

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH  
JEFF SESSIONS, ALABAMA  
LINDSEY O. GRAHAM, SOUTH CAROLINA  
JOHN CORNYN, TEXAS  
MICHAEL S. LEE, UTAH  
TED CRUZ, TEXAS  
JEFF FLAKE, ARIZONA  
DAVID VITTER, LOUISIANA  
DAVID A. PERDUE, GEORGIA  
THOM TILLIS, NORTH CAROLINA

PATRICK J. LEAHY, VERMONT  
DIANNE FEINSTEIN, CALIFORNIA  
CHARLES E. SCHUMER, NEW YORK  
RICHARD J. DURBIN, ILLINOIS  
SHELDON WHITEHOUSE, RHODE ISLAND  
AMY KLOBUCHAR, MINNESOTA  
AL FRANKEN, MINNESOTA  
CHRISTOPHER A. COONS, DELAWARE  
RICHARD BLUMENTHAL, CONNECTICUT

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
KRISTINE J. LUCIUS, *Democratic Chief Counsel and Staff Director*

June 23, 2016

**VIA ELECTRONIC TRANSMISSION**

The Honorable Loretta E. Lynch  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Attorney General Lynch:

On June 3, 2016, I sent a formal invitation to Robin Ashton, Counsel, Office of Professional Responsibility, to testify before the Senate Judiciary Committee, on June 22, 2016. The day prior to the hearing, the Justice Department responded to my invitation by refusing to send Ms. Ashton as a witness.<sup>1</sup> This declination and the late notice thereof do not reflect comity between the branches or respect for legislative oversight.

Moreover, the Department's stated basis for the declination, that the Committee has recognized by inviting another Justice Department witness, i.e., Acting Administrator Rosenberg, that that witness is in the best position to represent the Department, is both disingenuous and inaccurate. The Committee recognized no such thing, and it is misleading for the Department to suggest otherwise.

For some time now, I have been questioning the adequacy of discipline at the Drug Enforcement Administration (DEA).<sup>2</sup> My letters have raised repeated concerns about the discipline meted out for agents responsible for the horrific detention of Daniel Chong and those identified in the Office of Inspector General's report, *The Handling of Sexual Harassment and*

---

<sup>1</sup> Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (June 21, 2016).

<sup>2</sup> Letter from Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Michele Leonhart, Administrator, Drug Enforcement Administration (Aug. 27, 2014), *available at* [https://www.judiciary.senate.gov/imo/media/doc/2014-08-27%20CEG%20to%20DEA%20\(Chong\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2014-08-27%20CEG%20to%20DEA%20(Chong).pdf).

*Misconduct Allegations by the Department's Law Enforcement Components.*<sup>3</sup> Disciplinary actions for the six DEA personnel linked to the Chong incident were merely a seven-day suspension for a supervisor, and for the remaining special agents, a five-day suspension and four letters of reprimand.<sup>4</sup> For agents involved in sex parties paid for by the cartels, the DEA imposed penalties ranging from a two-day suspension to a ten-day suspension, and one line agent was cleared of all wrongdoing.<sup>5</sup> The Department itself agreed that it “has serious concerns about the adequacy of the discipline that DEA imposed on these employees.”<sup>6</sup>

In April 2015, then-Attorney General Holder directed a systematic review of DEA's disciplinary process by the Department's Office of Professional Responsibility (DOJ-OPR).<sup>7</sup> Since that time, the Department has repeatedly put off my inquiries into the adequacy of DEA's disciplinary process by pointing to this “management review”<sup>8</sup> by DOJ-OPR.<sup>9</sup>

On October 19, 2015, I yet again raised concerns with DEA's disciplinary process and asked for a status update on DOJ-OPR's review.<sup>10</sup> I also asked why DOJ-OPR—which is

---

<sup>3</sup> *Id.*; Letter from Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Sally Quillian Yates, Deputy Attorney General, U.S. Department of Justice (Mar. 26, 2015), available at <http://www.grassley.senate.gov/news/news-releases/grassley-calls-zero-tolerance-policy-doj-following-report-%E2%80%9Csex-parties%E2%80%9D>; Letter from Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Michele Leonhart, Administrator, Drug Enforcement Administration (Apr. 21, 2015), available at <http://www.grassley.senate.gov/sites/default/files/judiciary/upload/DEA%2C%2004-22-15%2C%20Chong%20Follow-up%20letter.pdf>.

<sup>4</sup> Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Apr. 28, 2015), available at [https://www.judiciary.senate.gov/imo/media/doc/2015-04-28%20DOJ%20to%20CEG%20\(Daniel%20Chong%20DEA\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-04-28%20DOJ%20to%20CEG%20(Daniel%20Chong%20DEA).pdf).

<sup>5</sup> U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, Report Number 15-04, *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components* (2015), at 28, available at <https://oig.justice.gov/reports/2015/e1504.pdf>

<sup>6</sup> Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Apr. 28, 2015).

<sup>7</sup> Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Apr. 10, 2015), available at [https://www.judiciary.senate.gov/imo/media/doc/2015-04-10%20DOJ%20to%20CEG%20\(Zero%20Tolerance%20of%20Prostitution\)%20-%20Copy.pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-04-10%20DOJ%20to%20CEG%20(Zero%20Tolerance%20of%20Prostitution)%20-%20Copy.pdf).

<sup>8</sup> *Oversight of the Drug Enforcement Administration: Hearing Before the S. Comm. on the Judiciary*, 114th Cong. (2016) (statement of Michael Horowitz, Inspector General, U.S. Dep't of Justice) (“[A]s told to us by the Department's leadership...they wanted to...have management do an internal management review.”), available at <https://www.judiciary.senate.gov/hearings>.

<sup>9</sup> Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Apr. 10, 2015); Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Apr. 28, 2015); Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Nov. 13, 2015), available at [https://www.judiciary.senate.gov/imo/media/doc/2015-11-13%20DOJ%20to%20CEG%20\(DEA%20Misconduct\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-11-13%20DOJ%20to%20CEG%20(DEA%20Misconduct).pdf).

<sup>10</sup> Letter from Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Sally Quillian Yates, Deputy Attorney General, U.S. Department of Justice (Oct. 19, 2015), available at [https://www.judiciary.senate.gov/imo/media/doc/2015-10-19%20CEG%20to%20DOJ%20\(DEA%20misconduct\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-10-19%20CEG%20to%20DOJ%20(DEA%20misconduct).pdf).

generally responsible for attorney misconduct—was assigned this review, instead of the independent OIG, which had previously conducted a review of DEA’s disciplinary system.<sup>11</sup> On November 13, 2015, the Justice Department responded that the “OPR review is ongoing and we expect it be completed by the end of 2015.”<sup>12</sup> The Department did not respond to my question as to why the OIG was not tasked with this assignment.<sup>13</sup>

In early May, my staff informally inquired as to the status of OPR’s systematic review and were told that the report was near completion. Several weeks later, my staff informally invited Ms. Ashton to testify at a DEA oversight hearing given that DOJ-OPR had been conducting a review of DEA’s disciplinary system for more than a year. Following the Department’s stated preference to have a written invitation at least two weeks prior to the hearing,<sup>14</sup> on June 3, 2016, I sent a formal invitation to Ms. Ashton requesting her testimony before the Senate Judiciary Committee approximately three weeks before the scheduled hearing date.<sup>15</sup>

As I explained in my letter to the Department on March 12, 2015, it is for the Committee to set the order and composition of witness panels at its hearings according to its rules, not the Department.<sup>16</sup> Ms. Ashton was invited, and she was an appropriate witness. It is the Attorney General who put her in the position of being an expert on the DEA’s disciplinary process and the Department that has repeatedly pointed to her office’s review as its mechanism to ensure appropriate changes are made to DEA’s discipline system.

According to my staff, Department officials relayed concerns about the scope of Ms. Ashton’s testimony given that her office’s report—more than six months after I was told it would be completed—would not be finished in time for the hearing. The last communication from Committee staff was the Friday before the hearing. It stated that the witness was still invited. It also attempted to further accommodate the Department’s concerns about Ms. Ashton’s testimony by describing procedural issues that she could address for the Committee without discussing the substance of her office’s ongoing work.<sup>17</sup>

---

<sup>11</sup> *Id.*

<sup>12</sup> Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Nov. 13, 2015).

<sup>13</sup> *See id.*

<sup>14</sup> Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Mar. 5, 2015).

<sup>15</sup> Letter from Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Robin C. Ashton, Counsel, Office of Professional Responsibility, U.S. Department of Justice (June 3, 2016).

<sup>16</sup> Letter from Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary, to Peter J. Kadzik, Assistant Attorney General, U.S. Department of Justice (Mar. 12, 2015), *available at* [https://www.judiciary.senate.gov/imo/media/doc/2015-03-12%20CEG%20to%20DOJ%20\(hearing%20practices\).pdf](https://www.judiciary.senate.gov/imo/media/doc/2015-03-12%20CEG%20to%20DOJ%20(hearing%20practices).pdf).

<sup>17</sup> Staff relayed my expectations that Ms. Ashton should testify as to the objectives, scope, and methodology of the review; the basis for the review; and the reasons for delays. None of these topics was implicated by the ongoing nature of the work, assuming, for the sake of argument, that an unfinished report is not an appropriate subject for testimony.

Only one day before the hearing, when prompted for Ms. Ashton's written statement, did the Department finally clarify that Ms. Ashton would not appear at all, and only at the request of my staff did the Department formally respond to my invitation with a letter declining the invitation. That letter did not arrive until after the witness list had already been published. Informal communications about concerns relating to the scope of a witness's testimony followed by silence is not an appropriate way to decline a Chairman's formal invitation to testify before a Senate Committee.

The Justice Department has previously taken the unprecedented position that it is the Department's "intention to adhere firmly to the requirement of a formal written invitation at least two weeks in advance of the Department's participation in a congressional hearing."<sup>18</sup> Yet, the Department apparently does not feel bound to extend the courtesy of a formal written response to such invitation when the witness intends to decline.

In the future, if a Department witness intends to decline a formal written invitation to appear voluntarily before the Committee, that intent should be sent via formal written correspondence as soon as possible, so that the Committee can consider whether to secure the testimony by other means if necessary.

Thank you for your attention to this very disappointing matter.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

cc: The Honorable Patrick Leahy  
Ranking Member  
Senate Judiciary Committee

---

<sup>18</sup> Letter from Peter Kadzik, Assistant Attorney General, U.S. Department of Justice, to Senator Charles E. Grassley, Chairman, U.S. Senate Committee on the Judiciary (Mar. 5, 2015).