--------------|-----------|
| | Ottawa | Toronto | Berlin | Tokyo | Pretoria | Cape Town |
| Department of State | | | | | | |
| U.S. Ambassador | X | | X | X | X | |
| Deputy Chief of Mission | | | | X | X | |
| Consulate General | | | | | | X |
| Deputy Principal Officer | | | | | | X |
| Consular Section | | | | | | |
| American Citizens Services | | | X | X | | |
| Consular Public Affairs | | X | | | | |
| Regional Security Officer | X | X | X | X | X | X |
| Narcotics Law Enforcement Affairs | | | | | X | |
| Department of Justice | | | | | | |
| Alcohol, Tobacco, and Firearms | X | | | | | |
| Drug Enforcement Administration | X | | X | X | X | |
| U.S. Attorney's Office | | | | | X | |
| [CLASSIFIED INFORMATION REDACTED] | | | | | | |
| Department of Homeland Security | | | | | | |
| Immigration and Customs Enforcement ⁴² | X | X | X | X | | |
| U.S. Secret Service | X | | X | | | |
| Transportation Security Administration | | | | X | | |
| Department of Defense | | | | | | |
| U.S. Air Force, Office of Special Investigations | | | X | X | | |
| U.S. Army, Military Liaison | | | X | | | |
| U.S. Navy, Naval Criminal Investigative Service | | | | X | | |

⁴² In Ottawa, we interviewed an ICE official from the former INS and another from the former U.S. Customs Service. The ICE officials in the other three locations were from the former U.S. Customs Service.

**FBI LEGAL ATTACHÉ OFFICES AND SUB-OFFICES
FISCAL YEAR 2003 STAFFING LEVELS**

| OFFICE | AGENTS | SUPPORT | TOTAL |
|-------------------------|---------------|----------------|--------------|
| Almaty, Kazakhstan | 2 | 1 | 3 |
| Amman, Jordan | 2 | 1 | 3 |
| Ankara, Turkey | 2 | 1 | 3 |
| Athens, Greece | 3 | 2 | 5 |
| Bangkok, Thailand | 2 | 2 | 4 |
| Beijing, China | 2 | 1 | 3 |
| Berlin, Germany | 2 | 2 | 4 |
| Frankfurt, Germany | 2 | 2 | 4 |
| Bern, Switzerland | 2 | 1 | 3 |
| Bogotá, Colombia | 4 | 2 | 6 |
| Brasília, Brazil | 2 | 1 | 3 |
| Bridgetown, Barbados | 2 | 1 | 3 |
| Brussels, Belgium | 2 | 2 | 4 |
| Bucharest, Romania | 2 | 1 | 3 |
| Buenos Aires, Argentina | 2 | 1 | 3 |
| Cairo, Egypt | 3 | 1 | 4 |
| Canberra, Australia | 2 | 2 | 4 |
| Caracas, Venezuela | 2 | 1 | 3 |
| Copenhagen, Denmark | 2 | 1 | 3 |
| Hong Kong, SAR, China | 2 | 1 | 3 |
| Islamabad, Pakistan | 4 | 2 | 6 |
| Kiev, Ukraine | 2 | 1 | 3 |
| Lagos, Nigeria | 2 | 1 | 3 |
| London, England | 6 | 5 | 11 |
| Madrid, Spain | 2 | 1 | 3 |
| Manila, Philippines | 3 | 2 | 5 |
| Mexico City, Mexico | 6 | 6 | 12 |
| Guadalajara, Mexico | 2 | 1 | 3 |
| Monterrey, Mexico | 1 | 0 | 1 |
| Moscow, Russia | 3 | 2 | 5 |
| Nairobi, Kenya | 2 | 1 | 3 |
| New Delhi, India | 2 | 1 | 3 |
| Ottawa, Canada | 5 | 4 | 9 |
| Vancouver, Canada | 1 | 1 | 2 |
| Panama City, Panama | 2 | 1 | 3 |
| Paris, France | 3 | 2 | 5 |

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| OFFICE | AGENTS | SUPPORT | TOTAL |
|--------------------------------------|---------------|----------------|--------------|
| Prague, Czech Republic | 1 | 1 | 2 |
| Pretoria, South Africa | 2 | 1 | 3 |
| Riyadh, Saudi Arabia | 3 | 2 | 5 |
| Rome, Italy | 4 | 3 | 7 |
| Santiago, Chile | 2 | 1 | 3 |
| Santo Domingo, Dominican Republic | 2 | 1 | 3 |
| Seoul, South Korea | 1 | 1 | 2 |
| Singapore, Singapore | 2 | 1 | 3 |
| Tallinn, Estonia | 2 | 1 | 3 |
| Tel Aviv, Israel | 2 | 1 | 3 |
| Tokyo, Japan | 2 | 2 | 4 |
| Vienna, Austria | 3 | 1 | 4 |
| Budapest, Hungary | 1 | 0 | 1 |
| Warsaw, Poland | 2 | 1 | 3 |
| Totals | 119 | 75 | 194 |

RECOMMENDATIONS FROM THE FBI INSPECTION DIVISION REPORT ON LEGAL ATTACHÉ PRE-DEPLOYMENT TRAINING

CONSOLIDATED LIST OF FINDINGS AND RECOMMENDATIONS

Finding 1: The International Operations Administrative Unit, Office of International Operations, and the Operational Skills Unit, Training Division, have successfully established a pre-deployment training program for outgoing Legal Attache personnel.

Recommendation 1.1: That one comprehensive course evaluation instrument be developed for all Legat pre-deployment training, and that all Legat personnel be required to provide feedback upon completion of training, six months after reporting to their overseas assignment, and at the end of their overseas tour.

Finding 2: FBI Headquarters operational divisions are not providing outgoing Legat personnel with briefings that address the crime problems and/or investigative concerns associated with the country and territories that the agent will be responsible for covering.

Recommendation 2.1: That the FBI Headquarters operational divisions of Counterintelligence, Counterterrorism, Criminal Investigative, and Cyber be required to provide agent personnel being transferred to a Legat assignment with substantive briefings describing the crime problems and investigative concerns pertaining to the Legat office and region of the world to which the agent is being assigned.

Recommendation 2.2: That the OIO send formal ECs to the Assistant Directors of the Counterintelligence, Counterterrorism, Criminal Investigative, and Cyber to request substantive briefings for outgoing Legat personnel two weeks in advance of Legat pre-deployment training classes.

Finding 3: Sufficient personnel and nonpersonnel resources have not been provided for Legat pre-deployment training to ensure the continued success of the existing program much less allow for continuous improvement in order to meet future training needs.

Recommendation 3.1: That the Administrative Services Division identify space and the Finance Division identify funding for an OIO classroom facility and simulated Legat office to provide Legat pre-deployment training.

Recommendation 3.2: That the Resource Allocation and Staffing Requirements Office, in coordination with the Training Division, identify additional personnel resources within the Training Division's existing Funded Staffing Level to support the Legat Security Awareness Program.

Finding 4: The expanded use of temporary duty assignments would not only provide useful pre-

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deployment training for individuals selected for a Legat assignment, but would also provide an opportunity for prospective Legat applicants to experience working in a Legat office and the OIO with an opportunity to assess the prospective applicant's performance in an overseas environment.

Recommendation 4.1: That individuals selected for Legat vacancies without any prior Legat experience, regardless of whether the office is a new or established Legat office, be required to complete a temporary duty assignment prior to transfer.

Recommendation 4.2: That the OIO and the Executive Development and Selection Program determine whether it would be feasible to require FBI employees to complete a temporary duty assignment in a Legat office as a prerequisite for applying to a Legat vacancy.

Finding 5: Agent personnel are not selected far enough in advance to complete a successful course of foreign language training that will enable them to conduct business at a functional level in the host country language.

Recommendation 5.1: That the Language Services Section, OIO, provide an EC to the OIO and the Executive Development and Selection Program describing the amount of time necessary to provide a successful level of foreign language training for each Legat office with a critical foreign language requirement.

Recommendation 5.2: That the information provided by the Language Services Section, OIO, be used by the OIO and the Executive Development Selection Program to prioritize, advertise, and select personnel for overseas vacancies far enough in advance to allow for an appropriate level of foreign language training to be provided.

Recommendation 5.3: That all FBI personnel receiving foreign language training be required to evaluate the foreign language training received and be tested to determine the level of proficiency achieved.

Finding 6: The FBI does not have a proactive system in place to address the mental health needs of Legat personnel.

Recommendation 6.1: That the Employee Assistance Unit, Administrative Services Division, provide estimates to the Finance Division detailing the amount of resources necessary to develop and implement a mental health program in support of the FBI's Legat Program.

Recommendation 6.2: That the Finance Division identify and reallocate resources in support of mental health services for the FBI's Legat Program.

FEDERAL BUREAU OF INVESTIGATION RESPONSE



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

March 10, 2004

Ms. Carol S. Taraszka
Regional Audit Manager
U.S. Department of Justice
Chicago Regional Audit Office
Office of the Inspector General
500 W. Madison Street
Suite 3510A
Chicago, Illinois 60661

Dear Ms. Taraszka:

Reference is made to your memorandum, dated February 18, 2004, requesting the Federal Bureau of Investigation's (FBI) response to the Department of Justice (DOJ), Office of the Inspector General (OIG), draft audit report titled, "The Federal Bureau of Investigation's Legal Attache Program." This memorandum requested that the FBI review and provide written comments on the six recommendations contained in the draft audit report, specifically indicating whether the FBI agrees or disagrees with each recommendation. Also, you requested that the FBI conduct a law enforcement sensitivity and classification review of this report, and have appropriate personnel sign the Record of Sensitivity and Classification Review form.

Enclosed are the FBI's written responses to the six recommendations made by your staff in the draft audit report, a copy of the draft audit report with appropriate sensitivity and classification review markings, and the signed Record of Sensitivity and Classification Review form. The FBI is in agreement with these recommendations and is currently taking corrective action to address the issues raised by your staff.

The format of the enclosed document identifies the DOJ OIG draft audit report's recommendations followed by the FBI executive management's response. The responses to the recommendations have been coordinated through the FBI's Inspection Division.

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Ms. Carol S. Taraszka

If you have any questions regarding the responses or if I can be of any further assistance, please contact me at (202) 324-2901.

Sincerely,



Steven C. McCraw
Assistant Director
Inspection Division

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**FBI Response
to
DOJ OIG Draft Audit Report
Re: The Federal Bureau of Investigation's
Legal Attache Program**

Chapter 3: Legat Investigative Activities

Ottawa Backlog Previously Reported by FBI Inspection Division

Recommendation Number 1, Page 38: We recommend that the FBI analyze the staffing level in Ottawa and initiate action to adjust the permanent staff levels commensurate with the workload.

Response: The Office of International Operations (OIO), International Operations Section (IOS), agrees that there is insufficient staffing at Legat Ottawa to address the demands of the existing workload; however, office space and other administrative issues beyond the FBI's control, as set forth below, have also contributed to the backlog. The IOS has consistently attempted to address the staffing issues in order to significantly reduce or eliminate the need for temporary duty staff. Unfortunately, the inability of the Department of State to identify commercial office space to create a law enforcement hub in Toronto has prevented the IOS from enhancing Ottawa, by placing two additional agents in Toronto who would have addressed a substantial portion of the leads now assigned at Ottawa.

Legat Ottawa is currently staffed by one Legal Attache and six Assistant Legal Attaches (ALATs), one of whom is located in a sub-office in Vancouver. As the OIG staff is already aware, the Fiscal Years (FY) 2002-2003 Counterterrorism Supplemental Appropriation included approval for a two ALAT/one Office Assistant (OA) sub-office to be located in Toronto. Despite the difficulties mentioned above, the IOS intends to deploy the approved positions directly to Ottawa. In October 2003, Legat Ottawa advised that sufficient space is available in the existing office space to accommodate this increase in personnel. It is anticipated that the personnel will be selected and deployed by mid-Summer 2004. The IOS believes that this infusion of personnel will significantly reduce, if not eliminate, the backlog of work in Legat Ottawa.

Controls Over Temporary Duty Travel

Recommendation Number 2, Page 38: We recommend that the FBI implement a process that ensures that FBI personnel obtain country clearances before they travel to foreign countries on official business, and develop a system that ensures complete records of these clearances are maintained.

Response: The OIO, IOS agrees with the OIG's assessment of the policy underlying the need for all FBI field office and FBI Headquarters travelers to request and obtain country clearance in

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advance of foreign travel. Information regarding the process for obtaining country clearance, and other applicable policies, is readily available and accessible to all employees on the OIO web page. Since early 2003, the IOS has transmitted a semi-annual electronic communication (EC) to all employees reminding them of the need for country clearance and again setting forth the process.

Each Legat office plays a significant role in the country clearance process. They receive the request from the traveler, interact with the Ambassador to obtain concurrence for the travel, and advise the traveler of the approvals. The maintenance of accurate records and control files established in each Legat office are assessed as part of each Legat's performance appraisal. Record-keeping with regard to country clearances is no exception. The IOS responds routinely to Congressional inquiries where such information is needed and relies on the Legats to provide comprehensive statistical data in support of the IOS responses. Whenever a Legat identifies individual employees who have traveled to their area of responsibility without country clearance, the Legat notifies the IOS in order that remedial action may be undertaken with the effected field office or headquarters division.

According to Legat Ottawa, between 500 and 600 requests for country clearance are processed for travel to Canada per calendar year. The IOS has identified a technical issue regarding the number of failures to obtain country clearances as set forth in the OIG's report, and the true extent of the problem as indicated by Legat Ottawa. According to the OIG, there were 135 vouchers submitted for travel to Canada during a two and one-half year period where no country clearances could be located. From the list of 135, a random sample of 42 travel vouchers for 29 employees was examined by IOS. Each employee was contacted via email and requested to identify the file number and serial number of the communication in which they requested country clearance. In fact, for 74 percent of the voucher submissions, country clearance communications were identified by the employee and provided to IOS. A review of these communications revealed that each one was addressed to Legat Ottawa. It is clear that the appropriate protocols to obtain country clearance had been observed by the traveler, but that the records at Legat Ottawa and at the sub-office in Vancouver were inaccurate. Presuming an across-the board error rate of 74 percent, the original figure of 135 reflected in the OIG report is reduced to 35 voucher submissions in two and one-half years for which there is no accompanying country clearance request. While not statistically significant when compared to the number of official visitors during the same period, OIO, IOS acknowledges the need to strive for 100 percent compliance with existing protocols for international travel. The IOS will continue to monitor this issue with all Legat offices to ensure that FBI employees traveling internationally comply with established procedures.

The OIG report does highlight the need for the OIO, IOS to reinforce the need for each individual Legat to ensure that administrative controls are in place, and are vigilantly enforced to provide the FBI and any other oversight entity an accurate assessment of compliance with country clearance requirements. Moreover, the travel of official visitors to any Legat's territory invariably requires staffing support from the Legat hosting the official delegation. As such, these

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official visits account for an insignificant element of a Legat's workload, especially in our closest allied nations, such as Canada and Great Britain, where Legats host an exceptional number of official visits each year. An accurate accounting is of critical importance for IOS' reporting to Congress. The IOS has prepared a communication to each Legat office to remind them of the importance of keeping accurate records and maintaining control files, and will work with the Inspection Division to ensure these control files are reviewed for compliance during each Legat inspection.

On average, more than 2,500 country clearance requests are handled by the 46 Legat offices per year. This number is expected to rise as more new Legat offices are established. These requests may range from visitors for case specific investigative reasons to travel by the Director, his staff and his security detail for high level meetings with embassy and foreign officials. The centralization at FBI Headquarters of country clearance processing was attempted by the IOS in the year 2000 without success. Insufficient resources exist in IOS to ensure adequate processing of requests, and it was determined that inserting a bureaucratic layer between the requestor and the Legat responsible for obtaining the country clearance was redundant and overly cumbersome. In addition, many more requests were lost, delayed, or improperly handled, and FBI Headquarters management ultimately saw no added value in making the process more bureaucratic, rather than less so. As a result, the system currently in place was determined to be the most effective and efficient method of processing country clearance requests.

Recommendation Number 3, Page 38: We recommend that the FBI direct the Inspection Division (INSD) to review compliance with country clearance requirements during its inspections.

Response: The Office of Inspections, INSD agrees with the OIG's recommendation that compliance with country clearance requirements be reviewed during inspections. To ensure field divisions have complied with the requirements set forth in the Department of State, Justice, and Treasury Memorandum of Understanding on Chief of Mission (COM) Authority, the INSD will review all official business related foreign travel by FBI personnel assigned to the field office during on-site inspections. As part of the on-site financial audit, all travel vouchers submitted for foreign travel will be identified and a representative sample will be reviewed. Documentation supporting the authority for foreign travel will be examined to determine whether proper authority was obtained from the Assistant Director in Charge (ADIC) or Special Agent in Charge (SAC) of the field division, the Assistant Director (AD) of the corresponding FBI Headquarters division, and the Legal Attache who was responsible for obtaining the country clearance from the COM of the destination country prior to the commencement of travel.

FBI citations addressing country clearance requirements are found in the Manual of Investigative Operations and Guidelines Part I, Section 23-8.2. This citation states that "prior to travel by any FBI employee to a foreign country to conduct any official business country clearance must be obtained." Additionally, an EC, dated July 27, 2000, was sent to all FBI

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Headquarters divisions and field offices which states that "the authority for all official international travel must be obtained in an EC approved by: the ADIC/SAC of the field division, the AD of the corresponding FBI Headquarters division, and the Legal Attache who obtains the country clearance from the U.S. Ambassador/COM of the destination country."

Chapter 4: Liaison Activities Were Effective at the Legal Attache Offices Reviewed

Details of Liaison Activity and Accomplishments by Office

Recommendation Number 4, Page 54: We recommend that the FBI ensure the Buffalo field office and all FBI offices coordinate their training and investigative activities involving Canadian authorities with the Ottawa Legat.

Response: The OIO, IOS agrees with this recommendation and has already addressed this matter prior to the OIG issuing this recommendation in the draft audit report. The OIO, IOS discussed this matter with SAC Buffalo who advised that the Director recently approved "Border Liaison Office" (BLO) status for the Buffalo field office. This status permits Special Agents assigned to the Buffalo field office to travel approximately 50 miles into Canada for routine investigative matters. These matters would not normally be addressed by the Legat because of their low priority. SAC Buffalo advised that this limited travel into Canada is coordinated with Legat Ottawa, who is provided with summary information concerning the need for the travel. Legat Ottawa has confirmed that SAC Buffalo is coordinating this travel with the Legat office.

Outside of the National Academy (NA), the FBI does not provide training to the Royal Canadian Mounted Police, a highly skilled, modern law enforcement agency. According to the NA Training Unit at the FBI Academy, SAC Buffalo is permitted to recommend NA participants from within the Canadian territory covered by the Buffalo BLO. This policy has been in effect for a number of years. According to both SAC Buffalo and Legat Ottawa, the selection of the NA candidates is coordinated to avoid duplication. In addition, the Detroit, Seattle, and Minneapolis field offices also work with Legat Ottawa to occasionally nominate and process candidates for the FBI NA. According to the NA Training Unit, this arrangement has met with great success, and there is excellent coordination between the field offices and Legat Ottawa.

Chapter 7: Selection and Training of Legal Attache Staff

Pre-Deployment and Foreign Language Training for Legat Staff

Recommendation Number 5, Page 82: We recommend that the FBI implement the FBI INSD's recommendations contained in their July 2003 report titled, Legat Attache Pre-Deployment Training: An Evaluation of the Preparation of FBI Personnel for Overseas Assignment (see Appendix V), and provide us with details about the actions taken.

Response: The OIO, IOS agrees with the recommendations contained in the INSD's report and

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has taken the following actions to implement these recommendations:

1. Develop a comprehensive course evaluation instrument. **Action:** Implemented in August 2003. Each participating employee now completes an evaluation of both the instruction and content of the training.

2. That FBI Headquarters substantive divisions (Counterterrorism, Criminal Investigative, Counterintelligence and Cyber) provide substantive briefings to out-going Legat personnel. **Action:** Implemented in August 2003. All of the FBI Headquarters substantive divisions now provide Legat specific comprehensive briefings to our outgoing personnel.

3. That OIO request the briefings mentioned at number two via formal EC. **Action:** Implemented August 2003. An EC is now transmitted to each division requesting the appropriate briefings one month in advance of the training dates. The EC includes such information as the employee's name and their Legat office of assignment.

4. That the Administrative Services Division (ASD) identify space for an OIO classroom facility and simulated Legat Office, and that Finance Division (FD) identify funding for same. **Action:** IOS has been working with ASD to identify space within FBIHQ which can be converted into a classroom facility and simulated Legat office. IOS, working with the FD, has identified funding resources for this project.

5. That additional training personnel be assigned to the Legat Pre-Deployment Training initiative by the Training Division (TD). **Action:** IOS has requested the TD to provide additional personnel. The TD intends to request the necessary resources to increase its staffing in order to supplement the training.

6. That personnel selected for Legat vacancies who have no prior Legat experience be provided with training in an established Legat office. **Action:** Implemented August 2003. To date, Legats with no prior Legat experience have been trained in existing Legat offices. Two recently selected Legats with no prior Legat experience are scheduled for training in an established Legat office within the next two months. To supplement this training, IOS also provides an overlap of approximately one month between the incumbent and the incoming Legat. This enables the incumbent to provide training, guidance, and information relating to Legat specific procedures and initiatives, and also ensures the smooth introduction of the new Legat to existing liaison contacts.

7. That the Language Services Section (LSS) advise the IOS of the amount of time needed for training in the identified critical languages. **Action:** The LSS researched the issue of critical language skills and determined the amount of time needed for language training in critical languages. According to LSS, each of the critical languages (Chinese, Japanese, Korean and Arabic) requires two years of full-time intensive language instruction in order to achieve a speaking level sufficient to enable the employee to carry on routine business and social

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discussions. Language training in other difficult languages, such as Russian, Czech, Romanian, Urdu, and Pashtu, are 44 week courses. However, removal of a talented and valuable Special Agent investigator for such an extensive time period is not without a downside; specifically, a one or two year hiatus from investigative duties may result in an adverse impact on both investigative skills and current terrorism knowledge, both of which are critical to success in the posts where these languages are necessary. Thus, there must be a continual balancing between the benefit to the FBI of deploying a Legat or ALAT with the language skills, versus the actual ability of the employee to be successful in the Legat or ALAT position without the desired language skills. Because of this dilemma, IOS attempts to select employees for these positions who already have basic language skills or who may be heritage language speakers, thereby reducing the need for extended language training prior to deployment.

8. That the information provided at number 7 be utilized by OIO to prioritize, advertise and select Legat personnel for those offices with critical language needs. **Action:** Implemented August 2003. Prior to August 2003, it was the established IOS policy to select replacements for projected vacancies one year in advance of the vacancy; however, this policy was difficult to implement due to a lack of available staffing within the IOS. Beginning in mid-summer 2003, IOS began a concerted effort to realign staffing to comply with its own internal policy. From that time until the established FBI management selection system was shut down in October 2003, pending the implementation of the new system, IOS selected replacements for all projected Legat and ALAT vacancies through the end of calendar year 2004. Recently, the independent Legat Selection System Review Group recommended that selection of Legat personnel be moved forward to 18 months in advance of the projected vacancy to facilitate language training when necessary. IOS agrees that advancing the selection process would improve the ability to provide language training to employees without language skills, and has formulated a plan to implement this recommendation when the new management selection system becomes operational in March 2004.

9. That all personnel receiving language training be required to provide evaluations of the training received, and then tested to determine their level of proficiency. **Action:** Implemented August 2003. The LSS requires evaluation feedback from employees who attend the various forms of language training. In addition, those who complete intensive language training in advance of deployment to an overseas assignment are tested for proficiency.

10. That the Employee Assistance Unit, ASD, in cooperation with FD, develop and implement a mental health program for Legat personnel. **Action:** The ASD intends to request an enhancement of personnel and resources in the FY 2006 budget submission. The FD is awaiting this proposal.

11. That the FD identify and reallocate resources to support mental health services for the Legat Program. **Action:** Because this is not a critical unfunded program, the FD is awaiting the ASD FY 2006 budget submission where the enhancements for EAU will be included.

Some Legat Staff Remain Abroad For Long Periods of Time

Recommendation Number 6, Page 82: We recommend that the FBI adhere to its limits on overseas tours of duty and keep exceptions to these limits to a minimum.

Response: The OIO, IOS agrees with this recommendation. Beginning in May 2003, procedures were put in place to ensure that Legats and ALATs do not remain overseas beyond the five year limitation, absent the exigent needs of the FBI. Since that time, two three-month extensions beyond the approved five years have been granted to Legats who were involved in time specific initiatives. One of these was due to participation in a trial in the foreign country, and the other was due to hosting the annual FBI National Academy Associates Re-Trainer in the foreign country. At the conclusion of the initiative, both employees effected their transfer back to the U.S. In fact, since May 2003, IOS management has denied four requests for extensions (six months or one year) to a number of Legats and ALATs because the request did not meet the established criteria.

From time-to-time, the IOS does permit Office Assistants (OAs) to extend beyond the normal five year tour limitation, but only if they volunteer and are selected for a position in a hard-to-fill post, which is normally a two or three year tour of duty. These are the least desirable of the Legat offices, where repeated postings of the OA vacancy resulted in no qualified applicants. Only after a minimum of two such unsuccessful vacancy postings does IOS consider the selection of an OA who has already been abroad for five years. In these limited cases, IOS ensures that the OA will not be at the new post beyond the initial two or three year tour of duty.

OFFICE OF THE INSPECTOR GENERAL, AUDIT DIVISION
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT

Recommendation Number:

1. **Resolved.** The FBI agreed with our recommendation and reported that it intends to deploy to Legat Ottawa the positions that were approved for a three-person (two ALAT/one Office Assistant) sub-office in Toronto. The FBI anticipates that the personnel will be selected and deployed by mid summer 2004. Further, the Office of International Operations (OIO) believes that this infusion of personnel will significantly reduce, if not eliminate, the backlog of work in Legat Ottawa. In order to close this recommendation, please provide us with documentation showing that the personnel have been deployed to Legat Ottawa, along with quarterly workload reports for the 12 months following the completion of the deployment, and an analysis performed to determine if the staffing is adequate. In the interim, please keep us informed about the status of filling these positions.
2. **Resolved.** The FBI responded that it agreed with our assessment of the policy underlying the need for all FBI travelers to request and obtain a country clearance in advance of foreign travel and emphasized the Legat's role in this process. The OIO acknowledged that some FBI travelers to Canada had failed to request country clearances but indicated that the 135 instances cited by the OIG were overstated. Specifically, after our exit conference, the OIO said it contacted a random sample of 29 employees who had submitted 42 of the 135 travel vouchers and determined that for 74 percent of these voucher submissions, a country clearance request had been submitted to Legat Ottawa. However, the response was silent regarding whether the country clearances for these 42 trips were actually approved and documented. As we pointed out in the report, the 135 discrepancies were based on information provided by Legat Ottawa as well as OIO's research of its records and ACS. At the time this research was initiated, we suggested that OIO contact individual employees to ascertain whether these employees could provide evidence of country clearance, but OIO declined to

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do so. As we also stated in our report, the fact that OIO had to contact individuals, rather than obtaining this information from a centralized source, in our opinion, demonstrates a weakness in the internal control over country clearances for FBI employees traveling abroad. Moreover, after all of this research, the FBI still did not provide evidence of approved country clearances for the discrepancies we identified.

The FBI also stated in its response that the centralization at FBI Headquarters of country clearance processing was attempted by the OIO in the year 2000 without success. Instead, OIO said that it will remind each Legat office of the importance of keeping accurate records and maintaining control files and will work with the Inspection Division to ensure these control files are reviewed for compliance during each Legat inspection. While we did not examine OIO's unsuccessful centralization of the country clearance process, we are unconvinced that a centralized source for maintaining this information is not viable. Nevertheless, OIO's proposed alternative approach seems reasonable; therefore, we consider this recommendation resolved.

In order to close this recommendation, please provide us with the: 1) communication issued to all Legat offices reminding them of the importance of keeping accurate records and maintaining control files, and 2) country clearance communications for the 31 vouchers (74 percent of 42 vouchers sampled) that were subsequently located and provided to OIO by individuals.

3. **Resolved.** As stated in Number 2, the Inspection Division plans to review country clearance files as part of its reviews of Legat offices. In addition, the Office of Inspections said it will review compliance with country clearance requirements by reviewing vouchers for foreign travel as part of the financial audit conducted during on-site inspections of domestic field offices. In order to close this recommendation please provide us with a copy of the guidance that will be provided to Inspectors for use during their reviews of country clearance requirements at Legat and domestic field offices. In addition, provide us with samples of Legat and field office inspection reports that demonstrate country clearance requirements were reviewed and the results obtained.

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4. **Resolved.** The FBI agreed with our recommendation and said that the Director recently approved "Border Liaison Office" status for the Buffalo field office, which permits FBI Special Agents assigned to the Buffalo field office to travel approximately 50 miles into Canada for routine investigative matters. The FBI added that the Special Agent in Charge of the Buffalo field office provides summary information concerning the need for the travel to Legat Ottawa and that Legat Ottawa has confirmed that this is being done. The FBI's response was silent, however, as to how other FBI field offices near the Canadian border coordinate their investigative activities with Legat Ottawa. This recommendation can be closed when the FBI provides: 1) an example of the summary information provided to Legat Ottawa by the Buffalo field office, 2) Legat Ottawa's confirmation that Buffalo is adequately coordinating its activities, and 3) specific comments addressing how other border offices are coordinating their activities in Canada with Legat Ottawa.

5. **Resolved.** In its response, the FBI stated that it agreed with the recommendations contained in the Inspection Division's report and has initiated actions to implement the recommendations. The FBI, however, did not address one of the recommendations dealing with the need to study the feasibility of FBI employees completing a temporary duty assignment in a Legat office as a prerequisite for applying for a Legat vacancy. To close the OIG's recommendation, the FBI needs to address this recommendation and provide us with documentation for the actions that have been taken on the others as shown in the following table.

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| RECOMMENDATION NUMBER | DOCUMENTATION REQUESTED |
|------------------------------|---|
| 1 | Copy of the comprehensive course evaluation instrument. |
| 2,3 | Example of the electronic communication transmitted to substantive divisions at FBI Headquarters requesting specific comprehensive briefings for outgoing Legat personnel and evidence these briefings occurred. |
| 4 | Progress reports about locating space at FBI Headquarters for an OIO classroom facility and simulated Legat office until this project is completed. |
| 5 | Progress reports about providing additional training personnel to the Legat Pre-Deployment Training initiative. |
| 6 | Documentation supporting that personnel selected for Legat vacancies with no prior Legat experience were provided with training in an established Legat office. |
| 7,8 | Copy of the plan formulated to prioritize, advertise, and select Legat personnel for those offices with critical language needs, which is expected to be implemented after the FBI's new management selection system becomes operational. |
| 9 | Examples of completed evaluation forms used to provide feedback about the language training received and evidence that personnel receiving language training are tested. |
| 10,11 | FY 2006 budget submission where an enhancement of resources to the Employee Assistance Unit is requested in order to implement a mental health program for Legat personnel. |

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6. **Resolved.** In our report, we stated that 29 Legat staff had remained abroad for long periods, including eight employees who will have been overseas for more than 6 years if they complete their current tours of duty. We recommended that the FBI adhere to its tour of duty limits and keep exceptions to a minimum. In its response the FBI agreed with our recommendation and provided comments regarding its actions related to several requests for extensions. The FBI did not comment, however, regarding the eight employees we concluded would exceed tour-of-duty limits if they are permitted to complete their current tours. To close this recommendation, please provide us with documentation supporting the requests for extensions and denials as noted in the FBI's response and specific comments and/or justification regarding the eight employees mentioned above.