

United States Senate

WASHINGTON, DC 20510

January 23, 2006

Via Electronic Transmission

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Mueller:

In 2001, the Senate Judiciary Committee conducted oversight hearings into the double standard of discipline imposed by the Federal Bureau of Investigation's Office of Professional Responsibility (OPR). The Committee inquired into allegations that OPR routinely imposed harsher disciplinary sanctions on rank-and-file agents than on supervisors, even when the misconduct was similar. In 2002, the Justice Department's Inspector General also reviewed the issue and determined the following: "that in several FBI disciplinary matters, including several important and well-known cases, senior managers were afforded different and more favorable treatment than less senior employees."¹ In February 2004, the Bell-Colwell Commission issued its study on the FBI OPR, which concluded:

[A] number of continuing issues contribute to the perception of disparity in punishment between management and lower level FBI employees. Actual disparate treatment in highly publicized, historic OPR cases (e.g., Ruby Ridge, Waco), initially created the well-justified perception that management received favorable consideration in disciplinary matters.²

I recently learned about the outcome in two more cases that reinforce the appearance that a double standard is still in effect. These cases illustrate the classic double standard where supervisors seem to "get off easy." However, these cases also give the impression of a different kind of double standard engrained in the FBI culture. In this second double standard, agents whose alleged misconduct is seen as in any way "disloyal" to the FBI get harsher treatment than more serious misconduct by so-called "loyal" agents.

¹ U.S. Department of Justice, Office of Inspector General, *A Review of Allegations of a Double Standard of Discipline at the FBI*, p. 70 (November 15, 2002).

² Griffen B. Bell, Lee Colwell, *A Study of the FBI's Office of Professional Responsibility*, 2 (Feb. 2004).

The Robert Wright Case

As you know, Senator Leahy and I have written to you numerous times (July 14, 2004, April 22, 2005, and May 17, 2005) expressing concerns about the case of Special Agent Robert Wright and attempting to conduct oversight of his case by both the Justice Department and FBI OPR. The Justice Department and FBI have consistently refused to provide adequate answers to our questions or even limited access to the documents we requested. After our letters alerting you to clear evidence that FBI OPR could not objectively handle the case because its officials had hatched a plan to “take out” Agent Wright, you asked DOJ OPR to handle the investigation. DOJ OPR’s recommendation for Wright’s alleged misconduct — failing to obtain approval for a public statement despite having previously obtained approval for nearly identical statements — was a 30 to 100 day suspension. However, FBI OPR proposed that he be dismissed instead, citing an alleged pattern of misconduct. The letter proposing his dismissal however, lists three previous instances of discipline, none of which occurred within the last four years and none of which involve unauthorized disclosures.

On Friday, October 14, 2005, I learned that the DOJ official assigned to decide Agent Wright’s case determined that he should receive a six month suspension without pay, a demotion from GS-13 to GS-12, and a one-year probation. The official did not comment on whether the FBI should reinstate Agent Wright’s security clearance at the end of his suspension. So, the FBI could still deny him the ability to continue working as an agent, even though his clearance was not suspended for cause. Moreover, I understand that Agent Wright must have permission from the FBI before accepting any other employment or income during his unpaid suspension. This decision could amount to a virtual dismissal — an unusually harsh penalty given the nature of Agent Wright’s actions and his motivation for speaking out. I am unaware of any evidence that Agent Wright had a bad intent for acting as he did. His purpose was to improve the FBI through criticism. Unfortunately for the Bureau and the country, that approach is still unacceptable in the FBI culture.

The Cecilia Woods Case

The contrast between the treatment of Robert Wright and the supervisor of Special Agent Cecilia Woods is stark. Wood’s supervisor is the former FBI Legal Attaché (Legat) in Panama and was the FBI’s highest ranking official in Panama. He admitted under oath that, while in that position, he repeatedly engaged in sexual relations with foreign nationals during business hours. According to Woods, one of those individuals was someone to whom he also paid taxpayer funds as an FBI informant, even though the informant was not providing any useful information to the Bureau. Moreover, he admitted to failing two polygraph examinations and OPR found that he admitted to giving the informant gifts, including lingerie. According to Woods, the Legat engaged in pattern of misconduct regarding misuse of government vehicles and extramarital affairs.

The former Legat’s admissions came during a sworn deposition, dated November 4, 2003, in the Equal Employment Opportunity Commission (EEOC) case of *Woods v. Ashcroft*:

Question: Do you recall what issue he thought you were lying about?

Former Legat: I believe the issue with the improper relationship *with the informant*.

Question: Okay. So you denied the relationship in the polygraph test?

Former Legat: Yes, I did.

Question: And he believed you to be lying about that relationship?

Former Legat: I later learned that he did, yes.

Question: Did you engage in extramarital affairs in Panama?

Former Legat: Yes, I did.

Question: How many?

Former Legat: I related that I had had a relationship with an attorney who worked for one of the ministries and that I had - - well, that I had - the attorney in one of the ministries.

Question: And was that the subject of one of the OPR charges?

Former Legat: No, that was something I volunteered.

Question: And was that the only extramarital affair? In Panama?

Former Legat: No, it was not.

Question: How many other affairs did you have?

Former Legat: I had affairs with two other women.

Question: And what were their positions?

Former Legat: One was a [Panamanian government official].

Question: And the other one?

Former Legat: The other one was a civilian who I met years earlier on a TDY [Temporary Duty].

Question: Did she live in Panama?

Former Legat: Yes.

Question: Was she a Panamanian national?

Former Legat: Yes.

Question: And the [Panamanian government official], was she also a national?

Former Legat: Yes.

Question: Would that be considered inappropriate?

Former Legat: Yes.

Despite this behavior, the Legat received only a 14 day suspension, a demotion, and a transfer to his office of choice. He remains employed with the FBI as an agent.

According to papers filed in an appeal to the FBI Inspections Division, even though the former Legat's misconduct was far more egregious than Wright's, his punishment was much more lenient than Wright's. But, that isn't the end of it. Not only did the Legat get off with a slap on the wrist by comparison to Wright, he also received more lenient treatment than the person who reported his misconduct to the FBI in the first place.

Cecilia Woods, the Assistant Legat, became suspicious of his pattern of behavior when they met with the FBI informant to deliver payments. Former Agent Woods told my investigative staff that the Legat always made her exit the meetings first, leaving him and the female informant alone together in a hotel room. These meetings generally occurred at the end of the day, and Woods was instructed to turn in her key and go home, with no idea how long the Legat and the informant remained alone together in the room and no way to return to the room later. After one such meeting with the informant, Agent Woods asked an acquaintance working in the hotel bar (who is related to a previous FBI Legat in Panama) to let her know if and when she noticed the Legat leaving the hotel. Woods says that she was retaliated against for this attempt to confirm her suspicions and was charged with misconduct. She was later accused of unauthorized disclosures to her attorney. I am aware of no evidence that her alleged disclosures, either to the acquaintance in the hotel bar or to her attorney, had any actual negative impact on the security of FBI operations.

For these two alleged violations, Woods received a total of 24 days suspension, 10 more days than her supervisor, and was subjected to what appears to be a retaliatory transfer to an undesirable position. Rather than face further retaliation, she voluntarily retired from the FBI after over 23 years of service. Yet, the person whose misconduct her actions exposed received fewer days of suspension and is still employed at the FBI.

The Double Standards

The double standards are clearly demonstrated by these cases. How can other agents who watch these events avoid getting the impression that "loyalty," seniority, and

personal connections matter most at the FBI? The lesson is this: if you are loyal to the FBI and you are a supervisor, it is possible to engage in conduct that dishonors the Bureau and undermines its mission while keeping your job. However, if you show any sign of disloyalty to the FBI or your supervisors, they will try to fire you — even if your “disloyalty” consists of reporting misconduct or concerns about national security.

You have described the FBI’s core values as being:

“Adherence to the rule of law and rights conferred to all under the United States Constitution; integrity through everyday ethical behavior; accountability by accepting responsibility for our actions and decisions and the consequences of our actions and decisions; fairness in dealing with people; and leadership through example, both at work and in our communities. ...[T]hese priorities represent the expectations that the American people, the law enforcement community, the Congress, and the Administration hold for the FBI.”³

Given these core values, it is difficult to understand how misconduct like having sex with a paid informant should not warrant immediate removal. Tolerating such misconduct while punishing those who report it gives the appearance that the FBI simply does not take it seriously. I cannot imagine a situation where any agent having sex with an informant should continue to be employed with the FBI. The FBI should enforce an absolute zero-tolerance policy on this issue, and explain why one has not been enforced thus far.

In light of this continuing and disturbing pattern of double standards, Congress needs to examine the policies and procedures of FBI OPR even more closely than we have in the past. To begin that process, therefore, please answer the following questions, in writing, by February 6, 2006.

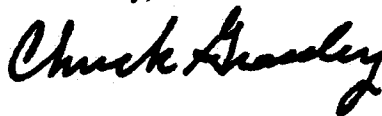
- 1) How and when did the FBI first become aware of the Legat’s misconduct?
- 2) Prior to Agent Woods’ arrival in Panama, I understand that the Legat had no Assistant Legat, but was still making regular payments to the informant. I understand further that FBI policy requires two witness signatures to verify payment to informants. Is it true that the Legat made payments to the informant not witnessed by Agent Woods? If so, how many, for how much, and who co-signed as the witness? What is the total amount of money paid to the informant?
- 3) Please describe what role the former Legat has had in working with informants since the FBI first became aware of his misconduct?
- 4) Has the FBI conducted an inquiry to see if the former Legat’s actions resulted in the compromise of national security or sensitive FBI matters?

³ *Oversight Hearing on Counterterrorism: Hearing before the Comm. on the Judiciary*, 107th Cong. 920 (June 6, 2002) (Statement of Robert S. Mueller, III).

- 5) My understanding is that official charges sustained against Robert Wright were insubordination, unprofessional conduct, and unauthorized disclosures to the media. Please provide the number of agents disciplined for these charges within the last five years, summaries of the facts of each case (excluding the name of the agent), and the penalties imposed for each violation.
- 6) Please provide the number of agents disciplined for sexual relations with an informant within the last five years, summaries of the facts of each case (excluding the name of the agent), and the penalties imposed for each violation.
- 7) Please provide any charts, tables, lists, or other records available to FBI agents describing potential penalties for particular misconduct.

If it is necessary to provide classified information, please forward any and all *unredacted* materials to the United States Senate, Office of Senate Security. All responses should be faxed to (202) 228-0554 with original to follow by U.S. Mail. Should you have any questions regarding this matter, please contact Jason Foster at (202) 224-4515.

Sincerely,

A handwritten signature in black ink, appearing to read "Chuck Grassley", written in a cursive style.

Charles E. Grassley
United States Senator

cc: Chairman Arlen Specter
Committee on the Judiciary

Inspector General Glenn Fine
U.S. Department of Justice