

**Opening Statement of Senator Charles Grassley
Senate Judiciary Committee - "The Inspector General's Findings of Improper Use
of the National Security Letters by the FBI"**

March 21, 2007

Chairman Leahy, thank you for calling this hearing today. I also want to thank Inspector General Fine and his staff for their hard work on these important reports. Some people are pointing to these findings to argue that there is something fundamentally wrong with the Patriot Act provisions expanding the FBI's authorities after 9/11. That point of view goes a step too far. I believe that National Security Letters ("NSLs") are a good tool for the FBI to utilize in tracking and disrupting potential terrorist activity on U.S. soil. To suggest that the FBI's new NSL authorities should be repealed or severely cut back would be an overreaction and a mistake. However, as worthy as these tools are, it is absolutely essential that the FBI use them according to the letter of the law, and be accountable for any abuses of their authority. The FBI doesn't need Congress to tie its hands by removing its ability to efficiently and effectively gather the financial and telephone records of suspected terrorists. What the FBI needs is transparency, accountability, and reform, so that the public can have confidence that any abuses will be exposed, corrected, and prevented in the future.

These reports and the work of this Committee today show just how crucial it is to have strong and independent oversight of the FBI. Unless we shine the light of day on abuses like these, they will continue in secret. Even after abuses are exposed, however, our work isn't done. We have to dig into the details and insist on consequences for anyone who engaged in wrongdoing or looked the other way. We have to find out what underlying issues may have contributed to the problems and deal with the institutional disease rather than just treating the symptoms.

I agree with Inspector General Fine that one of the most disturbing problems exposed by his investigation was the use of so-called "exigent letters" to circumvent the NSL statutes. Unlike the other problems identified by the reports, this issue did not involve the misuse of any provisions of the Patriot Act. Instead, the FBI utilized a process that was *not authorized by any statute*. There is a statutory provision allowing phone companies to *voluntarily* provide records in an emergency situation. However, the exigent letters did not cite that provision and implied that production of the records was compulsory.

The Inspector General's report describes how an FBI headquarters division known as the Communications Analysis Unit ("CAU") obtained information on about 3,000 telephone numbers by issuing 739 of these "exigent letters." According to the report, the letters "contained factual misstatements," claiming that the FBI had submitted a subpoena to a U.S. Attorney's office when, in fact, no subpoena had been submitted. Moreover, the letters were often issued when there was no emergency and although the FBI promised to deliver a subpoena later, those subpoenas never came.

These circumstances raise additional and even more serious questions about the state of mind of the FBI officials who signed the 739 letters. It is difficult to imagine how those individuals did not know that the letters were false when they were signed. It is even more difficult to imagine why there would not have been swift and severe consequences for anyone

who knowingly signed a letter with false statements. Anyone at the FBI who knew about that kind of wrongdoing had an obligation to put a stop to it and report it immediately. We know that some within the FBI General Counsel's Office knew about the exigent letters as early as 2004, but it is unclear when the misrepresentations in them were reported to higher-ups. Congress needs to know who knew about these irregularities and when they knew it. I've asked Director Mueller for information and documents that will begin to address those questions, and I expect him to provide answers to this Committee promptly.

Something not specifically addressed in the report is what role FBI whistleblower Bassem Youssef may have had in reporting and trying to correct problems caused by the issuance of the exigent letters. Youssef is the current Unit Chief at CAU. He is also a decorated Arab-American agent, who is suing the FBI alleging discrimination in its promotion practices. I became very concerned when I discovered that FBI officials took the surprising position in his lawsuit that subject-matter expertise and counterterrorism experience are not necessary prerequisites for senior positions in the FBI's National Security Branch. Given the Inspector General's findings, I am worried that the lack of experience among senior FBI managers may be the institutional disease, and the abuse of these exigent letters is just another symptom.

I wrote to the Inspector General last year to advise him of evidence of whistleblower retaliation against Youssef that came to light during the discovery process in his lawsuit. It would be very disappointing if it turns out that Youssef had brought this matter to the attention of higher-ups at the FBI only to be dismissed or ignored because of an FBI culture that is still more interested in silencing whistleblowers than in fixing its problems.

This Committee ought to learn more about Youssef's particular role in this matter. So, last week, I wrote to Youssef's attorney seeking more information. In his reply, Youssef's attorney explained:

Mr. Youssef discussed the issue with his Assistant Section Chief, who advised Mr. Youssef that there was no problem with the way CAU had used exigent letters. . . . Because the Assistant Section Chief had been personally involved in the prior practices of the CAU, he was hostile to the NSL-related issues raised by Mr. Youssef. Additionally, Mr. Youssef also raised this matter at a unit chiefs meeting attended by the Section Chief. The Section Chief was dismissive of the concern.

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In summary, the Assistant Section Chief for the Communications Exploitation Section was hostile to Mr. Youssef's identification of the matters identified above. The operational units and field offices were non-compliant with the requests for documentation. The [National Security Law Branch ("NSLB") of the General Counsel's Office's] attempt to have the operational units/field offices assist in obtaining compliance with the documentation requests were ineffective. The contacts with "higher ups" identified by the NSLB were ineffective. At all times the NSLB and FBI OGC knew that the Field offices and operational units were non-compliant in obtaining the legal documentation.

If these representations are true, it seems that FBI leadership had a clear opportunity to

address the problems with exigent letters long before the Inspector General investigation. And yet, they did not do so until it became clear that the Inspector General was taking a close look and was going to report to Congress on this issue. That's not a scenario that instills public confidence in the FBI as a healthy, well-run institution.

Mr. Chairman, I have asked the FBI to provide us with copies of the unclassified emails reviewed by the Inspector General related to the exigent letter issue, so that we can determine whether the claims from Bassem Youssef's attorney are supported by the documentary evidence. If the FBI initially turned a blind eye to these problems, then that is something this Committee ought to know about.

Thank you again for calling this hearing, and I look forward to hearing Inspector General Fine's testimony.