

ADDITIONAL QUESTIONS FROM SENATOR GRASSLEY TO JUDGE MICHAEL MUKASEY

1. At the Judiciary Committee hearing, in your answer to my question about the propriety of the FBI participating in the investigation of its own conduct by Inspector General's Office, I was pleased that you shared some of my concerns. You were correct when you said, "having an agency investigate itself is generally not the optimum way to proceed." However, it was disappointing that you went on to express essentially no problem with the FBI's participation in the particular investigation of its issuance of so-called "exigent letters," which the OIG is now conducting.

(a) Please clarify your reasoning as to why what you characterized as "not the optimum way to proceed" should be considered appropriate in this instance.

(b) Specifically, do you have any basis for believing that the OIG's "preliminary conclusion" was that "nobody bothered to read the form" used to generate exigent letters with false statements?

(c) My understanding is that one goal of the OIG's current investigation is to determine exactly who authorized and used the exigent letter form and under what circumstances. An objective, independent determination of these facts is at the heart of the question as to whether any of the false statements made by the FBI in order to obtain phone records without legal process were knowing or willful, and if so, who should be held responsible. How can the public have confidence in that investigation's conclusions if it is being conducted jointly with the FBI—the agency whose conduct is at issue?

(d) Another reason for my concern about the objectivity of this investigation is that a central witness is FBI whistleblower Bassem Youssef. As you may know, Agent Youssef had previously reported mismanagement of the FBI's counterterrorism program to Congress and subsequently had his transfer to the International Terrorism Operations Section halted in-process, in apparent retaliation for bringing his concerns to Congress. He has now been notified that he is a subject in the investigation regarding the use of exigent letters, even though he claims that he substantially slowed and corrected their use after becoming the head of the FBI's Communications Analysis Unit. Given these circumstances, can you explain why allowing the FBI to participate in the OIG investigation doesn't risk undermining confidence in the objectivity its findings by raising questions of further retaliation?

(e) Will you agree to promptly reconsider this issue if you are confirmed, determine whether it is appropriate to continue to allow the FBI to participate in the investigation, and get back to me directly?