

Statement of

The Honorable Chuck Grassley

United States Senator
Iowa
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Prepared Statement of Senator Chuck Grassley
Senate Committee on the Judiciary
Oversight of the U.S. Department of Justice
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Chairman Leahy, thank you for calling this hearing today on Department of Justice oversight.

Today's hearing is an opportunity to show the American people that oversight is not something that is done when an issue presents itself. Instead, it is a long process that is required by our Constitution, a duty that I have taken seriously since my first day in Congress. The Constitution requires us, the Congress, to serve as a check on the Executive Branch. That said, I have a number of issues I want to discuss with the Attorney General today, and other questions I'll submit for the record.

First off, I'm concerned about recent events related to the False Claims Act. The False Claims Act is the preeminent tool the Federal government has for recovering money lost to fraud or abuse of government funds. In 1986, I was the Senate author of amendments to the False Claims Act that strengthened the law signed by President Lincoln in 1863. This law allows average citizen whistleblowers to act as private Attorney's General and bring a claim for fraud on behalf of the government. This mechanism, known as qui tam, has successfully recovered nearly \$20 billion since the 1986 amendments.

However, recent court decisions have limited the application and scope of the False Claims Act. Earlier this year, the Supreme Court issued a decision in *Rockwell International v. United States*, which is seen by many as placing additional burdens upon whistleblowers who file FCA cases. Another negative interpretation of the False Claims Act, *United States ex rel. Totten v. Bombardier Corp.*, has been around for a few years. This decision limited the fraud the government can recover when false claims are presented to government grantees. Taken together, these decisions threaten to limit the original spirit and intent of the 1986 amendments.

I'm also concerned about the False Claims Act and its application to fraud cases arising in relation to Iraq. Specifically, I've watched with interest the case of *United States ex rel. DRC Inc., et al., v. Custer Battles, LLC*. Here, a subcontractor for Custer Battles alleged widespread fraud relating to two contracts, and filed a sealed complaint with the United States District Court for the Eastern District of Virginia.

Initially, the Department failed to file a stated position as to whether claims filed with the Coalition Provisional Authority represented a claim to a government agent within the definition of the False Claims Act. Eventually, the Justice Department filed a brief with the court stating it believed the claims were within the definition in the statute.

The case continued to move forward and ultimately the jury returned a verdict finding Custer Battles liable for 30 false claims made to the Coalition Provisional Authority worth \$10 million. Despite the verdict, the District Court judge threw out the case based on a procedural matter, finding that the relators failed to prove that the claims were actually presented to a government employee acting in their capacity as a government employee. Currently the case is on appeal to the Fourth Circuit Court of Appeals. I note that the Department has filed an amicus brief supporting the relators, but wonder why the Department chose not to intervene in the case from the onset. Perhaps their involvement earlier could have persuaded the court and would have done away with the uncertainties of appellate litigation.

The False Claims Act works, and \$20 billion returned to the treasury and the taxpayers proves it. But there are some bugs that need to be worked out and I want to hear what the Attorney General has to say regarding critics of the Department for failing to join False Claims Act suits related to Iraq contracts.

Finally, I may not have time to address this directly but I want to talk to the Attorney General about oversight of the Federal Bureau of Investigation. I have a long history of asking tough questions of the FBI and have learned over the years that the best way to get answers from the FBI is to go directly to the top, be it the Director, or his boss, the Attorney General. Almost four months ago, FBI Director Mueller was before this Committee to discuss the problems with the use of National Security Letters. At that hearing, I reiterated my request to Director Mueller for e-mails related to so-called "Exigent Letters" that were sent in place of National Security Letters. Chairman Leahy entered my request for these emails as part of the hearing record, but to date, I've not received these e-mails. For Congress to conduct proper oversight, we must have access to documents. My staff has been told on multiple occasions that these e-mails would show up within a week, yet the e-mails remain outstanding. I ask the Attorney General to talk to Director Mueller and make sure that these e-mails are produced in an expedited manner.

Aside from the "Exigent Letters" request, I note to the Attorney General that I have other outstanding requests to the FBI. First, a request related to Special Agent Jane Turner and the jury verdict finding that she was retaliated against by her FBI Supervisors. Second, I am still waiting for outstanding documents related to the investigation into the anthrax attacks of 2001. Finally, I have a request for documents related to the discipline of Special Agent Cecilia Woods which the FBI has blocked as there was a pending administrative case. As I understand it, that case is now over so I look forward to those documents as well. I ask the Attorney General to see these requests are expedited as well.

In the meantime, I look forward to hearing the remarks from the Attorney General and for the opportunity to hear his thoughts on these important issues.