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## United States Senate

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*

November 14, 2011

### Via Electronic Transmission

The Honorable Eric H. Holder  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Dear Attorney General Holder:

I write to express my concerns regarding the perpetual delays for resolving Federal Bureau of Investigation (FBI) whistleblower cases at the Department of Justice (DOJ). As you are well aware, I am a long-standing advocate for whistleblower rights. Whistleblowers point out fraud, waste, and abuse when no one else will, and they do so while risking their professional careers. Whistleblowers have played a critical role in exposing failed government operations such as Operation Fast and Furious, and retaliation against whistleblowers should never be tolerated. Thus, I am concerned about the treatment of whistleblowers at the FBI, specifically in the cases of Jane Turner and Robert Kobus. The process of resolving whistleblower claims appears to be broken.

Jane Turner was a career FBI agent with an outstanding record for conducting investigations involving missing and exploited children. Agent Turner filed a whistleblower complaint with the Department of Justice, Office of the Inspector General (OIG), in 2002 when she discovered that FBI agents removed items from Ground Zero following the terrorist attacks of 9/11. Unfortunately, Agent Turner was forced to file an appeal to the Office of Attorney Recruitment and Management (OARM) due to the OIG's delayed decision in their investigation. Ultimately, the OARM substantiated her allegations in May, 2010, and the FBI was ordered to provide Agent Turner back pay, attorney's fees, and other relief. It is my understanding that the FBI filed an appeal to the Deputy Attorney General concerning the issue of back pay, despite the FBI's failure to raise the issue of back pay during previous OARM proceedings, and the case was remanded, in part, back to OARM for further review of the back pay issue. Consequently, a final resolution to Jane Turner's reprisal case against the FBI is now further delayed by the Deputy Attorney General's curious decision. Given the already excessive delays in this case, the ruling by the Deputy Attorney General postpones a judgment that should have come much sooner. I remind you that Agent Turner initially filed her complaint approximately 9 years ago, and she has yet to receive a final decision. Any reasonable person would agree that 9 years is extreme and unacceptable.



Robert Kobus is a 30 year non-agent employee of the FBI who disclosed time and attendance fraud by FBI agents. The OIG also conducted an investigation into these allegations and substantiated that he was retaliated against for protected whistleblowing. The FBI management not only demoted Mr. Kobus to a non-supervisory position, but they even went so far as to move him from his office to a cubicle on the vacant 24<sup>th</sup> floor of the FBI's office building. Nevertheless, the OIG's findings were referred to OARM for adjudication and Mr. Kobus' case has now languished in bureaucratic red tape for approximately 4 years.

I'm confident you would agree that a cumulative 13 years is an excessive amount of time to complete two whistleblower investigations. You previously stated during your testimony to the Senate Judiciary Committee that you will "ensure that people are given the opportunity to blow the whistle and they will not be retaliated against, and then to hold accountable anybody who would attempt to do that."<sup>1</sup> You also stated that, "I have seen their [whistleblowers'] utility, their worth, and, frankly, the amount of money that they return to the Federal Government. And they serve a very, very useful purpose."<sup>2</sup> The Deputy Attorney General, in his responses to congressional "Questions for the Record", asserted he would "work with the Judiciary Committee and the independent Office of Special Counsel, which investigates and prosecutes violation of law, including reprisals against whistleblowers, to provide timely and accurate information to the Congress."<sup>3</sup> He further pledged he would "not tolerate unlawful retaliation against any Department of Justice employee, including FBI employees" and he would "work to ensure that there are adequate safeguards so that whistleblowers receive all of the protections to which they are entitled by law."<sup>4</sup> I would ask that you honor these statements and ensure these cases, and others like them, are investigated and decided in a reasonable timeframe.

Given your previously stated support for whistleblowers, I presume that you would agree that DOJ is sending the wrong message to whistleblowers by taking an inordinate amount of time to issue final declarations for Agent Turner and Mr. Kobus. The excessive time the OARM has taken to issue a final judgment, which is further exacerbated by the Deputy Attorney General's recent decision in Agent Turner's case, has cast your department in a dubious light regarding your stated support for whistleblowers. These excessive delays indicate that the process of adjudicating a FBI whistleblower claim is broken. Consequently, I ask that you review these matters and ensure that the OARM and the Deputy Attorney General conduct their respective reviews in a transparent and expeditious manner. While I appreciate that allegations of fraud, waste, and abuse must be properly investigated, Agent Turner and Mr. Kobus deserve transparency in the process and finality to their cases.

Thank you for your cooperation and attention to this important matter. I request you provide a written response to this letter no later than November 21, 2011.

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<sup>1</sup> Committee on the Judiciary, United States Senate, Nomination of Eric H. Holder, Jr., Nominee to be Attorney General of the United States, January 15 & 16, 2009

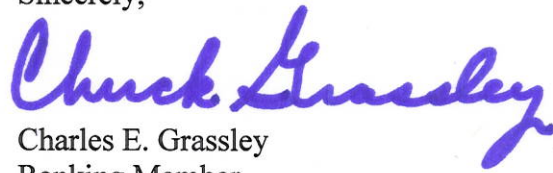
<sup>2</sup> *Id.*

<sup>3</sup> Responses to Questions for the Record of the June 15, 2010 Confirmation Hearing of James M. Cole, Nominee to be Deputy Attorney General

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



Sincerely,



Charles E. Grassley  
Ranking Member

Cc: The Honorable Patrick Leahy  
Chairman