Responses of the Federal Bureau of Investigation to Questions for the Record Arising from the March 4, 2015, Hearing Before the Senate Committee on the Judiciary Regarding "Whistleblower Retaliation at the FBI: Improving Protections and Oversight"

Questions Posed by Chairman Grassley

Department of Justice and Government Accountability Office Recommendations

1. In its April 2014 report examining the FBI whistleblower regulations, the Justice Department recommended expanding whistleblower protections to disclosures made to the second-in-command of an FBI field office.[1] Despite the urgings of employees, whistleblower advocates, and even the Office of Special Counsel, however, the Department did not recommend expanding protections to disclosures made to direct supervisors or other management within an FBI employee's chain of command.

As the Department notes, "[The Office of Special Counsel (OSC)] believes that to deny protection unless the disclosure is made to the high-ranked supervisors in the office would undermine a central purpose of whistleblower protection laws."[2] The U.S. Government Accountability Office (GAO) report examining the Department's handling of FBI whistleblower cases similarly stresses that employees who report to a "nondesignated entity," whether they intend to officially blow the whistle or not, leaves those employees with "no recourse" against retaliation.[3] GAO explains that it is common for whistleblowers in the FBI to report wrongdoing to their immediate supervisors, and some report concerns without realizing or expecting to make a "whistleblower disclosure."[4] Moreover, internal

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[1] Department of Justice Report on Regulations Protecting FBI Whistleblowers (Apr. 2014), at 12-13 (The current regulations protect disclosures made to the first-in-command of an FBI field office) [Hereinafter "DOJ Report"].
[2] U.S. Government Accountability Office, Report to the Chairman, Committee on the Judiciary, U.S. Senate, Whistleblower Protection: Additional Actions Needed to Improve DOJ's Handling of FBI Retaliation Complaints (Jan. 2015), at 1 [Hereinafter "GAO Report"].
[3] *Id.* at 18.
[4] *Id.* at 19; Notably, the impulse to report wrongdoing to a direct or immediate superior is common in the private sector as well as in the government. *See* Ethics Resource Center, Inside the Mind of a Whistleblower: A Supplemental Report of the 2011 National Business Ethics Survey, at 11 (2012) ("In 2011, 56 percent of first reports were made to the employee's direct supervisor."); *available at* http://www.ethics.org/files/u5/reportingFinal_0.pdf.

These responses are current as of 3/27/15

FBI policy *encourages* reporting wrongdoing within the chain of command.[5] The policy "specifically prohibits retaliation against employees who report compliance risks to any supervisor in the employees' chain of command, as well as additional specified officials, but *does not offer any means of pursuing corrective action if an employee experiences retaliation for such a disclosure.*"[6]

It is not surprising, then, that during the course of its review the Department examined its handling of 89 FBI whistleblower cases, and determined that 69 of them were deemed "non-cognizable." A "significant portion" of those involved disclosures that were "not made to the proper individual or officer under 28 C.F.R. § 27.1(a)."[7]

Why shouldn't the law or regulations protect disclosures made to direct supervisors and others within an FBI employee's chain of command?

Response:

The question refers to two different sources of protection: the statutory protection afforded to those who make whistleblower disclosures protected by statute (5 U.S.C. § 2303 and its implementing regulations) and the protection provided by FBI policy for those who report compliance risks.

As discussed further in response to Question 6, below, a 2014 FBI policy entitled "Non-Retaliation for Reporting Compliance Risks" (policy directive 0727D) addresses compliance with laws, regulations, and Department of Justice (DOJ) and FBI policies, and protects from retaliation FBI employees who report compliance concerns to: those to whom protected whistleblower disclosure may be made, the FBI Office of Integrity and Compliance (OIC), the OIC Helpline (which accepts anonymous calls), division compliance officers, the Division Compliance Council, **or any supervisor in the reporting employee's chain of command**. (Section 8.4.1.) Retaliation for reporting compliance risks is actionable misconduct under Offense Code 5.16 (Retaliation) of the FBI's "Offense Codes and Penalty Guidelines Governing the FBI's Internal Disciplinary Process" and, in the absence of aggravating or mitigating factors, is punishable under those guidelines by a 30-day suspension without pay.

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[5] GAO Report at 19 n. 41 (citing Policy Directive 0032D, Non-Retaliation for Reporting Compliance Risks (Feb. 11, 2008) and Policy Directive 0727D Update (Sept. 23, 2014)).
[6] DOJ Report at 12-13.
[7] *Id.* at 7.

As to the separate question of whether statutory whistleblower protections should be extended to employees who make disclosures to their direct supervisors, we note that this issue was addressed in the Department's report of April 2014. This report was the culmination of a working group of attorneys from the FBI, the Justice Management Division, the Office of Attorney Recruitment and Management, the Office of the Inspector General, the Office of Professional Responsibility, and the Office of the Deputy Attorney General. Ultimately, in the report, this group advocated expanding the list of persons to whom a protected disclosure may be made to the second-highest ranking tier of field office officials. As we formulate these proposed regulations, we will consider this report and all of the testimony before the Senate Judiciary Committee regarding the appropriate category of persons to whom a protected disclosure may be made. As is the normal course, any new regulations will be subject to the requisite notice and comment process, through which we will gather more information and views on this issue.

2. During the March 4 hearing, I asked the witnesses on the second panel whether the FBI regulations should be amended to clarify that FBI whistleblower disclosures to Congress are protected and you and the other second panel witnesses expressed approval. Will the Department include this recommendation in its proposed regulatory amendments? Why or why not?

Response:

Although the whistleblower protection provisions set out at 5 U.S.C. § 2303 and 28 C.F.R. Part 27 do not encompass disclosures to Congress, a separate Federal law provides that "[t]he 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." (5 U.S.C. § 7211.) This statute prohibits interference with an employee's provision of information to Congress, or to a committee or member, as long as the information is not classified or similarly restricted.

3. You state in your testimony that the Department is working with the Office of the Inspector General to improve training so that FBI employees better understand their rights and responsibilities with respect to potential whistleblowing.

a. Will you commit to providing this Committee with complete information regarding any new training programs and materials developed for FBI employees on this subject, including the substance, format, and recipients of such training?

These responses are current as of 3/27/15

Response:

The FBI would be pleased to continue to provide to the Committee information regarding its training regarding whistleblower protections.

b. During the March 4 hearing, Inspector General Horowitz noted that mid-level managers, in addition to senior management, are important in delivering a message throughout the organization that whistleblowers are valued and protected. What training or guidance does the FBI provide to its mid-level managers concerning their responsibilities in protecting whistleblowers and their role in communicating the value of whistleblowers to their staff?

Response:

The FBI Director believes the message that whistleblowers are valued and protected starts with him, and he takes every opportunity to disseminate that message throughout the FBI's workforce. In addition, whistleblower protections are addressed in briefings for new employees, called "Onboarding New Employees" (ONE) briefings, and during required biennial training, often called No FEAR Act training. Whistleblower protections are also often discussed during annual All Employee conferences and during training directed by the Equal Employment Opportunity Commission, the Merit Systems Protection Board, and others. Information regarding whistleblower protections is additionally available on the websites of both the FBI's Office of Equal Employment Opportunity Affairs and Office of the General Counsel; these websites identify those to whom protected disclosures can be made, provide filing instructions, and address frequently asked questions. Finally, periodic informal communications emphasize the importance of encouraging compliance at all levels. For example, a 2014 communication provides as follows:

> **Institutionally we are well served by a culture that encourages our personnel to raise good-faith concerns**. It is our obligation in fact to raise such concerns, and we provide various avenues for people to raise perceived problems so that they can be assessed and addressed. To foster such a culture, we have incorporated ethics, accountability, and leadership into our core values, and created systems that support the making of such reports, whether it be to the INSD [Inspection Division], OIC, the chain-of-command, the OIG [Office of the Inspector General], or others. Of course, some reports may turn out to be true and others incorrect. Regardless, we prohibit retaliation even if the report

subsequently proves groundless. . . . **Maintaining a culture of being open to criticism, admitting mistakes, and having faith that the investigative (or EEO) process will follow the facts where ever they lead is part of what it means to be in the FBI. That is who we are.**

(E-mail from Patrick W. Kelley, Assistant Director, OIC, to the FBI's Senior Executive Service officials, Division Compliance Officers, and others, dated November 5, 2014 and restating the contents of a 2013 email (emphasis in original).)

FBI Cooperation in Whistleblower Investigations

4. On February 3, 2015, as required by Section 218 of the 2015 Department of Justice Appropriations Act,[8] Inspector General Michael Horowitz informed appropriations committee leadership in the House and Senate that the FBI "has failed, for reasons unrelated to any express limitation in Section 6(a) of the Inspector General Act (IG Act) to provide the Department of Justice Office of the Inspector General (OIG) with timely access to certain records."[9] According to that letter, the OIG requested those records in connection with its investigations of two FBI whistleblower complaints.

The letter states that the FBI failed to meet deadlines to produce a portion of these records for the "primary reason" that the FBI "desire[d] to continue its review of e-mails requested by the OIG to determine whether they contain any information which the FBI maintains the OIG is not legally entitled to access."[10] Further, the letter states that the FBI "informed the OIG that, for any such information it identified, it would need the authorization of the Attorney General or Deputy Attorney General in order to produce the information to the OIG."[11]

However, as the letter correctly states, Section 218 plainly contemplates that the OIG will have access "to *all* records, documents, and other materials," subject to the sole limitation of Section 6(a) of the IG Act.[12] Section 6(a) does not limit the OIG's access to the categories of records the FBI has identified.

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[8] Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (2014).
[9] Letter from Michael Horowitz, Inspector General, to Rep. Harold Rogers, Rep. Nita Lowey, Sen. Thad Cochran, and Sen. Barbara Mikulski (Feb. 3, 2015).
[10] *Id.* at 2.
[11] *Id.*
[12] *Id.* at 1-2 (emphasis added) (quoting Pub. L. No. 113-235, § 218, 128 Stat. 2130, 2200 (2014)).

Since February 3, OIG also has issued three additional Section 218 notices regarding the FBI's failure to produce documents in response to the OIG's requests.

a. How is it appropriate for the FBI to decide which documents it will produce to the independent investigator looking into whether the FBI retaliated against a whistleblower?

Response:

The FBI has a good faith disagreement with the Office of the Inspector General (OIG) regarding what documents the FBI may legally provide, in a very limited range of circumstances. The FBI's authority to disseminate its documents is affected by several different legal authorities, including the Wiretap Act, the Bank Secrecy Act, the Fair Credit Reporting Act, and Rule 6(e) of the Federal Rules of Criminal Procedure (regarding grand jury materials). We have been completely transparent with the OIG and the leadership of DOJ regarding this legal disagreement. In order to resolve this matter, consistent with standard DOJ practice, the Office of the Deputy Attorney General has asked DOJ's Office of Legal Counsel (OLC) to render an opinion as to the correct reading of the law. As we await the OLC opinion, in order to comply with the Inspector General Act as well as all other provisions of law that we have concluded are applicable in this context, we believe we must conduct a legal review of the large volume of documents that the OIG has requested from us. Because we are conducting this review in order to provide the OIG with the requested materials in a manner consistent with law, we do not believe we are in violation of section 218 of the fiscal year 2015 DOJ Appropriations Act.

b. I sent a letter to the FBI two weeks ago asking how much in appropriated money was used to conduct these reviews and delay the access to documents. Will you commit to ensuring that the FBI provides a timely and thorough reply?

Response:

The FBI will forward its reply as soon as possible.

Loss of Effectiveness Orders

5. Whistleblowers claim that the FBI uses Loss of Effectiveness orders (LOEs) as a tool for retaliation. LOEs can reportedly result in immediate demotion or transfer, without giving recipients notice or an opportunity to appeal. According to the FBI, an LOE order does

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not result in a loss of pay or a demotion in rank. Rather, "the aim is to improve the employee's performance to the fullest extent possible." However, matters relating to employee *performance* or *efficiency* should be handled through Performance Improvement Plans (PIPs), which provide employees notice of any perceived performance deficiency and an opportunity to improve performance in that area. On the other hand, investigations of employee *misconduct* should be forwarded to the Office of Professional Responsibility (OPR) for adjudication – which affords employees with the due process protections of notice and ability to appeal. Given these existing tools, it's unclear whether LOEs serve *any* legitimate purpose at the FBI.

I sent a letter to FBI in September 2014 and letters to GAO and the Inspector General in February 2015, asking for information on the FBI's use of LOEs.

Two days before the hearing, the FBI notified me that it has instituted a new policy that at least provides notice to employees and an opportunity to provide a written response to that claim within 7 days. However, the policy has a loophole. It also says that the FBI Director or Deputy Director "may order the reassignment of any employee" "in whom he no longer reposes trust or confidence" "without adhering to the process and procedures set forth" in the new policy.

a. Under what circumstances could the FBI Director or Deputy Director reassign an employee "without adhering to the process and procedures set forth" in the new policy? Can this reassignment authority be delegated to lower level officials rather than the Director or Deputy Director? Will it be delegated? Why or why not?

Response:

The FBI complies with the statutes (Title 5 of the United States Code) and Office of Personnel Management (OPM) regulations (Title 5 of the Code of Federal Regulations) that govern personnel actions with respect to FBI employees. Among other things, those authorities require that we employ merit system principles, comply with the procedural protections applicable to adverse actions, and afford whistleblower protections. Provided that a non-adverse personnel action is not taken for an improper purpose (such as for a discriminatory purpose or in retaliation for whistleblowing), there is no prohibition on such an action. For example, FBI Special Agents are subject to temporary assignment and transfer anywhere, worldwide, based upon the needs of the Bureau, such as when a particular expertise is needed at a particular location.

A "loss of effectiveness" (LOE) transfer is a particular type of transfer that results when an employee is unable to effectively fulfill official responsibilities in the current position (including for reasons beyond the employee's control) and this cannot be corrected through managerial action such as counseling, mentoring, or the use of a performance improvement plan. As discussed further below, an LOE transfer does not reduce the employee in grade or pay or suspend, furlough, or remove the employee, and it is, consequently, not an adverse action. Provided an LOE transfer is not directed for an improper purpose, it is, like other non-adverse personnel actions, not prohibited by law or regulation.

"Loss of effectiveness" is often identified during an inspection of the office by the FBI's Inspection Division, which is charged with improving organizational performance by providing independent, evaluative oversight of FBI investigative and administrative operations. Under the new policy (policy directive 0773D), an LOE transfer may be recommended by the Inspection Division, an Assistant Director in Charge, a Special Agent in Charge (SAC), an Executive Assistant Director, or an Assistant Director. The affected employee may respond to the recommendation in writing. The Assistant Director of the Human Resources Division will consider both the recommendation for transfer and the employee's response and will propose a course of action to the Associate Deputy Director.

In addition to, and separate from, this process, under the recent policy the FBI Director or Deputy Director may transfer any FBI employee in whom he or she no longer reposes trust or confidence. The policy does not provide for delegation of this authority. Like the LOE transfers discussed above, this transfer is not an adverse action and, unless it is directed for an improper purpose, it is not prohibited by law or regulation.

b. The new suggested LOE policy defines an "adverse action" as "a personnel action that results in a loss of grade or pay (including suspensions without pay and furloughs of less than 30 days) or removal from employment." The policy does not deem an LOE transfer as an adverse action because it "is not initiated to and does not reduce in grade, suspend, furlough, or remove an employee."

Is "adverse action" defined anywhere else in FBI internal guidance or policy? If so, how is that term defined? Does the FBI consider an involuntary removal from an employee's position a "removal"? Please explain why an involuntary transfer—in effect a removal from an employee's position—should not be deemed an "adverse action."

Response:

These responses are current as of 3/27/15

The FBI uses the term "adverse action" as it is used in Chapter 75 of Title 5 of the United States Code, which governs personnel actions with respect to FBI employees. That chapter uses the term "removal" to mean removal from civil service or termination of employment. The new LOE policy provides the following definition of "adverse action": "a personnel action that results in a loss of grade or pay (including suspensions without pay and furloughs of less than 30 days) or removal from employment." (Policy directive 0773D, Section 15.2.1.) As the policy explains, because an LOE transfer is not initiated to, and does not, reduce the employee in grade or pay or suspend, furlough, or remove the employee, it is not an adverse action.

c. The new policy states that an LOE transfer may be recommended by INSD, an ADIC, SAC, AD, or EAD. Why shouldn't disclosures to all of these individuals be protected, if those individuals could retaliate against whistleblowers for disclosing wrongdoing?

Response:

As discussed in the March 2, 2015 letter to Senator Grassley on this topic, and as noted in prior correspondence, information pertaining to an individual's protected activity (such as an EEO claim or a whistleblower complaint of fraud, waste, abuse, or mismanagement) is not reviewed, commented upon, or otherwise considered by any FBI official during any stage of the LOE process. Even if protected disclosures were considered during the LOE process, the entities designated by the Attorney General to receive protected whistleblower disclosures include the FBI's Inspection Division and, as the "highest ranking official in any FBI field office" (28 C.F.R. § 27.1(a)), the FBI's Assistant Directors in Charge and SACs. Consequently, disclosures to the majority of those who can recommend LOE transfers would, in fact, be protected.

d. Are LOEs ever used as an allegation or finding of employee misconduct? If so, shouldn't such cases be forwarded to the Office of Professional Responsibility for adjudication?

Response:

As noted in response to subpart a, above, an LOE transfer is a particular type of transfer that results when the employee is unable to effectively fulfill official responsibilities in the current position (including for reasons beyond the employee's control) and this cannot be corrected through managerial action. An LOE transfer is not an adverse action

and does not result in a reduction in grade or pay. Under the recent policy, the recommendation for an LOE transfer will explain the basis for the transfer, including the circumstances that support it. The employee will receive the recommendation, along with any supporting attachments or other information, and will have an opportunity to respond in writing. If, instead, an adverse action for misconduct were contemplated, the FBI would engage in an entirely separate process as prescribed by Chapter 75 of Title 5, United States Code.

e. Why are investigators from the Inspection Division involved in the LOE process?

Response:

Please see the response to subpart a, above.

f. As of March 1, 2015, the FBI claims that it had issued LOEs against a total of 23 FBI employees. Will you provide all 23 of these individuals with a written justification for their LOEs and an opportunity to provide a written response?

Response:

As discussed in response to subpart a, above, the FBI complies with the statutes and OPM regulations that govern personnel actions with respect to FBI employees. Provided that a non-adverse personnel action is not taken for an improper purpose (such as for discriminatory purposes or in retaliation for whistleblowing), there is no prohibition on such actions. Because an LOE transfer is not initiated to, and does not, reduce the employee in grade or pay or suspend, furlough, or remove the employee, it is not an adverse action. Although we have revised our practice to provide the recommendation of LOE transfer to employees affected in the future, the absence of this documentation does not invalidate past transfers. The need for finality often dictates that once the administrative process prescribed for handling a certain matter is complete, the matter is final, even if a new process or different procedure is subsequently adopted. This is important both to employee expectations and institutional efficiency. Therefore, while we would re-open past cases if they were not handled in accordance with the applicable law or procedural requirements, in the absence of such concerns we decline to disrupt those determinations.

g. Two weeks ago, I asked the Inspector General to examine the FBI's use of these orders in depth. Will you commit to cooperating fully with the Inspector General in this review, and to providing him with timely access to all 1requested records?

Response:

We will cooperate fully with the Inspector General and appreciate his recognition of the constraints discussed in our response to Question 4, above.

Accountability for FBI Whistleblower Retaliation

6. During the March 4 hearing, I asked you whether the FBI defined whistleblower retaliation as misconduct, and whether the FBI had disciplined anyone for whistleblower retaliation. As indicated in our exchange at the hearing, please provide the written FBI policy that defines whistleblower retaliation as misconduct, the recommended punishment for whistleblower retaliation, and a description of each time the FBI imposed discipline for retaliating against a whistleblower. Will you commit to providing these responses by a date certain?

Response:

The FBI has two policies related to whistleblower protections. Among other things, our policy entitled "FBI Whistleblower Policy" (policy directive 0272D) identifies the types of protected disclosures (reports of mismanagement, gross waste of funds, abuse of authority, substantial and specific danger to public health or safety, and violation of any law, rule, or regulation), the authorities to whom protected disclosures are made, and the responsibility of FBI managers to ensure that whistleblowers are not subject to reprisal.

As discussed in response to Question 1, above, a more recent policy provides additional protections. The purpose of the 2014 policy entitled "Non-Retaliation for Reporting Compliance Risks" (policy directive 0727D) "is to provide an effective process for all Federal Bureau of Investigation (FBI) personnel to express concerns or report potential violations regarding the FBI's legal and regulatory compliance, without retaliation, and to encourage the reporting of any such concerns." (Section 7.) This policy emphasizes that "[t]he FBI is committed to creating and sustaining a culture of compliance that promotes open communication, including open and candid discussion of concerns about compliance with applicable laws, regulations, and Department of Justice (DOJ) and FBI policies" (Section 8.1.1) and makes clear that "FBI personnel are strictly prohibited from retaliating against anyone for reporting a compliance concern" (Section 8.1.2). Protected compliance concerns may be reported to: those to whom protected whistleblower disclosure may be made, the FBI Office of Integrity and Compliance (OIC), the OIC Helpline (which accepts anonymous calls), division compliance officers, the Division

Compliance Council, or any supervisor in the reporting employee's chain of command. (Section 8.4.1.) This policy explicitly provides that it "does not add to, or subtract from, the whistleblower protections provided to FBI personnel under 5 U.S.C. § 2303, the DOJ regulations set forth in 28 CFR Part 27, Intelligence Community Directive (ICD) 120, or Policy Directive (PD) 0272D, *FBI Whistleblower Policy*." (Section 8.5.1.)

In Offense Code 5.16 (Retaliation) of the FBI's "Offense Codes and Penalty Guidelines Governing the FBI's Internal Disciplinary Process," the offense of "retaliation" is defined as follows:

> Taking, or threatening to take, an adverse employment action against an employee who made, or was believed to have made, a protected disclosure, or who engaged, or who was believed to have engaged, in a protected activity. See, *e.g.*, Whistleblower Protection Act; Civil Rights Act of 1964; and other anti-retaliation provisions of federal law.

Under this definition, the offense of "retaliation" includes both retaliation against whistleblowers who make protected disclosures under 28 C.F.R. Part 27 and retaliation against those who report compliance risks under FBI policy directive 0727D. Consequently, FBI personnel are subject to discipline if they retaliate against employees who report concerns about compliance with applicable laws, regulations, or policies regardless of whether the report is made to someone in a position identified in the whistleblower regulations (28 C.F.R. Part 27) or to a direct supervisor or other official in the reporting employee's chain of command as provided for in policy directive 0727D.

The standard penalty for retaliation is a 30-day suspension without pay. Mitigating factors may warrant a 10- to 21-day suspension, while aggravating factors may warrant a 35-day suspension or more, up to dismissal. These penalty guidelines were significantly strengthened in 2012; prior to that, the standard penalty was a 7-day suspension. The FBI investigates and punishes whistleblower retaliation regardless of whether an employee seeks to assert whistleblower status. Consequently, the cases in which the FBI has imposed discipline for retaliating against whistleblowers will not necessarily be identical to the cases in which FBI employees have invoked 28 C.F.R. Part 27 and successfully claimed whistleblower status and demonstrated improper reprisal.

The records that allow us to identify cases in which we have imposed discipline for retaliation against a whistleblower date to 2004. During the period 2004 to the present, the FBI's Office of Professional Responsibility (OPR) has imposed punishment related to whistleblower retaliation in the following cases:

- In a 2004 case, a Unit Chief (UC) was found to have engaged in retaliation against a Special Agent (SA) who complained to the Assistant Special Agent in Charge (ASAC) and Congress about the manner in which a terrorism investigation was conducted. The UC retaliated by removing the SA from serving as an instructor regarding undercover activity. The FBI's OPR suspended the UC for 30 days. Adverse disciplinary actions imposed by OPR may be appealed to the FBI's Disciplinary Review Board (DRB), which occurred in this case. On appeal, the DRB reduced the 30-day suspension to a letter of censure. The FBI Director later set aside the DRB's decision and suspended the UC for 14 days.

- In a 2005 case, an Intelligence Analyst (IA) alleged that she was retaliated against by a Supervisory Special Agent (SSA) and an ASAC for making a protected disclosure to the SAC. OPR found that that there was no protected disclosure to the SAC and that the personnel actions taken against the IA would have been taken in the absence of the IA's complaints. Nevertheless, OPR suspended the ASAC for 7 days for supervisory dereliction for placing the IA under the supervision of an SSA about whom she had openly complained and for failing to take action to remedy the situation once it deteriorated. We include this case because, although the discipline was technically not imposed for retaliation, the case does relate to the FBI's response to allegations of retaliation.

- In a 2006 case, an SAC was found to have engaged in retaliation against an SA who provided testimony critical of the FBI's handling of a terrorism investigation. The SAC retaliated by removing the SA from a terrorism case and reassigning him to a different squad. OPR proposed the SAC for dismissal; the SAC retired before the dismissal could be effected.

- In a second 2006 case, OPR found that a Supervisory Technical Information Specialist (STIS) made a protected disclosure relating to his supervisor's misconduct. Although the disclosure was protected, the FBI's OPR found that the SAC transferred the STIS and reassigned his Bureau vehicle for legitimate reasons unrelated to his complaints. Although OPR did not find whistleblower retaliation, they did find that, in executing the SAC's decision to transfer the STIS, the ASAC engaged in supervisory dereliction by advising the STIS of his reassignment in a meeting to which the ASAC had invited the supervisor about whom the STIS complained. OPR suspended the ASAC for 10 days for supervisory dereliction. The appellate authority (when OPR imposes a suspension of less than 15 days, the appellate authority is the

Assistant Director (AD) of the FBI's Human Resources Division (HRD)) overturned OPR's finding of supervisory dereliction and vacated the 10-day suspension imposed by OPR.

- In a 2008 case, an SSA was found to have engaged in retaliation when he made a comment that caused his squad to believe that if they complained about management during an inspection, management would seek retribution. OPR suspended the SSA for 10 days.

- In a 2009 case, a UC was found to have retaliated against an SSA who reported allegations of misconduct that led to an investigation of the UC. The UC transferred the SSA to another unit and manipulated the timing of her transfer so as to reduce her chances of advancement. OPR suspended the UC for 20 days and demoted him to a non-supervisory position at a lower pay grade.

- In a second 2009 case, an SA was found to have engaged in retaliation against an Electronics Technician (ET) after the ET reported the SA to the Chief Security Officer for improperly using a pass key to gain access to the building, thereby triggering the silent alarm. The SA made negative comments about the ET in an attempt to negatively impact the ET's request for a transfer. OPR suspended the SA for 7 days. The appellate authority (the AD HRD) vacated the SA's suspension.

- In a 2012 case, OPR dismissed a senior manager who, among other things, attempted to discredit employees who reported his improper personal relationship with a subordinate.
