



Testimony
of
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Policy Counsel, American Civil Liberties Union,
Former Special Agent, Federal Bureau of Investigation

before the

House Committee on Oversight
and Government Reform

May 14, 2009

*The Whistleblower Protection Enhancement Act of 2009
(H.R. 1507)*



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Chairman Towns, Ranking Member Issa, members of the Committee, thank you for inviting me to testify in support of H.R. 1507, the Whistleblower Protection Enhancement Act of 2009. I represent the American Civil Liberties Union, a non-partisan organization of half a million members nationwide dedicated to defending the Constitution and protecting civil liberties. The ACLU vigorously supports meaningful legal protections for all whistleblowers, and particularly for employees and contractors within the law enforcement and intelligence communities, where abuse and misconduct can have the most serious and direct consequences to our liberty and our security.

INTRODUCTION

Executive Order 12731 requires all federal employees to report “waste, fraud, abuse and corruption to the appropriate authorities.”¹ Unfortunately, employees who follow this ethical obligation are often subject to retaliation by the very managers to whom they are duty-bound to report. Efforts by Congress to protect responsible whistleblowers, beginning with the Civil Service Reform Act in 1978 and followed by the landmark Whistleblower Protection Act (WPA) in 1989, have been steadily undermined by an ineffective Merit Systems Protection Board and hostile decisions of the United States Court of Appeals for the Federal Circuit, which has a monopoly on federal whistleblower appeals. Moreover, the Department of Justice and the intelligence community successfully lobbied to have Congress exempt employees from the Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), National Security Agency (NSA) and other intelligence agencies from the WPA, promising instead to provide internal mechanisms to protect whistleblowers in these agencies.² As a former FBI whistleblower, I can personally attest to the fact that these alternative regimes do not work.³

President Obama recognized the need to provide real protection to federal employees and his transition “ethics agenda” included a strong statement of support for whistleblowers:

Often the best source of information about waste, fraud and abuse in government is an existing government employee committed to public integrity and willing to

speaking out. Such acts of courage and patriotism, which can sometimes save lives and often save taxpayer dollars, should be encouraged rather than stifled as they have been during the Bush administration. We need to empower federal employees as watchdogs of wrongdoing and partners in performance. Barack Obama will strengthen whistleblower laws to protect federal workers who expose waste, fraud and abuse of authority in government. Obama will ensure that federal agencies expedite the process for reviewing whistleblower claims and whistleblowers have full access to courts and due process.⁴

H.R. 1507 answers this call to action and the ACLU applauds its introduction and urges its swift passage. The bill effectively overturns the adverse Federal Circuit Court decisions that limited the scope of disclosures protected under the WPA and raised the burden of proof necessary for whistleblowers to prevail and it eliminates the Federal Circuit's monopoly. It provides independent due process through full court access for all federal employees and contractors, including national security whistleblowers from the FBI and other intelligence agencies. When it passes, H.R. 1507 will usher in a new era of government accountability, particularly within the agencies that have proven most resistant to effective oversight, which have led to truly disastrous results for our security and our civil liberties. In my testimony today I will focus on the expansion of whistleblower protections to employees of the FBI, CIA, NSA and other intelligence agencies. I will explain why national security whistleblower protections are necessary and how Congress can ensure they remain effective in practice, both to deter retaliation against the conscientious federal agents who risk their own safety to secure ours and to provide Congress with the information it needs to check executive abuse.

I. NATIONAL SECURITY WHISTLEBLOWERS: SECURING OUR RIGHTS AND OUR SECURITY

In the weeks leading up to the terrorist attacks of September 11, 2001, FBI National Security Law Unit (NSLU) officials denied a New York agent's request to start looking for a known al Qaeda operative who had entered the United States, in what the 9/11 Commission would later call a clear misunderstanding of the law.⁵ The agent sent an angry e-mail warning that "someday someone will die," and wondering whether the NSLU would stand by its decisions then.⁶ At almost the same time an FBI supervisor in Minneapolis, stymied from pursuing a Foreign Intelligence Surveillance Court order to search Zacharias Moussaoui's computer by headquarters officials who later admitted to that they did not know the legal standard necessary to obtain one, shouted that he was trying "to stop someone from taking a plane and crashing it into the World Trade Center."⁷

These agents clearly knew that the gross mismanagement of the FBI's counterterrorism program posed a substantial threat to public safety, but neither formalized his complaint or pushed it up the chain-of-command. Perhaps they didn't feel confident in their analysis of the situation, or maybe, like one-third of those polled in a 1993 MSPB study of the federal workforce who did not report illegal or wasteful

activities they had seen on the job, they feared retaliation.⁸ Fifty-nine percent of those who didn't report said they didn't think anything would be done to correct the activity.⁹

After 9/11 it appeared the intelligence community finally recognized the value of timely reports from within. President George W. Bush expressly called on agents to report 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.¹⁰

Likewise, FBI Director Robert Mueller repeatedly vowed to protect Bureau whistleblowers:

I issued a memorandum on November 7th [2001] 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.¹¹

Yet the record reflects that the few FBI employees who answered this post-9/11 call -- myself, Sibel Edmonds,¹² Jane Turner,¹³ Robert Wright,¹⁴ John Roberts,¹⁵ and Bassem Youssef¹⁶ -- were not protected. It is certainly not for a lack of misconduct warranting disclosure that few FBI whistleblowers come forward. A review of the many Department of Justice Inspector General reports regarding the FBI over the last several years reveals significant failures in programs as critical to our national security as the management of the Terrorist Screening Center watch list¹⁷ and oversight of Chinese intelligence agents,¹⁸ and as mundane yet fundamental as keeping track of FBI weapons and laptops¹⁹ and establishing a functioning computer network.²⁰ A report on the FBI's management of confidential case funds revealed that poor oversight and insufficient internal controls failed to prevent theft and left important bills unpaid. As a result, telecommunications lines supporting FBI surveillance efforts, including at least one FISA wiretap, were shut down²¹.

Many of the FBI management failures documented in the Inspector General reports have direct consequences on civil rights, whether these violations of law and policy involve spying on Americans without reasonable suspicion,²² mistreating aliens after 9/11,²³ or abusing detainees in Guantanamo Bay, Iraq and Afghanistan.²⁴ The IG report regarding detainee abuse documented reprisals suffered by three different FBI

whistleblowers who raised concerns about the treatment of detainees in Afghanistan, Iraq and Guantanamo Bay.²⁵ The CIA, NSA and other intelligence agencies were involved in these or other scandals and intelligence failures, including warrantless wiretapping in violation of FISA, extraordinary rendition and the destruction of detainee interrogation tapes, among others. A more recent report that a CIA whistleblower advised then-Speaker of the House Dennis Hastert that Congress was not notified as required when a Member of Congress was recorded in an intelligence operation,²⁶ and the unsurprising news that the NSA had been “over-collecting” Americans’ communications in violation of the broad new authorities granted under the FISA Amendments Act last year,²⁷ reveal the ongoing need for national security whistleblowers.

Yet Congress cannot expect whistleblowers from these agencies to come forward if it will come at the expense of their careers. The failure to provide the necessary protections not only betrays the brave federal employees who dare to come forward despite the personal consequences, but it also undermines Congress’s ability to fulfill its constitutional obligation to serve as an effective check against executive abuse of power. In 1998 Congress recognized that the lack of protection for whistleblowers and the genuine risk of reprisals “impaired the flow” of information Congress needed to carry out its legislative and oversight functions in the area of national security.²⁸ And while Congress reiterated its right to receive classified information from intelligence community employees in the Intelligence Community Whistleblower Protection Act of 1998 (ICWPA), it failed to provide them a remedy if such disclosures resulted in reprisals.²⁹ Under the current system the safest way for a national security whistleblower to bring problems to Congress’s attention is through anonymous leaks to the media. H.R. 1507 will provide long overdue protections for responsible disclosures to the appropriate authorities, enforceable through the independent due process that comes with full court access and jury trials.

II. PROVIDING WHISTLEBLOWER RIGHTS TO INTELLIGENCE COMMUNITY EMPLOYEES WILL NOT RISK DISCLOSURE OF CLASSIFIED INFORMATION

As important as what H.R. 1507 does for national security whistleblowers is what it does not do to national security: H.R. 1507 does not authorize intelligence community employees to leak classified information to the media or to any other person who does not have the appropriate security clearances. In fact, by providing safe avenues for agency employees to report waste, fraud and abuse to the appropriate authorities and to Congress, there will be less of a need to anonymously leak information in order to have serious problems adequately addressed. FBI and other intelligence community employees have the training and experience required to responsibly handle classified information and the severe penalties for the unlawful disclosure of classified information will remain intact after this legislation passes.

The access to jury trials for whistleblower reprisals likewise would not risk the unlawful disclosure of classified information. Intelligence employees and contractors already have access to courts with jury trials in employment cases under the Equal Employment Opportunity Act and other types of litigation, including criminal trials,

which might also involve classified information.³⁰ Courts have become accustomed to handling classified information in the decades since the passage of the Classified Information Procedures Act addressing the use of classified information in criminal trials, and the government has robust powers to protect specific pieces of classified evidence from disclosure in civil trials through the state secrets privilege.³¹ The courts can already order the government to produce unclassified substitutes or summaries of classified information in the interests of justice, so the modest changes this bill makes to the manner in which the state secrets privilege can be used in whistleblower retaliation cases will not create a undue burden on the government and will only serve the interests of justice. Rewarding the responsible handling of classified information by a national security whistleblower is simply good public policy.

Moreover, the concerns regarding the unauthorized disclosure of classified information in the context of whistleblowing are substantially overstated, and I can use my own experience as an example. Like most FBI employees, I conducted much of my work in an unclassified setting. There were classified aspects to the mishandled counterterrorism investigation that was the subject of my complaint, but it was not necessary for me to reveal this material in order to give Members of Congress the information they needed to begin an investigation of my allegations. While this might be more difficult for employees with some of the other intelligence agencies it is not impossible and these employees are trained in the appropriate methods for ensuring the proper handling of the information. If critics of this bill are concerned that the whistleblowing employees of these agencies will not take their obligation to properly handle the classified information in their cases seriously, the fatal mistake of trusting them with the material was already made. These employees already have access, and giving them rights to report the information to the appropriate authorities responsibly will only help the situation.

Likewise the personnel actions taken in retaliation for making a protected disclosure, which would be the subject of the litigation in a reprisal case, are not typically classified, even if the information that actually made up the protected disclosure was. The vast majority of these cases could be tried in front of a jury as are equal employment cases involving employees of the same agencies.

III. PROVIDING WHISTLEBLOWER PROTECTION WILL NOT INHIBIT PROPER MANAGEMENT OF THE INTELLIGENCE COMMUNITY WORKFORCE

One argument made by those opposing independent due process rights for national security whistleblowers is that the fear of litigation will chill agency supervisors from taking personnel actions against problem employees. This argument at least removes all pretense that the FBI and other intelligence agencies currently respect and protect employees who report waste, fraud and abuse within these agencies. For if these agencies enforced regulations protecting whistleblowers by punishing supervisors who imposed retaliatory personnel actions, whatever chilling effect codifying these rights would have on these managers would already be realized. Moreover, many other employee rights prohibiting arbitrary or discriminatory personnel actions are enforceable

in courts of law, so if providing employees with protection from unlawful acts by agency supervisors cripples their ability to properly manage the federal workforce, the damage is already done.

But even if this hypothetical chilling effect on agency managers was regarded as a serious matter of concern, the solution is simple: require agency supervisors to properly document their employees' deficiencies and any efforts made to address the problems before taking adverse actions against them. One would hope this is already a matter of policy within these agencies. If an employee's properly documented deficiencies justify an adverse personnel action agency supervisors would have little to worry about, regardless of whether the employee later claimed to have made a protected disclosure.

To be clear, though, H.R. 1507 is designed, like most laws, to chill the behavior it specifically prohibits. FBI and other intelligence agency supervisors who desire to unjustly retaliate against good faith whistleblowers who responsibly report waste, fraud and abuse to the appropriate authorities should feel less secure when those employees are given the power to enforce their rights in court, which is exactly why Congress should pass H.R. 1507. Forcing intelligence community supervisors to become more professional, more responsible and more accountable will be a positive side effect to protecting the rights of employees who fulfill their ethical obligation to report waste, fraud and abuse of authority.

IV. POSSIBLE IMPROVEMENTS TO H.R. 1507 TO MORE EFFECTIVELY PROTECT WHISTLEBLOWERS IN PRACTICE

1. EXPLICITLY PROTECT CHAIN-OF-COMMAND DISCLOSURES

H.R. 1507 protects disclosures made to "an authorized Member of Congress, an authorized official of an Executive Branch agency, or the Inspector General of the covered agency...." The bill mandates that "an authorized official of an Executive Branch agency" will include the head, the general counsel, and the ombudsman of such agency," but leaves it to the discretion of the Office of Personnel Management (OPM) to specify others within the agencies by future regulation. If OPM chooses not to expand the list of authorized officials, H.R. 1507 would actually narrow the audience to whom FBI employees can disclose information in order to receive protection. In addition to the officials specifically named in H.R. 1507, the FBI's current regulations protect disclosures to the FBI Office of Professional Responsibility, the Deputy Directors of the FBI and "to the highest ranking official in any FBI field office."³² Yet in a practical sense, even this broader audience creates a trap for FBI employees who want to report misconduct, which may inadvertently leave some deserving whistleblowers unprotected. My own experience highlights the problem.

When I decided to report improprieties in a counterterrorism case to which I was assigned, I attempted to follow the customary chain-of-command in fulfilling the protocols described in the Director's November 7, 2001 memorandum regarding protected disclosures. I advised my Assistant Special Agent in Charge (ASAC) that I

was going to report this matter to the “highest ranking official” in the field office, the Special Agent in Charge (SAC). As a practical matter, if I had attempted to contact the SAC directly he likely would have refused to take my call and contacted the ASAC to find out why I was calling. My ASAC would have then chastised me for violating the chain-of-command. While the FBI is not a paramilitary organization, this methodology is something the FBI takes seriously, as demonstrated by the fact that a chain-of-command violation was cited as one of the reasons the FBI provided for punishing an agent who reported concerns about abuse at Guantanamo by having a letter personally delivered to Director Mueller.³³ The catch-22 is that if the agent did follow the chain-of-command he or she would not be protected under the current regulations, nor under H.R. 1507.

In my case the ASAC directed me not to contact the SAC directly and instead to document the information in a letter, which he would deliver to the SAC. This detail seemed insignificant at the time but the FBI later argued that by passing my complaint through my ASAC I forfeited any protection from retaliation under FBI regulations. Fortunately, the Inspector General found that my complaint was a “protected disclosure” under the regulations because I intended it to be forwarded to the appropriate official and it was delivered to him in a timely manner. The FBI’s cynical interpretation of the statute clearly violates the spirit and intent of the legislation, but Congress should address this ambiguity in the bill because it could easily leave well-meaning FBI employees without protections. Congress should make explicit that disclosures made through the normal chain-of-command do not lose their protected status.

2. EXPLICITLY PROTECT THE RIGHT OF ALL MEMBERS OF CONGRESS TO RECEIVE INFORMATION FROM NATIONAL SECURITY WHISTLEBLOWERS

Congress must make clear that all Members of Congress have the right, by virtue of their election, to receive all lawful disclosures of information from FBI, CIA, NSA and other intelligence agency employees and contractors, and that those federal employees and contractors who make lawful disclosures to any Member of Congress will be protected under the law. The potential for confusion arises because the definition of “covered information” in Section 10 of H.R. 1507 does not distinguish between classified and unclassified information and the definition of “authorized Member of Congress” is limited to certain committees based on jurisdiction over the type of information being provided.

Congress codified its right to receive information from federal employees with the Lloyd-LaFollette Act in 1912:

The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.³⁴

These provisions also set a potential trap for an intelligence community employee or contractor who is not familiar with the operations of Congress. A national security

whistleblower who contacts his or her own Congressperson to seek assistance would potentially not be protected from retaliation if the Member was not assigned to one of the specific committees of jurisdiction, even if no classified information was ever disclosed. Congress should explicitly state that unclassified disclosures by FBI, CIA and other intelligence agency employees and contractors to any Member of Congress are protected disclosures under H.R. 1507.

Further, the President has no right to deny Members of Congress access to national security information without asserting a constitutional privilege. In the National Security Act of 1947 Congress established a statutory requirement for the President to keep Congress “fully and currently informed of all intelligence activities” via the House and Senate intelligence committees.³⁵ In the ICWPA Congress emphasized that:

...as a co-equal branch of Government, [Congress] is empowered by the Constitution to serve as a check on the executive branch; in that capacity it has a “need to know” of allegations of wrongdoing within the executive branch, including allegations of wrongdoing in the Intelligence Community.

And:

...no basis in law exists for requiring prior authorization of disclosures to the intelligence committees of Congress by employees of the executive branch of classified information about wrongdoing within the Intelligence Community.³⁶

Clearly intelligence agency employees cannot disclose classified information to a Member of Congress who does not possess the necessary clearances to receive the information. This would be, by definition, an unlawful disclosure and to do so would subject the employee to serious administrative and/or criminal penalties. But this does not mean that that Members of Congress lack the power to demand the specific clearances necessary to gain access to particular information once they know it exists, and to use the robust tools available under the Constitution to compel compliance with their requests, including the appropriations power, the appointment power, the contempt power and the impeachment power.³⁷ Congress also has the power under its own rules to declassify information.³⁸

Congress can regulate how it receives particular kinds of information, as it does in Section 10 of H.R. 1507 by specifically delineating which committees may receive disclosures in order for them to be protected, but the ACLU urges this Committee to take great care before limiting the rights of any of its Members to receive information from national security whistleblowers, even classified information. A Member of Congress who does not sit on a particular committee of jurisdiction might still require access to particular information in order to serve the needs of a constituent impacted by a classified program or policy. And every federal employee should be able to request the assistance of his or her own Senator or Congressman without fearing reprisals. Congress should strive to protect the rights of all Members to receive information necessary to fulfill their

legislative and oversight needs and should use its robust powers to ensure Members obtain the requisite clearances as needed.

V. CONCLUSION

The system that was intended to protect national security whistleblowers is broken, if it ever worked at all, and both our security and our liberty are in peril as a result. All federal employees are required to report waste, fraud and abuse of authority they see on the job, and this obligation only deepens when the agencies responsible for our national security are involved. The reforms provided in H.R. 1507 will provide real protections to those who are willing to speak truth to power. This is not a question of balancing security interests against liberty interests; it is a question of competence and accountability in the agencies that wield extraordinary power under a cloak of secrecy. The irresponsible use of this authority can have dire consequences for individual rights and can undermine the fabric of our democracy. Congress must have access to information about misconduct within the intelligence community in order to perform its constitutional duty to check these awesome and easily abused powers. 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 pass H.R. 1507 and extend meaningful protection to the workforce that is charged with protecting us all by granting them full and independent due process rights when they blow the whistle during government investigations or refuse to violate the law, enforced through jury trials in federal court once administrative measures are exhausted, and “full circuit” review. Thank you for the opportunity to present our views.

¹ Exec. Order No. 12,731, 55 Fed. Reg. 42547 (Oct. 17, 1990), *available at* http://www.usoge.gov/laws_regs/exec_orders/eo12731.pdf; 5 C.F.R. §2635.101(b)(11) (2008), *available at* http://edocket.access.gpo.gov/cfr_2008/janqtr/5cfr2635.101.htm.

² 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.” Congress ordered the FBI to establish regulations “consistent with the Whistleblower Protection Act,” 5 U.S.C. §2303. Regulations for Whistleblower Protection for FBI Employees can be found in 28 C.F.R §27, *available at* <http://www.fas.org/sgp/news/1999/11/fbiwhist.html>.

³ For a detailed description of these events, See *FBI Whistleblowers Hearing Before the Subcomm. On Crime, Terrorism and Homeland Security, H. Comm on the Judiciary*, 110th Cong. (May 21, 2008) (written testimony of Michael German); *National Security Whistleblowers in the post-September 11th Era: Lost in a Labyrinth and Facing Subtle Retaliation Hearing 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).

⁴ The Office of the President-elect, The Obama-Biden Plan, http://change.gov/agenda/ethics_agenda/.

⁵ NATIONAL COMMISSION ON TERRORIST ATTACKS, THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 271 (2004), *available at*

http://govinfo.library.unt.edu/911/report/911Report_Ch8.pdf. 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, 538, nn 80-81).

⁶ NATIONAL COMMISSION ON TERRORIST ATTACKS, THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 271 (2004), *available at* http://govinfo.library.unt.edu/911/report/911Report_Ch8.pdf.

⁷ *Id.* at 275. *See also*, SENATOR PATRICK LEAHY, SENATOR CHARLES GRASSLEY, AND SENATOR ARLEN SPECTER, INTERIM REPORT ON FBI OVERSIGHT IN THE 107TH CONGRESS BY THE SENATE JUDICIARY COMMITTEE: FISA IMPLEMENTATION FAILURES (Feb. 2003), *available at* http://www.fas.org/irp/congress/2003_rpt/fisa.html.

⁸ U.S. MERIT SYSTEMS PROTECTION BOARD REPORT, WHISTLEBLOWING IN THE FEDERAL GOVERNMENT: AN UPDATE (Oct. 1993), *available at* <http://www.pogoarchives.org/m/gp/wbr2005/AppendixB.pdf>.

⁹ *Id.*

¹⁰ Karen Hosler, *FBI must slim down and change culture, whistle-blower says*, BALTIMORE SUN, June 7, 2002, at 1A.

¹¹ *See Oversight Hearing on Counterterrorism Before the S. Comm. on the Judiciary*, 107th Cong. 16-17 (2002) (S. HRG. 107-920).

¹² U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL, A REVIEW OF THE FBI’S ACTIONS IN CONNECTION WITH ALLEGATIONS RAISED BY CONTRACT LINGUIST SIBEL EDMONDS, SPECIAL REPORT (Jan. 2005), *available at* <http://www.usdoj.gov/oig/special/0501/final.pdf>.

¹³ Dan Browning, *Ex-Agent Wins Lawsuit Against FBI*, MINNEAPOLIS STAR-TRIB., Feb. 5, 2007.

¹⁴ Todd Lightly, *Beleaguered FBI Agent Gets Job Back*, CHICAGO TRIB., Oct. 19, 2005.

¹⁵ U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL, A REVIEW OF THE FBI’S RESPONSE TO JOHN ROBERTS’ STATEMENTS ON 60 MINUTES (Feb. 2003), *available at* <http://www.usdoj.gov/oig/special/0302/report.pdf>.

¹⁶ U.S. DEPARTMENT OF JUSTICE OFFICE OF PROFESSIONAL RESPONSIBILITY, REPORT OF INVESTIGATION OF WHISTLEBLOWER ALLEGATIONS BY FEDERAL BUREAU OF INVESTIGATION SPECIAL AGENT BASSEM YOUSSEF (Jul. 3, 2006), *available at* http://www.whistleblowers.org/storage/whistleblowers/documents/order_and_opr_report.pdf.

¹⁷ U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL AUDIT DIVISION, THE FEDERAL BUREAU OF INVESTIGATION’S TERRORIST WATCHLIST NOMINATION PRACTICES, AUDIT REPORT 09-25 (May 2009), *available at* <http://www.usdoj.gov/oig/reports/FBI/a0925/final.pdf>.

¹⁸ 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), *available at* <http://www.usdoj.gov/oig/special/s0605/final.pdf>.

¹⁹ 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 02-25 (August 2002), *available at* <http://www.usdoj.gov/oig/reports/FBI/a0227/fullpdf.htm>.

²⁰ U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL AUDIT DIVISION, THE FEDERAL BUREAU OF INVESTIGATION’S MANAGEMENT OF THE TRILOGY OF INFORMATION TECHNOLOGY MODERNIZATION PROJECT, AUDIT REPORT 05-07 (Feb. 2005), *available at* <http://www.usdoj.gov/oig/reports/FBI/a0507/final.pdf>.

²¹ U.S. DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL AUDIT DIVISION, SUMMARY OF FINDINGS THE FEDERAL BUREAU OF INVESTIGATION’S MANAGEMENT OF CONFIDENTIAL CASE FUNDS AND TELECOMMUNICATIONS COSTS, AUDIT REPORT 08-03 (Jan. 2008), *available at* <http://www.usdoj.gov/oig/reports/FBI/a0803/final.pdf>.

²² 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 (Mar. 2007), *available at* <http://www.usdoj.gov/oig/special/s0703b/final.pdf>.

²³ 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), *available at* <http://www.usdoj.gov/oig/special/0306/full.pdf>.

²⁴ 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), available at <http://www.usdoj.gov/oig/special/s0805/final.pdf>.

²⁵ *Id.* at 135, 326 and 328.

²⁶ Jeff Stein, *CIA Whistleblower Told Hastert About Suppression of Harman Wiretap*, CQ POLITICS, April 26, 2009, <http://www.cqpolitics.com/wmspage.cfm?docID=hsnews-000003103377>.

²⁷ Eric Lichtblau and James Risen, *Officials Say U.S. Wiretaps Exceeded Law*, N. Y. TIMES, Apr. 15, 2009, available at http://www.nytimes.com/2009/04/16/us/16nsa.html?_r=2&hp=&pagewanted=all.

²⁸ Pub.L. 105-277, Title VII, § 701(b)(5), Oct. 20, 1998.

²⁹ 5 U.S.C. App. 3, §8H(a)(1)(A). See *National Security Whistleblowers in the Post-September 11th Era: Lost in a Labyrinth and Facing Subtle Retaliation Protection: hearing before the Subcomm. for National Security, Emerging Threats, and International House Comm. on Gov't Reform Relations*, 109th Cong. (Feb. 14, 2006) (Statement of Thomas F. Gimble, Acting Inspector General, Department of Defense) (stating “Despite its title, the ICWPA does not provide statutory protection from reprisal for whistleblowing for employees of the intelligence community. The name “Intelligence Community Whistleblower Protection Act” is a misnomer; more properly, the ICWPA is a statute protecting communications of classified information to the Congress from executive branch employees engaged in intelligence and counterintelligence activity”).

³⁰ 42 U.S.C. 2000e (1991).

³¹ Pub.L. 96-456, 94 Stat. 2025, enacted October 15, 1980.

³² 28 C.F.R. § 27.1 (2006).

³³ 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 326 (May 2008), available at <http://www.usdoj.gov/oig/special/s0805/final.pdf>.

³⁴ 5 U.S.C. §7211 (2000).

³⁵ 50 U.S.C. §501(a)(1) and (4).

³⁶ Pub.L. 105-277, Title VII, § 701(b)(3), Oct. 20, 1998.

³⁷ See LOUIS FISHER, CONGRESSIONAL ACCESS TO EXECUTIVE BRANCH INFORMATION: LEGISLATIVE TOOLS, CRS REPORTS FOR CONGRESS (May 17, 2001).

³⁸ See, Project on Government Oversight, Congressional Tip Sheet on Access to Classified Information, (Oct. 2007), <http://pogoarchives.org/m/cots/cots-october2007a.pdf>. (“The House rule allowing declassification by the House Permanent Select Committee on Intelligence can be found in Rules of the 109th Congress, U.S. House of Representatives, Rule X. Senate Resolution 400, section 8, agreed to May 19, 1976 (94th Congress, 2nd Session) allows the Senate to declassify”).