

**Questions for the Record**  
**Attorney General Eric H. Holder, Jr.**  
**Senate Judiciary Committee**  
**November 18, 2009**

**FBI Whistleblower Retaliation:**

**On March 25, 2007, the DOJ OIG found that the FBI retaliated against Robert Kobus, a Senior Administrative Support Manager in the NY Field Office. The DOJ OIG found that the retaliation was in response to protected whistleblowing by Mr. Kobus. Why hasn't the FBI implemented the corrective action ordered by the DOJ OIG?**

**Response:** On March 15, 2007, DOJ's Office of the Inspector General (OIG) recommended the following: "As corrective action we recommend that OARM [DOJ's Office of Attorney Recruitment and Management] direct the FBI to restore Kobus to the position of a senior administrative support manager in the New York Field Division, or an equivalent position." The FBI identified several open positions available to Mr. Kobus. After rejecting several offers, Mr. Kobus accepted and was placed directly into a newly created Administrative Officer position in approximately December 2007/January 2008, changing both his supervisor and work location.

**The DOJ Office of Attorney Recruitment and Management (OARM) received an FBI appeal of the IG's findings in March of 2007, but still no hearing has been held and no resolution of Mr. Kobus's case has been issued by OARM more than 2.5 years after the appeal was filed. Why is the process taking so long? What is a reasonable amount of time in your view for a case such as this to be resolved?**

**Response:** The time required for the Department's final resolution of FBI whistleblower cases depends on a number of factors, including: the complexity of the legal and factual issues presented; the time for and extent of discovery, as well as the time for the parties' respective briefs on the issues (the deadlines for which are usually extended due to requests made by the parties); the voluminous nature of the case files and record evidence; the number and length of hearings (if requested and granted) and OARM's opinions (which typically range between 20-60 pages); a possible stay of OARM proceedings pending resolution of any concurrently filed federal court cases (involving Title VII/EEO claims); and the pendency of other cases before OARM.

OARM has been conducting appropriate and necessary proceedings regarding Mr. Kobus' Request for Corrective Action since it was filed in May 2006. Subject to a change in circumstances, a ruling could be issued by OARM within the next several months.

**I understand that Mary Galligan, one of the FBI officials cited by the IG for retaliation against Mr. Kobus, has since been promoted to the position of Chief Inspector of the FBI at FBI Headquarters. What kind of message does this send to other employees that a supervisor who has been cited for whistleblower retaliation has been promoted to head of inspections at the FBI, while, at the same time, no decision has been made by the DOJ on the FBI's appeal of the IG's findings in favor of Mr. Kobus?**

**Response:** Please see the response to Question 62, below.

**Did Director Mueller, or other officials participating in the decision, know of the IG's findings of retaliation involving Ms. Galligan at the time she was promoted? If not, why not?**

**Response to 61 - 62:** Prior to any executive promotion or selection within the FBI, the FBI conducts disciplinary reviews of the records of the FBI's OPR, Inspection Division, Office of Equal Employment Opportunity Affairs, and Security Division, and of DOJ's OIG, OPR, and Criminal Division, for all prospective candidates.

Internal disciplinary reviews, covering Mary Galligan's entire career, were conducted prior to her selection as Chief Inspector. DOJ records did not disclose any pending OIG investigation regarding Ms. Galligan and the FBI's OPR records revealed that an administrative inquiry involving Ms. Galligan had concluded that allegations that she had retaliated against an FBI employee (not identified) were unsubstantiated.

Following these checks, on June 30, 2009, the FBI Director selected Ms. Galligan for the position of Chief Inspector.

**Mr. Kobus filed his complaint under 5 U.S.C. § 2303, which provides the statutory authority creating baseline whistleblower protections for FBI employees. Under that law, FBI employees are required to file their whistleblower retaliation complaint with the DOJ OIG or DOJ OPR, and in this case the OIG, make specific findings of retaliation after conducting a thorough investigation of Mr. Kobus's whistleblower complaint. As shown in this case, the OIG plays an important role in investigating whistle blower retaliation and produces significant information that an employee who alleges whistleblower retaliation would not otherwise have access to.**

**In a last minute amendment prior to the Homeland Security and Government Affairs Committee mark-up of the Whistleblower Protection Enhancement Act of 2009, S. 372, the Administration included a provision that would repeal section 2303 and eliminates the IG's role in FBI whistle blower cases. I asked Director Mueller about the origins of this provision at the last FBI oversight hearing and am still awaiting a response. However, I remain concerned about how and why this amendment came to be.**

**It appears to me that there is still hostility to whistleblowers at the FBI and the Department of Justice. You have publicly stated your support for whistleblowers. Do you support repealing 5 U.S.C. § 2303 and eliminating the OIG's role in FBI whistle blower cases? If so, please provide a detailed explanation as to how you reconcile previous statements supporting whistleblowers with repealing this important protection.**

**Response:** The Department of Justice strongly supports protecting the rights of whistleblowers and recognizes the invaluable role that whistleblowers play in unearthing waste, fraud, and abuse. The Department does not support eliminating OIG's role in FBI whistleblower cases.