

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*

November 15, 2016

The Honorable Michael E. Horowitz  
Inspector General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Robin C. Ashton  
Counsel  
Office of Professional Responsibility  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

Dear Inspector General Horowitz and Ms. Ashton:

I write concerning allegations of a conflict of interest that potentially affected a plea agreement in a criminal case that was negotiated by the United States Attorney's Office (USAO) for the Eastern District of Louisiana. FBI Special Agent (SA) Michael Zummer has reported to this Committee that a relationship between then-First Assistant United States Attorney (AUSA) Fred Harper and defense attorney Ralph Capitelli may have resulted in a lenient plea agreement for former St. Charles district attorney Harry Morel.

Mr. Morel has admitted to soliciting sex from female defendants and female family members of defendants during his time as the St. Charles district attorney. However, Mr. Morel was not charged with any sexual offenses. Rather, Mr. Morel received a three-year sentence in 2016 after pleading guilty to a single count of obstructing justice. AUSA Harper and Mr. Capitelli, who represented Mr. Morel, owned a condominium together until March 2013 when AUSA Harper transferred his ownership to his girlfriend.

The USAO initially declined to prosecute Mr. Morel in 2013. AUSA Harper was reportedly directly involved in that decision. SA Zummer filed a complaint with the Office of Inspector General (OIG) in May 2013 against AUSA Harper for failing to recuse himself from matters involving Mr. Capitelli. SA Zummer reported to this Committee that he experienced retaliation as a result of his OIG complaint, including from AUSAs who declined to prosecute SA Zummer's cases. Additionally, in March 2014, the USAO reportedly refused to accept the FBI's referral of SA Zummer to serve as a Special Assistant United States Attorney to prosecute FBI cases.

In 2015, under the leadership of a new United States Attorney, Ken Polite, the USAO reopened the case against Mr. Morel. When it became apparent that the USAO would not indict Mr. Morel, but would seek a plea agreement, SA Zummer expressed his intent to report concerns to the court about the conflict of interest between AUSA Harper and Mr. Capitelli. On June 2, 2016, SA Zummer submitted a draft letter for review to the OIG. The letter was written to the presiding judge in Mr. Morel's case, Judge Kurt Engelhardt. It explained the conflict of interest between AUSA Harper and Mr. Capitelli, and alleged a loss of impartiality related to the USAO's handling of the case. The OIG reportedly referred this matter to the OPR, which advised SA Zummer on August 11, 2016, that it would be inappropriate for the OPR to comment on whether SA Zummer should send the letter to Judge Engelhardt. SA Zummer submitted the letter to Judge Engelhardt on August 15, 2016. The FBI consequently suspended SA Zummer's security clearance and suspended him indefinitely without pay. That looks like it could be a misuse of the security clearance process to mask retaliation for protected whistleblowing.

To assist this Committee in gaining a full understanding of the OIG's and OPR's involvement in investigating SA Zummer's allegations of a conflict of interest between AUSA Harper and Mr. Capitelli, a loss of impartiality within the USAO, and whistleblower retaliation against SA Zummer, please provide the following information and documents by no later than November 29, 2016:

Office of Inspector General:

1. When did the OIG first become aware of the relationship between AUSA Harper and Mr. Capitelli?
2. Has the OIG received complaints, other than those submitted by SA Zummer, related to the relationship between AUSA Harper and Mr. Capitelli?
3. Did the OIG open an investigation as a result of SA Zummer's May 2013 complaint or SA Zummer's letter to Judge Engelhardt that he submitted to the OIG for review in June 2016? Has the OIG opened an investigation into the relationship between AUSA Harper and Mr. Capitelli at any other time or for any other reason?
  - a. If yes, please provide all documents and communications relating to such investigations, including information about the outcomes of the investigations.
  - b. If no, please explain why not and provide all documents and communications related to the OIG's decision not to open an investigation.
4. Has the OPR ever made a recommendation to the Department related to the relationship between AUSA Harper and Mr. Capitelli?
5. Has the OIG referred to OPR any complaints it has received related to the relationship between AUSA Harper and Mr. Capitelli?

- a. If so, please provide all documents and communications related to such referrals.
  - b. If not, please explain why not and provide any documents and communications related to the OIG's decision not to refer the matter to OPR.
6. Did the OIG reveal SA Zummer's identity to AUSA Harper, Mr. Capitelli, or any other employee of the USAO?
  7. Did the OIG notify Mr. Capitelli that the USAO declined to prosecute Mr. Morel in 2013?
  8. Has the OIG ever opened an investigation related to whistleblower retaliation against SA Zummer? If not, why not?

Office of Professional Responsibility:

1. When did the OPR first become aware of the relationship between AUSA Harper and Mr. Capitelli?
2. Did the OPR receive referrals from the OIG of SA Zummer's May 2013 complaint or SA Zummer's letter to Judge Engelhardt that he submitted to the OIG for review in June 2016? Has the OPR received any other referrals from the OIG related to the relationship between AUSA Harper and Mr. Capitelli?
  - a. If yes, when did the OPR receive such referrals?
  - b. If yes, please provide all documentation and communications related to such referrals.
3. Has the OPR received complaints, other than those referenced in question 2, related to the relationship between AUSA Harper and Mr. Capitelli?
4. Has the OPR ever opened an investigation related to the relationship between AUSA Harper and Mr. Capitelli, including investigations prompted by referrals from the OIG?
  - a. If yes, please provide all documents and communications related to such investigations, including information about the outcomes of the investigations.
  - b. If no, please explain why not and provide all documents and communications related to the OPR's decision not to open an investigation.
5. Has the OPR ever made a recommendation to the Department related to the relationship between AUSA Harper and Mr. Capitelli?

6. Has the OPR ever opened an investigation related to whistleblower retaliation against SA Zummer? If not, why not?

Thank you in advance for your cooperation with this request. Please number your responses according to their corresponding questions. If you have questions, please contact Samantha Brennan of my Committee Staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Senate Judiciary Committee

cc: The Honorable Patrick Leahy  
Ranking Member  
Senate Judiciary Committee

The Honorable Loretta E. Lynch  
Attorney General  
United States Department of Justice

The Honorable James B. Comey, Jr.  
Director  
Federal Bureau of Investigation