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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

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May 17, 2005

VIA Facsimile: (202) 514-2141
Original via USPS Mail

The Honorable Alberto Gonzales
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20535

Dear Attorney General Gonzales:

On April 22, 2005, we wrote to you seeking a briefing on the investigation of FBI Special Agent (SA) Robert Wright. We asked questions about matters both related and unrelated to his case, and requested that you provide certain documents to the Committee. That letter was a follow-up to correspondence dated July 14, 2004, requesting similar information. The July 14 letter was acknowledged in a response from the Department dated September 10, 2004. The Department's letter informed us that the case of SA Wright had been referred to the Office of Professional Responsibility, but did not address the questions we had raised on July 14.

We recently received a response to our April 22, 2005, letter. This response, dated April 27, 2005, failed to acknowledge a number of our questions – questions that have now been outstanding for nine months. The April 27 response dismissed our requests, claiming that, because SA Wright has a currently pending personnel matter, “it would not be appropriate” to provide a briefing or documents to the Committee. This is not a sufficient basis to deny our request.

Congress frequently receives information from and about whistleblowers who have reported waste, fraud, or abuse, many of whom claim to have suffered adverse personnel actions in retaliation for speaking out. In order to fulfill our constitutional oversight obligations, and to evaluate the credibility of individual whistleblowers' claims, it is often necessary to obtain information about their underlying assertions and complaints of retaliation. Such information is also critical to the drafting of legislation.

The Department's response implies that it does not, as a matter of policy, provide briefings to Congress on cases that involve currently pending personnel matters. On the contrary, there is no consistent practice of denying briefing requests merely because a personnel matter is pending. For example, on September 16, 2003, the FBI provided a briefing to the Senate Governmental Affairs Committee staff regarding SA Gamal Abdel-Hafiz during the pendency of his personnel matter. Last summer, the FBI also provided a briefing to Senate Judiciary Committee staff regarding SA Bassem Youseff during the pendency of his personnel matter.

In addition, the fact that a matter is pending has never been a bar to Congressional oversight. As you may recall, during your confirmation hearing, Chairman Specter quoted a 1995 report by the Congressional Research Service (CRS) stating that a "review of congressional investigations over the past 70 years demonstrates that DOJ has been consistently obliged to submit to congressional oversight, regardless of whether litigation is pending." See CRS Report for Congress, 95-464, "Investigative Oversight: An Introduction to the Law, Practice and Procedure of Congressional Inquiry," April 7, 1995. That report stated that appropriate oversight includes "the testimony of subordinate DOJ employees, such as line attorneys and FBI field agents[.] . . . In all instances, investigating committees were provided with documents respecting open or closed cases that included prosecutorial memoranda, FBI investigative reports, summaries of FBI interviews, memoranda and correspondence prepared during the pendency of cases." *Id.*

The Chairman asked, "Do you agree with that generalized statement as to the authority of congressional oversight?" and you answered, in part, "I respect the oversight role of this committee." You continued, "I do have concerns about whether or not the release of information may somehow — may jeopardize national security. But my goal, Mr. Chairman, is to work with the committee and to try to find a way that we can reach an accommodation so that your goals are met and the institutional interests of the executive branch are met."

We were pleased to hear you testify that you respect our oversight role. However, the Department's failure to respond adequately to our requests is not consistent with that general statement of cooperation. Indeed, the exchange of correspondence relating to our original July 2004 request does not demonstrate an effort to "reach an accommodation." Instead, Justice Department responses to our inquiries have simply ignored our questions and dismissed our document requests without citing sufficient grounds for doing so.

We ask again that you answer the questions we posed in our previous two letters, deliver copies of the requested documents, and arrange for a briefing on this matter no later than May 27, 2005. The questions are enumerated on page three of our July 14, 2004, letter, which is attached for your convenience. Should there be any questions regarding this matter, please have your staff contact Tara Magner with Senator Leahy at (202) 224-7703 and Jason Foster at (202) 224-4515 with Senator Grassley. All responses should be faxed to both (202) 224-9516 and (202) 228-2131.

Sincerely,



Patrick Leahy
Ranking Member



Charles E. Grassley
Member

Attachments

cc: Chairman Arlen Specter, Senate Judiciary Committee
Director Robert Mueller, Federal Bureau of Investigations

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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

July 14, 2004

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Robert S. Mueller
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Washington, DC 20535

Via mail and telefax (202) 514-4482 & (202) 324-6490

Dear Attorney General Ashcroft and Director Mueller:

We are writing to inquire and express concern about the Federal Bureau of Investigation's (FBI) continued targeting of Special Agent Robert Wright, a situation we had hoped and believed had been resolved after we raised the issue last year. Unfortunately, we have learned that the Justice Department (DOJ) has now inserted itself into the matter. Specifically, counsel for Agent Wright has informed us that the DOJ Office of Professional Responsibility (DOJ OPR) intends to interview Agent Wright this month regarding unspecified allegations.

As Director Mueller will recall, we wrote with concerns about Agent Wright's predicament on June 12, 2003, after learning that the FBI had opened its fourth internal investigation against Agent Wright. Agent Wright was cleared of allegations investigated by the FBI's Office of Professional Responsibility (FBI OPR) in the three previous investigations. Our concern was that the latest investigation was a sign of the FBI's apparent haste to launch an OPR probe every time an agent speaks publicly about problems within the FBI.

Recent internal documents of the FBI provided to the Senate Judiciary Committee escalate our concerns about retaliation against Agent Wright.

According to the documents, after Agent Wright completed his June 2, 2003 press conference, the top two FBI OPR officials at the time discussed their plan to "take him out," for his public appearance and comments on a network television news program

The materials provided to us include a summary of observations by former Special Agent John Roberts, who served as a Unit Chief in FBI OPR, and his wife Brenda, who served as a secretary in FBI OPR. FBI OPR officials sought to involve Mr. Roberts in the

investigation against Agent Wright, but Mr. Roberts raised objections and concerns about the manner in which OPR officials were conducting themselves and the investigation.

The documents reflect that Mr. Weis instructed Mr. Roberts to open the case against Agent Wright in such a way that the Justice Department Office of Inspector General (DOJ OIG), which has the right of first refusal on all FBI allegations, would not initiate its own investigation, thus leaving the matter within the FBI. Mr. Weis also said that Mr. Jordan had already decided "to propose SA Wright for dismissal," based on their belief that Agent Wright committed insubordination, without even conducting an investigation.

According to the documents, when Mr. Roberts reviewed the allegation and information, he determined "there was no predication to open a case" in FBI OPR at headquarters. At most, the documents stated, the matter called for an investigation by the Chicago Field Office, where Agent Wright worked.

There are other irregularities raised by the documents. For example, FBI OPR officials allowed two persons interviewed in the investigation to review the FBI written summary (FD-302s) of their interview, even though FBI practice does not permit this.

Mr. Roberts' documents also reflect that an Assistant Special Agent-in-Charge (ASAC) of the Chicago field Office called Mr. Weis in an apparent attempt to smear Agent Wright in the media. The message, taken by Mrs. Roberts in her capacity as secretary, stated that several FBI agents "WANT PERMISSION TO SPEAK WITH A REPORTER FROM CHICAGO (PORTER?) IN ORDER TO DISCREDIT WRIGHT."

In addition to raising concerns about the handling of Agent Wright's situation, the documents provided contain other alarming information about questionable practices and incidents within FBI OPR. One such incident was a cheating scandal at the FBI Academy in Quantico, Virginia. FBI OPR received information that two students violated rules and the FBI Academy Honor Code on at least two tests. The information stated that, "After conducting an investigation, it was clear to those involved that the two students had been cheating." One of the students even admitted to cheating. Nevertheless, the Special Agent-in-Charge (SAC) of the FBI Academy disregarded the recommendations for discipline and merely "chose to verbally admonish" the students. The agents apparently were allowed to graduate on September 5, 2003. Whitewashing the cheating incident not only called into question the SAC's performance and judgment, but may have constituted misconduct.

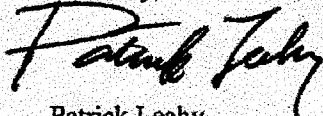
The continuing investigation of Agent Wright, and a FBI Academy cheating scandal swept under the rug show problems still fester at FBI OPR. This information is especially disappointing because Director Mueller has made efforts to improve and reform FBI OPR.

Given our shared concerns about FBI reform and the treatment of FBI whistleblowers, we must get to the bottom of this situation quickly. We would appreciate answers to the following questions by Thursday, August 5, 2004:

- 1) Do you consider the actions of Mr. Jordan and Mr. Weis regarding Agent Wright to be appropriate and in accordance with FBI standards of conduct? What action, if any, is being taken regarding the way they conducted the investigation?
- 2) When and why was the investigation against Agent Wright moved to DOJ OPR?
- 3) Why did Mr. Weis allow two interviewees in the investigation of Agent Wright to review FBI documents of their interview summaries with FBI OPR? Did either of them request changes to the interview summaries, and did the FBI comply? Please provide the initial draft of their FD-302s, and the final copy after they reviewed them. Is it standard practice and/or procedure at the FBI to allow witnesses or interviewees in OPR cases to review their FD-302s? Please list any other incidents of this occurring in the past five years.
- 4) Did any FBI official grant permission for agents in the Chicago Field Division to speak to one or more reporters about Agent Wright, as the Chicago ASAC requested on June 17, 2003? If so, please identify the FBI official(s) who granted permission, and identify the agents in Chicago who spoke to reporters about Agent Wright.
- 5) Do you believe the FBI Academy SAC made an appropriate decision by verbally admonishing the two students who were alleged to have cheated, as opposed to taking more severe disciplinary action against them, such as expulsion? Was the SAC's decision consistent with the FBI's zero-tolerance for lying, cheating and stealing, and the FBI's motto of "Fidelity, Bravery, Integrity"?
- 6) Also, the end of Mr. Roberts' letter mentions documents that are interview summaries (FD 302s) of Jeffrey Howard, former Principal Assistant Deputy Attorney General and Chief of Staff for the Deputy Attorney General at DOJ (Sept, 22, 1995), and of Director Mueller, formerly an AUSA (Sept. 21, 1995). Please provide these documents as well.

We thank you in advance for your cooperation.

Sincerely,



Patrick Leahy
RANKING MEMBER



Charles E. Grassley
MEMBER

cc:

Senator Orrin Hatch
Chairman
Senate Judiciary Committee