

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Hearing on:
“Whistleblower Retaliation at the FBI: Improving Protections and Oversight”
Wednesday, March 4, 2015**

Since Congress passed the Whistleblower Protection Act in 1989, I have been saying that whistleblowers are a very important part of Government operations. By exposing waste, fraud, and abuse, they help keep Government honest and efficient. But despite all of our hard work over 25 years ago, whistleblowers are still fired, demoted, discredited, and ostracized—all for doing their patriotic duty and telling the truth.

Today, we are going to focus on whistleblower retaliation at the FBI. Why? The FBI’s whistleblower policies need special scrutiny because the legal protections for its employees are weaker than at any other agency. The FBI is not subject to the Whistleblower Protection Act. It has its own, special rules, and employees have no ability to appeal for an independent judgment outside the Justice Department.

Back in 2012, President Obama issued a directive that established limited protections for whistleblowers in the intelligence community. He required the Department of Justice to report on how effective the FBI regulations actually are in protecting whistleblowers. The Department submitted that report in April 2014—a year late.

In May 2013, I also asked the Government Accountability Office to look into the Department’s handling of FBI whistleblower complaints. That report was published last week, and GAO is here to testify about the findings.

Unfortunately, the Justice Department failed to identify a witness from the Attorney General’s or Deputy Attorney General’s office to talk about its report and recommendations for reform.

The GAO and the Justice Department reports have several important findings in common. I’ll mention just two of them now.

First, both reports recognize that, unlike every other federal agency, FBI employees are not protected from retaliation when they report wrongdoing to their direct supervisors. This makes me scratch my head. The FBI culture requires a deep respect for the chain of command. The FBI encourages employees to report wrongdoing to their supervisors and within the chain of command. But it does not tell them they will have no recourse if they experience retaliation for doing so.

It is not surprising that the Department found a significant portion of FBI whistleblower complaints have been rejected because the whistleblower blew the whistle to the “wrong person.” Two of our witnesses today tried to disclose waste or wrongdoing only to be told that their whistleblowing was not protected under FBI rules. Mr. Kiper went to the Assistant Director of the Training Division. That was the most senior person in his office at Quantico and ranked higher at the FBI than a Special Agent in Charge. But that official is not listed in the FBI

whistleblower regulations. Similarly, Special Agent Mike German tried to blow the whistle to the Special Agent in Charge as required under the rules. But, the FBI said it didn't count because the initial contact went through the Assistant Special Agent in Charge. So, the FBI's so-called whistleblower protections did not protect these whistleblowers simply because of a technicality.

Second, both the GAO and the Justice Department reports confirmed that the Department subjects FBI whistleblowers to delay after delay in these cases. It took the Department more than ten years to finally uphold Jane Turner's retaliation claim, after she was fired for reporting that FBI agents took "souvenirs" from Ground Zero after 9/11. It took more than nine years to resolve Robert Kobus' claim of retaliation for reporting time and attendance fraud—just in time for him to plan his retirement.

As we know, however, justice delayed is justice denied. And even after finally winning vindication, was anyone ever held accountable for the retaliation against these whistleblowers? Not that I'm aware of. If no one pays a price, then it will happen again.

In addition to the findings in these two reports, the FBI appears to be engaged in a pattern of stonewalling the Inspector General—including in two investigations of FBI whistleblower complaints. On February 3, the Inspector General reported to Congress that the FBI failed to comply with its legal obligation to provide timely access to all records requested. The FBI said that it needed to review the records before it decided whether to provide access to the Inspector General. It took four months from the initial request for the FBI to cough up the documents. That is not how the law is supposed to work.

It should not take months of negotiations and a notice to Congress for the Inspector General to get access to documents in FBI whistleblower cases. That doesn't instill much confidence in the Department's willingness or ability to protect whistleblowers. The FBI needs to commit to cooperating with independent oversight of its treatment of whistleblowers.

To conclude, I am pleased that the Department has made recommendations in its 2014 report to improve FBI whistleblower protections. Those recommendations are a start, but they do not go far enough. Last week's report from the Government Accountability Office made that clear. If every other law enforcement and intelligence agency can protect disclosures of waste, fraud, or abuse to a direct supervisor, then why can't the FBI? Whistleblowers should not have to fear retaliation for speaking up, and they should not have to wait a decade for relief. And, they should not have to rely on Congress to see justice done.