

Statement of Michael German, former Special Agent, Federal Bureau of Investigation, before the Subcommittee on National Security, Emerging Threats, and International Relations, February 14, 2006

Chairman Shays, Ranking Member Kucinich, members of the committee, thank you for inviting me to speak with you today. You have aptly named this hearing. I have indeed felt lost in a Labyrinth since I reported serious misconduct in an FBI Counterterrorism investigation four years ago. But there was nothing subtle about the retaliation against me.

At the time I made my complaint I had fourteen years of experience as a Special Agent of the FBI. During my career I twice successfully infiltrated terrorist organizations, recovered dozens of illegal firearms and explosive devices, resolved unsolved bombings, and prevented acts of terrorism by winning criminal convictions against would-be terrorists. I had an unblemished disciplinary record, a medal of valor from the Los Angeles Federal Bar Association and a consistent record of superior performance appraisals.

In early 2002 I was asked to assist in a Tampa Division counterterrorism investigation that started when a supporter of an International terrorist organization met with a leader of a domestic terrorist organization. This January 2002 meeting was recorded by an FBI Cooperating Witness as part of an ongoing FBI domestic terrorism investigation. From the beginning the case was hampered with administrative deficiencies. My informal efforts to get the case back on track were met with indifference by FBI Supervisors, both in Tampa and at Headquarters. In August of 2002 I learned that part of the January meeting had been recorded illegally, in violation of Title III wiretap regulations.

I reported this to the supervisor of the investigation, who informed me he wanted to just 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 reported the violation to my superiors, through my chain of command, as dictated by FBI policy. That's when my journey in the labyrinth began. My ASAC reported my complaint to the Assistant Director of the Counterterrorism Division and the SAC of the Tampa Division. The Counterterrorism Division reported it to the FBI's Office of Professional Responsibility, but OPR did not open an investigation.

The Tampa Division responded by immediately approving my undercover operation while simultaneously telling the case agent he was no longer allowed to speak to me. Tampa sent an e-mail to Headquarters promising to start an investigation into my complaint, and then provided the results of the investigation they had not yet started. Then they began backdating and falsifying FBI records.

About this time the Unit Chief of the Undercover Unit at Headquarters told his staff that I would never work undercover again.

I contacted the Assistant Director of the CTD to report that I was being retaliated against but I received no response. I called OPR but they refused to interview me. Finally I called the Department of Justice Inspector General's Office. They agreed to interview me, but when I advised OPR that OIG would interview me, OPR wanted to interview me instead. The OIG investigator said both offices would participate in the interview, and in December of 2002, three months after my complaint, I was finally interviewed by both OPR and OIG. Neither opened an investigation

In February of 2003 I made a second statement to OPR and OIG, regarding the false statements Tampa managers made after my complaint. This time I was told OPR would open an investigation. But then a month later, I was told the Inspection Division was taking the investigation away from OPR. Ironically this was done during a separate OIG investigation into allegations that OPR investigations against FBI managers were routinely taken away from OPR. The OIG later concluded it could find no investigations that had been taken away from OPR.

Meanwhile a second counterterrorism investigation I was assigned to in Portland, Oregon was being unnecessarily delayed. The new SAC in Portland, who happened to be the former OPR Assistant Director that refused to open an investigation into my original complaint, told the supervisor of the Portland undercover operation that my participation in the investigation was "problematic" because I was a whistleblower and because I had asked to speak to members of Congress. The undercover proposal sat at Headquarters for a year, but was never brought to the Review Committee for approval until my name was taken off it.

In December of 2003 I was told the Inspection Division report was finished, with no finding of misconduct among the Tampa supervisors. The

OIG investigator told me the OIG would not open an independent investigation. I asked for a written declination from OIG but instead, in January of 2004 I received a letter from the Office of Inspector General saying they would open an investigation, and that an agent would be contacting me shortly. By March of 2004 I had still not been contacted so I called the OIG again. In April of 2004 I was interviewed for a third time and a third sworn statement was taken. I was told this statement would again be evaluated to determine whether the OIG would proceed with an investigation. In May of 2004 I sent a letter to the Senate Judiciary Committee and the Senate Intelligence Committee and in June of 2004, I resigned from the FBI.

A year and a half later the OIG has finally finished its report.

The report confirms many of the allegations I made in my original complaint regarding the mismanagement of the Tampa terrorism investigation. The significant findings detailed in the report include:

1. The Tampa terrorism case was not properly investigated or documented.
2. That Tampa supervisors failed to effectively address investigative deficiencies in the case on a timely manner.
3. The only effort the Tampa Division made in response to notice of a Title III violation was to place the tape into the personal possession of the Orlando Supervisor responsible for the investigation.
4. The Tampa Division did not undertake a thorough investigation of my allegations.
5. The FBI Inspection Division investigation into my allegations found FBI managers deficient in handling this investigation, but made no recommendations to hold anyone responsible for those deficiencies.
6. Both the FBI Inspection Division and the FBI Office of Professional Responsibility failed to investigate my allegations that Tampa officials backdated and falsified official FBI records.
7. Tampa officials did backdate and falsify official FBI records.

8. The FBI retaliated against me for reporting official misconduct within the FBI.

These important findings demonstrate a dangerous lack of internal controls within the FBI.

One would think that after such facts were discovered there would be a strongly worded rebuke against the FBI, an agency whose success, after all, is entirely dependent on its reputation for integrity. This integrity was sorely undermined by FBI managers who used correction fluid to materially alter official FBI records in furtherance of a scheme to obstruct the internal investigation. One would think that an Inspector General charged with protecting the integrity of the FBI, and with protecting the whistle-blowers who bravely come forward to report these lapses, would stop at nothing to find out who so recklessly tarnished the image of the FBI, and so distracted us all from our critical mission of protecting the nation from terrorist threats.

One would think that, but in the maze I found myself in after making my complaint, this was just one more twisted path that put me back to where I started. In a final report that can only be described as schizophrenic, the Inspector General who made these findings repeatedly heaps praise on the FBI Supervisors and Inspectors who were responsible for this misconduct. The Inspector General finds that the Tampa Division failed to properly investigate and manage a terrorism investigation, and then backdated and falsified FBI records to obstruct the investigation into that failure, yet then describes these managers as “experienced terrorism investigators” and defends the conclusions reached in their admittedly deficient investigation of themselves. The Office of Professional Responsibility and the Inspection Division are likewise found to have not adequately investigated my complaint, yet they are also called “terrorism experts” and are reported to have been thorough and forthright in their analysis of the terrorism issues, despite their utter incompetence in all other aspects of the investigation, particularly their failure to notice that critical documents had been altered with white-out.

When I received a draft copy of the Inspector General’s report last November, I was willing to attribute the many factual errors and omissions in the report to honest mistakes. I made a good faith effort to identify these errors so the Inspector General could produce a final report that comported

more closely to the well-documented facts. In his final report the Inspector General simply ignores the bulk of my response and instead adds new material that is equally as misleading and contradictory to common sense. The ridiculousness of the OIG response can be summed up by their warning to me not to identify the names of the terrorist organizations involved in the investigation they say did not involve terrorism.

Since this hearing is focused on security clearance retaliation I would like to concentrate attention on just one particularly troubling aspect of this debacle that demonstrates how national security agencies like the FBI manipulate the system to surreptitiously conduct retaliatory investigations against whistleblowers. This is critical, because without retaliatory investigations these agencies would not be able to gather the evidence necessary to justify revoking a security clearance.

After twice providing OPR and OIG with signed, sworn statements in which I alleged serious misconduct by FBI managers, I assumed both OPR and OIG would pursue investigations. Without notifying me, however, the FBI Inspection Division initiated a separate investigation that was not limited to my allegations- in fact the Inspectors were not even advised of my OPR statements when they conducted their investigation. Instead, in the words of one of the Inspector's quoted in the OIG report, they were instructed to "take a look at the whole thing." The "whole thing" of course included my conduct in the investigation, and since the subjects of my complaint all knew the Inspection Division investigation was taking place while I did not, I was at a severe disadvantage. The Tampa Division managers even acted as fact-finders for the inspection.

The Inspectors did initiate inquiries into my conduct during their investigation. They looked into allegations that one of my trips to Tampa lacked proper authorization and into allegations that I spent a small amount of case funds without authorization. Neither investigation bore fruit, but that's not the point. If the Inspectors had found something they would certainly have used it as justification for taking action against me, which they then could have argued was not related to my complaint.

If they had been up front and actually opened an internal investigation against me, it would have been an obvious act of retaliation. But by camouflaging the investigation as an all-encompassing "Inspection" they could mask their true intent and engage in one fishing expedition after

another until they finally got lucky. Since the OIG report concludes that the Inspection Division did not investigate my allegations of misconduct by Tampa managers, it begs the question: if they weren't investigating my complaint, what were they investigating? The Inspection Division was not trying to discover what went wrong in this investigation, they were trying to find something they could use against me.

Now this is where things get really troubling, and where the bad faith in the OIG investigation is demonstrated. In the draft report the OIG states that the Inspectors interviewing the Tampa officials "did not take written statements or document each interview." As I said, this allowed the Inspectors to conduct these retaliatory investigations without leaving a record. The Inspectors told me they pursued these investigations against me- I believe to intimidate me- and I requested that they document who made the allegations because the accusations evidenced retaliation. I also informed the OIG investigator soon afterward in a telephone call, and I documented the incident in a letter to the Chief Inspector. Despite my requests, the Inspection Division refused to provide the names of my accusers or document their investigation of these allegations.

In the OIG final report, however, the sentence quoted above is removed and replaced with a sentence stating: "In our examination of the Inspection Division review and interviews of the team, **the OIG found nothing** to indicate that the Inspection Division investigated German's travel authorizations, his handling of case funds, or any other aspect of his conduct." This alteration of the OIG report intentionally obscures the fact that the Inspectors deliberately chose not to document their investigative interviews, creating the misleading impression that such events did not take place. I documented the Inspector's inquiries in a timely manner and provided that information to the Chief Inspector, and to the OIG.

I wish I could say that now that the OIG report is complete I am out of the labyrinth, but I am not. In fact I'm back to square one. This matter now goes before the Department of Justice Office of Attorney Recruitment and Management for adjudication, only the OIG doesn't even give the OARM the full results of its investigation. Of the 52-page OIG final report, only 13 pages have been given to OARM. According to what I have been told, OARM will now act somewhat like an administrative law judge in a de novo review of this matter, where I will be placed in an adversarial position against the OIG. My supposed protector is now my adversary. In order to

present any evidence to the OARM I will have to request discovery, even though I gave all the records to the OIG three years ago. In order to obtain witness testimony I will have to request depositions, even though these witnesses have all given statements to the OIG. The OARM can deny my requests for discovery at its own discretion.

In closing, my odyssey is the clearest example possible of the need for greater Congressional oversight of the FBI and the Department of Justice. The OIG investigator once asked me why I thought the FBI managers were so brazen in the way they altered the records in this case. I told him it was because they knew no one would look, and even if someone did look, no one would care. The people responsible for this mess still work for the FBI, many in leadership positions, and that should leave all of you questioning the veracity of what you're being told about the FBI Counterterrorism program. This is not a question of balancing security interests against liberty interests. Neither our security nor our civil liberties are protected when FBI managers can so easily cover up their misconduct.

Thank you for your time.