

FBI WHISTLEBLOWERS

HEARING
BEFORE THE
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS
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CONTENTS

MAY 21, 2008

	Page
OPENING STATEMENT	
The Honorable Robert C. “Bobby” Scott, a Representative in Congress from the State of Virginia, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security	1
The Honorable Louie Gohmert, a Representative in Congress from the State of Texas, and Ranking Member, Subcommittee on Crime, Terrorism, and Homeland Security	9
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary	11
WITNESSES	
The Honorable Chuck Grassley, a United States Senator from the State of Iowa	
Oral Testimony	1
Prepared Statement	5
Mr. Mike German, Policy Counsel, American Civil Liberties Union	
Oral Testimony	12
Prepared Statement	15
Mr. Bassem Youssef, Unit Chief, Communications Analyst Division, Counterterrorism Division, Federal Bureau of Investigation	
Oral Testimony	24
Prepared Statement	27
LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING	
Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary	11
APPENDIX	
Material Submitted for the Hearing Record	75

FBI WHISTLEBLOWERS

WEDNESDAY, MAY 21, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2 p.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. “Bobby” Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Delahunt, Johnson, and Conyers (ex officio), Gohmert, and Lungren.

Staff Present: Ameer Gopalani, Majority Counsel; Caroline Lynch, Minority Counsel; Renata Strause, Majority Staff Assistant; and Lillian German, Majority Deputy Chief Oversight Counsel.

Mr. SCOTT. The Subcommittee will come to order. And I would like to welcome you to the Subcommittee on Crime, Terrorism, and Homeland Security. Today’s subject is FBI Whistleblowers, and I will suspend the rest of my opening statement because we understand Senator Grassley’s schedule had assumed that we would start on time. Unfortunately, we are a half-hour late. So I will defer the rest of my statement, Senator, so that you can make your opening statement and attend to your other duties.

Senator Grassley.

TESTIMONY OF THE HONORABLE CHUCK GRASSLEY, A UNITED STATES SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. I have noticed the House has had a lot of toleration toward the Senate moving slowly. So it would be wrong for me to come over here and complain about not starting on time.

Mr. Chairman and Members of the Subcommittee and particularly my good friend Mr. Conyers, thank you for holding this important hearing today. Listening carefully to what whistleblowers have to say and looking into their allegations is a key constitutional duty of all of us in Congress.

The FBI is one of the most powerful but least transparent organizations in the Federal Government. Underneath of all the good things the FBI does—and I want to emphasize good things that they do—unfortunately there is a history of abuse, mismanagement, retaliation so strong that it has become part of its organizational culture. Unfortunately, it is this culture that causes the FBI to confuse dissent with disloyalty. Only a brave few dare to speak

out and break the FBI's code of silence to report problems. When they do speak out, they usually suffer retaliation.

Whistleblowers demonstrate tremendous courage in any organization, but speaking out as an FBI agent takes a special level of guts and determination. I have worked with whistleblowers for many years, including Dr. Frederick Whitehurst, who came forward to discuss outrageous problems at the FBI crime lab, and former Special Agent Colleen Rowley, who came forward to discuss the bungled investigation of Zacarias Moussaoui.

Today you are going to hear testimony from two other FBI whistleblowers who have worked with my office for several years, former Special Agent Michael German, and supervisory agent, Special Agent Bassem Youssef. I am here today to let you know why I have supported these courageous individuals and can tell you that these two men have taken more than their share of abuse. They stuck their necks out for the good of all of us. They didn't take the easy way out by going along to get along or looking the other way.

The whistleblower who I call the grandfather of whistleblowers, Ernie Fitzgerald of Department of Defense fame, says that whistleblowers are only guilty of one crime, committing truth. Well, that is exactly what put a target on the backs of Michael German and Bassem Youssef inside the FBI. They had the courage to tell the unvarnished truth that some people at the FBI didn't want to hear, and they have paid the price for committing truth.

Michael German was a 14-year veteran special agent who would risk his life by going undercover and successfully infiltrating neo-Nazi organizations for the FBI. He was asked to help with a Florida case where a neo-Nazi group and a foreign Islamic terrorist group appeared to be talking about forging an alliance based upon their shared anti-Semitic beliefs. He soon discovered that a portion of a meeting between the groups had been illegally recorded by mistake. Rather than simply follow the rules, document the errors and move forward as German suggested, one FBI supervisor told him to, quote, just pretend it didn't happen. An investigation by the Department of Justice Inspector General found that the FBI retaliated against German for refusing to look the other way. The Inspector General even found someone that in the FBI falsified documents in that Florida case, actually using Wite-Out to hide their mistakes.

Yet despite these findings, did the FBI take swift and decisive action to hold anyone accountable? Has it done anything whatsoever to correct the problem of the wrongs inflicted on Michael German? The answer to both questions is no.

Bassem Youssef is the FBI's highest-ranking Arab American agent. Before 9/11 he successfully worked counterterrorism cases and served as an effective liaison from the FBI to the Saudi Arabian Government. His background as an Egyptian-born Coptic Christian and a native Arabic speaker should have made him one of the FBI's most valued and most appreciated employees, especially after the 9/11 attacks. Yet despite his experience in counterterrorism and his cultural expertise, the FBI failed to assign him to positions where those assets would be best used.

When Youssef expressed concern about the FBI's practice of putting other less qualified agents into critical counterterrorism positions, he quickly became like most whistleblowers, about as welcome as a skunk at a Sunday school picnic.

How did the FBI let Youssef know that he wasn't welcome? Well, this is simple. Senior officials denied him a transfer to a counterterrorism unit. They placed him in an administrative job managing the FBI's receipt of information from telephone companies. Youssef soon identified major problems with the way his new office had been operating before he got there. The FBI had been sending something called exigent letters to get phone companies to provide phone records to the Bureau. The letters ask phone companies to give the FBI records immediately, claiming that there was an emergency and that the grand jury subpoena was being drafted and would be sent later. However, no grand jury subpoenas were actually drafted, and in many cases, there was no emergency to justify their request. The FBI was misusing the system.

Youssef says that he recognized this and tried to work with others at the FBI to correct them but received little or no cooperation. The FBI's General Counsel's Office and his superiors at the FBI were uninterested in the issues that he raised. The FBI finally started trying to deal with the issues Youssef had raised only after Congress asked the Inspector General to investigate.

So Mr. Chairman, you know some of the things you are doing today are very important. Yet even after scrutiny from Congress and the Inspector General, FBI officials wasted time and energy on retaliating against Youssef rather than fixing the problems that he brought to their attention. One FBI official said that during his testimony to the Inspector General that he, quote, threw Bassem Youssef under the bus, end quote. Another FBI official asked a colleague who was preparing to testify to the Inspector General if he was, quote, getting ready to throw Bassem Youssef off the roof.

These comments confirm that the anti-whistleblower culture at the FBI is as strong as ever. Essentially these FBI personnel stated openly that they intend to use the Inspector General review as a vehicle to retaliate against Youssef.

In light of these comments, I am very concerned about the Inspector General's ongoing investigation. I am also concerned because the inquiry is being conducted jointly with the FBI. Conducting an investigation jointly with the organization under review seems to me undermines the very independence that an Inspector General is supposed to provide.

When this controversy first began, the Inspector General wanted to let the FBI investigate itself and simply the Inspector General monitor the results. I thought that position was very wrong-headed. Allegations as serious as these warrant an independent review, not an internal FBI probe that might look like a whitewash.

So I urged the Inspector General to make an independent determination. Now his office is conducting a review. But instead of doing it independently, it is being done jointly with the FBI, the same organization whose conduct is in question. That bothers me a lot, as I imagine it bothers you.

Given all these circumstances, Congress needs to take a careful look at the Inspector General's report on the use of exigent letters

when it is finally released. We need to get access to the underlying document and ask the tough questions necessary to ensure the reliability and the integrity of the investigation.

My colleagues and I have been seeking e-mails from the FBI on this case for over a year. We are still waiting these e-mails and the FBI doesn't seem too eager to turn them over. We would appreciate working with your competent staff and you, as individual Members of Congress, to obtain these important documents.

Congress needs to follow up and find out whether those in the FBI responsible for retaliating against whistleblowers like Michael German and Bassem Youssef are held accountable. Just giving lip service to protecting whistleblowers will not get the job done and bring justice. The FBI's culture of retaliation will never change unless those who endorse or condone it face discipline for their actions.

We all ought to be grateful for what Michael German and Bassem Youssef do for our country. They face very difficult circumstances, sacrificing family finances, their employability and the attempts by powerful interests to smear good names and reputations.

For over two decades I have learned from and appreciated and tried to honor whistleblowers like these. Congress must have information from whistleblowers to do its constitutional job of oversight. Only whistleblowers can explain why something is wrong and help Congress locate the best evidence to prove it.

Moreover, only whistleblowers can help us truly understand problems with the culture at Government agencies. At the FBI, where I focused much of my oversight efforts over the years, agents who blow the whistle about problems or wrongdoing do not enjoy the same protections as other Federal Government employees. Congress has attempted to fix this problem with various versions of whistleblower reform bills. One bill, S. 274, which I am a cosponsor, unanimously passed the Senate in December and would address a number of issues within what Federal whistleblower laws that remain outstanding.

The witnesses you will hear from today, just as other whistleblowers before them, deserve the support of Congress for bringing to light problems with the Bureau.

So thank you again for holding this important hearing. I am sorry our meeting didn't start on time. I will go to the Senate now, but I look forward to reviewing the remainder of the proceedings once the transcript is available.

So Mr. Chairman, I hope that we and our staffs can work together to follow up with the FBI in more detail on important issues and questions raised today not only by me but by your witnesses and by your staff. Thank you very much.

[The prepared statement of Mr. Grassley follows:]

PREPARED STATEMENT OF THE HONORABLE CHARLES E. GRASSLEY,
A U.S. SENATOR FROM THE STATE OF IOWA

PREPARED REMARKS OF SENATOR CHARLES E. GRASSLEY

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

May 21, 2008

Good afternoon, Mr. Chairman and Members of the Committee. Thank you for holding this important hearing today. Listening carefully to what whistleblowers have to say and looking into their allegations is a key Constitutional duty for all members of Congress. The FBI is one of the most powerful and least transparent organizations in the Federal Government. Underneath all of the good things the FBI does, unfortunately there is a history of abuse, mismanagement, and retaliation so strong that it has become part of its organizational culture. Unfortunately, it is this culture that causes the FBI to confuse dissent with disloyalty. Only a brave few dare to speak out and break the FBI's code of silence to report problems. When they do speak out, they usually suffer retaliation.

Whistleblowers demonstrate tremendous courage in any organization, but speaking out as an FBI agent takes a special level of guts and determination. I have worked with FBI whistleblowers for many years including Dr. Frederic Whitehurst who came forward to discuss outrageous problems at the FBI Crime Lab and former Special Agent Coleen Rowley who came forward to discuss the bungled investigation into Zacharias Moussaoui.

Today you are going to hear testimony from two other FBI whistleblowers who have worked with my office for several years: former Special Agent Michael German and Supervisory Special Agent Bassem Youssef. I am here today to let you know why I have supported these courageous individuals, and I can tell you that these two men have taken more than their share of abuse. They stuck their necks out for the good of us all. They didn't take the easy way out by going along to get along, or looking the other way.

The whistleblower who I call the grandfather of whistleblowers—Ernie Fitzgerald—says that whistleblowers “commit truth.” Well, that's exactly what put a target on the backs of Michael German and Bassem Youssef inside the FBI. They had the courage to tell the unvarnished truth that some people at the FBI didn't want to hear, and they have paid the price for committing truth.

Michael German

Michael German was a 14-year veteran special agent who had risked his life by going undercover and successfully infiltrating neo-Nazi organizations for the FBI. He was asked to help with a Florida case where a neo-Nazi group and a foreign, Islamic terrorist group appeared to be talking about forging an alliance based on their shared anti-Semitic beliefs. He soon discovered that a portion of a meeting between the groups had been illegally recorded by mistake. Rather than simply follow the rules, document the error, and move forward as German suggested, one FBI supervisor told him to just “pretend it didn't happen.”

An investigation by the DOJ Inspector General found that the FBI retaliated against German for refusing to look the other way. The Inspector General even found that someone in the FBI falsified documents in that Florida case, actually using white-out to hide their mistakes. Yet, despite these findings, did the FBI take swift and decisive action to hold anyone accountable? Has it done anything to correct the wrongs inflicted on Michael German? Sadly the answer to both questions is “no.”

Bassem Youssef

Bassem Youssef is the FBI’s highest-ranking Arab American agent. Before 9/11, he successfully worked counterterrorism cases and served as an effective liaison from the FBI to the Saudi Arabian government. His background as an Egyptian-born Coptic Christian and native Arabic speaker should have made him one of the FBI’s most valued and appreciated employees after the 9/11 attacks. Yet, despite his experience in counterterrorism and his cultural expertise, the FBI failed to assign him to positions where these assets would be best used.

When Youssef expressed concern about the FBI’s practice of putting other, less qualified agents into critical counterterrorism positions, he quickly became like most whistleblowers—about as welcome as a skunk at a Sunday afternoon picnic.

How did the FBI let Youssef know he wasn’t welcome? Well, senior officials denied him a transfer to a counterterrorism unit. They placed him in an administrative job, managing the FBI’s receipt of information from telephone companies. Youssef soon identified major problems with the way his new office had been operating before he got there.

The FBI had been sending something called “exigent letters” to get phone companies to provide phone records to the Bureau. The letters asked phone companies to give the FBI records immediately, claiming that there was an emergency and that a grand jury subpoena was being drafted and would be sent later. However, no grand jury subpoenas were actually drafted and, in many cases, there was no emergency to justify the request. The FBI was misusing the system.

Youssef says he recognized this and tried to work with others at the FBI to correct them, but received little or no cooperation. The FBI’s General Counsel’s Office and his superiors at the FBI were uninterested in the issues he raised. The FBI finally started trying to deal with the issues Youssef had raised only after Congress asked the Inspector General to investigate.

Yet, even after scrutiny from Congress and the Inspector General, FBI officials wasted time and energy on retaliating against Youssef rather than fixing the problems he brought to their attention. One FBI official said that during his testimony to the Inspector General he “threw [Bassem Youssef] under the bus.” Another FBI official asked a colleague who was preparing to testify to the Inspector General if he was “getting ready to throw Bassem Youssef off the roof?”

These comments confirm that the anti-whistleblower culture at the FBI is as strong as ever. Essentially, these FBI personnel stated openly that they intend to use the Inspector General review as a vehicle to retaliate against Youssef. In light of these comments, I am very concerned about the Inspector General’s ongoing investigation. I am also concerned because the inquiry is being conducted jointly with the FBI. Conducting an investigation jointly with the organization under review undermines the very independence that an Inspector General is supposed to provide.

When this controversy first began, the Inspector General wanted to let the FBI investigate itself and simply monitor the results. I thought that position was wrong-headed. Allegations as serious as these warrant an independent review, not an internal FBI probe that might look like a whitewash. So, I urged the Inspector General to make an independent determination. Now, his office is conducting a review, but instead of doing it independently, it is being done jointly with the FBI, the same organization whose conduct is in question. That bothers me a lot, and it should bother each of you too.

Given all these circumstances, Congress needs to take a careful look at the Inspector General's report on the use of exigent letters when it is finally released. We need to get access to the underlying documents and ask the tough questions necessary to ensure the reliability and integrity of this investigation. My colleagues and I have been seeking emails from the FBI on this case for over a year. We are still awaiting these emails, and the FBI doesn't seem too eager to turn them over. We would appreciate working with your and your staff to obtain these important documents.

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We all ought to be grateful for what whistleblowers like Michael German and Bassem Youssef do for our country. They face very difficult circumstances, sacrificing their family's finances, their employability, and the attempts by powerful interests to smear their good names and reputations.

For over two decades, I've learned from, appreciated and honored whistleblowers like these. Congress must have information from whistleblowers. Only whistleblowers can explain *why* something is wrong and help Congress locate the best evidence to prove it. Moreover, only whistleblowers can help us truly understand problems with the *culture* at government agencies.

At the FBI, where I've focused much of my oversight efforts over the years, agents who blow the whistle about problems or wrongdoing do not enjoy the same protections as other federal government employees. Congress has attempted to fix this problem with various versions of whistleblower reform bills. One bill, S.274 which I am a cosponsor of, unanimously passed the Senate in December, and would address a number of issues within the federal whistleblower laws that remain outstanding.

The witnesses you will hear from today, just as other whistleblowers before them, deserve the support of Congress for bringing to light problems with the Bureau. Thank you again for holding this important hearing. I'm sorry I cannot stay, but I have to leave now to fulfill other commitments back in the Senate. I look forward to reviewing the remainder of the proceedings once the transcript is available. Mr. Chairman, I hope that we and our staff can work together to follow-up with the FBI in more detail on the important issues and questions that will be raised today.

Mr. SCOTT. Thank you, Senator. The gentleman from Texas.

Mr. GOHMERT. Thank you, Mr. Chairman. I was just going to thank Senator Grassley for your courage, as you brought up a history of retaliation from the FBI. It sounds like from what you had said today, you may be next on the hit list. So we will look forward to working with you.

Senator GRASSLEY. Well, my colleagues have told me that I must be squeaky clean or I would have been out of here a long time ago.

Mr. SCOTT. Well, thank you, Senator. And Senator, you were the original sponsor of the Whistleblower Protection Act of 1989. So you have been working on this issue for a long time. You passed a bill and we passed a bill that is pending in the Senate, so we need to get together to see what we can do, particularly insofar as it would protect the FBI officials. So we will be working together on that.

Senator GRASSLEY. Thank you.

Mr. SCOTT. Thank you.

We will now resume regular order. And I will complete my opening statement.

We depend on whistleblowers to expose illegal behavior, corruption and waste in Government. But without adequate protections, few will take the risk of revealing the truth. This Subcommittee has held hearings on waste and fraud in Government contracting in Iraq, which has led to loss of billions of taxpayer dollars. We have also investigated incidences of rape of Americans serving our country abroad and the killing of innocent civilians in Iraq. All of these investigations could have either been bolstered or prevented with the help of whistleblowers. And so in no other area is the truth more urgent than in national security at wartime, but it is exactly these areas where whistleblowers are being silenced.

The hearing before us today will explore the troubling issue of why breaking ranks to speak the truth has led to the shoot-the-messenger mentality at the FBI. Over the years the FBI has gained a reputation for harboring an anti-whistleblower culture where supervisors have repeatedly been found to retaliate against agents who repeat wrongdoing. Sadly these supervisors go unpunished, and no one knows this history better than the Senator who just spoke to us today, the Senator from Iowa, Mr. Grassley. A number of incidents at the FBI stand out, and we have two of these whistleblowers appearing with us today.

The first is Special Agent Youssef. According to press reports, an internal investigation conducted by the Department of Justice concluded that as the FBI's highest-ranking Arab-American agent, he was blocked from a counterterrorism assignment in 2002 after voicing concerns about the FBI's counterterrorism operations. He tried to alert his colleagues on the misuse of national security letters, including exigent letters by which requests are submitted to telephone companies in emergency situations. He was ignored by supervisors and, as we now know, the FBI intentionally abused these letters in nonemergency situations, and they legally obtained information pursuant to faulty national security letters. If Mr. Youssef's warnings had been heeded, maybe the Bureau would have stopped violating the law much earlier.

Another special agent, Agent German, worked on domestic terrorism cases for 14 years before facing retaliation which led to his departure from the FBI. He had concerns for the Bureau's handling of the counterterrorism cases which he found that agents had illegally recorded conversations in violation of the Federal Wiretap Act. When he brought the matter to the attention of his supervisors, he was told to look the other way. He faced a retaliation and a Department of Justice Inspector General report substantiated many of his claims, including the Bureau's falsification of records to cover up its mistakes.

Compounding these specific cases of retaliation at the Bureau is the fact that there is no substantive whistleblower protection for these courageous individuals. Under current law, employees at key Government agencies in charge of protecting the United States, including the FBI and CIA, are excluded from conventional whistleblower protections. These workers deserve to have the same protection as other Federal employees, and they should feel as secure to come forward with information that is essential to national security without fear of retaliation.

I hope this hearing will reveal creative ways that we can protect key whistleblowers and still maintain our national security. As the NSL matter demonstrated, Congress cannot fully conduct its oversight mandate if it cannot get reliable information that is both truthful and goes to the heart of the matter.

So I look forward to hearing from our witnesses today.

And with that, I yield to the Ranking Member of the Subcommittee, the gentleman from Texas, Judge Gohmert.

Mr. GOHMERT. Thank you, Chairman Scott. I would like to first send a special welcome to our witnesses today as well and join Chairman Scott in doing so. I appreciate your taking time out of your schedule. I know you are not here because of the big money you get paid for being a witness, because obviously that isn't any money.

But Congress does have a long history of providing protection to executive branch employees who seek to report administrative issues, waste, fraud and abuse or allegations of corruption within their agency.

In 1978, Congress enacted the Civil Service Reform Act to establish procedural protections for executive branch whistleblowers. Congress found that employees should be protected against reprisal for the lawful disclosure of information regarding violation of any rule of law, regulation or any mismanagement or gross waste of funds and abuse of authority or a substantial and specific danger to health, public health and safety.

Congress intended to ensure that employees not be prohibited from communicating with Congress or sanctioned for disclosing information to a Member of Congress or staff. At the same time, Congress did not intend the whistleblower laws to protect substandard or corrupt employees from appropriate sanction or even termination.

Congress provides these protections in 1989 and again in 1994 with enactment of the Whistleblower Protection Act. Both the Civil Service Reform Act and the Whistleblower Protection Act included national security exceptions for employees who disclosed informa-

tion which is classified or prohibited by statute. Moreover, current law expressly exempts employees of certain national security agencies, including the FBI, from filing a whistleblower claim under the WPA with the Office of Special Counsel.

Employees of the FBI can file a complaint or a prohibited personnel action with the Office of Professional Responsibility or the Office of the Inspector General. However, opponents of this process argue that it is insufficient because it fails to provide a truly independent review of a whistleblower claim.

Last year the House passed H.R. 985, which amends the Whistleblower Protection Act to extend whistleblower protections to Federal employees who specialize in national security issues. The bill extends whistleblower protections to employees of the FBI, CIA, Defense Intelligence Agency, National Geospatial Intelligence Agency, National Security Agency, National Reconnaissance Office and, quote, any other executive agency or element or unit thereof determined by the President to have as its principal function to conduct foreign intelligence or counterintelligence activities, unquote.

We are joined today by former Special Agent Michael German, FBI supervisory special agent unit Chief Bassem Youssef, who have alleged retaliation against them for disclosing certain details about undercover and counterterrorism operations within the FBI. One of the things that became clear to me as I got to Congress 3½ years ago was the dispelling of a myth that I had previously believed and that was, as a former judge, I had always felt that the American public was protected from overzealous intelligence activities by the FBI or some other entity by the judiciary. What I came to find out was, if the intelligence gathering by an entity such as the FBI is never intended to be introduced in court, there is no judicial protection. We found out things that had been done by J. Edgar Hoover as FBI Director with no intention ever of introducing those matters into court, just intelligence that could be used as it might be necessary.

So once you realize that, you realize, gee, looks like the legislative branch is the balance of power when it comes to intelligence gathering both domestically and abroad. And therefore, the whistleblower protection seems to be even more important at that point. We had people that misunderstood across America after the raid on a Congressman's office a couple of years ago. They misunderstood in that some people here had concerns not that the FBI would do a search of a congressional office because as far as I am concerned, if there is evidence there, a body, drugs, illicit money, anything, DNA, something like that, then I would say it ought to be wide open to being searched and seized.

But the concern was, under the Constitution, the Speech and Debate Clause would protect someone who talked to a Member of Congress especially about issues with the FBI or some intelligence activity. And if a Congressional Record in a private congressional office here on the Hill could not be protected from a search by those people about whom complaints were made, then there would be no oversight, there would be no protection at all. And we would all be subject to whatever might be imposed upon us because Congress would not have the wherewithal to do proper oversight.

I am glad that we are not at that point and appreciate the efforts on both sides of the aisle to try to make sure we do a proper balance and appreciate your time in being here today. Thank you.

Mr. SCOTT. Thank you. Thank you, Mr. Gohmert. The gentleman from Michigan, the Chairman of the full Committee.

Mr. CONYERS. Thank you. I ask unanimous consent to have my remarks entered into the record.

Mr. SCOTT. Without objection, so ordered.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

We are here today for three reasons.

First, we need to explore and consider the very salutary aspect of whistleblowers—at the FBI and otherwise. Whistleblowers are uniquely positioned to expose waste, fraud and corruption in our government. By coming forward to challenge their superiors and the Administration, they risk their careers and livelihoods.

- It was Daniel Ellsberg, whose *Pentagon Papers* exposed corruption in the Pentagon and helped build the case for our withdrawal from Vietnam.
- It was Peter Buxton, the HHS employee who exposed the shameful *Tuskegee Syphilis Experiment*, a government sanctioned project that gave placebos to thousands of African American men who had contracted the disease in order to study the long term effects of syphilis.
- It was Dr. Fred Whitehurst, the FBI forensic scientist who exposed fraud and **corruption in the FBI crime lab, through which we learned that numerous investigations of “judicial corruption” had been severely tainted.**

We owe a debt of gratitude to all of these individuals.

Second, we need to consider the record of present and past Administrations with regard to whistleblowers. I would note that today’s witnesses Bassem Youssef and Michael German, an FBI agent and a former agent, have made serious and credible charges that they were punished by demotion and termination when they identified misconduct at the Bureau. Similarly, during the Clinton Administration Dr. Fred Whitehurst blew the whistle on misconduct at the FBI crime lab only to face re-criminations within the Department. So the concerns we examine today are not partisan, they are institutional.

Third, today’s hearing will allow us to consider the need for stronger legislation. Last year, Congress passed the Whistleblower Protection Act of 2007, which extended protection to federal workers who specialize in national security issues, but excluded FBI agents altogether due to supposed “national security,” concerns. As a result, under present law FBI whistleblowers have no court remedy whatsoever.

I am concerned that FBI agents who face greater danger and far less protection than other federal whistleblowers, who face threats of criminal prosecution, and non-disclosure and pre-publication review agreements, are perhaps the most deserving of whistleblower protection. I hope today’s hearing will shed light on this important issue.

I also want to thank my good friend and colleague Senator Charles Grassley for coming over to the House today. He has been a stalwart support of whistleblower protections over the years, regardless of party or partisanship.

Mr. CONYERS. And after the powerful testimony of the Senator from Iowa and the courageous testimony of Judge Gohmert, I am really impressed about the decision of the Chairman of the Crime Subcommittee, Bobby Scott, to inquire into this area. The fact of the matter is the FBI is not covered by whistleblower protections at this moment, and we are going to learn from these gentlemen why that is. And we are going to have a little task on our hands, trying to convince not just the rest of the House but the Senate that they are entitled to these safeguards.

Every week new revelations fall out of the sky literally on things that have been going on in the executive branch or in the agencies and departments of this Government. And it is just amazing. The Chairwoman of the Subcommittee on Immigration just gave me something out of *The Washington Post* in which this Committee is going to have brought to its attention.

And these are not small issues either. We have got the former Attorney General coming here. We have got the Chief Counsel for the Vice President of the United States coming here. We have the former Secretary of State of Ohio coming here. And I am so proud of this Committee, both of Crime and the full Committee itself, about the questions that we dare to raise, and they are not in a partisan sense. We want a better Government. And we want a Government that doesn't retaliate against those who would dare point out mistakes or wrongdoing and not them become the victims of the way we go about improving our system. And so I thank you very much, Chairman Scott.

Mr. SCOTT. Thank you. And we welcome the gentleman from Georgia, Mr. Johnson, who is with us today. And I would ask other Members to introduce their statements for the record. Without objection, so ordered.

We will begin the panel. Our first witness will be Michael German, the Security Policy Counsel for the American Civil Liberties Union. He served as a special agent for the FBI for 16 years with responsibility for domestic terrorism, bank fraud and public corruption investigations. While at the FBI, he also served in undercover operations, successfully helping to prevent several terrorist attacks. He resigned in 2004 to make Congress and the public aware of the continuing deficiency in FBI counterterrorism operations after the implementation of the 9/11 Commission's reforms. He is a graduate of Wake Forest University and earned his JD at Northwestern University Law School.

Next we will have Bassem Youssef, who joined the FBI in 1988 and was promptly assigned to the Middle Eastern terrorism cases. As part of his counterterrorism work, he obtained the Intelligence Community's highly coveted Director of Central Intelligence Award in 1995. 1996, former Director Louis Freeh personally selected Mr. Youssef to establish the FBI's Legal Attache Office in Saudi Arabia. Later in his career he was selected as the Chief of the Document Exploitation Unit within the FBI's Counterterrorism Division, and in early 2005 he was assigned to his current position as Chief of the Communications Analysis Unit. He is a graduate of California State University.

Each of your written statements will be made part of the record in its entirety. I would ask each of our witnesses to summarize your testimony in 5 minutes or less. And to help you stay within that time, a lighting device is at the table will start green, go to yellow when you have about a minute left, and will switch to red when your 5 minutes are up.

We will begin with Mr. German.

**TESTIMONY OF MIKE GERMAN, POLICY COUNSEL,
AMERICAN CIVIL LIBERTIES UNION**

Mr. GERMAN. Thank you. Chairman Scott, Chairman Conyers.

Mr. SCOTT. Is your microphone on?

Mr. GERMAN. Sorry. Chairman Scott, Chairman Conyers and Ranking Member Gohmert, Members of the Committee, thank you for inviting me to speak with you about the treatment of whistleblowers at the Federal Bureau of Investigation. I represent the American Civil Liberties Union, which vigorously supports meaningful legal protection for all whistleblowers, particularly for those in the law enforcement and intelligence agencies where abuse and misconduct can directly affect our liberty as well as our security.

Unfortunately, my experience with the FBI's treatment of whistleblowers is all too personal. I joined the FBI in June 1988. And my journey from the FBI to the ACLU began 14 years later in early 2002. I was asked to assist the Tampa terrorism investigation that began when a supporter of an international terrorist organization met with the leader of a White supremacist group as part of an effort to establish operational ties. This January 2002 meeting was recorded by an FBI cooperating witness. I quickly learned of serious deficiencies in the investigation, but my efforts to get the case on track were met with indifference by FBI supervisors. The case remained stalled through August of 2002, when I learned that part of the January meeting had been recorded illegally. When I brought this to the attention of the supervisor responsible for the investigation, he told me we were just going to pretend it didn't happen. Realizing a failure to correct this problem would imperil a future prosecution, I reported the matter through my chain of command. I didn't know at the time that the FBI was exempt from whistleblower protection laws, but I didn't think I needed to worry about retaliation. I had an unblemished disciplinary record and a history of superior performance praises. Twice during my career I had successfully infiltrated domestic terrorist organizations and prevented acts of terrorism by winning criminal convictions. As the FBI shifted to a terrorism prevention focus, I assumed this experience would be in high demand.

Moreover, FBI Director Robert Mueller publicly urged FBI employees to report problems they saw in FBI counterterrorism operations, and he offered his personal assurance that retaliation against whistleblowers would not be tolerated.

Unfortunately, Director Muller did not uphold his end of the bargain. Retaliation was tolerated and eventually successful in forcing me to leave the FBI. Over the course of 2 years, I was removed from one terrorism investigation, prevented from working on a second and denied opportunities to train new undercover agents. I reported the misconduct and the retaliation to the FBI Office of Professional Responsibility and the Department of Justice Inspector General in December of 2002 and again in February of 2003. I sent a third written complaint to the IG in October of 2003, yet neither OPR nor the IG opened an investigation or took any steps to protect me. Worse, both the IG and OPR leaked information from my complaints directly to the FBI officials I was complaining against. After I demanded the letter explaining why no investigation was opened, as is required by FBI whistleblower investigations, the IG finally opened a case in January of 2004. But nothing happened until April of 2004, when the IG requested I provide yet another sworn statement.

At that point I decided to report the matter to Congress and to resign from the FBI. Fortunately, Senator Charles Grassley championed my cause and his dogged pursuit of the underlying documentation of this investigation provides a glimpse into the dysfunctional management practices that harm our security and allow FBI managers to retaliate against agents who report misconduct. In January of 2006, a full year and a half after I resigned, 3 years after my first formal complaint to the IG and 4 years after these events took place, the IG finally issued a report confirming many of the allegations in my original complaint, including the Tampa Division terrorism case was not properly investigated or documented, that Tampa officials backdated and falsified FBI records, and finally that the FBI retaliated against me for reporting misconduct.

Senator Grassley continued his pursuit of the truth and in the summer of 2006 he finally received the January 2002 transcript that the FBI and the IG claimed contains no discussion of terrorists. As Senator Grassley said, it is a lot closer to what Michael German described than what the FBI described.

In closing, my odyssey demonstrates the need for greater congressional oversight of the FBI and DOJ. Neither our security nor our liberties are protected when incompetent FBI managers can so easily suppress evidence, falsify FBI records and retaliate against agents who dare report their abuse. Congress cannot perform effective oversight unless informed Federal employees and contractors are willing to tell the truth about what is happening within these agencies. And it is simply unfair to expect them to tell you the truth if they know it will cost them their jobs.

Congress should extend meaningful protection to the workforce that is charged with protecting all of us by granting them full due process rights when they blow the whistle.

Thank you for the opportunity to present our views, and I request that my written statement to the Committee be entered into the record. Thank you.

[The prepared statement of Mr. German follows:]

PREPARED STATEMENT OF MICHAEL GERMAN



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 Caroline Fredrickson
Director

**Testimony of Michael German, Policy Counsel,
 American Civil Liberties Union,
 former Special Agent, Federal Bureau of Investigation,
 before the
 Subcommittee on Crime, Terrorism, and Homeland Security,
 May 21, 2008**

Chairman Scott, Ranking Member Gohmert, members of the Committee, thank you for inviting me to speak with you about the treatment of whistleblowers at the Federal Bureau of Investigation. I represent the American Civil Liberties Union, a non-partisan organization dedicated to defending the Constitution and protecting civil liberties. The ACLU vigorously supports meaningful legal protections for all whistleblowers, but particularly for employees and contractors within the law enforcement and intelligence communities, where abuse and misconduct can have serious and direct effects on our rights and liberties, as well as our security.

The House of Representatives passed a comprehensive whistleblower protection bill last year, H.R. 985, which would significantly improve the legal protections for all whistleblowers and extend protection to employees of the FBI, CIA, NSA and other intelligence agencies that are currently exempt from the Whistleblower Protection Act.¹ Companion legislation in the Senate, S. 274, passed without a provision extending protection to the FBI or other intelligence agencies. I hope my testimony today will explain why the current systems designed to protect FBI whistleblowers are simply inadequate, and why legislative reform is so necessary.

Unfortunately, my experience with the FBI's treatment of whistleblowers is all too personal. I entered on duty as a Special Agent of the Federal Bureau of Investigation in June of 1988. My journey from the FBI to the ACLU began in 2002, when I made a protected disclosure about management failures and violations of law in an FBI counterterrorism investigation. I didn't know at the time that the FBI was exempt from the Whistleblower Protection Act, but I also didn't think I needed to be concerned about retaliation. I had fourteen years of experience as a Special Agent, an unblemished disciplinary record, a medal of valor from the Los Angeles Federal Bar Association, and a consistent record of superior performance appraisals. Twice during my career I had successfully infiltrated domestic terrorist organizations, recovered dozens of illegal firearms and explosive devices, resolved unsolved bombings, and prevented acts of terrorism by winning criminal convictions against terrorists. As the FBI shifted to a terrorism prevention focus I assumed this experience would be in high demand.

Moreover, earlier that summer President George W. Bush expressly called on agents to report any breakdowns in national security:

“If you’re a front-line worker for the FBI, the CIA, some other law enforcement or intelligence agency, and you see something that raises suspicions, I want you to report it immediately. I expect your supervisors to treat it with the seriousness it deserves. Information must be fully shared, so we can follow every lead to find the one that may prevent a tragedy.”²

Likewise, FBI Director Robert Mueller repeatedly vowed to protect FBI whistleblowers. In the wake of public disclosures regarding FBI failures surrounding the September 11, 2001 terrorist attacks, Director Mueller urged FBI employees to report any problems that impeded FBI counterterrorism operations, and he offered his personal assurance that retaliation against FBI whistleblowers would not be tolerated:

“I issued a memorandum on November 7th reaffirming the protections that are afforded to whistleblowers in which I indicated I will not tolerate reprisals or intimidation by any Bureau employee against those who make protected disclosures, nor will I tolerate attempts to prevent employees from making such disclosures. In every case where there is even intimation that one is concerned about whistleblower protections, I immediately alert Mr. Fine and send it over so that there is an independent review and independent assurance that the person will have the protections warranted.”³

I listened and obeyed the Director’s orders. When I became aware of serious misconduct in a terrorism case, I reported as directed, through my chain of command. I did my duty. Unfortunately Director Mueller did not uphold his end of the bargain. Retaliation was tolerated, accepted, and eventually successful in forcing me to leave the FBI.

I am here today to tell you about a system that is broken. The Department of Justice Inspector General’s report on my case,⁴ and Senator Chuck Grassley’s dogged pursuit of the underlying documentation of that investigation, provide a glimpse into the dysfunctional management practices at the DOJ that continue to allow FBI managers to retaliate against agents who report their misconduct.

In early 2002 I was asked to assist in a Tampa Division counterterrorism operation that began when a supporter of an international terrorist organization met with the leader of a domestic white supremacist terrorist organization. The meeting, which occurred on January 23, 2002, was an effort to establish operational ties between the two groups, based on their shared hatred of Jews, and it was recorded by an FBI Cooperating Witness as part of an ongoing FBI domestic terrorism investigation. I quickly became aware of deficiencies in the case, but my informal efforts to get the case on track were met with indifference by FBI Supervisors.

In August of 2002 I learned that part of the January meeting had been recorded illegally, in violation of Title III wiretap regulations. When I brought this to the attention of the Orlando Supervisor responsible for the investigation, he told me we were just going to “pretend it didn’t happen.” In fourteen years as an FBI agent I had never been asked to look the other way when I saw a violation of federal law. I felt I had no choice but to report this information to his superiors.⁵

Following the FBI chain-of-command and the protocols in the Director’s November 7, 2001 memorandum, I advised my Assistant Special Agent in Charge (ASAC) that I was going to report this matter to the Tampa Special Agent in Charge (SAC). My ASAC directed me to instead document the information in a letter, which he would deliver to the Tampa SAC. This detail might seem insignificant, as it did to me at the time, but the FBI would later argue that making my complaint through my ASAC deprived me of any protection from retaliation because the regulations regarding FBI whistleblowers only authorize disclosures to “the Department of Justice’s Office of Professional Responsibility (OPR), the Department’s Office of Inspector General (OIG), the FBI Office of Professional Responsibility (FBI OPR), the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, or to the highest ranking official in any FBI field office.”⁶ Fortunately the Inspector General ruled that my complaint was a “protected disclosure” under the regulations because it was intended to be forwarded to the appropriate officials, but this anomaly in the law must be addressed because its impracticality could easily leave well-meaning FBI employees without protections for appropriately reporting misconduct matters through their chain-of-command.

My letter, dated September 10, 2002, was sent to the Tampa SAC and the Assistant Director for the Counterterrorism Division, John Pistole. The reaction was swift, but it was not what I expected. Tampa officials began uploading backdated documents into the file, while I was ostracized from the Tampa investigation, and ultimately the Tampa SAC removed me from the investigation. Moreover, Tampa officials forwarded my complaint letter to the Unit Chief of the Undercover and Sensitive Operations Unit, who threatened that I would never work undercover again. I reported the retaliation in an e-mail to Assistant Director Pistole in October of 2002, but he did not respond to the e-mail or subsequent telephone messages.

In November of 2002 I reported the entirety of this matter to the DOJ OIG, and I provided a signed sworn statement, which included allegations of retaliation, to the OIG and the FBI OPR in December of 2002. I was told by the OIG that OPR would do an initial investigation, which OIG would review later to determine if further investigation was necessary. In reality, neither OPR nor the OIG opened an investigation, in direct violation of the FBI’s whistleblower protection regulations.⁷ Worse, both the OIG and OPR would leak information from my complaints directly to the FBI officials I was complaining against.

In January of 2003 an OIG investigator asked me if I still had a copy of the transcript of the January 23, 2002 meeting that initiated the investigation. He alerted me to a Tampa Division electronic communication (EC) written after my complaint, which stated that the January 23rd meeting was not recorded and did not involve discussions of terrorism. I was asked to come back to Washington, DC, for a second interview. On February 11, 2003 I provided a copy of the transcript to the OIG and OPR. An OPR Unit Chief came into the interview room and advised that the tape had been located in the Tampa Supervisor's desk. I immediately, and colorfully, expressed concern to the OIG interviewer that this disclosure of the information I provided would subvert a subsequent OIG or OPR investigation (I later learned that Tampa Division was allowed to write a "clarification" EC that same day, which "corrected" their previous false statement that the meeting had not been recorded). I again alleged in writing that I was suffering reprisals, but neither the OIG nor OPR pursued an investigation. I remained in regular contact with the OIG investigator regarding the ongoing reprisals, but was repeatedly told the OIG could do nothing until the FBI performed its own investigation of my allegations.

I also sent an e-mail to Director Mueller, advising him of the ongoing problems with this investigation. I received no reply, but months later I was contacted by FBI Inspectors who were reviewing the Tampa Division investigation and asked to speak with me. I asked them if they had read my previous signed, sworn statements to the OIG and OPR, and they replied they were unaware of any such statements. During my interview with the Inspectors they advised me that they had looked into allegations that I had engaged in unauthorized travel and misspent \$50 in case funds, but that their investigation had cleared me. They refused to tell me who made these allegations. I advised them that I considered their inquiry a retaliatory investigation and requested that they document their investigation. I also sent a letter to the Inspector in Charge, demanding the allegations and the inquiry be documented, but the OIG later found no evidence this inquiry was ever documented.

Meanwhile I was working on a separate terrorism investigation in Portland, Oregon, that was being stalled by the Undercover and Sensitive Operations Unit (USOU), in retaliation for my previous complaint. In the summer of 2003, the Assistant Director over OPR, Robert Jordan, was given a reassignment to Portland after he was disciplined for retaliating against an OPR Unit Chief who publicly complained of uneven treatment in FBI internal investigations. As the new SAC of Portland, Jordan told both the case agent and supervisor that my continued participation in the investigation was "problematic" because I was a whistleblower, and he encouraged them to replace me. I reported this incident to the OIG investigator, who asked me to write a letter to the IG, documenting this incident and the other ongoing retaliation, which I did in an October 2003 letter. Years later, through documents obtained by Senator Grassley's investigator, I learned that SAC Jordan was advised of my complaint against him almost immediately after I submitted the complaint to the OIG, in direct violation of the Inspector General Act of 1978.⁸ The OIG could hardly argue that this disclosure was necessary during the course of the investigation, as it had not yet opened an investigation.

In fact, the OIG never made any effort to protect me from the ongoing retaliation and in December of 2003 the OIG investigator finally advised that the OIG would not pursue an investigation regarding any of my allegations. I asked for confirmation in writing and was refused. I pointed the OIG investigator to the FBI whistleblower regulations, which require the OIG to write a letter stating the reasons for closing a reprisal investigation.⁹ In January of 2004 I received instead a letter advising me that the OIG would investigate the retaliation allegations. No investigative activity took place however, until OIG interviewed me again in April of 2004, and took a third signed, sworn statement. At that point I was told that the OIG General Counsel would review my third statement to determine if further investigation was warranted.

By this point I had worked within the system for two years to try to get the deficiencies I saw addressed, with no success. My career was effectively ended while the managers responsible for the failed investigation and the cover-up that followed were promoted. When it became clear that no one within the FBI or DOJ would address this matter appropriately, I chose to report the matter to Congress and to resign from the FBI in protest. Fortunately Senator Grassley championed my cause, despite the fact that the FBI issued a press release challenging my integrity and denying that a meeting between a supporter of an international terrorist group and a domestic white supremacist group took place. Senator Grassley, together with the Chairman and Ranking Member of the Senate Judiciary Committee, Senator Arlen Specter and Senator Patrick Leahy, began requesting documents from the FBI, including the transcript of the January 23, 2002 meeting.

The public exposure of this matter finally compelled the IG to act as well. In January of 2006, a full year and a half after I resigned, three years after my first formal complaint to the IG, and four years after these events took place, did the IG finally issue a report of its investigation.

The report confirms many of the allegations in my original complaint, including: that the Tampa Division terrorism case was not properly investigated or documented; that Tampa supervisors failed to address investigative deficiencies in the case in a timely manner; that Tampa officials backdated and falsified official FBI records in an effort to obstruct the internal investigation of my complaint, including using correction fluid to alter documents; that the FBI failed to properly investigate my allegations; and finally, that the FBI retaliated against me for reporting official misconduct within the FBI, though only in that the USOU Unit Chief did not allow me to participate in undercover training exercises.

The OIG report detailed a continuous, collaborative effort to punish me for reporting misconduct by FBI managers, yet only grudgingly admitted that I was retaliated against. An Orlando Supervisor justified removing me from one case because I “unilaterally” discussed the case with Supervisors at FBI Headquarters. The Portland SAC told his staff that my participation in a second terrorism investigation was “problematic” because I was a whistleblower who requested to speak to members of Congress. The Unit Chief of the Undercover Unit told his staff that I would never work undercover again, yet none of this was considered retaliation. Meanwhile FBI managers

who backdated, falsified and materially altered FBI records were given a pass. Moreover, the OIG report directly conflicted with documents the Senate Judiciary Committee had already obtained from the FBI.

On February 3, 2006 Senators Grassley, Specter and Leahy sent a letter to Inspector General Glenn Fine asking him to explain the conflicts between his report and the documents in the possession of the Senate Judiciary Committee.¹⁰ IG Fine submitted a written explanation on March 8, 2006, admitting some errors but reiterating his position that the transcript showed the subjects of the meeting did not discuss “any willingness to engage in terrorist activities.”¹¹ The response quoted a misleading portion of the transcript to give the false impression that terrorism was not discussed in the meeting.

In the summer of 2006 Senator Grassley finally received a redacted version of the transcript he requested from the FBI in 2004. As he said in a December 6, 2006 FBI oversight hearing, “it is a lot closer to what Michael German described than what the FBI described.”¹² He went further in a subsequent FBI oversight hearing in March of 2007:

...after years of effort by this Committee, the FBI finally provided a transcript of the meeting, and it flatly contradicts statements made by Bureau officials trying to downplay the incident and discredit Michael German. The transcript clearly shows a white supremacist and an Islamic militant talking about building operational ties between their organizations. Moreover, it is clear that what brings them together was anti-Semitism. According to the transcript these two groups also discussed (1) shooting Jews, (2) their shared admiration for Hitler, (3) arms shipments from Iran, (4) their desire for a civil war in the United States, (5) their approval of suicide bombings, and (6) assassinating pro-Israeli journalists in the United States. This was all the very first time they met.¹³

We all have great respect for Inspector General Fine, and the detailed and critical oversight he has performed over the FBI for the last eight years. That such a competent and energetic watchdog failed to protect this whistleblower and failed to properly evaluate the evidence demonstrates that this is a structural problem that requires a legislative solution. The failure of the structures designed to protect FBI whistleblowers became even more apparent after the OIG’s finding that I was retaliated against.

With a finding of retaliation by the OIG the FBI whistleblower regulations require that the Director of the DOJ Office of Attorney Recruitment and Management (OARM) determine what corrective action by the FBI is appropriate. I was immediately hopeful that I would be given some relief because the OARM Director, based upon a simple reading of the OIG report, found a prima facie case that the Tampa SAC did retaliate against me by removing me from the Tampa investigation after my complaint, despite the OIG’s contrary conclusion. Yet I still had to prove both the USOU Unit Chief and the Tampa SAC retaliated against me in a de novo review in front of the OARM Director. Neither the OIG’s finding against the USOU Unit Chief nor the OARM Director’s

decision regarding the Tampa SAC were dispositive. I was expected to depose witnesses and discover documents at my own expense, and argue why the earlier findings were correct. This effort seemed entirely redundant, as the OIG had just completed a two-year investigation into the same events. I requested that the OIG simply provide a copy of the investigative file to the OARM. I was confident that even where the OIG did not find retaliation, the underlying documentation would reveal the truth. The OIG refused to release the file, and after negotiations, OARM only ordered that records relevant to the USOU Unit Chief and the Tampa SAC be turned over.

Because I had resigned from the FBI as a result of the retaliation, my only hope for appropriate compensation from OARM was that I could show I was constructively removed from my position. Constructive removal is when the agency takes actions that make working conditions so intolerable that the employee was driven to an involuntary resignation. The DC Circuit has held that to objectively determine whether a reasonable person in the complainant's position would have felt compelled to resign, a deciding tribunal must consider the totality of the circumstances:

“...in measuring the voluntariness of an employee's resignation or retirement, all of the activities surrounding his or her resignation or retirement, even events not immediately preceding the leave of employ, must be considered. Indeed, this court has recently stated that “[i]n determining whether an alleged act of coercion caused an employee's involuntary retirement, a court need not limit itself to any particular timeframe.”¹⁴

Yet the OARM Director refused to look at the rest of the OIG investigative file, or to accept or consider any evidence or argument regarding the other retaliation, the refusal of the OIG to investigate the retaliation prior to my resignation, or the misconduct of the OIG in passing information from my complaint to the subject of the complaint. This was a fundamentally unfair proceeding where the decider of fact had a clear conflict of interest. I was in no financial position to pursue a claim before such a dubious tribunal.

In closing, my odyssey is the clearest example possible of the need for greater congressional oversight of the FBI and DOJ. If an FBI agent with proven counterterrorism experience can be so easily drummed out of the FBI for truthfully reporting failures the FBI and DOJ do not want to admit, we will be neither safe nor free. The system that is intended to protect FBI whistleblowers is broken, if it ever worked at all, and is in need of legislative reform to provide real protections to those agents willing to confront waste, fraud, abuse and misconduct within the ranks of the FBI. This is not a question of balancing security interests against liberty interests; it is a question of competence and accountability in the agencies that are responsible for our national security. Neither our security nor our civil liberties are protected when incompetent FBI managers can so easily suppress evidence, falsify FBI records to cover up their misconduct, and retaliate against agents who dare report their abuse. But Congress cannot perform effective oversight unless informed federal employees and contractors are willing to tell the truth about what is happening within these agencies. And it is simply

unfair to expect them to tell you the truth if they know it will cost them their jobs. Congress should extend meaningful protection to the workforce that is charged with protecting us all by granting them full due process rights when they blow the whistle during government investigations or refuse to violate the law, with the right to jury trials in federal court once administrative measures are exhausted and “full circuit” review. Thank you for the opportunity to present our views.

¹ See 5 U.S.C. § 2302(a)(2)(C)(ii), which states that a “covered agency” under the Act does not include, “the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities.”

² Karen Hosler, FBI must slim down and change culture, whistle-blower says,” BALTIMORE SUN, June 7, 2002, at 1A.

³ See, *Oversight Hearing on Counterterrorism Before the S. Comm. on the Judiciary*, 107th Cong., S. HRG. 107-920, at 16-17 (2002).

⁴ UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF INSPECTOR GENERAL REPORT OF INVESTIGATION INTO ALLEGATIONS OF MICHAEL GERMAN, Jan. 12, 2006 (on file with author).

⁵ For a detailed description of these events, please see, *National Security Whistleblowers in the post-September 11th Era: Lost in a Labyrinth and Facing Subtle Retaliation Before the Subcomm. on National Security, Emerging Threats and International Relations, H. Comm. on Government Reform*, 109th Cong. (Feb. 14, 2006) (written statement of former FBI Special Agent Michael German in Response to the Department of Justice Office of Inspector General Draft Report into Retaliation for Making Protected Disclosures Against FBI Managers on September 10, 2002) (on file with author).

⁶ 28 C.F.R. § 27.1 (2006).

⁷ 28 C.F.R. § 27.3(c): “Within 15 calendar days of the date the allegation of reprisal is first received by an Investigative Office, the office that will conduct the investigation (Conducting Office) shall provide written notice to the person who made the allegation (Complainant) indicating—

- (1) That the allegation has been received; and
- (2) The name of a person within the Conducting Office who will serve as a contact with the Complainant.

(d) The Conducting Office shall investigate any allegation of reprisal to the extent necessary to determine whether there are reasonable grounds to believe that a reprisal has been or will be taken.”

⁸ 5 U.S.C.A., § 7(b) (West 2006): “The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.”

⁹ 28 C.F.R. § 27.3(h): “(h) If the Conducting Office terminates an investigation, it shall prepare and transmit to the Complainant a written statement notifying him/her of—

- (1) The termination of the investigation;
- (2) A summary of relevant facts ascertained by the Conducting Office;
- (3) The reasons for termination of the investigation; and
- (4) A response to any comments submitted under paragraph (g) of this section.”

¹⁰ Letter from Senator Arlen Specter, Senator Patrick Leahy, and Senator Charles Grassley to Department of Justice Inspector General Glenn Fine (Feb. 3, 2006) (on file with author).

¹¹ Letter from Department of Justice Inspector General Glenn Fine to Senator Arlen Specter, Senator Patrick Leahy, and Senator Charles Grassley (Mar. 6, 2006) (on file with author).

¹² *FBI Oversight Hearing Before S. Comm. on the Judiciary*, 109th Cong. (Dec. 6, 2006) (Statement of Senator Charles Grassley).

¹³ *FBI Oversight Hearing Before S. Comm. on the Judiciary*, 110th Cong. (Mar. 27, 2007) (Statement of Senator Charles Grassley).

¹⁴ Shoaf v. Department of Agriculture, 260 F.3d 1336 (Fed. Cir. 2001), citing Terban v. Dep't of Energy, 216 F.3d 1021, 1024 (Fed. Cir. 2000). See also, Perlman v. United States, 490 F.3d 928, 933 (Ct. Cl. 1974) (“This court has consistently examined the surrounding circumstances to test the ability of the employee to exercise free choice.”); Scharf v. Dep't of the Air Force, 710 F.2d 1572, 1574 (Fed.Cir.1983) (“To determine whether a resignation or retirement is voluntary, a court must examine the surrounding circumstances. . . .”); Covington v. Dep't of Health and Human Servs., 750 F.2d 937, 941-42 (1984) (same); Braun v. Dep't of Veterans Affairs, 50 F.3d 1005, 1007-08 (Fed.Cir.1995) (same); Heining v. General Services Admin., 68 M.S.P.R. 513, 519-20 (1995) (“[T]he voluntariness of the resignation or retirement [is] based on whether the totality of the circumstances supported the conclusion that the employee was effectively deprived of free choice in the matter.”).

Mr. SCOTT. Thank you. Your written statement—both written statements will be made part of the record in its entirety. Mr. Youssef.

TESTIMONY OF BASSEM YOUSSEF, UNIT CHIEF, COMMUNICATIONS ANALYST DIVISION, COUNTERTERRORISM DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. YOUSSEF. It is a great honor and a privilege for me to be here.

Mr. SCOTT. Could you turn on your microphone?

Mr. YOUSSEF. Yes. It was turned off.

Mr. SCOTT. Mr. Youssef, could you identify the person sitting to your right?

Mr. YOUSSEF. Yes, sir. Chairman, this is Mr. Steve Cohen, my attorney, and he is present here today to answer any technical or legal questions that I may not be at liberty to discuss.

Mr. SCOTT. Thank you.

Mr. YOUSSEF. Thank you, sir.

As I started to say, it really is a great honor to be here before this distinguished Committee. I think in my 20-year career in the FBI I never dreamt in a million years that I would be sitting here speaking before Congress. And my greatest goal today is to be able to get the message across to Congress, to this distinguished Committee, that the FBI—the FBI's Counterterrorism Division is ill-equipped to handle the terrorist threat that we are facing. Regardless of what happens to me when I walk into the Hoover Building tomorrow, that is what I am hoping that I would be able to convey to you.

Let me start by just saying that I have a great love and admiration for the FBI itself, for what it stands for as an organization, and for the men and women that I have worked with and continue to work with within the FBI. But I do have serious concerns about the current state of affairs of the FBI and the FBI's Counterterrorism Division, and specifically the position that we find ourselves in today almost 8 years after the 9/11 attacks.

To maybe explain a little better of where we are today inside the FBI, allow me to take you back to 1993 before the 1993 World Trade Center bombing which took place on February 26, 1993.

I would say right now that I am one of the very, very few agents who have worked counterterrorism and worked on this particular investigation of the World Trade Center bombing that is still in the FBI today. Most of the agents that have worked on that particular investigation either have left or have gone on to other positions.

Let me just give you a little backdrop. Obviously I can't discuss anything classified, so I am going to try to explain this to the best I know how without being totally open on what is in the files.

In early 1993 I began to work on a particular group in a particular field office and was working with other field offices that were trying to obtain a FISA on the blind sheikh, on Sheikh Omar Abdel Rahman. I had worked terrorism my entire career up until that time. And the FISA was not obtainable simply because—or this is what I was told by FBI headquarters—is that we can't touch him. He is a religious man. Obviously a lack of understanding of the intelligence of who this man is. And the information that I was

able to obtain from my own sources and my operation that I was working at the time was extremely instrumental in actually getting us over the hump and actually getting the FISA approved on the blind sheikh. Unfortunately, that particular FISA was approved 9 days before the actual bombing of February 26, 1993. In 9 days there would be no way for anyone to be able to catch the threat and comprehend the threat and stop it.

Even though we didn't understand it fully at the time, there was an understanding within the FBI in those days that we do need the expertise in language, in the Arabic language, understanding just the mindset of the enemy and the cultural innuendos, especially when you deal with sources and with subjects. There was that understanding and the need to beef up that particular cadre of counterterrorism agents.

Unfortunately, the Counterterrorism Division today still suffers from lack of expertise in counterterrorism matters, specifically with Middle Eastern counterterrorism matters and lack of understanding or appreciation for the language, having the language and the cultural understanding.

I would like to, if I may, just to give you a glimpse of how things are today in the Counterterrorism Division, to read to you a couple of e-mails that have been circulating within the FBI.

The first one is dated March 5, 2008. I am sorry. I will start with the one in 2007. April 16, 2007. This is what the e-mail states, and it has been sent to everyone in the Counterterrorism Division.

The CTD is hosting a conference next week at LX 1 to train new ITOS supervisors, and in parenthesis, for those of you who don't know, approximately 12 supervisory special agents from Quantico were transferred to work in ITOS 1. And this training is to help to get them to know CT investigations. We plan to show the video and have a short question and answer period following the video.

If I may just take 2 seconds to decipher what that means. ITOS 1.

Mr. GOHMERT. Mr. Chairman, I would ask unanimous consent to allow him whatever time he needs to finish it.

Mr. SCOTT. Without objection.

Mr. YOUSSEF. Thank you, sir.

If I may just explain the meaning behind each term on this particular e-mail. ITOS 1 is the International Terrorism Operations Section, which is the premier counterterrorism division section that deals with tracking al Qaeda and al Qaeda's activities. These 12 supervisory special agents are obviously in a supervisory position who would be leading and directing operations of the field. They come from the training division. They have absolutely no counterterrorism experience whatsoever. They probably have worked in criminal matters and noncounterterrorism matters. And they were actually drafted into the Counterterrorism Division to work and actually run the operations of the field.

They have absolutely no experience whatsoever to the point that the author of this e-mail was saying, we need to show them a video to get them to understand the innuendos of counterterrorism investigations.

I will tell you that I know specifically this video would teach them nothing about counterterrorism because it comes from my

unit. These supervisors were drafted, and in fact eventually ended up leaving because they couldn't stay where they were in the ITOS section. This was dated April 16, 2007.

If I may read another e-mail that was sent out by the Counterterrorism Division on March 5, 2008. And this is what the e-mail states.

Executive management is canvassing the division for volunteers GS-14 supervisory special agents to be permanently reassigned to ITOS 1. This is due to the fact that ITOS 1 is currently at 62 percent of its funded staffing level. It is critical that the CT mission fill these positions as soon as possible.

Gentlemen, this is March 5, 2008. If the FBI's premier counterterrorism section is operating at 62 percent of its funded staffing level, that means if there are 100 seats in that section, there are only 62 seats being filled. However, if you talk to the counterterrorism executives, they will say that we are doing phenomenal work. If I may equate this to a car with six cylinders operating on three cylinders, it is not doing phenomenal work or is not performing phenomenally.

The amazing thing about these two e-mails is that they are only symptomatic of what is really going on in the Counterterrorism Division today. And again, we are talking about almost 8 years after the 9/11 attacks.

In the FBI everyone who is interested in moving up the ladder of promotion would want to be jockeying for positions in the number one priority of the investigations being worked by the FBI. The Counterterrorism Division is unable to keep agents, supervisors and analysts within the division. And 62 percent is an alarmingly low figure.

While all this was going on, there have been in the last 4 or 5 years several requests by field offices within the FBI and other intelligence agencies who have known of my work prior to 9/11, requesting me to offer assistance in training their agents and their analysts and specifically counterterrorism, Middle Eastern counterterrorism matters as well as help or consult with the ongoing operations that they have in the field.

Each time I was requested, my supervisors blocked the request just saying that I was busy. And the field offices would call me back or the other agencies would call me back and say, what is going on? And I had no explanation to give, other than, this is what is coming from the front office.

We still have agents who are highly dedicated within the Counterterrorism Division who want to do a very good job, but they are unable to because they are not given the tools or the assets that they need to actually understand the enemy and get into the mind of the enemy that we are facing today.

This is the summary of my position and where we are in the FBI. And I very much look forward to answering any questions that you have.

[The prepared statement of Mr. Youssef follows:]

PREPARED STATEMENT OF BASSEM YOUSSEF

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY

"Hearing on FBI Whistleblowers"

WRITTEN STATEMENT FILED ON BEHALF OF FBI
SUPERVISORY SPECIAL AGENT and UNIT CHIEF BASSEM YOUSSEF
Submitted by Counsel for Mr. Youssef, Stephen M. Kohn

May 21, 2008

Chairman Robert C. Scott, Ranking Minority Member Louie Gohmert and Honorable Members
of the Committee:

Thank you for the opportunity to submit a written statement on behalf of my client,
Supervisory Special Agent Bassem Youssef, the Unit Chief in the Federal Bureau of
Investigation's ("FBI") Counterterrorism Division's Communications Analysis Unit. The FBI
provided Mr. Youssef with conditional permission to orally testify before this Committee in his
personal capacity.

SUMMARY

- * The FBI's counterterrorism program cannot properly protect the United States from another catastrophic and direct attack from Middle Eastern terrorists.
- * Currently the ITOS sections are inexcusably understaffed. Critical supervisory personnel within ITOS (which includes the Unit that tracks Al-Qaeda) staffing level is only 62% of its mandated Funded Staffing Level. This has forced the FBI to recruit supervisors into ITOS who lack the background and expertise necessary to direct America's most important law enforcement mission.
- * The mismanagement of the FBI's Counterterrorism program has already resulted in the systemic and needless violation of the civil liberties of thousands of Americans, the misidentification of threats against the United States and repeated sloppy mistakes within the counterterrorism program.
- * The continuing failure of the FBI to hire or train agents who are fluent in Arabic, knowledgeable about the Middle East and/or experienced in operational counterterrorism is rooted in two factors: First, an ongoing policy which does not reward these skills in the promotional process and Second, deep seated discriminatory practices within the Bureau.
- * A full independent review of the counterterrorism program is badly needed. The review must be conducted by persons with unquestionable expertise in Middle Eastern terrorism.

MR. YOUSSEF'S BACKGROUND AND EXPERIENCE

Within the FBI Mr. Youssef possesses unparalleled expertise and experience in Middle Eastern counterterrorism. Because of his fluency in Arabic and his extensive knowledge of Middle Eastern history and culture, Mr. Youssef was working major counterterrorism cases years before American law enforcement focused on Middle Eastern terrorists. Starting in 1988 Mr. Youssef was case agent on a major investigation related to the Abu Nidal Organization. See extensive documentation on Mr. Youssef posted on-line at http://www.whistleblowers.org/html/inside_the_fbi.html

Between January, 1993 and December, 1996 Mr. Youssef served as FBI coordinator for the counterterrorism (as opposed to the criminal) investigation of *al-gamaa al-islamiyah* [also known as the "Islamic Group"]. This group was responsible for the first World Trade Center bombing and was led by the "Blind Sheikh". The Blind Sheikh is Osama bin Laden's "spiritual leader." Mr. Youssef's highly effective work as coordinator was recognized by the entire U.S. intelligence community, and in 1994 Mr. Youssef was awarded the prestigious Director of Central Intelligence ("DCI") award based on his undercover work on *al-gamaa al-islamiyah*. Exhibit 1. The DCI documentation upon which the award was based stated:

Utilizing to the maximum advantage his Middle Eastern background, and his inherent knowledge of that region's traditions, customs, and languages, SA BASSEM YOUSSEF has implemented these skills on a daily basis in furtherance of the FBI's primary mission of preventing terrorist acts which has benefited not only FBI Los Angeles, but also many other field divisions throughout the FBI who have periodically sought his valuable assistance. Since January, 1993, he has worked tirelessly to uncover and to continue to identify members of an international terrorist cell in Southern California, identify its associates throughout the United States and abroad, utilizing creative and relentless investigative initiative to accomplish this end. His constant efforts in developing and handling assets has resulted in much valuable personality assessment data on individual cell members, as well as information which defines the structure and modus operandi of this dangerous international terrorist group whose members are present throughout the U.S.

In 1996 Mr. Youssef was appointed by former FBI Director Louis Freeh as the first FBI Legal Attaché in Riyadh, Saudi Arabia, with regional responsibility for all of the seven Gulf States (Kuwait, Qatar, Bahrain, United Arab Emirates, Oman and Yemen). With the unanimous consent of the responsible FBI managers, Mr. Youssef's assignment as the Legal Attaché in Riyadh was extended twice and he served in that capacity between 1996-2000. In 2000 his performance as Legat was subject to an FBI inspection. The inspection found:

- *Mr. Youssef "was successful in establishing an excellent relationship with the Mabahiith, the Saudi Arabian counterpart of the FBI . . . His efforts led to the establishment of direct communications with senior officials of the Mabahiith, which had previously been unavailable to any U.S. Embassy personnel."*

- *"His Arabic language ability greatly enhanced his effectiveness . . . Ambassador Wyche Fowler called Legat Youssef a superior representative for the FBI, and noted that he was 'just the right man' for this position."*
- *"Major General Adul Aziz Al-Huwairini, Director of Liaison, Mabathith, indicated that the FBI was the only western law enforcement agency having direct liaison with his office, and characterized the relationship with the FBI as exceptional. General Al-Huwairini commented that the Minister of the Interior had instructed him to cooperate fully with the Legat office."*
- *"In addition to the liaison contacts in Saudi Arabia Legat Youssef developed an impressive liaison base of prominent law enforcement officials in the Legat territory. These included the Director of the Abu Dhabi Police, the Commandant General of the Dubai Police Force and the Director of State Security for the UAE; the Director of Kuwait State Security . . . and the Director General of the Bahraini Criminal Investigative Directorate."*
- *"Sheikh Mashal Al-Jarrah Al-Sabbaah, Director of the KSS [Kuwait State Security], characterized his relationship with the FBI as 'strong' and 'built upon mutual trust.' The Sheikh referred to the Legat as one of his trusted advisors."*

See Exhibit 2. This document can be viewed in its entirety online at:
http://www.whistleblowers.org/FBI_Riyadh_Inspection_Report.pdf

In addition to the findings of the internal Inspection Report, Mr. Youssef's formal performance review also documented his exceptional performance in Saudi Arabia. Exhibit 3. Youssef Performance Review (May, 2000).

While most Americans were completely unaware of the threat to the United States from Osama bin Laden and those associated with him, Mr. Youssef commenced his investigation into the organization responsible for the first World Trade Center bombing *before* the 1993 attack and obtained the key intelligence used by the FBI to obtain FISA on the mastermind behind the first World Trade Center bombing. Mr. Youssef was extensively involved in investigatory and liaison work related to Bin Laden during his work as Legat. In 2000 the FBI inspector reviewing Mr. Youssef's highly successful work in Saudi Arabia recognized that Mr. Youssef was aware of the threat posed to America by bin Laden, and noted that Mr. Youssef was "preoccupied with Bin Laden's current status and whereabouts."

Upon returning to the United States he was appointed the Chief of the Executive Secretariat Office for the National Counterintelligence Center ("NACIC") and worked at CIA headquarters in Langley, Virginia for two years. In 2003 he was selected as the first Chief of the FBI's Document Exploitation Unit. He was laterally transferred into his current position as Chief of the Counterterrorism Division's Communication's Analysis Unit in early 2005.

Mr. Youssef has an exemplary employment record. He has never been disciplined and has never had a bad performance review. His most recent performance review "cleared" for public release is attached as Exhibit 4. He received a rating of "excellent."

**FBI MISTAKES WITHIN ITS COUNTERTERRORISM PROGRAM DIRECTLY
THREATEN NATIONAL SECURITY AND THE PUBLIC SAFETY**

Mr. Youssef is gravely concerned that significant FBI policy and operational mistakes within its counterterrorism program threaten America's national security and public safety.¹ These concerns include the following:

1. *FBI currently has failed to properly staff the most important operational sections in combating Middle Eastern terrorists, including Al Qaeda.* Today, critical supervisory positions within the International Terrorism Operations Section ("ITOS") 1 (which includes *al Qaeda*) is staffed only at a level of 62% of its Fulltime Staffing Level for critical supervisory personnel. The fact that the program is dangerously understaffed was confirmed in an email sent to all counterterrorism employees at FBIHQ on March 5, 2008. The email states "Executive management is canvassing the division for volunteers (GS 14 supervisory special agents) to be permanently reassigned to ITOS 1. This is due to the fact that ITOS 1 is currently at 62% of its funded staffing level. It is critical to the CT mission that these positions be filled as soon as possible";
2. *The FBI recruits supervisors into the critical ITOS units who have no experience in counterterrorism and who did not even want to work in these positions.* In other words, the failure of the FBI to build a cadre of experts in Middle Eastern terrorism – as promised immediately after the 9/11 attacks – has resulted in critical personnel shortages and lapses in competence within the most important FBI positions concerning Middle Eastern terrorist threats. The fact that ITOS supervisors are recruited and installed into their positions is reflected in an email sent by the Communications Exploitation Section dated April 16, 2007. It states as follows: "CTD's Continuing Education and Development Unit is hosting a conference next week at LX1 to train the new ITOS supervisors (for those of you who don't know, approximately 12 SSAs from Quantico were transferred to work in ITOS 1 and this training is to help them get to know CT investigations). . . . We plan to show the video and have a short question and answer period following the video;"
3. *The FBI policy to promote individuals to its upper management positions who have no comprehension of the Arabic language has resulted in the agency's failure to have a management capable of responding to real time potential threats or opportunities.* The

¹ Many of these concerns were set forth in non-classified testimony Mr. Youssef provided to the Department of Justice Office of Inspector General. Pursuant to an agreement between the Inspector General and Mr. Youssef's counsel, these allegations can be presented to the U.S. Congress. Other concerns are based on information released in other non-classified proceedings, depositions and documents obtained by counsel for Mr. Youssef.

over-dependency on translators can (and does) delay responses to situations which are time critical;

4. *The over-reliance upon translators within the counterterrorism program has undermined the ability of agents to properly understand, monitor, and evaluate threats.* In other words, subtle messages and information not capable of ready translation or that which would be obvious to a native speaker who is simultaneously involved in operational activities are regularly lost;
5. *The FBI is not capable of properly exploiting its potential to develop strategic source recruitment.* In this regard, Mr. Youssef has unique background and experience (with a high degree of success) in the recruitment of highly valuable sources for targeting against Middle Eastern terrorist groups. These recruitments should constitute the backbone of a successful counterterrorism program. The FBI not only lacks the expertise to exploit these opportunities, but also has no policy whatsoever to put into place agents capable of performing this critical function. The failure to recruit well placed sources into terrorist organizations is perhaps the single largest threat to national security. Mr. Youssef is prepared to testify to these matters as well as testify as to how the failure of the FBI to understand the importance of such human sources resulted in the loss of critical intelligence needed to win the war on terror;
6. *Misidentification of threats:* Mr. Youssef is prepared to testify about the FBI's irresponsible misidentification of threats and provide testimony concerning the root causes of these misidentifications;
7. *The FBI's policy that its agents, ITOS supervisors and counterterrorism managers do not need subject matter expertise in Middle Eastern counterterrorism is indefensible and counterproductive.* In making promotional decisions within the counterterrorism division, the Director of the FBI testified that (a) knowledge of Arabic is not needed; (b) knowledge of Middle Eastern culture and history is not needed; (c) subject matter expertise Middle Eastern counterterrorism is not needed; and (d) experience in any counterterrorism program is not needed. Other high-ranking managers within the FBI confirmed this testimony. The policy has completely undermined the ability of the FBI to recruit and retain agents to perform absolutely critical positions within ITOS.²
8. *Over-reliance upon technology:* Because of the lack of human sources, the FBI depends on technologies that have the potential of undermining American civil liberties. Agents have simply adopted electronic surveillance practices from the criminal side of the Bureau into the counterterrorism side, without first having a solid intelligence base. Without having a management and agent cadre with *extensive* expertise and skills

² (See, Supporting Documents 7, 6/17/05 Letter from Steve Kohn, and 8, 6/20/05 Follow-up letter, email links to letters from Stephen Kohn to Senators Specter, Leahy, and Grassley, which include excerpts from the testimony of FBI Director Mueller, former EAD Gary Bald, former EAD Dale Watson, FBI representative on post-9/11 promotional requirements for CTD (Pikus), and former DAD John Lewis). These letters can be viewed in their entirety at <http://www.whistleblowers.org/SpecterLetter.pdf> and at http://www.whistleblowers.org/Specter_2June_20.pdf

(including language skills and knowledge of cultural mores), the Bureau will continue to fall back on an overuse of technology and continue to monitor American citizens without proper justification and without necessity;

9. *Failure to properly analyze information obtained:* Specifically, Mr. Youssef can testify to incidents related to agents not properly trained in counterterrorism that overlooked critical facts related to the identification of a potential threat;
10. *Continuous promotion of individuals who lack the qualifications to effectively manage the Middle Eastern counterterrorism program;*
11. *Failure to establish an internal mechanism to audit the effectiveness of the counterterrorism program.* The Inspection Division does not have the ability to properly inspect the Middle Eastern counterterrorism program, as it has not assigned inspectors qualified to properly assess the deficiencies of that program. The FBI regularly assigns inspectors within non-counterterrorism backgrounds (such as inspectors who work in public affairs and the Criminal Division) to review Middle Eastern counterterrorism programs. A serious counterterrorism program must be the subject of inspection by highly qualified and skilled counterterrorism experts. However, the FBI's policy that such expertise is not needed within its management ranks has also undermined its view of the inspection program, its recruitment, training and promotion of inspectors qualified to understand the subtle (or not so subtle) deficiencies which can undermine the effectiveness of a program;
12. *Failure to comprehend or properly process the Arabic language after translation.* FBI managers rely exclusively on translation services to comprehend communications made by targets in Middle Eastern terrorist operations in their native language. The agents and managers continue to make major mistakes based on their lack of expertise in the Arabic language. This is highlighted by *basic* errors, such as the failure to understand *names*. Middle Easterners often have multiple names.
13. *Failure to recruit sufficient numbers of Arab-American agents into the FBI.* The FBI's discriminatory policies have undercut its ability to recruit Arab-American agents into the FBI. For example, Mr. Youssef was *twice* approached by managers responsible for new agent recruitment and asked to assist in the recruitment of Arab-American agents. On both occasions Mr. Youssef agreed to assist in these recruitment agents; however, because of the ongoing discrimination concerns within the FBI, it appears as if the FBI decided against using Mr. Youssef's services to assist in this process;
14. *Failure to Facilitate Liaison with Critical Middle Eastern Intelligence Agencies:* In 1996, former Director, Louis Freeh, selected Mr. Youssef to establish the FBI's Legal Attaché office in Riyadh, Kingdom of Saudi Arabia. This office had regional responsibility for all FBI matters in the Gulf region which included the following countries: Saudi Arabia, Kuwait, Qatar, Bahrain, United Arab Emirates, Oman and Yemen. Mr. Youssef served as the first Legal Attaché in Riyadh for four years, and established a track record of highly successful liaison with our Middle Eastern partners

unparalleled in *any* of our intelligence agencies. This exceptional liaison paid huge tangible dividends evidenced by the increase in the Saudi lead response from 15% to nearly 95% during Mr. Youssef's tenure as LEGAT Riyadh. Despite having established spectacular liaison with His Royal Highness, Prince Naif bin Abdel Aziz, Saudi Arabia's Minister of Interior, and his counter-parts in the Mabahith, after the retaliation Mr. Youssef was blocked from performing any liaison work with our Middle Eastern partners. The failure to utilize Mr. Youssef's skills and services in performing critical liaison activities has undermined vital U.S. security interests;

15. *Failure to Conduct Polygraph Examinations of Key Potential Sources in Arabic.* The effective use of polygraph examinations plays an instrumental role in vetting potential sources and in identifying potential "recruitments in place" within Middle Eastern terrorist organizations. It is well established that using a translator as a surrogate to conduct such polygraphs undermines the effectiveness of the examination and increases the chance of false-positive and false-negative results in the examination process. Moreover, prior to 9/11, the experiences within the FBI demonstrated that utilization of a polygraph-certified Arabic speaking to conduct such interrogations resulted in the FBI's ability to obtain critically needed human intelligence and assets necessary for a successful counterterrorism program. After Mr. Mueller became Director of the FBI, the FBI stopped using Arabic speaking agents to conduct polygraphs. In this regard, Mr. Youssef's specific requests to use his skills in these areas have been explicitly blocked or rejected;
16. *Over a year before the recent Inspector General investigation into the FBI's use of National Security Letters ("NSL"), Mr. Youssef identified serious problems with the FBI's handling of such letters.* Because of the hostile atmosphere within the FBI and the profound lack of subject matter expertise within the FBI's Counterterrorism Division, the Bureau could not properly respond to Mr. Youssef's inquiries and requests. The FBI refused to take necessary corrective actions until the OIG published its own critique of the program.

National Security Letters

In December, 2004/January, 2005 Mr. Youssef was appointed into his current position, Chief of the Counterterrorism Division's Communications Analysis Unit ("CAU"). This Unit has responsibility for processing requests for information from the FBI's counterterrorism operational units to various telephone companies. These searches are often conducted by use of National Security Letters ("NSLs"). After becoming the Chief of CAU Mr. Youssef learned that the FBI had both a written policy and practice of conducting searches of phone records without the issuance of an NSL. This practice violated various safeguards in the Patriot Act, and the FBI's misconduct in this matter has been confirmed in two previously published Inspector General reports. See OIG Reports posted on-line at http://www.whistleblowers.org/IGReport_on_Use_of_Nat_Sec_Letters.pdf. Currently there is a joint FBI-Inspector General investigation ongoing into the NSL matter. Mr. Youssef provided seven days of testimony as part of these reviews.

Mr. Youssef's efforts to call attention to the NSL problems, and fix those problems, are well documented. They include the following: Aggressive steps to obtain the list of all improper searches and compel the FBI to issue proper NSL requests for the information; meetings with representatives from ITOS and General Counsel in order to stop the improper practices and obtain assistance on having NSLs issued concerning prior searches; re-writing the NSL policy in order to ensure that it complied with the law; instructing his staff to request information from the telephone companies only if there was a proper NSL or a true emergency circumstance; and, effectively halting the practice of using "exigent letters" to obtain telephone records *before* the Inspector General commenced its investigation.

Mr. Youssef's supervisors within the Counterterrorism Division clearly recognized his achievements in helping to fix the NSL problem. First, his Unit was formally inspected in January, 2007. His Unit "passed" the inspection with the highest rating of "effective and efficient." Second, on January 7, 2007 the Deputy Assistant Director for Counterterrorism signed Mr. Youssef's annual performance review. Mr. Youssef was rated "outstanding" or "excellent" in every performance category. In the narrative write-up Mr. Youssef's managers recognized his efforts in fixing the NSL problems and wrote:

Unit Chief Bassem Youssef has performed in an overall excellent manner. His decision making, oral communication and ability to maintain a high level of professionalism during extreme operational circumstances have been outstanding.

Exhibit 4, Youssef Performance Appraisal Report dated January 7, 2007. A copy of this review is posted on-line at the end of the following web page:
http://www.whistleblowers.org/html/inside_the_fbi.html

Finally, the Assistant Director for the Counterterrorism Division (Mr. Youssef's fourth line supervisor) personally praised Mr. Youssef's actions in attempting to fix the NSL matter. In a personal email to Mr. Youssef, the Assistant Director wrote: **"Bassem – thank you for all your efforts to ensure CTD is totally compliant. I very much appreciate all you are doing."**
 Exhibit 5, Email from Assistant Director to Youssef (January 31, 2007).

DISCRIMINATION AND RETALIATION IN THE FBI

The FBI has little experience or expertise within the Arab community. Underlying discriminatory attitudes, combined with the FBI cultural mantra "Thou Shall Not Embarrass the Bureau," combine to make the recruitment, retention and promotion of Arab American agents a very difficult task within the FBI.

The existence and negative impact of these factors are evident in the treatment Mr. Youssef has faced within the FBI. Much of this simply had to do with Mr. Youssef's name. In the very early 1990's, when Mr. Youssef's career took-off, Mr. Youssef was not known within the FBI by his name. Specifically, given the dangerous and highly secret nature of his work, the Attorney General approved FBI credentials for Mr. Youssef in another name: Adam Shoukry. In other words, within the FBI Mr. Youssef was not known as Bassem Youssef – he was known

as Adam Shoukry. He obtained FBI certificates in that name and his supervisors called him Adam. Only a small handful of personnel within the FBI knew his real name.

In 1996 when Mr. Youssef was promoted and became the first Legal Attaché in Riyadh, Saudi Arabia, he reverted back to using his real name. However, while working in the Middle East, that name did not have any negative ramifications.

When he returned to the United States in 2000 he kept using his real name, Mr. Bassem Youssef. That's when his problems within the FBI commenced. Based on prejudice and ignorance, high ranking managers within the FBI confused Mr. Youssef with another FBI agent with an Arabic sounding name, Mr. Gamal Abdel Hafiz. In other words, high ranking (and low ranking) FBI employees actually thought Mr. Youssef was Mr. Abdel Hafiz. This confusion not only constitutes a window into the depth of the problems facing the FBI in efforts to conduct effective operations against Middle Eastern subjects (i.e. the failure to keep basic names straight), but it directly harmed Mr. Youssef. Mr. Youssef, whose service to the nation was recognized by the Director of the CIA, and directly praised by former FBI Director Louis Freeh - was confused with another agent who had refused to conduct a terrorism operation due to his Muslim beliefs. Mr. Youssef (a Christian, not a Muslim), *never* refused to participate in a terrorism related operation, and regularly placed himself in harm's way conducting undercover operations. No high ranking official was ever held accountable for these confusions, nor have proper steps been taken to educate agents involved in Middle Eastern issues related to name identification and the potential harmful impact of confusing a name or not understanding the potential relationship of the name of other factors.

After the September 11th terrorist attacks, Mr. Youssef met directly with FBI Director Robert Mueller and Congressman Frank Wolf and raised concerns regarding discrimination against Arab Americans within the FBI and the failure of the FBI to utilize agents with Arabic language skills and expertise in Middle Eastern counterterrorism post-9/11. According to a report issued by the U.S. Department of Justice Office of Professional Responsibility, evidence existed to support a finding that FBI managers illegally retaliated against Mr. Youssef for raising these concerns with the Director. The OPR report can be reviewed on-line at http://www.whistleblowers.org/order_and_OPR_report.pdf.

PRIOR PRECEDENT FOR INDEPENDENT EXPERT REVIEW

There are striking parallels between the current case of Mr. Youssef and the prior case of Dr. Frederic Whitehurst. In the 1990's the FBI laboratory was managed by persons with no expertise in science. Dr. Whitehurst, a scientific expert working in the crime lab, raised concerns ranging from contamination to the lack of quality control. After these concerns were publicly disclosed, the Attorney General stepped in and ensured that the lab would be independently reviewed by a team of five subject matter experts. The result was real reform: The FBI was required to hire a subject matter expert as Director of the Lab, the Lab was required to undergo an outside accreditation process, and numerous scientific reforms were mandated.

The same process must occur within the FBI's Counterterrorism Division. Currently, the OIG is conducting a *joint* investigation with the FBI of the FBI's use of National Security Letters. This investigation could become a critical tool in reforming the FBI's counterterrorism program. However, if the FBI remains involved in the review and the review fails to focus on identifying the root causes of the problems within the FBI's entire counterterrorism program (through use of outside experts), an opportunity to truly reform the counterterrorism program will be lost.

CONCLUSION

It is very important to state that Mr. Youssef strongly believes that the vast majority of FBI agents employed in the counterterrorism areas are dedicated, honest, and hard working civil servants. But their ability to serve and protect the United States is undermined by policies which lead to major errors in the war on terror; thus, resulting in the failure of the FBI to detect and correct both systemic deficiencies and specific failures within the counterterrorism program.

All attempts to correct these problems identified by Mr. Youssef within the existing FBI and DOJ channels have not been successful. Only the active participation of Congress – and its leadership and insistence that the FBI do its job to the best of its ability, will better ensure that America will be safe from another successful terrorist attack. The following actions need to be taken:

1. Congress must insist that the specific problems identified by Mr. Youssef be immediately reviewed and corrected. Time is of the essence, based on the real threat to American democracy by Middle Eastern terrorist groups;
2. A careful review of the current FBI's counterterrorism program must be conducted by nationally respected experts in terrorism;
3. The ongoing Inspector General investigation into the National Security Letter violations must be expanded to include a full root cause analysis. Moreover, the current investigation into the FBI's abuses of NSLs is actually a *joint* FBI-IG review. The FBI should have no role whatsoever in this oversight process;
4. The FBI must be ordered to take immediate action to encourage the recruitment and promotion of Arab Americans into the FBI. This would include making knowledge of the Arabic language, culture and history part of the formal promotional criteria within the counterterrorism program.

5. The FBI must be ordered to immediately make knowledge of and a demonstrated *successful* experience in operational Middle Eastern-related counterterrorism as a requirement for promotion into upper management levels which have supervisory responsibility for Middle Eastern terrorist-related programs.

Respectfully submitted,

/s/

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 Washington, D.C. 20007
 202-342-6980 (personal)
 202-342-6984 (fax)
www.whistleblowers.org
 Attorney for Mr. Youssef

DISCLAIMER

The disclosures set forth in this statement are protected under 5 U.S.C. 7211 and Title VII of the Civil Rights Act of 1964. The FBI's letter permitting Mr. Youssef to testify before the Committee is attached as Exhibit 6. The FBI has required Mr. Youssef to take annual leave in order to appear before the Committee. In accordance with a non-disclosure agreement executed by Counsel for Mr. Youssef and the Department of Justice Office of Inspector General, Mr. Youssef's Counsel was permitted to disclose to Congress information obtained as a result of Counsel's participation in five days of testimony provided to the Inspector General by Mr. Youssef. The opinions expressed by Mr. Youssef during his testimony do not represent the official position of the FBI.

Mr. Youssef's attorney Stephen M. Kohn is also the President of the National Whistleblower Center (www.whistleblowers.org and www.whistleblowersblog.org) and a partner in the Washington, D.C. law firm of Kohn, Kohn & Colapinto, LLP (www.kkc.com). He is the author or co-author of six books on whistleblower law, including *Whistleblower Law* (Praeger, 2004) and *The Whistleblower Litigation Handbook*, (Weily Legal Publishing, 1990). Since 1984 Mr. Kohn has specialized in representing employee whistleblowers, including numerous FBI employees such as Supervisory Special Agent Dr. Frederic Whitehurst (crime lab scandal), Special Agent Jane Turner (theft from Ground Zero), Sibel Edmonds (translation scandal) and Unit Chief John Roberts (OPR misconduct).

EXHIBIT 1

DCI AWARD

[APPROVED BY DIRECTOR OF CENTRAL
INTELLIGENCE AGENCY, 11.30.94]

RUC-11.2004 9:43PM

ORIGINAL ~~SECRET~~

RECOMMENDATION FOR INTELLIGENCE COMMUNITY AWARD

(Submit 15 copies with description of performance or service warranting award; this profile; and unclassified citation)

1. NAME OF PERSON RECOMMENDED (Last, First, Middle)		2. SOCIAL SECURITY NO.	3. GRADE/RANK
YOUSSEF, BASSEM			GS-13
4. YOB	5. PARENT ORGANIZATION	6. TITLE/PLACE OF ASSIGNMENT DURING AWARD PERIOD	
1958	FBI	SPECIAL AGENT LOS ANGELES	
7. RECOMMENDED AWARD <u>NIAA, page 2 - NO 17104</u>		8. INCLUSIVE DATES FOR WHICH RECOMMENDED	
NATIONAL INTELLIGENCE DISTINGUISHED SERVICE MEDAL SEE SLICK #19		JANUARY 1993 - APRIL 1994	
9. IF RETIRING, DATE OF RETIREMENT		10. HOME ADDRESS	11. TELEPHONE
N/A		P.O. BOX 241071 LOS ANGELES, 90024	OFFICE 310-477-656 HOME 818-545-903
12. HAS NOMINEE RECEIVED OR BEEN RECOMMENDED FOR ANOTHER AWARD FOR THIS SERVICE OR ACT?			
Yes: ☒ No: ☐ Indicate award: <u>OSI</u>			
13. TITLE AND SIGNATURE OF INDIVIDUAL MAKING RECOMMENDATION		14. DATE	
COREY W. HART, SUPERVISORY SPECIAL AGENT, LAFO <i>Edward J. Curran</i>		8/17/94	
15. TITLE AND SIGNATURE OF HEAD OF INTELLIGENCE ORGANIZATION MAKING RECOMMENDATION		16. DATE	
ROBERT M. BRYANT, ASSISTANT DIRECTOR, NATIONAL SECURITY DIVISION <i>Robert M. Bryant</i>		10/14/94	
17. TITLE AND SIGNATURE OF HEAD OF PARENT ORGANIZATION (If other than recommender)		18. DATE	
<i>John Ford</i>		10/14/94	
19. REPORT OF INTELLIGENCE COMMUNITY AWARDS REVIEW PANEL			
The Intelligence Community Awards Review Panel, having considered the foregoing recommendation of:			
08 NOV 1994			
☐ recommendation approved ☐ does not recommend approval ☒ recommends award of <u>National Intelligence Certificate</u> <u>of Distinction</u>			
THE RECOMMENDATION IN SECTION 19 IS APPROVED:			
<i>W.O. Anderson</i>		W.O. Anderson	
DIRECTOR OF CENTRAL INTELLIGENCE		11/30/94	
FORM 4239 PREVIOUS EDITIONS		BEST COPY	

DATE: 8/9/04
 CLASSIFIED BY: 60611uc/11/3/2029
 REASON: 1.4(C)
 DECLASSIFY ON: 8/9/2029
 03-220

SEE ADDENDUM(INTD) PAGE(S) 2

ALL INFORMATION CONTAINED
 HEREIN IS UNCLASSIFIED EXCEPT
 WHERE SHOWN OTHERWISE.

~~SECRET~~

000004576

AUG 11 2004 9:45AM

NO. 599 P. 3

Airtel from SAC, Los Angeles to Director, FBI, dated 5/4/94
 Re: INTELLIGENCE COMMUNITY AWARDS PROGRAM (ICARP)
 FOREIGN COUNTERINTELLIGENCE (FCI) PROGRAM

ADDENDUM: NATIONAL SECURITY DIVISION (NSD) RAP/rap, 10/13/94

By airtel dated 5/4/94, SAC Los Angeles nominated Special Agent (SA) Bassem Youssef for the National Intelligence Distinguished Service Medal.

Upon review of Los Angeles' ICARP nomination, the NSD recommends that the National Intelligence Medal of Achievement (NIMOA) be awarded to SA Bassem Youssef. The NIMOA award more appropriately recognizes SA Youssef's meritorious conduct in the performance of outstanding service to the Intelligence Community.

APPROVED:	_____	Laboratory	_____	Off. of EEO
	_____	Legal Counsel	_____	Att. Gen.
	_____	Intelligence	_____	Off. of Public
	_____	Personnel	_____	& Comm. Affs.
	_____	Info. Sys.	_____	
Director	_____	Inspection	_____	
Deputy Director	_____		_____	

SECRET

AUG 11 2004 9:45AM

NO. 593 P. 4

~~SECRET~~

This communication is classified "Secret" in its entirety.

Due to his Middle Eastern background and his inherent knowledge of that region's traditions, customs, and languages, Special Agent (SA) YOUSSEF has on a daily basis assisted other SAs with interviews of Arab individuals as well as reviews of Arabic language documents which greatly contribute to the efficacy of these International Terrorism (IT) investigations. Also SA YOUSSEF has assisted other field divisions with similar needs, and in one instance, assisted FBI Minneapolis with the interview of a potential drug source and was subsequently commended in writing by SAC, Minneapolis. During the past year,

and countries, and apprising appropriate FBI offices of their presence. In connection with these investigations SA YOUSSEF has submitted two FISA court applications to FBIHQ, which has resulted in

In order to achieve these results, SA YOUSSEF has worked diligently and dedicated long and irregular hours beyond what is normally required to achieve these accomplishments to date. Also, SA YOUSSEF is routinely contacted by supervisors and analysts at FBIHQ as well as field agents in other offices in order to gain his insight into these important and sometimes complex investigations.

On several occasions, SA YOUSSEF has conducted briefings to senior representatives of the Los Angeles Police Department, Los Angeles Sheriff's Department, and U.S. Secret Service, all of whom have personnel assigned to the Los Angeles Task Force on Terrorism and are periodically briefed regarding significant investigations. Also, during February, 1994,

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AUG 11 2004 9:46AM

NO. 599 P. 5

~~SECRET~~

SA YOUSSEF attended an international terrorism in-service comprised of approximately 150 Special Agents, and at this meeting presented a lecture regarding the IG which was the primary focus of the in-service. In both these instances SA YOUSSEF's briefings were very informative and of great benefit to the audience in understanding what is now seen as the latest international terrorist threat to U.S. interests here and abroad.

in the U.S. Also, SA YOUSSEF has used creative efforts to develop valuable sources, and one such example is his success through much effort, and work hours, and

[REDACTED]

afternoon, his contacts with asset have provided valuable intelligence information regarding the IG on a timely basis. In furtherance of this sensitive operation oftentimes SA YOUSSEF has been required to work late into the night and/or early morning in order to establish contact with asset who is located [REDACTED] His perseverance and creativity during the conduct of this operation to date are very noteworthy and supported by FBIHQ in addition to the FBI Los Angeles management hierarchy. (S)

Due to his continuous, conscientious, innovative and resourceful efforts, SA YOUSSEF is recommended for consideration for the National Intelligence Distinguished Service Medal.

~~SECRET~~

000004570

AUG 11 2004 9:49AM

NO. 599

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On one such case he has attempted to

and perseverance during the conduct of this complex, international operation have been very noteworthy and deserving of special recognition due to his constant resourceful efforts in support of the FBI's primary counterterrorism mission of preventing acts of terrorism.

~~SECRET~~

EXHIBIT 2

INSPECTION OF BASSEM YOUSSEF'S
PERFORMANCE AS RIYADH LEGAT,
1997-2000

[EXCERPTS FROM FBI INSPECTION REPORT]

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UNCLASSIFIED

INSPECTION SUMMARY

The Office of Legat, Riyadh, became operational on 02/28/1997, as a result of the November 1995 and June 1996 bombings in Riyadh and Dhahran, Saudi Arabia. Previously, Legat, Rome, had territorial responsibilities for Saudi Arabia and the Persian Gulf region. Initially, Saudi Arabia was the only country within Legat, Riyadh's, territorial responsibility, however, due to the proximity and the need for continuity in Legat coverage for the contiguous Gulf States, the countries of the United Arab Emirates (UAE), Kuwait, Oman, Yemen, Bahrain, and Qatar were reassigned to the Legat.

There was an on-board compliment of one Legat, one ALAT, and one Office Assistant (OA). Management and operations were effective and efficient, however, reasonable and measurable goals and objectives had not been documented. Adequate training was afforded host countries' law enforcement entities and Legat personnel.

Although the workload in Riyadh alone justified their presence full time, representatives throughout the Gulf Region believed that visits by the Legat and ALAT were too infrequent. By agreement with the U.S. Ambassador and [REDACTED] A

The Legat did not [REDACTED] investigative programs were ranked as follows: NFIP-TT, WCCP, and VCMOP. The Legat did not conduct any investigations in the NIPCIP, DOMTERR Program, CRP, and the OC/DP.

The Legat's primary investigative focus had been directed towards the solution of the Khobar Towers bombing. Additionally, based upon Bin Laden's reported involvement in the planning of the East Africa bombings, the Legat had been preoccupied with Bin Laden's current status and whereabouts. Although all funds were accounted for, a deficiency was noted in the Field Support Account (FSA).

UNCLASSIFIED

- 2 -

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DOJ007631

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UNCLASSIFIED

EXECUTIVE MANAGEMENT

Legat Youssef opened Legat, Riyadh, on 02/28/1997, and served as the Legat throughout the inspection period. He was initially responsible only for Saudi Arabia, but soon recognized the need for continuity in Legat coverage for the contiguous Gulf States, including the UAE, Kuwait, Oman, Yemen, Bahrain, and Qatar. As a result of his insights and initiative, these countries were reassigned from Legat, Rome, to Legat, Riyadh. Prior to his assignment in Riyadh, Legat Youssef served as an SA in the St. Louis and Los Angeles Divisions, where he specialized in terrorism matters. He served in a TDY capacity in Rome, Brussels, and Paris, which assisted in preparing him for this assignment. Legat Youssef directly supervised an ALAT and an OA, and was responsible for the development of liaison with government, intelligence, and law enforcement entities within the Legat territory. In establishing an excellent relationship with the Mabathith, the Saudi Arabian counterpart of the FBI. Of particular significance, was the unprecedented visit to the U.S. Embassy by the Director of Liaison for the Mabathith, at the invitation of Legat Youssef. This was accomplished within three months of assuming his post.

He developed an organizational structure for the office, established administrative and operational controls and procedures, and provided adequate administrative oversight and direction to the other assigned personnel. He provided guidance and training to the numerous TDY SAs assigned to the office, as well as to the newly assigned ALAT. He was a member of the Emergency Action Committee and the Counterintelligence Working Group, and also attended weekly staff meetings and Country Team meetings. The Legat or ALAT attended bi-monthly Force Protection meetings to discuss issues concerning the security of armed forces personnel.

The Deputy Chief of Mission in Riyadh, Albert Thibault, Jr., stated that Legat Youssef had done a great job, possessed excellent interpersonal skills, and was very reasonable. His subordinates described him as having an open-door policy, and as a responsive and hands-on manager.

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- 5 -

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DOJ007634

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countries. In particular, relations with embassy personnel in Yemen were found to be strained and ineffective as the result of the lack of a presence by Legat personnel. The inspection further noted that operations would have benefited from a division of responsibilities between the Legat and ALAT. The inspection noted some difficulties experienced by the Legat were the result of overextension of geographic responsibilities, and operations would have benefitted by reassignment of certain countries to other Legats. The inspection noted operations would have benefitted from visits to the embassies in the Legat territory by FBIHQ personnel. While FBIHQ personnel had visited Riyadh, Saudi Arabia, these visits were related to specific case matters, including the KHOBOMB investigation, and were not related to a review of Legat operations. The Inspector made recommendations regarding these matters to the Legat, Riyadh, and Investigative Support Division (ISD-HQ).

The inspection found that the efficiency of the Legat operations was adversely affected by inadequate office space which was not located in a Controlled Access Area (CAA). Plans were underway to move to new space, but these efforts had taken an inordinate amount of time, and no date for relocation was scheduled at the time of the inspection. The Inspector recommended that the Legat and ISD-HQ aggressively pursue efforts to secure suitable office space for the Legat.

The inspection noted that a Technical Security Countermeasures (TSCM) inspection had not been conducted for over two years. One of the reasons cited for the delay was the anticipated move to new office space in a CAA. A TSCM inspection had been conducted in May 1999. The Inspector provided the Legat with a routing slip setting forth the need for annual TSCM inspections.

LIAISON

Liaison contacts within the local police and security forces were noteworthy in Saudi Arabia. By agreement with the U.S. Ambassador and [REDACTED] (S) A the Legat, Riyadh, [REDACTED] (S) in host countries during the inspection period.

The liaison contacts were extensive and well documented. The Legat, Riyadh, maintained contact with law enforcement and security representatives within each of his assigned countries. Those contacts consisted of representatives from the Mabahiith, Saudi Arabia; [REDACTED] C

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- 9 -

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DOJ007638

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[REDACTED]
 [REDACTED] The Legat's primary liaison contact was with the Mabahith and the NASS in Riyadh, Saudi Arabia. The Legat, Riyadh, had limited contact with the [REDACTED] This was determined to be the [REDACTED] The Legat, Riyadh, offered training to each of the police and security organizations within its territory. Law enforcement officials from Bahrain, Kuwait, Oman, and Saudi Arabia received training from the Legat office, consisting of counterterrorism, WCC, money laundering, major case management, and interview and interrogation.

Representatives from various police forces confirmed that a positive working relationship existed with Legat, Riyadh. The Mabahith cited several instances in which investigative assistance had been rendered by Legat, Riyadh.

As a result of the Khobar Towers bombing, the relationship between the FBI and Mabahith improved tremendously. General Al-Huwairini commented that

The Director of Liaison for the Government of Oman stated that the level of cooperation between Legat, Riyadh, and his government was excellent, and that his government would like to establish direct contact with the Legat, rather than having to interface with the RSO. The Undersecretary of the Ministry of Interior, UAE, also expressed a preference to have direct contact with the FBI. He commented that the FBI did a very good job in the region.

Sheikh Mahdi Al-Jarrah Al-Sabbaah, Director of the KSS, characterized his relationship with the FBI as "strong" and

The Sheikh considered the FBI to be partners with the KSS. He prominently displayed a photograph of himself, the Minister of the Interior Mohammed Al-Sabaah and Director Freeh.

Lieutenant Colonel Saad Mohammadi of the Qatari SSI described the relationship between the SSI and the Legat, Riyadh, as excellent. He noted that Legat, Riyadh, had arranged for two officers from the SSI to attend the NA, but they were unable to pass the physical

UNCLASSIFIED

- 10 -

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DOJ007639

EXHIBIT 3

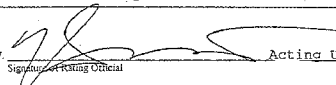
2000 PERFORMANCE APPRAISAL REPORT
FOR BASSEM YOUSSEF

FD-728 (Rev. 10-27-99) Case 1:03-cv-01551-CKK-AK Document 82 Filed 03/13/2006 Page 1 of 9

Federal Bureau of Investigation
Performance Management System - Special Agent and Support Personnel
Performance Appraisal Report - Cover Page

(See Instructional Page of FD-728 - Cover Page)

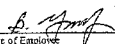
1. Payroll Name of Employee Bassem Youssef	2. Social Security Number 549-31-8219
3. Position Title, Grade and Number Supervisory Special Agent (Legat) 1811-15-78-15-714	4. Office of Assignment and Cost Code Legat Riyadh
5. General Nature of Assignment Legal Attache	

6. Summary Rating
Exceptional7.  Acting Unit Chief Walter P. Smith 4/10/00
Signature of Acting Official Name (Typed or Printed) Date

I have reviewed and approved this appraisal. () See my comments attached.

8.  Section Chief Thomas C. Knowles 4/10/00
Signature of Reviewing Official Name (Typed or Printed) Date

I am aware that a rating of less than Fully Successful (FS) on any critical element may preclude me from consideration for promotion and/or transfer. In addition, I am aware that my Summary Rating, if below the FS level, will preclude my consideration for a within-grade increase and that a Summary Rating of Unacceptable may be the basis for my reassignment, reduction in grade, or removal. My signature only indicates that I have reviewed this appraisal, not that I am necessarily in agreement with the information herein or that I am relinquishing my right to request reconsideration of it.

9.  5/3/2000
Signature of Employee Date Presented for Signature

10. Basis/Reason for Issuance A ☒ End of Annual Period T ☐ Position Change Date _____ N ☐ Current Appraisal Date _____ Q ☐ Requested by FBIHQ Date _____ D ☐ Conclusion of Detail Date _____ W ☐ Unacceptable - Warning Date _____ F ☐ Warning Resolution Date _____	11. Field/FBIHQ Division Use Entered into BPMS - By _____ (Initials) On _____ (Date) Date of Plan _____	PRAU USE ONLY Logged _____ Reviewed _____ Entered _____ Verified _____ Printout _____
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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11/22/01 BY 60324 JRS

Federal Bureau of Investigation
Performance Management System - Special Agent and Support Personnel
Performance Appraisal Report - Narrative Page

[See Instructional Page of FD-723b - Narrative Page]

1. Payroll Name of Employee Bassem Youssef	2. Social Security Number 549-31-8219
3. Critical Element # <u>1</u> . (Include specific examples of positive/negative performance. Such examples should include references to particular assignments, dates, time frames, and quality of work.)	

Management of Liaison Program:

During the rating period, LEGAT Youssef has continued to build strong liaison with the Saudi Mabahith, which was initiated by LEGAT upon the official establishment of the Legat Office in 1997. This has resulted in the Mabahith extending a second invitation, in April 1999, for the WFO KHOBOMB team to conduct the highly controversial and nearly impossible access [redacted] to the KHOBOMB suspects detained in Saudi Arabia. Prior to Director Freeh's visit, LEGAT Youssef was tasked to approach the Mabahith in an effort to determine whether or not the Saudi Government would be willing to grant the FBI direct access (face to face interview) to two (2) of the KHOBOMB detainees. LEGAT was able to receive an unofficial okay from Prince Naif Bin Abdul Aziz, Saudi Arabia's Minister Of Interior (MOI). This was followed by Director Freeh's visit to Saudi Arabia on February 20, 2000. This visit was characterized by the Director as a "highly successful" visit. LEGAT Youssef was able to facilitate meetings with the King, Crown Prince, and the Minister of Interior, which were all highly successful meetings. H

On March 1, 2000, LEGAT Youssef coordinated the unprecedented meeting between Director Freeh and Prince Mohammad Bin Naif, Assistant MOI. During that meeting, Prince Mohammad carried a message from his father (Prince Naif) advising that the Saudi Government has agreed to grant the FBI direct face to face interviews of not just two (2) of the detainees, but all six (6). Granting the FBI such a request is directly related to the exceptionally strong liaison affected by LEGAT Youssef.

LEGAT Youssef has continued to build and nurture strong liaison with other key foreign law enforcement officials in the Gulf region. Director of the Kuwait State Security (KSS), Director of the Kuwait Criminal Investigative Directorate (CID), Directors of the Omani Internal Security Service (ISS) and Royal Oman Police (ROP), Director General of the Dubai Police, Director of the Bahrain Security and Intelligence Service (BSIS), and Bahrain CID, to name a few.

Riyadh's Inspection report has mentioned that "In addition to establishing excellent relationship with the Saudi Mabahith, LEGAT Youssef developed an impressive liaison base of prominent law enforcement officials in the Legat territory."

EXHIBIT 4

JANUARY 7, 2007
PERFORMANCE APPRAISAL REPORT FOR
BASSEM YOUSSEF

APR-17-2007 12:54

CAU

202 324 3838 P.05

FD-125.1 (Rev. 06-01-2006)

Page 1 of 3

Federal Bureau of Investigation
Performance Appraisal System — Special Agent and Support Personnel
Performance Appraisal Report — Cover Page

See Instructional Page of () — Cover Page

1. Payroll Name of Employee Bassem Youssef		2. Social Security Number 549-31-8219	
3. Position Title, Grade and Number Unit Chief GS-15		4. Office of Assignment and Cost Code Communications Analysis Unit / 3227	
5. Type of Appraisal: A ☒ Annual Date: 12/29/2006 N ☐ Interim Date: _____		6. Summary Rating: ☐ Unacceptable ☐ Minimally Successful ☐ Successful ☒ Excellent ☐ Outstanding	

7. Signature of Rating Official	Name (Typed or Printed)	Date
8. Signature of Reviewing Official	Name (Typed or Printed)	Date

I am aware that a rating of Unacceptable will preclude me from consideration for promotion, transfer, and/or a within-grade increase and may be the basis for my reassignment, reduction in grade, or removal. My signature only indicates that I have reviewed this appraisal, not that I am necessarily in agreement with the information herein or that I am relinquishing my right to request reconsideration of it.

9. Signature of Employee	Date
<i>[Signature]</i>	12/29/06

10. Field/BIHQ Division Use — Entered into BPMS	PRAU USE ONLY:
By: _____	Logged: _____
On: _____	Reviewed: _____
Date of Plan: _____	Entered: _____
Plan Renewal Date: _____	Verified: _____

EMPLOYEE'S PERSONNEL FILE NUMBER: 067-0891649

APR-17-2007 12:55

CAU

202 324 3838 P.05

FD-726.2 (Rev. 06-01-2006)

Page 2 of 3

Federal Bureau of Investigation
Performance Appraisal System — Special Agent and Support Personnel
Performance Appraisal Report — Evaluation Page

1. Payroll Name of Employee Bassem Youssef	2. Social Security Number 549-31-8219
---	--

Critical Element	Rating Level					Numeric Value
	Unacceptable (1)	Minimally Successful (2)	Successful (3)	Excellent (4)	Outstanding (5)	
1. Investigating, Decision Making, and Analyzing	☐	☐	☐	☐	☒	5
2. Organizing, Planning, and Coordinating	☐	☐	☐	☒	☐	4
3. Relating with Others and Providing Professional Service	☐	☐	☐	☒	☐	4
4. Acquiring, Applying, and Sharing Job Knowledge	☐	☐	☒	☐	☐	4
5. Maintaining High Professional Standards	☐	☐	☐	☐	☒	5
6. Communicating Orally and in Writing	☐	☐	☐	☐	☒	5
7. Achieving Results	☐	☐	☐	☐	☐	N/A
	☐	☐	☐	☐	☐	
	☐	☐	☐	☐	☐	
	☐	☐	☐	☐	☐	
	☐	☐	☐	☐	☐	
	☐	☐	☐	☐	☐	
	☐	☐	☐	☐	☐	
	☐	☐	☐	☐	☐	

Sum of Numeric Values: 27

Number of Critical Elements: 6

= 4.5

AFR-17-2007 12:55 CAU

202 324 3838 P.07

FD-728.4 (06-01-2006)

Page 3 of 3

Federal Bureau of Investigation
 Performance Appraisal System—Special Agent and Support Personnel
 Performance Appraisal Report—Overall Summary Rating Narrative Page

1. Payroll Name of Employee Basseem Youssef	2. Social Security Number 549-31-8219
--	--

Overall Summary Rating Narrative:

Unit Chief (UC) Basseem Youssef has performed in an overall excellent manner. His decision making, oral communication and ability to maintain a high level of professionalism during extreme operational circumstances have been outstanding. UC Youssef is the senior UC in the Section and handles the Section's Front Office duties in the absence of the Section Chief and Assistant Section Chief. When called upon, he has handled these duties with a high level of responsiveness and professionalism.

TOTAL P.07

EXHIBIT 5

JOSEPH BILLY EMAIL TO BASSEM YOUSSEF
JANUARY 31, 2007

YOUSSEF, BASSEM (CTD) (FBI)

From: YOUSSEF, BASSEM (CTD) (FBI)
Sent: Thursday, February 01, 2007 6:59 AM
To: BILLY, JOSEPH (CTD) (FBI)
Cc: FRAHM, CHARLES E (CTD) (FBI)
Subject: RE: Subpoenas for telephone number requests connected to DT investigations

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Thank you for the very kind and encouraging words. We will always try our best to serve and make a difference. God bless you in all you do.

Regards,

Bassem Youssef
Chief
Communications Analysis Unit
Communications Exploitation Section
CTD
(202)324-7187

-----Original Message-----
From: BILLY, JOSEPH (CTD) (FBI)
Sent: Wednesday, January 31, 2007 6:14 PM
To: YOUSSEF, BASSEM (CTD) (FBI)
Cc: FRAHM, CHARLES E (CTD) (FBI)
Subject: FW: Subpoenas for telephone number requests connected to DT investigations

SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Bassem- thankyou for all your efforts to ensure CTD is totally compliant. I very much appreciate all you are doing.
 Joe

EXHIBIT 6

BASSEM YOUSSEF HOUSE SUBCOMMITTEE
TESTIMONY LETTER

MAY-13-2008 12:13

202 324 3367 P.02/03



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535-0001

May 13, 2008

Stephen Kohn, Esq.
3233 P Street, NW
Washington, D.C. 20007-2756

Re: Testimony before the House Subcommittee on Crime,
Terrorism, and Homeland Security

Dear Mr. Kohn,

This letter is in response to your May 12, 2008, request for approval for your client, Bassem Youssef, to speak before the House Subcommittee on Crime, Terrorism, and Homeland Security, on May 21, 2008, pursuant to the Federal Bureau of Investigation's (FBI) Prepublication Review Policy (PRP) (Manual of Administrative Operations and Procedures, Part I, 1-24).

Your request to testify is formally approved. However, please be advised that any discussion of matters relating to your period of employment with the FBI may involve pending cases, grand jury, classified, and other information, the disclosure of which could violate criminal laws or Department of Justice or FBI policy. In addition, please be advised that the FBI will not approve the disclosure of:

- A. Information protected from agency disclosure by the Privacy Act;
- B. Information that is classified or the disclosure of which could otherwise harm national security;
- C. Information that reveals sensitive law enforcement, intelligence, or counterintelligence techniques, sources or methods; or that reveals the sensitive, confidential, or proprietary techniques, sources, or methods of other agencies or governmental entities;
- D. Information that would reveal grand jury material protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure;
- E. Information that would reveal the identity of a confidential source or informant;
- F. Information that relates to any sensitive operational details or the substantive merits of any ongoing or open investigation, inquest, probe, prosecution, appeal, or case;

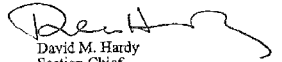
MAY-13-2009 12:13

202 324 3367 P.03/03

- G. Information that consists of the proprietary information of another, including trade secrets;
- H. Information pertaining to wiretaps or intercepts protected or regulated by Title III (Title 18, U.S.C., Sections 2510-2520);
- I. Information pertaining to currency transaction reports regulated or protected by Title 31, U.S.C., Section 5319;
- J. Tax return information regulated or protected by Title 26, U.S.C., Section 6103;
- K. Information pertaining to contractor bids or proposals or source-selection information before the award of the procurement contract to which the information relates;
- L. Information protected from disclosure by any other federal statute or regulation; or,
- M. Information exempt from disclosure under the Freedom of Information Act (Title 5, U.S.C. Section 552) unless the material is clearly already in the public domain." (MAOP, Part I, 1-24(5)(a)1.)

Should you have any questions, please contact Kay Williams at (202) 324-5518.

Sincerely,


David M. Hardy
Section Chief
Record/Information
Dissemination Section (RIDS)
Records Management Division (RMD)

Mr. SCOTT. Thank you very much. Thank you both for your testimony. We will have questions now from the panel.

I recognize myself first for 5 minutes and just ask both of you to briefly comment on, how can we tell the difference between a bona fide whistleblower and someone who is just a disgruntled or incompetent employee or if there is just a good faith disagreement over policy?

Mr. GERMAN. I think a very quick investigation would reveal that pretty easily. I mean, that was one of the very frustrating things about my complaint is that everything was very well documented when I made the complaint. And you know, in the first 3 or 4 months when things weren't going the way I thought they would, I was really confused until I found out that the managers involved were actually falsifying documents and, you know, saying that this particular meeting had never been recorded.

Well, I had a copy of the transcript of that meeting. So I went up to Washington, D.C. to meet with the IG and OPR and show them the transcript of the meeting that these FBI supervisors were saying didn't exist. And yet that still didn't change their opinion on whether to open an investigation. And in fact, in that meeting they told me that they called down to the Tampa field office to tell them that I had a copy of the transcript, which of course made things worse for me, not better. Rather than doing an investigation to find out—you know, now you have two problems, the failure of a terrorism investigation and FBI managers falsifying records. But yet there wasn't an interest in pursuing that investigation.

And you know, I just feel like and particularly as a former investigator, it is pretty easy to tell, you know, you follow the evidence.

Mr. YOUSSEF. Chairman Scott, I will echo the sentiments in what Mr. German mentioned here. However, one added thing that would be very simple is to look again at the performance appraisals, to look and to see if there is anything in the whistleblower's records that would show maybe there was an issue before and they are trying to maybe deflect it. If there isn't anything like that, especially if you look at a stellar career—I am not talking about either one of us here. I am saying any whistleblower—you would see that it becomes totally unprompted and all of a sudden almost a situation where the agency turns on the individual.

Mr. SCOTT. How can we tell whether there is just a few bad apples, that this is an isolated incident as opposed to a situation where there is an expectation that you would look the other way when you see wrongdoing?

Mr. GERMAN. I would think the repetition of whistleblowers that come forward and report retaliation would show that this is not simply an isolated incident and in fact is part of a larger culture within the FBI. And you know, I think it is as simple as just going to the Inspector General's Web page and reading the many reports. Pick the topic of your choice, whether it is national security letters or the FBI's involvement in detainee abuse or the FBI's mismanagement of confidential funds, to reveal that there are serious problems within the FBI. And you know, it can't be that there are all these very dedicated employees who simply don't want to tell Congress that these problems exist.

Mr. YOUSSEF. In my specific case, former Director Louis Freeh was deposed regarding my situation, and he specifically in his deposition said that I should be utilized in effecting and continuing liaison that I started with the Saudi Arabian Government when I was the first legal attache. Yet what happened from inside the FBI and the current administration of the FBI was that I was blocked from any contact with any Government officials. I believe that is one tell-tale sign.

Senator Grassley when he was here, he testified that the fact that he has asked for e-mail traffic a year ago and the FBI still refused to comply with that. Those e-mails would again tell an incredible story.

Mr. SCOTT. Exactly what kind of protections would you need to have effective whistleblowing?

Mr. YOUSSEF. I believe that when the bill first came out earlier, I believe it was this year, an e-mail went out from the Office of Legal Counsel in the FBI saying that there will be no retaliation against whistleblowers. Everyone is mandated to actually watch a video to show that you cannot retaliate against whistleblowers. Yet within 2 months after that, comments are being said about me behind my back and even to my face at a unit chiefs' meeting where the issue of whistleblowers comes up. And one individual said, whistleblowers, hang 'em. And I was in the room. And everyone knew where I stand on this issue. I felt compelled to send an e-mail to the Director's Office and to my boss, the Deputy Assistant Director, explaining exactly what happened at this meeting and saying that if we are serious about protecting whistleblowers that something has to be done about comments like that because they are extremely alarming.

What ended up happening is 2 weeks later that individual was honored with a birthday party for making these comments. So I probably have not answered your question, Chairman Scott, but it is a pretty serious situation there.

Mr. GERMAN. And I would suggest that H.R. 985 has some very good protections built into it but—I mean to sort of shorten it down to giving the FBI agent an opportunity to get into court. You know, the problem is this is a very closed system. So there was no sort of reasonable person that didn't have an interest in protecting the Department of Justice involved in looking at my complaint. So once things had gone sour, it was very difficult to have this land on somebody's desk to take a fresh look at and an objective view of what had transpired.

Mr. SCOTT. And should we be concerned about national security if we encourage whistleblowers within national security organizations, FBI and other law enforcement agencies?

Mr. YOUSSEF. Absolutely, sir. I believe that there are avenues, maybe in a closed session, in a classified session to bring out the issues that are at hand and there should be no issue in terms of saying, this is classified, we can't discuss it.

Mr. GERMAN. And I would just second that you know FBI agents are very concerned about national security. That is how they spend their time and what they are interested in. The last thing they want to do, if you talk to an FBI agent, is to be in front of Congress testifying. They want to keep this in-house. And it is the inability

to receive any sort of protections that compel agents to try to find somebody either in Congress or in the courts to correct the situation.

Mr. SCOTT. Or in the press?

Mr. GERMAN. Or the press. And if there were avenues and protections that worked for them to report to responsible officials, I think that would be something that would protect information better than—

Mr. SCOTT. And is an Inspector General insufficient?

Mr. GERMAN. I believe if you look at the history of my case, you will see that the Inspector General's Office's performance was insufficient, greatly insufficient.

Mr. SCOTT. Thank you.

The gentleman from Texas.

Mr. GOHMERT. Thank you, Chairman Scott. The testimony has raised a number of questions.

First of all, you have mentioned the e-mail, Mr. Youssef, about training for counterterrorism. You said you knew it wouldn't be effective because it was produced by your unit. Don't you make good videos?

Mr. YOUSSEF. We make a very good video, sir.

Mr. GOHMERT. But not adequate to train people in counterterrorism?

Mr. YOUSSEF. This specific video was for training on—exposing the viewer to certain tools within our section. And our section, the section that I work in, is a technical section. It doesn't deal with the actual operations of counterterrorism investigations.

Mr. GOHMERT. You mentioned that counterterrorism is at 62 percent, unable to keep agents in the unit. When we had Director Mueller in here, one of the things that I have been concerned about for some time is his 5-year up or out policy. Are you familiar with that?

Mr. YOUSSEF. Absolutely, sir.

Mr. GOHMERT. And the concern that I have and have had for some time has been the loss of—when he was here, I said hundreds of years but based on other information I have seen, apparently we have lost thousands of years of FBI experience. And of course that is the policy where if you are in the field as a supervisor, you can only be there 5 years to the day, and then you either come to Washington or you get demoted or you get out. And I appreciated the comment for the FBI spokesman in saying, yeah, they were just drawn out of the FBI because of all the money. And I know that is not right. There are too many people that wanted to stay in the FBI but were not going to come to Washington. And so sure, they could have made better money all along. But they wanted to serve their country and the FBI. And so I just know too many people past, present, who work for the FBI that I would trust with my life. But I am greatly concerned about the lack of experience that we had. And that was an issue that came up with the national security letter abuse when the IG report came back. And I heard Director Mueller in a press conference say he took the full responsibility. It was his job to make sure that there was adequate experience and training in those areas so these kind of abuses didn't happen. And obviously they have.

I would just like to ask you directly, you have mentioned someone saying, whistleblowers, hang 'em, and he got a birthday party. Do you mind telling me who that was?

Mr. YOUSSEF. Well, Congressman Gohmert, if you don't mind, I would just like to limit it to the fact that it was a unit chief of one of the other units without mentioning the name.

Mr. GOHMERT. So now we are going to have to go find out who had a birthday party after that one you mentioned to figure that out.

Mr. SCOTT. I think the gentleman might be more likely to give us his name in private rather than in a public hearing.

Mr. YOUSSEF. I certainly would be willing to do that. Thank you.

Mr. GOHMERT. In your testimony, you mentioned FBI agents. In the written testimony you submitted, you simply have adopted electronic surveillance practices from the criminal side of the Bureau into the counterterrorism side, and so I would like you to explain, are you talking about wiretaps, NSLs, warrantless surveillance? Can you specify more particularly?

Mr. YOUSSEF. Yes, sir.

I would like to just echo the concern of many agents within the Bureau about the comment you made, which is very astute, about the 5 year and out before I get into your question.

Mr. GOHMERT. In that regard, I can't help but wonder if that may be part of the 62 percent problem in counterterrorism. Some people that would be excellent just say, I am not going there. Do you know of another reason it is at 62 percent, why people are not willing to go into that unit?

Mr. YOUSSEF. Yes, sir. What is happening, when you have a team of agents who are very dedicated to do the best job they can to counter the threat, but they just simply don't have the experience, and they are supposed to be running the operations of the field, and there is a feeling of inadequacy that they don't know about the threats—they may come from a criminal background, a white-collar background, and that is where they thrive and know their business—and you throw them and literally draft them into a discipline they have not worked before, there is a sense of feeling this is not where I should be.

So you find that, first of all, if the executives themselves who are managing the entire section or the division are not where they should be in terms of the experience level that needs to be there for running these operations, you are going to see agents, analysts and other folks working in that division that are overworked because they are overassigned.

When you go after every single threat and look at it like it is the real deal, you will be spending an inordinate amount of time, not just time but personnel, resources, looking at a threat that maybe if you had the experience, you can tell in the first day or two that this is not a viable threat, and we need to move on to the next one.

Mr. GOHMERT. Good point.

Mr. YOUSSEF. This happens just about every weekend where folks are called in, and while they are waiting, they know this threat is not a real threat. There is a sense of discouragement. When these agents go back to the field, they tell others do not put

in for this division. So that is another reason for the lack of filling these positions.

Mr. GERMAN. May I just respond?

Mr. GOHMERT. Please.

Mr. GERMAN. The selection and the retention of FBI managers are just symptoms of a larger problem in the FBI's dysfunctional management system.

There have been a number of studies over the years of the FBI's management system. I am not sure that they ever saw the light of day, but I would encourage you to request those documents. They would be steps that actually showed what are the significant structural problems that cause not just these problems, but the other problems you see, problems that the IG reports so often bring out.

Mr. GOHMERT. We had a report discussed in a prior hearing about the software system, not just software, but that had to be scrapped, that cost about \$200 million or \$199 million, according to what we heard here today, and that was partly to blame on the inadequacy or the inconsistency of those working with the system because of the constant change of supervisors.

But you didn't get around to answering the question about what kind of surveillance, if you can answer.

Mr. YOUSSEF. Yes, sir. In my testimony I am speaking specifically of the utilization of national security letters and other legal-type instruments, such as subpoenas, excessively where there is no need to use them.

But I can also speak of certain examples that I was not directly involved in myself because I don't deal with FISA-type matters that I was aware of that came across my desk.

Mr. GOHMERT. Okay. Thank you. I realize my time has expired.

Mr. SCOTT. The gentleman from Michigan.

Mr. CONYERS. Thanks to everybody for what you are doing here today.

The Washington Post has a front-page article today that praises the FBI, at least from what I am reading, "Audit Finds FBI Reports on Detainee Abuse Ignored." There is considerable back-and-forth between the Department of Defense and the National Security Adviser about the FBI working scrupulously in this area. I think it reflects the fact that there are a lot of people at a lot of levels that are very concerned about it.

But today's hearing is one in which we find out that whistleblowers have literally no protection in the FBI, and that their criticisms are not only not processed, but are not welcomed, and that gets to the culture that you have both talked about and Senator Grassley did as well. And so we find that there are good things happening, and there are things that we have got to do to correct it.

We find that the abuses within the FBI's Counterterrorism Division might have more light shed on it if we could get ahold of some e-mails or correspondence that support and document both of your attempts to notify your superiors at the FBI. I don't think it is unreasonable to think that there are a number of other people that might come forward if they realized that whistleblowers are unpopular, they ought to be hung, as someone remarked in your presence. And so I would like you to both tell us a little bit about what

we might hope to find through these documents and e-mails that we are going to request very shortly.

Mr. YOUSSEF. I would like to start, Chairman Conyers, and thank you for the question.

The current IG investigation, which obviously I cannot discuss in this setting, or at least in detail, has just about every e-mail that I submitted and others that they have requested to conduct their investigation. And they have the entire picture.

I believe one of the reasons the FBI is reluctant to hand these over to Senator Grassley, who has asked for them in the past, is because they paint a very clear picture of the fact that when I was transferred to that unit, to the Communications Analysis Unit, within a very short period of time I began to realize that there were issues with the use of national security letters, and that I had actually gone to my superiors explaining to them that there is an issue here that we need to deal with.

I not just went to my superiors, but I went to the Office of General Counsel and explained to them the issue at hand. In fact, I called a meeting with the Operations Section, Section Chief, as well as Office of General Counsel saying this is going to kill us. We need to actually get the NSLs before we go and conduct a search.

Everyone agreed it is important, and they vowed to support our stance; however, nothing was done about the backlog. No offer of any type of solution to fix the backlog.

To give you, again, a backdrop of where I was, the section and division I am in, the previous Unit Chief before me who became the Assistant Section Chief, my immediate boss, comes from the criminal side of the house, worked drugs, and he was the one who approved the policy of using the exigent letters, but has never worked in counterterrorism before.

My boss's boss, the Section Chief, was the one responsible for the Mayfield investigation. This was a Portland investigation where we arrested an attorney, but he was the wrong individual, on a terrorism matter, and he was retained for several weeks.

My boss's boss's boss, the Deputy Assistant Director, admitted in depositions that he had absolutely no terrorism experience whatsoever, and that his counterterrorism experience as the DAD, or Deputy Assistant Director, is on-the-job training.

So it was very difficult to get them to maybe understand the magnitude of the problem. But I believe one other factor here is the fact that it is coming from me specifically, an already known whistleblower who has a known issue with the Bureau. So I was set aside basically.

Mr. CONYERS. How many letters and how many e-mails would we expect to have turned over to the Committee?

Mr. YOUSSEF. I believe there are hundreds.

Mr. CONYERS. It is in the hundreds.

Now, the national security letters themselves pose a big problem. When we caught them going out in huge amounts, and they were being sent out illegally, and the Director admitted that they were contrary, they were being used contrary to the law, and we thought and we hoped that they were stopped. I am beginning to wonder about what is going on over there these days.

Mr. YOUSSEF. Chairman Conyers, as I began to push for someone to do something about the NSLs around the time of 2005 and 2006, I have had numerous interactions with the Office of General Counsel.

In 2006, in mid-2006, there is an e-mail from an individual from general counsel that is actually giving us guidance, giving my unit guidance to continue to use the exigent letters and to start using them pronto. This is from the Office of General Counsel. These are the legal beagles. Anyone in operations would know just the framework of operations; but in terms of a legal instrument, they are the head honchos who would know what is right and what is wrong.

Mr. CONYERS. But are they being used legally or not? I don't mind the use of NSLs; we weren't trying to stop them from using them, we were trying to stop them from using them improperly.

Are you suggesting that that stop order is being ignored, or that they are being sent out willy-nilly?

Mr. YOUSSEF. I can't really comment on the frame of mind of the Office of Legal Counsel as to why they would issue such guidance.

Mr. CONYERS. Mr. Chairman, if I might just be able to indulge Attorney German for any responses that I have raised during my questioning. Thank you.

Mr. GERMAN. Well, I think, again, these are all symptoms. So much of what comes out, you know, in the few times we are able to peek behind the door is catastrophic, confusion between what the agents are doing on the ground and what management knows and is telling them. And the latest IG report that came out yesterday is an example of that.

Where the agents on the ground who are trying to do the best job they can are reporting up the chain of command that we are seeing things that don't seem right to us, that appear to be illegal, what do we do?

And as the IG report says, they were getting very little back, and there seemed to be at least some effort not to document what was happening.

In other words, one of the things that surprised me when I came over to the ACLU and looked at the documents that the ACLU had received through their Freedom of Information Act on the FBI's involvement on detainee issues were how many were in e-mail. E-mail is obviously not the primary mode of communication, and certainly not the official mode of communication in the FBI, so why are all of these very serious matters being discussed in e-mail?

There is one portion of the IG report where they discuss a situation where the Office of General Counsel asked some agents in Guantanamo to document the abuse that they were seeing. It says in the report that 6 months later they were given the authority to write the document. Well, obviously the abuse didn't stop in that 6 months, so why in the world would the FBI not allow that to be documented for that period of time?

Mr. CONYERS. Well, why are they using e-mail if you think it is probably not the best method to go about communicating?

Mr. GERMAN. Well, I think it is much easier for e-mail to disappear. In fact, in my investigation, in my complaint, I asked the IG to pull the e-mails because I believed that the agents, the super-

visors who were engaged in the retaliation were operating in a concerted fashion, and he refused. Or at least he didn't.

Mr. CONYERS. But there are some circumstances when the e-mails don't disappear, and that creates yet another problem when they are discovered.

Thank you, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Georgia.

Mr. JOHNSON. Mr. Chairman, I want to start by thanking you for holding this important hearing. This hearing is fundamental to the protections of the liberties that we enjoy in this country. I appreciate you and the Ranking Member, Judge Gohmert, for holding this hearing because we have certain rights that you gentlemen were sworn to protect, and you can be prosecuted for not protecting those rights. So when you do the job you have been sworn to do, and you point out illegalities, such as you, Mr. German, when calling attention to illegal wiretapping, and you, Mr. Youssef, in calling illegal attention to national security letters, it is very important to the protection of our liberties in this country that we have individuals who are as courageous as you both have been in being whistleblowers, people with superior knowledge who have the courage to reveal illegalities.

It is certainly a shame in terms of the FBI and other intelligence-gathering organizations, such as the CIA and all of the other, I think 19 additional intelligence-gathering organizations that exist, are not subject to the Federal Whistleblower Protection Act. You all are specifically excluded from the act. So that means that the Government can retaliate against you for fulfilling the duties that you have been sworn to uphold, and there appears to be no way of sanctioning the FBI if they don't use the information in court. So this is a very disturbing revelation or series of revelations that you all have testified to. I am disturbed about it very much.

I will ask Mr. Youssef, to what extent has the FBI utilized your extensive counterterrorism experience, language capabilities, successful liaison and cultural knowledge of the Middle East throughout your career with the agency?

Mr. YOUSSEF. Thank you, Congressman Johnson, for your comments.

Throughout my career, which started in March 1988, when the policy in the FBI at the time that a special agent being able to work counterterrorism or counterintelligence would have to have spent 5 years working nonintelligence matters because it was such a high and lofty discipline, I believe at the time I was thrown into that squad, terrorism squad, literally within 4 months because of my background as an individual who was born in Cairo, Egypt, and lived for 13 years there until I immigrated with my family to the United States. And the fact that I was a fluent Arabic speaker at a level 4, the Bureau utilized my background and my experience and talents extensively up until 9/11.

I was blessed by God to be able to recruit some highly sensitive sources that were instrumental in getting highly valuable intelligence.

Mr. JOHNSON. Let me stop you right there because there was a visible gasp when you said "up to 9/11." I would be remiss if I were not to follow up on that.

What was it about September 11, 2001, that resulted in your declining usage by the FBI?

Well, let me ask you, do you feel like it was discrimination based on your national identity? Do you feel like there was some hesitation by those within the FBI because they were suspicious of your heritage?

Mr. YOUSSEF. Sir, I will say that during my years of operations, field operations, I was working some highly sensitive investigations and recruited again some highly sensitive sources, to the point that my superiors in the field office suggested I use an undercover name as an FBI agent, not to use my name as Bassem Youssef as an FBI agent to protect my personal life from my meetings with sources and subjects, specifically Middle Eastern subjects.

In fact, I was approved by the Attorney General then to have different credentials and a different name, and very few people within the Bureau even knew my true name. The name was a Western name. When I went overseas to take the assignment of legal attache—

Mr. JOHNSON. This was prior to 9/11?

Mr. YOUSSEF. Yes. I began to use my true name in 1996 when I went to work the Khobar Towers investigation in Riyadh, Saudi Arabia, and became the legal attache for 4 years. When I came back, I was assigned to Langley, Virginia, in the National Counterterrorism Center. And somehow after 9/11, there was a confusion on my name with some other agent who had had some issues with the Bureau who also is of Egyptian background and had refused to wear a wire on a particular counterterrorism operation because of his religious beliefs. He was a Muslim and felt he would not want to be targeting another Muslim. Somehow that got stuck to me, and there is a mistaken identity of the name. If I would say it became comical several years later, at the time—

Mr. JOHNSON. Was it truly a mistake?

Mr. YOUSSEF. My name was mentioned in several circles as this is the individual, this is the agent who refused to wear a wire. It was ascribed to me again, the indiscretion of another agent who happened to have been in Riyadh following my tenure there.

At the time it was significant and sad, but years later it became comical when I found out that here the FBI is supposed to be following these terrorists with Middle Eastern names, and we can't get the names of two Arabic-speaking agents in the Bureau straight who are right there and not hiding under any bushes.

Mr. JOHNSON. Is it fair to say you would have been willing to wear a wire; you would not have had the same hesitation that the other Youssef had with respect to investigating Muslims?

Mr. YOUSSEF. The other gentleman's name was not Youssef. It was just another Middle Eastern name.

Mr. JOHNSON. That is even more egregious. So they hit you with a broad paintbrush, and everybody is the same if you are of Middle Eastern heritage?

Mr. YOUSSEF. Assuming, I guess, I am another Arab, that I was a Muslim, which I am not. I am a Christian. So that was also con-

fused. But I would say I have never, ever turned down an undercover assignment, and have worked extensively as an undercover agent because at that time I was the first and only agent of Egyptian background. And obviously if you need to infiltrate a group or assume the identity of an undercover agent, you must look the part and talk the talk and so on.

As a matter of fact, even when I left operations, field operations, and became a midlevel manager, there have been times when requests have come from field offices and even from headquarters asking me if I would be involved in undercover operations, and they would present me with the actual proposal on the undercover operations, saying to me—qualifying the fact that we know you are no longer in operations, but would you look at this operation because you are the only one who can do this, and I have accepted on each occasion. They are cases that you would actually know about from the papers, but obviously without mentioning my name.

Mr. JOHNSON. You are a certified Arabic-speaking FBI polygraph examiner; are you not?

Mr. YOUSSEF. I am.

Mr. JOHNSON. Have your skills been utilized by the FBI after the events of September 11, 2001?

Mr. YOUSSEF. Not once. As a matter of fact, a colleague of mine who went to polygraph school with me in the 1994-1995 time frame, we were sort of podmates, he mentioned to me 2 years after the September 11 attacks, we are looking at close to 500 Arabic-speaking individuals that we need to polygraph, and there is no native-speaking Arabic polygraph examiner to do it. In those cases, they were done through a surrogate translator.

If you talk with anyone in the very, very prestigious Department of Defense Polygraph Institute, where you actually go as an FBI agent to be saturated on polygraph matters, one of the best training that I have ever received in the Bureau, they will tell you that you always want to use a polygraph examiner who speaks the native tongue of the individual being polygraphed and not utilize a surrogate.

Mr. JOHNSON. Thank you.

Mr. Chairman, I am quite disturbed by this obvious gap in the ability to gather intelligence that would protect Americans from an attack. I am very disturbed. Thank you for allowing me to go over my time, sir.

Mr. SCOTT. Thank you for your questions.

The gentleman from Massachusetts.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Gentlemen, I want to also acknowledge your courage and thank you for your service. It is a service to this country, and you are to be applauded for that.

Mr. German, let me direct one question to you. In the Committee memorandum it indicates that you had found some serious problems with the campus division handling of the counterterrorism investigation, including Title 3 issues?

Mr. GERMAN. Right. There was an ongoing domestic terrorism investigation.

Mr. DELAHUNT. You reported that to your supervisor, and he asked you to ignore it?

Mr. GERMAN. Yes. He said, we are going to pretend it didn't happen.

Mr. DELAHUNT. It didn't happen.

Whatever happened to that supervisor?

Mr. GERMAN. He was promoted.

Mr. DELAHUNT. Thank you.

In 2006, the inspector general found that the FBI retaliated against you and actually falsified records related to this particular case; is that accurate?

Mr. GERMAN. That is accurate.

Mr. DELAHUNT. This is a finding of the inspector general that records of the FBI were falsified?

Mr. GERMAN. Yes.

Mr. DELAHUNT. Does that constitute a violation of the United States Criminal Code?

Mr. GERMAN. Yes, it does.

Mr. DELAHUNT. Have there been any criminal prosecutions as a result that you are aware of?

Mr. GERMAN. No. Neither the FBI nor the IG has identified who they said did it.

Mr. DELAHUNT. Is it true that an FBI spokesman went on television and said that you were full of hot air?

Mr. GERMAN. I don't remember that exact quote, but it is close. And they actually put out a press release saying what I said wasn't true.

Mr. DELAHUNT. Despite the findings of the inspector general?

Mr. GERMAN. Right.

Mr. DELAHUNT. And there has been no criminal prosecution?

Mr. GERMAN. Right.

Mr. DELAHUNT. Mr. Chairman, I would suggest by way of a letter from you and the Ranking Member to inquire as to why there has been no subsequent action against those who commit crimes, allegedly or purportedly would commit a crime.

Mr. SCOTT. If the gentleman would yield, I will confer with the Ranking Member about that letter. I think it is appropriate.

Mr. DELAHUNT. Mr. Chairman, I thank you.

I think it was you, Mr. German, that indicated that good information was coming from Guantanamo from the agents on the ground, so to speak.

Mr. GERMAN. What I meant was truthful information.

Mr. DELAHUNT. Yesterday I chaired a hearing. I chair the Oversight Committee on Foreign Affairs, and we had a rather extensive, expansive hearing on the treatment of detainees at Guantanamo, and I commended publicly the FBI for withdrawing and not participating in interrogations that potentially are violative of our international obligations under the conventions against torture, and the fact that field agents had that information and passed it up, and yet we now we have a new report indicating that the management level of the FBI could have done better. I find that disappointing.

I have great confidence in field agents. I find them hardworking, committed Americans that are there to serve their country. How do we solve this problem? You know, it is a major occasion here when we have an oversight hearing and get the Director before the Committee. I think it has happened twice in the last 7 years. We find

it as difficult as you do in terms of your frustration, getting the necessary information before us so that we can review the behavior of this very significant agency.

I am looking for some suggestions in terms of how do we provide protections to those field agents to come to this Committee, the Judiciary Committee, which has oversight jurisdiction of the FBI? Do you think it is possible to draft a concept paper for review by the Chairman and the Ranking Member that would provide protections for field agents to come directly to the U.S. Congress via this particular Committee and provide them full protection, confidentiality so that they can give us the realities of what is happening in terms of the significant national security and criminal investigations that are occurring in this country? Is that something that you think is worthy of consideration?

Mr. GERMAN. I think it absolutely is. I think it is your right to have this information, and it is their obligation to provide it to you.

Mr. DELAHUNT. I hope the two of you in conjunction with others would consider that.

The Chair of the full Committee Mr. Conyers left, but he raised the issue or alluded to e-mails. I want to pursue that just for a moment. Can you disclose the nature of those e-mails? I think the question was directed to you, Mr. Youssef.

Mr. YOUSSEF. Congressman Delahunt, I feel that I can't get into much detail about the e-mails or the substance of the e-mails because it is a pending inquiry with the Office of the Inspector General right now. But I can characterize them generically as, looking at them in chronology and substance, they will give a pretty accurate picture of why these abuses occurred, for one point.

Beyond that, I feel uncomfortable going into any more detail.

Mr. DELAHUNT. I respect that, and I would hope and I am sure that the Chair of the full Committee and the Chair of the Subcommittee, along with the appropriate Ranking Members would pursue this in an in camera proceeding, because it is important that this Committee has that information and make a determination after its receipt if it should be made public, because there is simply too much at stake here, and what is at stake is the efficient and effective operation of the Federal Bureau of Investigation and ensuring that employees are being treated with respect and dignity, and that the information that they have is processed in a way that protects the national interest, including the national security interests of this country.

With that I yield back the balance of my time.

Mr. YOUSSEF. If I may make one comment to that, sir. I believe that your dogged oversight will prime the system so that legitimate whistleblowers will be able to come forward because they will see that the current whistleblowers are being protected. However, the way that it is going on right now, the current state of affairs for what a whistleblower goes through inside the FBI, sends an extremely chilling message to anyone else in the Bureau who wants to come forward to explain what is really going on.

Mr. DELAHUNT. Mr. Chairman, Mr. Gohmert, I think it is very important that there be a thoughtful consideration of and an understanding between your Subcommittee and the full Committee with the Director of the FBI about protections for those who wish

to come forward to this Committee to provide us information which has been sorely lacking to this Committee over the past 8 years, and probably before that. I don't want to set any particular time frame. And I see that the judge Mr. Gohmert is preparing to ask for me to yield on that point.

I yield.

Mr. GOHMERT. The thought occurs to me, based on some of the things that we have heard here today, that perhaps it would be good to just invite FBI agents from time to time for a classified briefing and include in there people who may wish to come forward. So it is classified, it is secret. Because obviously if someone wants to come forward and talk to this Committee, that ends up being a record that can be established. I think there are ways to do that.

Mr. DELAHUNT. Whatever the Ranking Member says I am sure should be given careful consideration. I obviously defer to the Chairman, but we need to provide the kinds of protections necessary so that men and women like these two witnesses feel comfortable coming here and giving us information that we have not received in the past, and I am confident are not receiving now. We can't just simply rely on the inspector general to provide us this information. We have got to take a much more aggressive attitude.

I thank the Chair.

Mr. SCOTT. I thank you.

The gentleman's time has expired.

Any other comments?

Mr. GOHMERT. A couple of quick questions.

Mr. Youssef, talking about the Counterterrorism Unit, you indicated one of the problems also, they are not given adequate tools. Can you tell us quickly what tools they need? I think on both sides of the aisle we want to make sure that they have the tools that they need.

Mr. YOUSSEF. Thank you, sir.

I don't believe that the tools are necessarily financial or budgetary, even though that is always a concern. I believe the tools that are needed specifically for the Counterterrorism Division, agents and analysts is the appropriate training, the leadership that has experience to be able to run and direct the operations of the field and the rest of counterterrorism, language training; the very obvious assets that would be needed, for example, if you have agents in the field who have worked in the past and have had success in recruiting sources in a particular organization—

Mr. GOHMERT. Those agents have now gone to the private sector because of the 5 year up or out policy, but go ahead.

Mr. YOUSSEF. That is what we need to come back.

Mr. GOHMERT. I don't mean to be flippant, but time is short here. I would ask you to submit in writing after the hearing things to help the FBI, the Counterterrorism Unit, have what they need to do the job to protect America. Obviously there are an awful lot of very dedicated, incredibly adept FBI agents.

Another quick question. We have a different Attorney General from one who was in place during some of the time you mentioned. It appears to me General Mukasey is trying to do an admirable job

fighting for truth, justice and the American way. Do you have any information to the contrary?

Mr. YOUSSEF. No, sir, I don't know the Attorney General personally or in any other—

Mr. GOHMERT. Do you have any other information to the contrary?

Mr. YOUSSEF. No, sir. I was concerned that Attorney General Mukasey allowed the FBI to be involved in the inspector general's investigation. My understanding is if you are investigating a target of some sort, you don't involve them in the investigation. It should be an independent investigation. That was a concern of mine.

Mr. GOHMERT. Well, he may not have been aware of the concerns previously existing, but now certainly he will be.

Thank you.

Mr. SCOTT. Thank you.

I would like to thank our witnesses for their testimony today. Members may have additional written questions for our witnesses, which we will forward to you and ask you to answer as promptly as you can so the answers may be made part of the record.

Without objection, the hearing record will remain open for 1 week for submission of additional materials.

Without objection, the Subcommittee stands adjourned. Thank you very much.

[Whereupon, at 3:47 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

WASHINGTON
LEGISLATIVE OFFICE



June 13, 2008

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Ranking Member Louie Gohmert
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Dear Chairman Scott and Ranking Member Gohmert:

Thank you for the opportunity to testify before the Subcommittee on Crime, Terrorism, and Homeland Security hearing regarding the treatment of FBI whistleblowers. This letter responds to Ranking Member Gohmert's request for advice regarding what tools Congress could give the FBI to help it fulfill its counterterrorism mission. In my experience, and as my successful undercover cases demonstrated, the FBI had all the tools it needed to successfully investigate and infiltrate terrorist cells and prevent acts of terrorism through criminal prosecutions long before the attacks of September 11, 2001. The problem has never been with the tools Congress has given the FBI, but rather with the way the FBI handles those tools.

Though the 9/11 Commission criticized the FBI for favoring its criminal justice mission over its national security mission, not one of the ten failed "operational opportunities" identified in the report involved the failure of a law enforcement agent or law enforcement technique.¹ In fact, the FBI agents investigating acts of terrorism as criminal matters, as opposed to intelligence matters, began seeking information from the intelligence community about members of the al Qaeda cell responsible for 9/11 as early as November of 2000, causing one frustrated agent to warn just weeks before the attacks that "someday someone will die" because of the failure to share information with FBI criminal investigators.² Likewise, a federal prosecutor in Minneapolis told the 9/11 Commission that he believed the FBI agents investigating Zacarias Moussaoui had sufficient probable cause to obtain a criminal search warrant the first night of the investigation, and that he would have sought one if asked. Instead the agents submitted a request to FBI

headquarters seeking a foreign intelligence order from the Foreign Intelligence Surveillance Act. FBI supervisors and lawyers at headquarters thwarted this attempt, arguing the agents did not have enough evidence to seek a FISA order, but they all later admitted at a Senate Judiciary Committee hearing that they did not understand the legal standard necessary to demonstrate probable cause.³ In addition, five of the future hijackers had contact with at least fourteen different subjects of FBI counterterrorism or counter-intelligence cases during the time they were in the United States, and two of the hijackers had extensive contacts with an FBI informant.⁴ In all of these cases the FBI had the tools necessary to do the job; it just did not manage the tools properly.

In my own cases I found FBI managers slow to respond to problems and antagonistic to advice from experienced field agents regarding how to properly run operations. After my first successful undercover operation against domestic terrorist cells, I was surprised the FBI Domestic Terrorism Unit rebuffed my request for an operational debriefing. The surprise turned to frustration when its lack of interest continued after my second successful infiltration, during which I had to overcome many of the same administrative problems experienced in the first case. My 2002 assignment to an international terrorism investigation, which was detailed in my written testimony, proved the FBI's management of international terrorism cases was even worse, because FBI managers not only refused to address violations of law but willingly falsified internal FBI documents.

A window into the management problems that plague FBI operations can be found in the Department of Justice Inspector General's report on the FBI's management of confidential case funds, which revealed that poor oversight and insufficient internal controls failed to prevent theft and left important bills unpaid (telecommunications lines supporting FBI surveillance efforts, including at least one FISA wiretap, were shut down as a result of late payments).⁵ If an undercover agent can't even pay a phone bill on time because of poor program management, one can imagine how difficult it is to overcome more significant obstacles.

A review of the many other Inspector General reports regarding the FBI over the last few years reveals significant failures in programs as critical to our national security as the management of the Terrorist Screening Center Watchlist⁶ and oversight of Chinese intelligence agents,⁷ and as mundane yet fundamental as keeping track of FBI weapons and laptops⁸ and establishing a functioning computer network.⁹ Many of the FBI management failures documented in the Inspector General reports have direct consequences on the rights, privacy, and liberties of all people, whether these violations of law and policy involve spying on Americans without reasonable suspicion,¹⁰ mistreating aliens after 9/11,¹¹ or abusing detainees in Guantanamo Bay, Iraq and Afghanistan.¹² Faulty management practices combined with the overbroad and often unchecked authorities given the FBI after 9/11 invite such abuse by allowing the FBI to investigate and mistreat persons it has no reason to believe did anything wrong. Collecting vast amounts of personal information about innocent people is at best a waste of resources and actually harmful to security because it makes the few important pieces of data harder to find.

Ranking Member Gohmert expressed concern about recently publicized FBI management problems, such as the 5-year up-or-out policy and the difficulty in retaining experienced FBI personnel in key management positions. But these problems are simply symptoms of a larger disease: fundamentally flawed management practices that FBI leadership has simply chosen not to address. There are fundamental problems with the way the FBI selects, trains, oversees, promotes, and disciplines supervisors. Over the years the FBI has engaged private management consultants to study FBI management practices, most recently Arthur Anderson, which produced a report entitled, *Management Study of the Federal Bureau of Investigation*, which noted that at the time of its review (2001) eighty percent of FBI management was eligible to retire.¹³ Although the Anderson study has not been widely distributed, a 2006 National Academy of Public Administration report said the report "raised concerns about the FBI's overall management functions," and concluded that: "there is a real need for greater focus on management issues and strategic or long-term thinking in the FBI today."¹⁴ A more thorough study of FBI management practices that included comprehensive surveys of FBI agents and support staff, rather than just managers, was conducted in the early 1990s under the leadership of FBI Director William Sessions. This study, though dated, would be helpful to Congress because it incorporated the opinions of rank-and-file FBI employees. No one wants FBI management improved more than those conscientious FBI agents and staff who strive to do their jobs effectively and within the law, but are undermined by bad management.

These reports and studies of the FBI, whether conducted by the Inspector General or private management companies, all reflect common themes: lack of proper guidance and training, poor communication, disregard for applicable laws and policies and a lack of accountability in all levels of FBI management. Commentators often make the mistake of suggesting that national security interests can be balanced against liberty interests, but these reports make clear that the failures of FBI management risk both our security and our liberty. Granting broad unchecked authority to a fundamentally mismanaged agency does not make us safer; it simply enables and encourages the waste and abuse that undermines public confidence in government.

Congress should vigorously exercise its constitutional oversight authority to ensure FBI compliance with all laws and policies, and Congress should narrow the overbroad authorities given to the FBI after 9/11 to force it to focus its investigative resources against only those it reasonably suspects are involved in improper conduct. Congress should view these studies and Inspector General reports as building blocks for its own independent inquiry into FBI management practices and policies and compel the FBI to adopt more effective and accountable management practices. Thank you for the opportunity to express my views on this matter.

Sincerely,



Michael German
Policy Counsel

CC: Members of the House of Representatives Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary

- ¹ National Commission on Terrorist Attacks, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, (New York: Norton 2004), p. 423, p. 355.
- ² Id. at 271. It should be noted that the 9/11 Commission found that bureaucratic rules regulating the internal sharing of intelligence information known as “the wall” were misapplied in this situation, and that no law or regulation prevented the FBI and CIA intelligence analysts from sharing the information the agent requested (see Notes to Chapter 8, notes 80 and 81, p. 538).
- ³ Interim Report on FBI Oversight in the 107th Congress by the Senate Judiciary Committee: HISA Implementation Failures, Senator Patrick Leahy, Senator Charles Grassley, and Senator Arlen Specter, February 2003, at: http://www.fas.org/irp/congress/2003_rpt/fisa.html
- ⁴ Joint Inquiry into Intelligence Committee Activities Before and After the Terrorist Attacks of Sept. 11, 2001, Report of the Senate Select Committee on Intelligence and the U.S. House Permanent Select Committee on Intelligence, S. Rep. 107-351, H. Rep. 107-792, (Dec. 2002) at 26, <http://www.gpoaccess.gov/serialset/creports/pdf/hart1.pdf>
- ⁵ U.S. Department of Justice Office of the Inspector General Audit Division, SUMMARY OF FINDINGS THE FEDERAL BUREAU OF INVESTIGATION'S MANAGEMENT OF CONFIDENTIAL CASES, FUNDS AND TELECOMMUNICATION COSTS, Audit Report 08-03, (January 2008), at: <http://www.usdoj.gov/oig/reports/FBI/a0803/final.pdf>
- ⁶ U.S. Department of Justice Office of the Inspector General Audit Division, FOLLOW-UP AUDIT OF THE TERRORIST SCREENING CENTER, Audit Report 07-41, September 2007 <http://www.usdoj.gov/oig/reports/FBI/a0741/final.pdf>
- ⁷ U.S. Department of Justice Office of the Inspector General, A REVIEW OF THE FBI'S HANDLING AND OVERSIGHT OF FBI ASSET KATRINA LEUNG, (UNCLASSIFIED EXECUTIVE SUMMARY), Special Report, May 2006, at: <http://www.usdoj.gov/oig/special/s0605/final.pdf>
- ⁸ U.S. Department of Justice Office of the Inspector General Audit Division, THE FEDERAL BUREAU OF INVESTIGATION'S CONTROL OVER WEAPONS AND LAPTOP COMPUTERS, Audit Report 02-27, August 2002, at: <http://www.usdoj.gov/oig/reports/FBI/a0227/final.pdf>
- ⁹ U.S. Department of Justice Office of the Inspector General Audit Division, THE FEDERAL BUREAU OF INVESTIGATION'S MANAGEMENT OF THE TRILOGY INFORMATION TECHNOLOGY MODERNIZATION PROJECT, Audit Report 05-07, February 2005, at: <http://www.usdoj.gov/oig/reports/FBI/a0507/final.pdf>
- ¹⁰ U.S. Department of Justice Office of the Inspector General, A REVIEW OF THE FEDERAL BUREAU OF INVESTIGATION'S USE OF NATIONAL SECURITY LETTERS (Unclassified), Special Report, March 2007, at: <http://www.usdoj.gov/oig/special/s0703b/final.pdf>
- ¹¹ U.S. Department of Justice Office of the Inspector General, THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS, Special Report, June 2003, at: <http://www.usdoj.gov/oig/special/0306/final.pdf>
- ¹² U.S. Department of Justice Office of the Inspector General, A REVIEW OF THE FBI'S INVOLVEMENT IN AND OBSERVATIONS OF DETAINEE INTERROGATIONS IN GUANTANAMO BAY, AFGHANISTAN, AND IRAQ, Special Report, May 2008, at: <http://www.usdoj.gov/oig/special/s0805/final.pdf>
- ¹³ David M. Walker, Comptroller General of the United States, Testimony Before the Committee on Appropriations, Subcommittee on Commerce, Justice, State and the Judiciary, “FBI Reorganization: Initial Steps Encouraging but Broad Transformation Needed,” Government Accountability Office, (Jun. 21, 2002), at 1 (citing, Arthur Anderson, *Management Study of the Federal Bureau of Investigation*, (Dec. 14, 2001)).
- ¹⁴ National Academy of Public Administration, “Transforming the FBI: Integrating Management Functions Under a Chief Management Officer,” (September 2006).

