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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 2, 2022

VIA ELECTRONIC TRANSMISSION

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice

Dear Attorney General Garland,

I write to follow up with you regarding the briefing from the Department of Justice (DOJ) Criminal Division conducted on July 28th for staff and members of the Judiciary and Commerce Committees. The briefing focused on the decision not to prosecute the two former Federal Bureau of Investigation (FBI) agents who made materially false statements to the Office of the Inspector General (OIG) about their conduct in the investigation of Larry Nassar. Through both the OIG and an independent DOJ Criminal Division review, both investigations confirmed these agents repeatedly lied under oath, in violation of federal criminal law, and fabricated evidence to cover up their investigative failures.¹ Yet despite the astonishing new information revealed during the briefing, no new charges were filed. I now write to you for more definitive answers on the matter after waiting for DOJ to publicly share the reasons and the evidence that led them to their decision not to take further steps against these agents.

While I appreciated the opportunity to ask questions and learn more from members of your team, I am disappointed in the DOJ's lack of transparency, even during a member briefing. Those present left with more questions than answers in regards to the conduct and actions taken by the two agents in the Nassar case, as well as what next steps will be taken by DOJ to ensure accountability.

In this briefing, DOJ revealed the new information that came to light during their independent investigation. This new information was striking and would surely affect how DOJ would proceed in their investigation. However, it was maintained by your staff this information had nothing to do with the agents' actions in seeking to cover up their dereliction of duty to the victims in the Nassar case. The insistence these actions did not rise to the level of criminal charges despite the alarming new information raises serious questions about the agency as a whole.

Yet even with the seriousness of this new information surrounding these agents, DOJ still did not feel the false statements and actions of the agents rose to the level of prosecution.

¹ U.S. Department of Justice, Office of the Inspector General, *Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar*, Rep. No. 21-093, at 89, 105-06 (July 2021), <https://oig.justice.gov/sites/default/files/reports/21-093.pdf>; *Dereliction of Duty: Examining the Inspector General's Report on the FBI's Handling of the Larry Nassar Investigation: Hearing Before the S. Comm. On the Judiciary*, 117th Cong. (September 15, 2021), <https://www.judiciary.senate.gov/meetings/dereliction-of-duty-examining-the-inspector-generalsreporton-the-fbis-handling-of-the-larry-nassar-investigation>

In addition to the significant questions raised around this agent throughout the investigation and beyond, the attitude maintained about this briefing was unacceptable. During questioning from one of my colleagues in regards to sharing further information, a member of your staff told him it was already an “extraordinary event” taking time to brief United States Senators on one of the most consequential cases to come before the FBI. What happened to our gymnasts, the years-long abuse of underage girls right under the noses of adults who are supposed to protect them, is an actual extraordinary event equating to a grave misstep of justice.

When the Department officials were asked by my colleagues to provide the physical evidence they evaluated to determine not to prosecute the agents, they declined. The declination came despite the case being closed. This is unacceptable, and I am again left wondering what the DOJ is attempting to restrict access to if they felt the evidence (or lack thereof) was not sufficient for prosecution.

When she testified at the September 2021 Judiciary Committee hearing, McKayla Maroney stated, “I am tired of waiting for people to do the right thing.” McKayla and other victims deserve to see a government and a system that prioritizes doing the right thing in seeking justice.² It is unfortunate to think these girls have not yet seen the government do the right thing in holding these agents accountable.

Transparency brings accountability, and accountability is a first step towards getting these victims justice.

Please provide the following information:

1. When did investigators learn of the issues surrounding the new information about this agent?
2. How long after the information was uncovered was the agent allowed to retire from the FBI?
3. How many cases did he also oversee as a supervisory agent? Have any of those cases been reopened or reexamined since the new information came to light?
4. While new information was shared about only one of the agents, both agents in charge of handling this case must be held accountable. Please provide the Senate Judiciary and Commerce Committees access to the physical evidence used in the independent review to determine no new charges were necessary for these agents. If the answer is no, please provide an explanation as to why this information is not available even though the case is considered closed.
5. If the case is not considered closed, does the DOJ plan to hold anymore briefings on this case?

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

² *Dereliction of Duty: Examining the inspector General’s Report on FBI’s Handling of the Larry Nassar Investigation Before the S. Judiciary Comm.*, (2021)(statement of McKayla Maroney).