

Statement of

The Honorable Chuck Grassley

United States Senator

Iowa

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Prepared Statement of Senator Chuck Grassley of Iowa

U.S. Senate Committee on the Judiciary

FBI Oversight Hearing

Wednesday, September 17, 2008

Chairman Leahy, thank you for calling this hearing today. This hearing comes at a critical time with many pressing oversight issues pending regarding the FBI. I thank Director Mueller for coming up here today to discuss these important matters. I also want to thank Director Mueller for taking the time to meet with me last week to discuss some of the matters I'll be bringing up today. It is important that we take the time to discuss these concerns and bring them out in a public forum. That said, I look forward to discussing the following topics with Director Mueller.

Anthrax Investigation

In the anthrax investigation, we now know that the FBI has been focusing on a new suspect for the last several years, Dr. Bruce Ivins. Although it is unclear whether anyone will ever be punished for leaking confidential case information about Dr. Stephen Hatfill to the news media, Dr. Hatfill received a multi-million dollar settlement from the government. The FBI finally cleared Dr. Hatfill of any involvement in the killings, but it did so with no apologies and only after the FBI's new suspect committed suicide.

The FBI has released a limited amount of the evidence against Dr. Ivins, and is in the process of closing the anthrax case. However, dozens and dozens of serious questions remain unanswered. Since there will likely never be a trial, the reliability of the evidence against Dr. Ivins will never be tested as it traditionally would be in a court of law. If Dr. Ivins had been indicted and tried, his attorneys would have had access to virtually everything gathered by the FBI in the last seven years. They would have been able to search for evidence that contradicted the FBI's claims or supported alternate theories about who the killer or killers might have been. Now, that cannot happen.

Given all the time and money sunk into this investigation, I believe that the American people deserve more than just a press conference and a few briefings. If this case has truly been solved, then there has to be some alternative process capable of ensuring, in the way that a trial could have, that the FBI got it right. There needs to be a substantive, in-depth, and independent inquiry of the sort that only Congress can conduct at this point. I challenge Director Mueller to embrace this sort of scrutiny and open the FBI's files on this matter for inspection by the representatives of the American people. I challenge the leadership of the Senate and of this Committee to put the time, resources, and energy necessary into conducting a thorough review in which the public can have confidence.

Staffing Shortfalls / Bassem Youssef Retaliation

FBI whistleblower Bassem Youssef testified before the House Judiciary Committee in May that a key component of the FBI's counter-terrorism division operated at only 63 percent of capacity because it was so poorly run that FBI agents simply did not want to work there. If not for the courage of Youssef to come forward and report it to Congress while still employed at the FBI, we would never have known this critical information. The fear of retaliation would have kept most others silent. That sort of fear is well founded. Just days after the hearing, Youssef's supervisor informed him of anonymous allegations that he violated FBI travel regulations. Given the timing of these allegations, they appear to be motivated by a desire to retaliate for Youssef's Congressional testimony. I am anxious to hear from Director Mueller how he plans to deal with this continued culture of retaliation at the FBI as well as the serious staffing shortages that apparently plague the counter-terrorism division.

The FBI continues to stonewall this Committee on requests for documents. For example, in March 2007 we requested internal FBI emails on their issuance of "exigent letters." These letters were criticized by the Justice Department's Inspector General as an inappropriate way to obtain phone records without any legal process and said the letters contained false statements promising that a subpoena would be forthcoming, when there was no intent to issue a subpoena. Here we are a year-and-a-half later. The FBI only produced 15 heavily redacted pages last October and now says it won't produce anymore until the joint FBI/Inspector General investigation is complete.

ATF/FBI Cooperation

I am continuing to follow-up on concerns that were raised in May regarding the level of cooperation between agents from the FBI and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). In 2002, I worked closely with Senator Kohl to secure the transfer of ATF from the Treasury Department to the Department of Justice in the Homeland Security Act of 2002. It was our belief that bringing these investigative agencies under one roof would help to strengthen their ties and foster better cooperation

on firearms and explosives investigations. However, allegations were published that this transfer has not had that impact and I've written to the Attorney General seeking a copy of the new Memorandum of Understanding between FBI and ATF regarding explosives investigations. I have some concerns with the timing of that document and whether it supersedes or supplements past MOU's between the two agencies.

National Security Investigative Guidelines

We've heard recently that the Attorney General has proposed new investigative guidelines for national security investigations. Members and staff have had an opportunity to review these guidelines and I have a concern regarding a provision in the guidelines related to criminal matters uncovered by the FBI that are outside of their jurisdiction. I would like to ask the Director how he views this provision, how he believes it will work in practice, and if he believes it will hurt or hinder sharing of information between the FBI and other federal law enforcement agencies.

Time permitting; I'd also like to discuss some concerns I have with the investigative of mortgage fraud and fugitive warrants being entered into the National Crime Information Center which is overseen by the FBI. All these issues, and more, need to be addressed by this Committee.