

**Questions for the Record from Senator Charles E. Grassley
for Stephen Kohn
U.S. Senate Committee on the Judiciary
Hearing on “Whistleblower Retaliation at the FBI: Improving Protections and Oversight”
Submitted on March 10, 2015**

**Justice Department Sanctions Proposal and Disclosures to Congress and the U.S.
Department of Justice Office of Inspector General (OIG)**

The April 2014 *Department of Justice Report on Regulations Protecting FBI Whistleblowers*¹ recommended that the Department’s Office of Attorney Recruitment and Management (OARM), which adjudicates FBI whistleblower complaints, have the power to sanction litigants for violating protective orders. Those protective orders prohibit whistleblowers from speaking about their cases. There are no exceptions.

Does the sanctions proposal pose any threat to FBI whistleblowers? Should there be exceptions to the sanctions authority, such as for disclosures to Congress or the OIG?

**RESPONSE OF STEPHEN M. KOHN, EXECUTIVE DIRECTOR, NATIONAL
WHISTLEBLOWER CENTER:**

The National Whistleblower Center strongly opposes this recommendation.

First, this proposal would prevent Congress and other appropriate authorities from obtaining information from FBI whistleblowers and would serve to silence FBI employees from making otherwise protected and/or non-confidential disclosures.

Second, all FBI employees have executed employment agreements in which they are required to adhere to the FBI’s strict prepublication review procedures. These procedures have specific rules governing the release of information, and set forth procedures for internal FBI review of information for which an agent may want to disclosure, and has specific appeal processes. These procedures are consistent with long-standing judicial precedent on censorship rules. There is simply no need to place FBI whistleblowers under a new set of restrictions that do not apply to all other FBI agents.

Adding to this otherwise complex and extensive structure, a new layer of restrictions would not serve the public interest and would undermine the whistleblower program. The OARM does not have the statutory or regulatory authority for these powers, and should not be given such authority.

¹ Department of Justice Report on Regulations Protecting FBI Whistleblowers (Apr. 2014).

Third, we have worked with whistleblowers who have utilized the OARM process since the inception of the program. There has never been any example for which we are aware in which a whistleblower violated a protective order entered into between the parties. Why propose to fix a problem that does not exist? If FBI employees violate classification or privacy rules, there are numerous regulations and laws already in place for which these employees can be sanctioned. These rules have appeal procedures and some due process protections.

Finally, this proposal would have a real chilling effect on whistleblowers. It would discourage them from using the OARM process. FBI agents would not want to give the DOJ OARM authority to sanction them. Agents are already under strict disciplinary review from the FBI Office of Professional Responsibility and the Department of Justice's Inspector General.