United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510–6275

March 12, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Peter J. Kadzik
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Assistant Attorney General Kadzik:

This letter responds to your March 5, 2015 letter regarding Department of Justice testimony before congressional committees.

First, I understand that the Department of Justice has a process for the drafting, review, and approval of congressional testimony, which can take some time. That is why my staff spoke with the Department's Office of Legislative Affairs on February 10, 2015—more than three weeks prior to the March 4, 2015 hearing on FBI whistleblower regulations—about my intent to hold such a hearing. My staff discussed with the Office of Legislative Affairs that the hearing would examine two key reports reviewing the effectiveness of FBI whistleblower regulations, the precise subject of the hearing. One of those reports was prepared by the Department itself almost a year prior to the hearing, and the other, as the Department is aware, was drafted by the U.S. Government Accountability Office with a full opportunity for comment by the Department prior to its issuance. During the February 10th meeting, my staff also requested that the Office of Legislative Affairs identify a Department witness who could offer informed testimony about these reports.

It was not until approximately a week and a half prior to the hearing that the Office of Legislative Affairs offered to discuss its proposed witnesses. At that time, the Department did not offer any name, title, or description of responsibilities of a proposed witness, and instead requested additional time to locate one. On February 26, the

Thursday before the hearing, the Department proposed a witness from the Federal Bureau of Investigation. That same day, the Department retracted its offer to produce that witness. On February 27, the Department instead recommended FBI Associate Deputy Director Kevin Perkins, whom the Committee then invited and who subsequently appeared at the hearing on March 4.

Any insinuation that the Department was unaware of the Committee's plans to hold a hearing, the precise subject matter of the hearing, or the Committee's willingness to consider the Department's proposed witnesses in a timely fashion is simply uninformed or disingenuous.

Second, I appreciate the work necessary to prepare and deliver testimony, which is why my staff communicated with the Office of Legislative Affairs on this matter long before the public notice of the hearing. Your staff expressed their appreciation for that early notice at the time. However, your staff did not raise the Department's "requirement," as you described it, to receive a written invitation two weeks in advance of a congressional hearing. Moreover, no such requirement is binding on this Committee. The subject, title, witnesses, location, time, and all other details regarding hearings of the Committee are determined by the Chairman and announced pursuant to Committee rules. Our rules are internal, Legislative Branch matters that are not subject to Executive Branch policies or preferences.

Third, there is no required protocol for the order and composition of witness panels as described in your letter. Panels are designed as the Chairman deems necessary to serve the needs and purposes of the committee. Moreover, the Department's preference for having its witnesses testify before other witnesses is merely that: a preference. I would note that the only Senate-confirmed official to testify at the March 4 hearing was Inspector General Michael Horowitz. He had no objection to the order of the panels and was happy to listen to the testimony of the whistleblowers and advocates on the first panel.

The Inspector General's position is in sharp contrast to that of the Department. When the Department learned of the order and composition of the panels, officials indicated to my staff that having the government witnesses testify second would allegedly force them to listen to the whistleblowers' testimony on the first panel and would be "a waste of the government's time." They suggested it was inappropriate for the FBI witness to "cool his heels" while the first panel testified. And you indicated in a conversation to my staff that DOJ's concern about the order of the panels was motivated by a desire to make sure the government witnesses could leave the hearing and "get back to doing the people's business."

In my view, these hearings *are* the people's business.

Refraining from suggestions to the contrary would go a long way to promoting comity between the branches. Congressional hearings help ensure that the people's elected representatives are fully informed in the exercise of their constitutional oversight and legislative responsibilities. As Chairman, my judgment governs how we schedule and order hearings in the way that will best inform the Committee so that it can meet those obligations. It is my judgment that discussions between committee members and executive branch officials are sometimes best informed by first hearing testimony from witnesses most directly affected—in this case whistleblowers that have actually faced retaliation. Accordingly, I will continue to open hearings with panels of witnesses who I believe will best prepare members of the Committee to discuss the implications of legal and policy considerations with government witnesses, when appropriate.

I will continue to work cooperatively with the Department to ensure that when it is invited to participate in the Committee's hearings, the process is informative and productive for members of the committee. I look forward to our continued cooperation.

Sincerely,

Charles E. Grassley
Chairman
Committee on the Judiciary

cc: The Honorable Patrick J. Leahy
Ranking Member
Committee on the Judiciary