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The Hon. Arlen Specter
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Hon. Patrick J. Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Hon. Charles E. Grassley
Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

**RE: ADDITIONAL INFORMATION/FBI PROMOTIONAL
PRACTICES**

Dear Mr. Chairman, Ranking Member and Senator Grassley:

This letter is provided in further response to Senator Charles Grassley's May 25, 2005 request for information and to further supplement our letter to you dated June 17, 2005.

The FBI has issued various statements attempting to explain their management hiring/promotional conduct since the 9/11 attacks. These statements justify the FBI's hiring/promotional practices on the basis that there was a lack of expertise within the FBI, and thus the failure to promote subject matter experts into the counterterrorism division was somehow justified. As set forth below, these statements are inaccurate and misleading.

First, after the 9/11, attacks the FBI promised Congress that it would restructure its counterterrorism program in order to insure the promotion of subject matter experts. According to the testimony of the FBI's official spokesperson on post-9/11 promotional policies, the promised changes never happened.

Second, the highest ranking FBI officials responsible for the Bureau's response to the 9/11 attacks testified, under oath, that its managers did not need to possess important counterterrorism skills. The justification for this policy was the "crime is a crime" theory, i.e. an expert in bank robberies would somehow have the expertise needed to investigate al-Qaeda. In our June 17th letter we highlighted some of the testimony that supported this policy. Below, we cite to recent testimony given by the Director of the FBI that indicates the Director has adopted this same flawed policy.

The FBI Failed to Fulfill its Commitment to Congress

In the wake of the 9/11 attacks, FBI Director Mueller went before the Congress and the public, in an act of reassurance, promising to transform the FBI into a prevention-oriented agency with the capability and expertise to prevent the next attack upon the United States. The FBI had requested more statutory authority, more agents and a higher budget to implement Director Mueller's vision. His restructuring of the Counterterrorism Division was his "commitment" to establishing the necessary organizational framework, and cultural and behavioral changes necessary to prevent future terrorist acts (see Statement of Director Mueller before the Senate Judiciary Committee, June 6, 2002, pages 312-313 in official Committee Record).

For example, in his submitted written testimony following a June 6, 2002 hearing before the Senate Committee on the Judiciary, in response to a question submitted by Senator Patrick Leahy, Mr. Mueller promised that the FBI would create opportunities for agents with CT experience to be promoted into management positions in headquarters:

Q: (From Senator Leahy) The Director's written testimony notes that FBI Headquarters needs to develop a cadre of skilled experts to fight terrorism and that this is impossible with the constant turnover in headquarters personnel. I understand that the unit to which the Phoenix E.C. was initially sent is staffed entirely by agents who have been at FBI headquarters and in that unit for under a year. How do you propose to both attract and retain agents at headquarters long enough to develop the needed expertise to fight terrorism?

A: (From Director Mueller) ...The decision to manage the Counterterrorism Program in a more centralized manner will provide greater extended promotional opportunities within FBIHQ than have previously existed. GS-14 Agents will have enhanced opportunities for advancement within the Counterterrorism Division (CTD) which should result in the ability to maintain greater continuity of expertise and management in the CTD.

However, in his sworn deposition in the *Youssef v. FBI* case, Mr. Mueller denied that this was his testimony, and denied that he had reviewed and approved of the responses, as required by the Committee (see, *Youssef v. FBI*, Mueller deposition, page

105). He also denied knowing about the policy changes for continuity in CT expertise, as stated in his response to Senator Leahy's question (see, *Youssef v. FBI*, page 106, lines 7-11).

Even more troubling than the conflicts between the commitments made to Congress and the conduct of the FBI is the testimony of the FBI's official spokesperson regarding the post-9/11 promotional policies of the FBI's counterterrorism division. Mr. John Pikus testified as the official FBI representative on matters related to post-9/11 CT promotional activities. In accordance with the Federal Rules of Civil Procedure, Mr. Pikus was the official FBI "representative" "designated" to testify on behalf of the FBI's official policies and practices concerning the following:

to testify on [the FBI's] behalf with regard to all promotional activities concerning counter-terrorism in which any employee for the FBI who had a rank of GS-15 or below was promoted into the SES since 2001

See, *Youssef v. FBI*, Pikus Deposition Exhibit 2.

In his official capacity Mr. Pikus testified that the FBI did not change its promotional policies and procedures within counterterrorism after the 9/11 attacks. No efforts were made to recruit or hire managers with expertise in Arabic, Middle Eastern religion and culture or operational counterterrorism. The testimony speaks for itself:

No Need for Middle Eastern Counterterrorism Experts:

Q: Okay. Do you remember when you served in the position, whether there was any discussion about how best to promote persons who speak Arabic, have Counter Terrorism Operational experience, have knowledge and experience in the Middle East, or experience dealing with, say, experience dealing with terrorist groups like Al Qaeda, Middle Eastern Terrorist groups, the best way to try to get the persons with those qualifications into the SES?

A: No.

Q: And, to the best of your knowledge, that type of discussion never happened, that you knew of?

A: I was never privy to, no.

No Need for Arabic Language Managers

Q: And was there ever any discussion when you were serving in your position, vis-a-vis, promotions into the 14 or 15 SES ranks, formal or informal by anybody, about any need to try to get more people, say, who are Arabic speaking into any positions whatsoever?

A: No.

See Youssef v. FBI, Pikus Deposition Tr. 89

No Need to Change Hiring Policies in Counterterrorism After 9/11:

Q: Do you know if -- At the time you were there, were there any meetings, discussions, white papers, whatever, about how the 9/11 attacks and the new emphasis of the FBI, in terms of counter terrorism would impact on the criteria for promoting persons into the SES?

A: No.

Q: And what about in terms of promotions to persons into GS 14 or 15 rank, was there ever any discussions whatsoever about how the 9/11 attack and any lessons learned, or needs of the Bureau, based upon that attack, and what we now know about Middle Eastern Terrorism, were there any discussions, looking at those needs, about how that would impact on the skills and qualifications we're looking for in the GS 14, 15 or SES ranks?

A: No.

See Youssef v. FBI, Pikus Deposition Tr. 89.

No Effort to Recruit/Promote into Management Persons with Expertise in Operational Counterterrorism:

Q: And do you know of any steps taken by the FBI in terms of the Counter Terrorism Division to recruit persons who had Arabic speaking skills into SES positions within the Counter Terrorism Division?

A: No.

Q: And do you know of any specific steps taken by the FBI to recruit persons with Arabic speaking skills into GS 15 positions?

A: No.

Q: In terms of direct operational counter terrorism experience in Middle Eastern Counter Terrorism Operations, do you know of any steps taken to recruit persons to apply up to SES positions, who had that background?

MS. WELLS:

I'm going to object to the form of the question. I don't know that it's clear what you mean by "direct operational counter terrorism experience."

MR. KOHN: Okay.

BY MR. KOHN:

Q: Would you know, if I were to say someone had operational experience in Middle Eastern terrorism cases, would that have a meaning to you as an FBI --

A: It would mean that that person had expertise in that area.

Q: And was actively involved in actual operational activities related to Middle Eastern terrorist groups?

A: Right.

Q: Okay. Do you know of any efforts made to recruit persons with that background and experience to an SES position in the Counter Terrorism Division?

A: No.

Q: And the same question as for GS 15 positions?

A: No.

Q: In terms of knowledge and experience with the Middle East, you know, in terms of the culture and the heritage and the history of that region of the world, do you know of any specific steps taken to recruit or encourage persons with that level of expertise into an SES position within the Counter Terrorism Division?

A: No.

Q: And the same question as for a GS 15 position?

A: No.

Q: Now I think I asked you this once before, but I'm going to try to make it even a broader question, which is, after 9/11, are you aware of any review whatsoever from agent recruitment through who you want for Director of the FBI, any level, anything where anyone sat down formally or informally, and said, "Look what happened on September 11, 2001, and how that impacts the needs of the FBI and the needs of national security," and looked at that and said, what, specifically, are the new staffing needs of the FBI?

A: No.

See Youssef v. FBI, Pinkus Deposition Tr. 100-103.

The Current FBI Director Adopts Watson's "A Crime is a Crime" View on Combating Terrorism

Mr. Mueller's assurances to the public and to Congress have not been met with commensurate actions. He has not changed the culture of the FBI from reactive to preventative, probably because he does not know the difference, given his professional background in criminal law enforcement. He has not created a near-SIOC like environment within the CTD. He did not create conditions to ensure growing CT knowledge and expertise within CTD. He did not ensure that those who were brought into the CTD had sufficient background and expertise in counterterrorism, especially Middle Eastern counterterrorism. He took a hands-off approach. He subscribes to the flawed notions that "a crime is a crime" (see Mueller deposition, pages 60-62), as evidenced by the fact that he believes the sniper case translates into an intelligence-based terrorist case, and that "leadership" is more important than subject matter expertise because "leadership ability is transferable" (see Mueller deposition, pages 58-59). The correct answer is that *both* are important.

Unfortunately, Director Mueller, like Dale Watson and those who were brought into the CTD post-9/11, is apparently equally incapable of distinguishing between the "crime is a crime" mentality versus the CI/CT mentality of prevention. This point is made abundantly clear when Director Mueller compared the skill-sets necessary to effectively combat and prevent the terrorist actions of a highly trained, ideological Middle Eastern terrorism organization with the skills necessary to investigate the "sniper" case. Thus, it was not a question of not having personnel with expertise in Middle Eastern counterterrorism, such as Bassem Youssef. They didn't even look for these persons.

This is born out in the testimony of Mueller about why he thought that Gary Bald had sufficient counterterrorism expertise:

Q: And you know Mr. Gary Bald?

A: Yes.

Q: And are you aware that he was drafted into his position within the counterterrorism division?

MS. WELLS:

Object to the form.

THE WITNESS:

A: I'm not certain of the circumstances in which Bald took over at counter-terrorism. I know he had been an inspector handling the Boston case, and then became SAC in Baltimore.

I'm not certain, I don't recall the circumstances of him coming to Baltimore to counter-terrorism, whether it was a call made to him or he applied.

BY MR. KOHN:

Q: And if he was recruited for that position would that raise any concerns to you?

A: Again, it's speculative.

MS. WELLS:

Object to the form.

BY MR. KOHN:

Q: Were you aware that at the time Mr. Bald took his position in the counter-terrorism division he had no background or experience in counter-terrorism?

MS. WELLS:

Object to the form of the question.

THE WITNESS:

A: I don't think that's accurate. He was the SAC of Baltimore for a period of time.

MR. KOHN:

Q: I'm just going to call the witness ?for the record? to Bald deposition page 9, lines 13 through 17. I'd just ask if this meets with your recollection:

“Up through your assignment as the DAD counter-terrorism, can you describe in which of these offices ?he talked about his prior work history? did you perform substantive operational counter-terrorism work? Answer: none.”

“Were you ever assigned with primary duties for counter-terrorism like a CT desk or something like that? Answer: No.”

Q: Does that ? is that consistent with your understanding of his testimony?

THE WITNESS:

A: That testimony goes to sitting on a desk or being primarily assigned or principally assigned to counter-terrorism. Certainly as SAC he had some familiarity with terrorism, because he ran the Baltimore terrorism program for a period of time, during which he was SAC.

BY MR. KOHN:

Q: So your understanding of Mr. Bald is, his knowledge and background in counter-terrorism was as an SAC?

A: Based on what you read to me from his deposition, my knowledge of Mr. Bald's exposure to counter-terrorism would have been running an office in which counter-terrorism was a substantial program.

Q: And are you –

A: I might also add, he had ? during the time he was there he had the sniper case, which ? I don't know whether it was actually documented as a domestic terrorism program, but certainly it could fall under the category of domestic terrorism. So running the office gave him some exposure to terrorism matters.

Q: In terms of the sniper case, do you think background experience running the sniper case would provide a manager with the expertise they would need to manage an intelligence-based counter-terrorism operation?

MS. WELLS:

Object to the form. What do you mean by intelligence and counter-intelligence?

MR. KOHN:

In other words as opposed to law enforcement where you're prosecuting a crime, I'm talking about when I say counter-terrorism intelligence –

THE WITNESS:

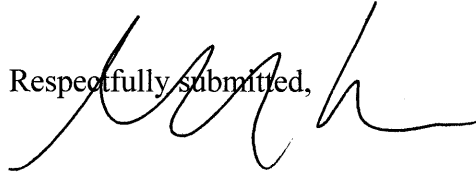
A: Yes, I think absolutely it would give, contribute to his ability to handle counter-terrorism, whether it be intelligence based or responsive to an act, absolutely.

See Youssef v. FBI, Deposition of Director Mueller Tr. 24-28

It is now abundantly clear as to why the FBI did not recruit, hire or promote Middle Eastern subject matter experts into its management ranks within the newly constituted counterterrorism program after 9/11. The FBI's top leadership adopted the untenable position that a "crime is a crime," and thus Middle Eastern counterterrorism experts were simply not needed within the FBI's top management. Thus, Mr. Mueller has failed to live up to the promises he made since the tragedy of 9/11.

We hope that this information is of help to you in the Committee's on-going oversight efforts of the FBI. Additional disclosures by us to the Committee, pursuant to Senator Grassley's request, will be made in the near future.

Respectfully submitted,



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