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**United States Senate**

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

September 17, 2014

**VIA ELECTRONIC TRANSMISSION**

Monty Wilkinson  
Director  
Executive Office for United States Attorneys  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W., Room 2242  
Washington, D.C. 20530-0001

Dear Mr. Wilkinson:

A recent report of closed non-public investigations by the Department of Justice (DOJ) Office of the Inspector General (OIG) raises serious concerns about the management of the Executive Office of U.S. Attorneys (EOUSA) and the discipline meted out to Assistant United States Attorneys (AUSA) who appear to have broken the law.

According to the OIG report, one AUSA whose spouse was engaged in embezzlement made misleading and contradictory statements to the Federal Bureau of Investigation (FBI), the U.S. Attorney's Office, and the OIG. The statements pertained to how and when she learned of her spouse's criminal activities, the circumstances surrounding an alleged fraudulent transfer of property, and her husband's ownership in the property.<sup>1</sup> According to the United States Code, it is illegal to knowingly and willfully make any materially false or fraudulent statement or representation in any matter within the jurisdiction of the executive branch of the Government of the United States.<sup>2</sup> Yet the AUSA's only punishment was apparently a verbal admonishment.<sup>3</sup>

In a second case, an AUSA used his government computer to send official documents from matters occurring before a grand jury to his spouse, who was employed as a paralegal with a private law firm.<sup>4</sup> As stated in the Federal Rules of Criminal Procedure, an attorney for the government must not disclose a matter occurring before the grand jury and a knowing violation of this rule is punishable as contempt of court.<sup>5</sup>

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<sup>1</sup> Letter from Inspector General Michael E. Horowitz to Ranking Member Charles E. Grassley and Ranking Member Tom Coburn, Jul. 14, 2014, at 6-7 [hereinafter OIG summaries].

<sup>2</sup> 18 USC § 1001(a)(2).

<sup>3</sup> OIG summaries at 7.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> Federal Rules of Criminal Procedure, Rule 6(e)(2)(B) and Rule 6(e)(7).

The OIG concluded that the AUSA violated these rules. However, since the AUSA retired from government service, the EOUSA was unable to impose any discipline.<sup>6</sup>

In a third case, an AUSA was recused from a federal investigation due to an existing personal relationship with the investigation's target. Nevertheless, she revealed information about the investigation and an associated Title III wiretap to her spouse, who subsequently disclosed that knowledge to the target of the Title III wiretap.<sup>7</sup> Further, the AUSA initially lied to investigators before finally admitting that she might have "said something" to her spouse about the investigation.<sup>8</sup> A Title III intercept is both costly and in many cases a last resort, used because no other options are viable. According to 18 USC § 2511, a Title III intercept is used because normal investigative procedures have been attempted and have failed, or reasonably appear to be too dangerous or unlikely to succeed if attempted.<sup>9</sup> According to the Administrative Office of the United States Courts, the average cost of a Title III intercept in 2013 was \$43,361.<sup>10</sup> It is unclear how many federal statutes were violated by the AUSA in the course of this case, which potentially tainted an investigation at a significant cost to the taxpayer. Yet once again the AUSA retired from government service, apparently before the EOUSA even proposed any discipline.<sup>11</sup>

The OIG provided the Reports of Investigation on these three cases to your office on November 25, 2013, January 7, 2014, and March 26, 2014, respectively. The OIG noted that as of June 20, 2014, prosecution had been declined in *all three cases*.<sup>12</sup> That is very disturbing.

In the Fast and Furious Joint Congressional Staff Report prepared by staff for Chairman Issa and me, you were criticized for failing to "believe it was [your] role to manage and supervise components of the Department, including . . . the Arizona U.S. Attorney's Office."<sup>13</sup> It is important that all components of the federal government be subject to meaningful oversight, including U.S. Attorney's offices.

Should U.S. Attorneys or AUSAs violate federal statutes, they too should be prosecuted to the full extent of the law. To do anything else creates the appearance of a double standard. The general public expects that AUSAs will at least be held to the same standard as everyone else, as U.S. Attorney's offices routinely prosecute other individuals for failure to abide by the law. If anything, employees of the United States

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<sup>6</sup> OIG summaries at 7.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.*

<sup>9</sup> 18 USC § 2511.

<sup>10</sup> Administrative Office of the U.S. Courts, Wiretap Report 2013, available at <http://www.uscourts.gov/Statistics/WiretapReports/wiretap-report-2013.aspx> (accessed September 5, 2014).

<sup>11</sup> OIG summaries at 9.

<sup>12</sup> *Id.*

<sup>13</sup> H. Comm. on Oversight & Gov't Reform and S. Comm. on the Judiciary Joint Staff Report, *Fast and Furious: The Anatomy of a Failed Operation (Part I of III)*, 112th Congress (July 31, 2012), at 10.

government, especially employees of U.S. Attorneys' offices, should be held to a *higher* standard because of their positions of public trust.

To further examine this issue, I have requested that the Government Accountability Office investigate the broader disciplinary issues in and oversight of U.S. Attorneys' offices. To this end, please answer the following questions:

1. What role does EOUSA play in the discipline of AUSAs for misconduct, as opposed to the U.S. Attorney in the relevant district?

### **Case One – Lack of Candor in Embezzlement Investigation**

2. Which U.S. Attorney's office did this case involve?
3. Who authorized the declination of prosecution?
4. Who decided that the only course of action in this case be verbal admonishment and why?
5. How do the OIG's findings that the AUSA made misleading and contradictory statements to the FBI, U.S. Attorney's Office, and the OIG affect the AUSA's ability to prosecute future cases?
6. Was the state bar association notified of the AUSA's actions? If not, why not?

### **Case Two – Disclosure of Grand Jury Materials to Private Law Firm**

7. Which U.S. Attorney's office did this case involve?
8. Who authorized the declination of prosecution?
9. Did the relevant U.S. Attorney's Office notify the magistrate and defense attorney of the disclosure of 6(e) grand jury information? If not, why not?

### **Case Three – Disclosure of Title III Investigation of Personal Relationship**

10. Which U.S. Attorney's office did this case involve?
11. Who authorized the declination of prosecution?
12. Had the relevant U.S. Attorney's office or the EOUSA proposed any disciplinary measures before the AUSA retired? If so, what was the proposed discipline?
13. Were the relevant magistrate and law enforcement agency notified of this misconduct? If not, why not?

14. What was the ultimate disposition of the subject of this Title III?
15. What is the status of the federal investigation cited?
16. Was the state bar association notified of the AUSA's actions? If not, why not?

Please provide your response by October 8, 2014. Should you have any questions, please contact Tristan Leavitt or Chris Lucas of my Committee staff at (202) 224-5225. Thank you for your prompt attention to this matter.

Sincerely,



Charles E. Grassley  
Ranking Member  
Committee on the Judiciary