

Statement of

The Honorable Chuck Grassley

United States Senator
Iowa
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Opening Statement of Senator Charles Grassley
FBI Oversight Hearing, U.S. Senate Judiciary Committee

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Mr. Chairman, thank you for holding this FBI oversight hearing today. While the FBI has made significant progress since 9/11, its transformation into an effective domestic intelligence service is far from complete. We will hear from the Government Accountability Office (GAO) today about a review of the FBI's computer modernization effort known as Trilogy. The GAO identified approximately \$10 million in questionable or undocumented costs and recommended that the FBI retain an independent third-party to do a more comprehensive audit and determine whether certain contractors ought to return millions of dollars to the taxpayers.

The barriers to the transformation of the FBI go far beyond its troubled efforts to upgrade its computers. Last Thursday, after only eight months on the job, the head of the FBI's newly created National Security Branch is retiring. The previous Director of Intelligence at the FBI stayed for less than two years. Consistent, long-term leadership in its senior management positions is critical to the FBI's success. The Bureau needs to find a way to recruit and retain senior managers with extensive counterterrorism and counterintelligence experience to set priorities and provide rank-and-file agents with steady, knowledgeable guidance.

That sort of leadership is essential if the FBI is going to change the negative aspects of its culture. Since 9/11, it has been clear that the FBI culture much change in order to effectively combat terrorism. The time of the old FBI has past. America can no longer tolerate an FBI that prizes loyalty above all else, hands out plum assignments based on personal relationships rather than merit, and emphasizes being "in charge" at the expense of cooperation with other government agencies.

Jurisdictional Pac-Man / Lack of Coordination

These old ways of thinking no longer serve to protect the American people. For far too long, the obsolete FBI culture has been a barrier to information sharing and coordination. The FBI gobbles up the jurisdiction, cases, and resources of other agencies like Pac-Man. Too many federal, state, and local law enforcement agencies view the FBI with disdain because it demands access to their intelligence, their informants, their evidence, and their resources while rarely returning the favor. Too many law enforcement officers no longer trust the FBI to deal fairly with them. One particularly disturbing example of this is the sabotaging by the FBI of a terrorism financing case that was developed in 2003 by agents of the Houston office of U.S. Immigration and Customs Enforcement (ICE). This March, former ICE Special Agent in Charge Joe Webber testified to a House Committee that the FBI hindered the processing of a wiretap request in a terrorism financing case, causing the government to miss an opportunity to capture communications between the target of a criminal investigation and a Specially Designated Global Terrorist. Webber said he was told by friends within the FBI that if the case had been developed by the FBI instead of ICE, the wiretap would have sailed through the process. It is past time for this type of turf warfare to end. The Inspector General has just issued a report on this case, but it remains classified "secret." I have concerns that the classification decisions may have been influenced more by a desire to protect the FBI from public scrutiny than by legitimate concerns about national security.

Double Standards in Internal Discipline

The FBI culture contributes to internal problems as well, such as double standards in the FBI disciplinary process. Any perception that internal discipline is unfair can be devastating to the morale and effectiveness of FBI field agents. For far too long, rank and file agents have believed that management looks out for management. One example of preferential treatment can be found in the case of Cecilia Woods, who reported that her supervisor had engaged in illicit sexual activities with a paid informant. Rather than being rewarded for being concerned about the integrity of the Bureau, Woods says she was subjected to two investigations resulting in suspensions and a retaliatory transfer.

More recently we have learned of the case of Jennifer Smith-Love. Smith-Love was the Acting Special Agent in Charge of the FBI office in Baltimore, Maryland, during an investigation into the death of former Assistant U.S. Attorney Jonathan Luna. Smith-Love and two agents acting under her direction were the subject of allegations that they conducted an unauthorized search of another agent's laptop computer. Smith-Love's conduct during the investigation became the subject of an investigation by the FBI's Internal Investigations Section (IIS) of the FBI's Inspection Division and a review by the Inspector General's Office. The I.G. was critical of the FBI for classifying Love's conduct as a performance issue rather than as a matter of misconduct. Even though other agents contradicted Love's statements to IIS investigators, she received a promotion to a counterterrorism position in headquarters while the issues were pending. On first blush, this appears to be another case where a senior manager may have received lenient treatment. However, we need to learn more about what happened and why.

Inequities in the FBI disciplinary process destroy confidence in FBI leadership and should be unacceptable to the Director, the Inspector General, and the Justice Department.

Support for Former FBI Agent Charged with Murder

In March, a New York grand jury indicted retired FBI agent Lin DeVecchio on four counts of murder. DeVecchio allegedly accepted bribes from a mob boss and supplied him with inside information that led to the deaths of at least four people. This case sounds disturbingly familiar. The allegations are similar to those that surfaced a few years ago out of the Boston office, which led to two retired FBI agents being charged with crimes involving collusion with their high-level mafia informants.

Current and former FBI officials have been publicly raising money for DeVecchio's legal defense and more than forty agents appeared at his bond hearing to show support. According to the website maintained by DeVecchio's supporters in the FBI, the agents helped post a one million dollar bond to secure his release, and after the hearing, the agents surrounded DeVecchio "in a human blanket" as he left the courtroom so that he could not be questioned by reporters. One agent wrote, "it might even be said that a few reporters received a few body checks out on the sidewalk" and that he "was never prouder to be an FBI Agent."

Obviously, Mr. DeVecchio is innocent until proven guilty, and an indictment is just an allegation until proved in court. However, I am concerned about the public perception created by such aggressive and broad support of DeVecchio by current and former FBI personnel. It could leave the impression that the FBI as an institution is circling the wagons to defend itself as well as DeVecchio against the charges. I am interested in hearing Director Mueller's reaction to these events.

The Moussaoui Case and Charges of Careerism

Protecting careers has to take a back seat to protecting the American people. Unfortunately, we have seen examples where those priorities aren't in order. A few weeks ago, Minneapolis FBI agent Harry Samit testified during the sentencing hearing for Zacharias Moussaoui. What he said was startling. Agent Samit said that he warned his FBI supervisors more than 70 times before 9/11 that Moussaoui was a terrorist. He said that Supervisory Special Agent Michael Maltbie had failed to support his efforts to obtain warrants to search Moussaoui's apartment and laptop computer. Maltbie reportedly removed from a search warrant application crucial information indicating that Moussaoui had been a recruiter for a Muslim group in Chechnya linked to Osama Bin Laden. In his sworn testimony Agent Samit described the failures of FBI management as "obstructionism, careerism, and criminal negligence." As a result, Agent Samit was unable to obtain the warrants he sought. Moussaoui's computer and apartment were not searched until

after 9/11. We can only guess whether 3,000 victims could have been spared by a more aggressive investigation of Moussaoui pre-9/11. However, it is certain that those who blocked the Moussaoui investigation have been rewarded rather than held accountable. The supervisor who failed to support Agent Samit's Moussaoui investigation is now in charge of the Joint Terrorism Task Force in one of our nation's largest cities.

Whistleblower Protections

The FBI's emphasis on loyalty is devastating to whistleblower protections. I continue to be concerned about whether the FBI makes any real attempt to prevent retaliation against whistleblowers. Director Mueller has often said that he will not tolerate retaliation, but actions speak louder than words.

Earlier this year, the Inspector General found that FBI Undercover Operations Unit Chief Jorge Martinez retaliated against Special Agent Michael German for raising concerns about unauthorized surveillance in a Florida terrorism investigation. After German wrote a letter outlining his concerns, Martinez said that he would never again work another undercover case and would never again be selected as an instructor at the FBI's undercover schools. Now that the IG has confirmed this key aspect of German's allegations, the question becomes whether the FBI is capable of holding its own accountable.

Another example is Bassem Youssef, the FBI's highest ranking Arab-American agent. Youssef is a native Arabic speaker and has extensive counterterrorism experience. He raised concerns after 9/11 that the FBI wasn't taking advantage of his expertise. After he made no progress internally, Youssef contacted his congressman who then contacted the Director. Youssef has now learned that he was about to receive a transfer to the International Terrorism Operations Section (ITOS) where he could have a more valuable asset to the FBI. But, after he contacted Congress, his transfer was never completed. That creates an appearance of retaliation. Chairman Specter, Senator Leahy, and I have jointly asked that these circumstances be investigated.

Trilogy / Sentinel

On our second panel today, we will hear from GAO, which found in its recent report that the FBI may have overpaid one contractor, on its Trilogy computer modernization project by \$2.1 million. The report describes how another contractor on the project could not support almost \$3 million that it paid to an event planning company. GAO recommended that GSA and the FBI (1) further investigate whether contractors were overpaid, (2) determine whether other questionable costs in the report, which total more than \$10 million, should be reimbursed, and (3) engage an independent third party to conduct further follow-up audit work.

The FBI has had the draft of this GAO report for months, so it knew about the millions in questionable payments Trilogy contractors identified in the report. Now two of these contractors are part of the Lockheed Martin team that was just awarded the contract for the FBI's case management system, Sentinel. What assurances do the taxpayers have that the FBI will be able to recover any funds these companies owe to the government before we start paying them millions more for work on Sentinel? GAO's recommendation that there be further audit work on the Trilogy project should be taken seriously, as there may be even more taxpayer money to recover.

Conclusion

The FBI's culture limits its potential for success by putting too much emphasis on protecting its own jurisdictional turf, protecting management from allegations of misconduct, and protecting individual careers. Instead, the FBI should be focusing more on protecting the American people. We've been calling for changes in the FBI for long enough. I hope that we are going to start seeing some results.