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COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

September 27, 2012

## Via Electronic Transmission

The Honorable James M. Cole  
Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Deputy Attorney General Cole:

As you may be aware, I recently contacted both Nevada U.S. Attorney Daniel Bogden and Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Acting Director B. Todd Jones about allegations from whistleblowers that a breakdown in relations had occurred between ATF and the U.S. Attorney's Office (USAO) in Reno, Nevada.<sup>1</sup> I have not yet received a briefing from either of their offices.

The alleged breakdown is illustrated in a declination memorandum from the Reno USAO, which indicates that as of September 29, 2011, the Reno USAO categorically refused to accept *any* cases submitted by Reno ATF. The declination memo states, "We are willing to consider your cases again when your management addresses and resolves the issues at hand."<sup>2</sup> Apparently as a consequence, ATF's Reno Field Office has only opened one case in 2012, as the attached chart indicates.<sup>3</sup>

I have since obtained documents from whistleblowers which indicate that these issues were raised with ATF headquarters and the Justice Department's Office of Professional Responsibility (OPR) almost a year ago. According to one document, ATF agents in Reno notified ATF's Internal Affairs Division of the issue on October 13, 2011.<sup>4</sup> According to a second document, an ATF agent in Reno notified OPR on October 25, 2011.<sup>5</sup> As you may know, because of ATF and the Reno USAO's inability to resolve these

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<sup>1</sup> Letter from Senator Grassley to U.S. Attorney for the District of Nevada Daniel G. Bogden (Sep. 17, 2012) (Attachment 1); Letter from Senator Grassley to ATF Acting Director B. Todd Jones (Sep. 17, 2012) (Attachment 2).

<sup>2</sup> Letter from Assistant U.S. Attorney Sue Fahami to ATF Special Agent (Sep. 29, 2011) (Attachment 3).

<sup>3</sup> "Cases Initiated by Program Area," ATF Reno Field Office (Attachment 4).

<sup>4</sup> Memorandum from ATF Internal Affairs Division to ATF Assistant Director for the Office of Professional Responsibility and Security Operations, "Request to Close Investigation" (Feb. 10, 2012) (Attachment 5).

<sup>5</sup> Letter from Justice Department Office of Professional Responsibility to ATF Special Agent (Dec. 12, 2011) (Attachment 6).

issues, three ATF line agents and a supervisor were transferred out of Reno in April 2012.

In light of these facts, I am seeking to understand whether Justice Department management was also notified of the problems between ATF and the USAO in Reno, and if so, what actions were taken to rectify these issues. Your office, the Office of the Deputy Attorney General (ODAG), is responsible for overseeing both ATF and U.S. Attorneys. Therefore, please answer the following questions:

- 1) Was anyone in ODAG notified in any way of these problems prior to my letters to ATF and U.S. Attorney Bogden on September 17, 2012?
  - a. If so, when were individuals in ODAG first notified?
  - b. What actions did they take to inquire into the situation?
  - c. What actions did they take to address the situation?
- 2) Were you aware of these problems prior to my letters to ATF and U.S. Attorney Bogden on September 17, 2012?
  - a. If so, when were you first notified?
  - b. What actions did you take to inquire into the situation?
  - c. What actions did you take to address the situation?
- 3) Was anyone in the Office of the Attorney General notified in any way of these problems prior to my letters to ATF and U.S. Attorney Bogden on September 17, 2012?
  - a. If so, when were they first notified?
  - b. What actions did they take to inquire into the situation?
  - c. What actions did they take to address the situation?

Please also provide the following documents:

- 4) All emails pertaining to anyone at Justice Department headquarters becoming aware of these issues prior to my letters to ATF and U.S. Attorney Bogden on September 17, 2012.
- 5) All emails pertaining to anyone at Justice Department headquarters responding to these issues prior to my letters to ATF and U.S. Attorney Bogden on September 17, 2012.

Please provide a response and produce these documents by Thursday, October 11, 2012. If you have any questions concerning this matter, please contact Brian Downey or Tristan Leavitt of my staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Ranking Member

Attachments

cc: The Honorable Michael E. Horowitz, Inspector General  
U.S. Department of Justice

B. Todd Jones, Acting Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives

# Attachment 1

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

September 17, 2012

**Via Electronic Transmission**

The Honorable Daniel G. Bogden  
United States Attorney  
Nevada District  
United States Department of Justice  
333 Las Vegas Boulevard South, Suite 5000  
Las Vegas, NV 89101

Dear U.S. Attorney Bogden:

It has come to my attention that a **“breakdown”** in relations has occurred between your office, the **U.S. Attorney’s Office for the District of Nevada (USAONV)**, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Reno, Nevada Field Office (Reno ATF). I am writing to better understand the causes of this breakdown.

The attached declination memorandum, signed by you, indicates that as of September 29, 2011, the USAONV categorically refuses to accept **any cases** submitted by Reno ATF. The declination memo states, **“We are willing to consider your cases again when your management addresses and resolves the issues at hand.”** However, it fails to identify what those issues are. Refusing to even consider cases that might merit prosecution as a way to exert influence over a law enforcement agency appears to be an extremely broad application of your discretion.

To help better understand the circumstances surrounding these issues and the current status of the working relationship between your office and Reno ATF, please make available the individuals most familiar with this situation to provide a telephone briefing to my office by no later than September 26, 2012. If you have any questions concerning this matter, please contact Brian Downey or Tristan Leavitt of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Ranking Member

cc: The Honorable Eric H. Holder, Jr., Attorney General  
U.S. Department of Justice

The Honorable Michael E. Horowitz, Inspector General  
U.S. Department of Justice

Attachment

# Attachment 2

PATRICK J. LEAHY, VERMONT, CHAIRMAN

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BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

September 17, 2012

## **Via Electronic Transmission**

Mr. B. Todd Jones  
Acting Director  
Bureau of Alcohol, Tobacco, Firearms, and Explosives  
U.S. Department of Justice  
99 New York Avenue, NE  
Washington, DC 20226

Dear Acting Director Jones:

It has come to my attention that a **“breakdown”** in relations has occurred between the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Reno, Nevada Field Office (Reno ATF) **and the U.S. Attorney’s Office** for the District of Nevada (USAONV). My office has been alerted to a variety of serious issues that allegedly continue to hamper the ability of agents at Reno ATF from performing their duties.

The attached declination memorandum, signed by the U.S. Attorney, indicates that as of September 29, 2011, the USAONV categorically refuses to accept **any cases** submitted by Reno ATF. Due to an alleged failure of management in ATF’s San Francisco Field Division, which oversees Reno ATF, the situation has still not been resolved over the last 12 months. As a result, the Reno ATF office has effectively been idled. It allegedly has no supervision, no cases, and no investigative resources.

Although Reno ATF once had around six full-time agents, that number dwindled down to two. The other four ATF agents allegedly requested to be transferred due to the lack of work stemming from the office’s breakdown in relations with the USAONV. These serious issues have reportedly been brought to the attention of ATF Headquarters, but little has been done to correct the problem.

To help better understand the circumstances surrounding these issues at Reno ATF, please provide the answers and documents to the following requests by no later than October 1, 2012:

- 1) Is ATF Headquarters aware of the alleged problems between Reno ATF and the USAONV?



- 2) **When did ATF's San Francisco Field Division become aware of the** problems between Reno ATF and the USAONV? What actions were taken to resolve these issues?
- 3) When did ATF Headquarters become aware of the problems between Reno ATF and the USAONV? What actions were taken to resolve these issues?
- 4) How many ATF agents are currently assigned to Reno ATF? How many ATF agents were assigned to Reno ATF between 2006 and 2011? Provide a breakdown for each year.
- 5) How many cases has Reno ATF initiated to date in the year 2012? How many cases did Reno ATF initiate between 2006 to 2011? Provide a breakdown for each year.
- 6) Provide all transfer request memorandums written by Reno ATF agents **which were vetted through ATF's San Francisco** Field Division. Please describe the reasons why these ATF agents wanted to be transferred out of Reno ATF.
- 7) What was the total cost to transfer agents out of Reno ATF?

I am also requesting that ATF make available the individuals most familiar with this situation and provide a briefing to my office by no later than September 26, 2012. If you have any questions concerning this matter, please contact Brian Downey or Tristan Leavitt of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Ranking Member

cc: The Honorable Michael E. Horowitz, Inspector General  
U.S. Department of Justice

Attachment

# Attachment 3



U.S. Department of Justice

*United States Attorney  
District of Nevada*

DANIEL G. BOGDEN  
United States Attorney

333 Las Vegas Boulevard South  
Suite 5000  
Las Vegas, Nevada 89101

Telephone (702) [REDACTED]  
FAX: (702) [REDACTED]

September 29, 2011

Special Agent [REDACTED]  
Bureau of Alcohol, Tobacco and Firearms  
[REDACTED]  
Reno, Nevada 89501

Re: [REDACTED]

Dear Special Agent [REDACTED]:

We are in receipt of the report you prepared on the aforementioned case. I am returning the report to you. At this time, we are not accepting any cases submitted by your office. We are willing to consider your cases again when your management addresses and resolves the issues at hand.

Sincerely,

DANIEL G. BOGDEN  
United States Attorney

SUE FAHAMI  
Assistant United States Attorney

# Attachment 4

CASES INITIATED BY PROGRAM  
AREA

Cases Initiated			Open FY										
Field Division Name	Field Office Name	Master Program	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Grand Total
San Francisco Field Division	Reno Field Office	Administrative					1						1
		Arson	9		1		2	1	1	2		1	17
		Explosives	1	5	6	4	5	5	13	1	1		41
		Firearms	76	74	53	17	40	48	56	28	22		414
	Reno Field Office Total		86	79	60	21	48	54	70	31	23	1	473

# Attachment 5



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

www.atf.gov

FEB 10 2012

604000: LAD  
20120006

MEMORANDUM TO: Assistant Director (Office of Professional Responsibility and Security Operations)/CSO

*approved  
gt 2/17/12*

FROM: Special Agent in Charge  
Internal Affairs Division

SUBJECT: Request to Close Investigation  
[REDACTED]  
20120006

On October 13, 2011, the Internal Affairs Division (IAD) was notified by Assistant Special Agent in Charge (ASAC) Jeffery E. Vind, San Francisco Field Division, that Reno, NV, Assistant United States Attorney (AUSA) Sue P. Fahami had alleged that Reno ATF Special Agent (SA) [REDACTED] lied to her office regarding the presence of a confidential informant during an undercover transaction on a pending criminal case. AUSA Fahami had in fact sent a letter to the Acting Resident Agent in Charge (RAC) of the Reno ATF office indicating that they would not be accepting any cases submitted by Reno ATF until management resolved "issues at hand."

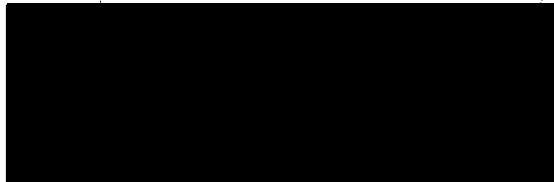
On December 6, 2011, Special Agents [REDACTED] (IAD) interviewed Reno Branch Chief AUSA Sue P. Fahami at the Reno, Nevada, U.S. Attorney's office. Also present were Criminal Chief of the Las Vegas U.S. Attorney's office, Russ Marsh, and for a portion of the interview, Reno AUSA [REDACTED]. The interview revealed no specific information regarding SA [REDACTED] lying to their office. While it was clear from the interview that there is a significant communication problem between the Reno U.S. Attorney's office and the Reno ATF Office, and that there may be issues that should be addressed by the incoming RAC regarding procedural matters, nothing that was stated by the U.S. Attorney's office personnel present on December 6, 2011, substantiated the allegation of lies to their office by SA [REDACTED] or other Reno ATF special agents. There was confusion on how many undercover contacts a particular informant had been present for, and that seemed to stem from the fact that the targets of the investigation were named in two overlapping investigations (786030-10-[REDACTED] and 786030-11-[REDACTED]). The U.S. Attorney's office also felt that ATF was not forthcoming in providing information regarding the informant.

Assistant Director (Office of Professional Responsibility and Security Operations/CSO)

Also on December 6, 2011, Special Agents [REDACTED] (IAD) interviewed Special Agent [REDACTED] under oath at the Reno, NV, ATF office. SA [REDACTED] provided a sworn statement, attached to this memorandum, in which he states essentially that while he had been directed by RAC Cannon to open investigation 786030-11- [REDACTED] in N-Force, he did not author the opening report of the case in question and was unaware until discovery was discussed with AUSA [REDACTED] that the informant in question had been present at an undercover meeting in related case 778060-10- [REDACTED] on September 28, 2010, which was detailed in ROI # [REDACTED] under IN #776030-10- [REDACTED], also not authored by SA [REDACTED]. SA [REDACTED] stated that the targets, [REDACTED] and [REDACTED], were mentioned in the 2010 investigation and the 2011 investigation continued that investigation. SA [REDACTED] further stated that when he was made aware of the informant's presence at the September 28, 2010, meeting, he immediately related that information to AUSA [REDACTED]. SA [REDACTED] advised AUSA [REDACTED] that the informant was not signed up by ATF and he therefore could not produce/provide additional information regarding that individual. SA [REDACTED] did provide AUSA [REDACTED] with contact information for the appropriate Reno Police Department personnel who would be able to provide the informant information to the U.S. Attorney's office.

As no evidence was offered to substantiate the allegation of SA [REDACTED] lying to the U.S. Attorney's office and SA [REDACTED] statement indicated that he did not author the reports in question, it is requested that investigation 20120006 be closed.

Department of Justice Office of Professional Responsibility (OPR) declined the investigation. OPR stated that the matter needs to be handled by management from the USAO and ATF.



Attachments: Sworn statement of SA [REDACTED]  
Response to allegations document prepared by SA [REDACTED]  
Relevant e-mails provided by AUSA [REDACTED]



# Attachment 6



**U.S. Department of Justice**

**Office of Professional Responsibility**

*950 Pennsylvania Avenue, NW, Room 3266  
Washington, D.C. 20530*

DEC 12 2011

Special Agent [REDACTED]  
Bureau of Alcohol, Tobacco and Firearms  
200 South Virginia Street, Suite 600  
Reno, NV 89501

Dear Special Agent [REDACTED]:

The Office of Professional Responsibility (OPR) has reviewed your October 25, 2011 e-mail, in which you allege that several Assistant United States Attorneys (AUSAs) in the District of Nevada have refused to pursue matters you submitted to them for prosecution and have engaged in unethical conduct in connection with those declinations. You requested an investigation of their alleged misconduct.

OPR has jurisdiction to investigate allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct involving law enforcement personnel that relate to allegations of attorney misconduct within the jurisdiction of OPR. However, Assistant United States Attorneys are vested with broad discretion to determine whether and how to pursue criminal investigations. Absent specific evidence indicating that this discretion was corruptly or otherwise inappropriately exercised, OPR does not review the exercise of that authority. Based on a review of the information you provided, OPR concluded that your complaint concerns a management matter which can more appropriately be addressed by having ATF management raise your concern with the United States Attorney for the District of Nevada.

Thank you for bringing this matter to our attention. We regret that we can be of no further assistance to you.

Sincerely,

[REDACTED]

Associate Counsel