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United States General Accounting Office
Washington, DC 20548

December 21, 2001

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate

The Honorable Charles E. Grassley
United States Senate

Subject: Joint FBI and Justice Investigation of Alleged Misconduct by Senior FBI Personnel in 1997 and Our Queries About the Possibility of Similar Misconduct in 2001

This letter responds to your July 10, 2001, request and our subsequent discussions with your offices concerning allegations of improper conduct by senior Federal Bureau of Investigation (FBI) personnel in connection with an October 9, 1997, retirement dinner for former FBI Assistant Director Larry Potts. Your request letter referred to allegations that a conference was scheduled at the FBI Training Academy in Quantico, Virginia, to provide a reason for senior FBI personnel from around the country to travel to Mr. Potts' retirement dinner in Arlington, Virginia, at government expense. Specifically, you asked that we determine (1) whether the joint investigation conducted by the FBI's Office of Professional Responsibility and the Department of Justice's Office of Professional Responsibility was thorough, (2) what disciplinary action resulted from the investigation and whether the FBI addressed a concern that a double standard existed in how the FBI's Senior Executive Service (SES) and non-SES employees were disciplined, and (3) the cost to the government associated with individuals who attended Mr. Potts' retirement dinner. You subsequently requested that we determine how many FBI employees traveled to Washington, D.C., at government expense to attend retirement events for former FBI Director Louis Freeh on or about June 20, 2001, and the cost of any such travel.

We conducted our investigation between August and September 2001 in accordance with investigative standards established by the President's Council on Integrity and Efficiency. We interviewed knowledgeable Justice and FBI officials, including cognizant investigators, and reviewed relevant documentation, including the investigative file.

In summary, we determined that the October 1997 investigation of the alleged improper scheduling of a training conference was thorough. The FBI and Justice

investigators reviewed the actions of eight SES employees.¹ Of the eight, three were issued letters of censure by the FBI's Deputy Director—one for failing to exercise proper administrative oversight of the training conference and two for inappropriate travel. Two individuals retired before receiving proposed letters of censure. The remaining three individuals whose actions were reviewed were not disciplined because they either had attended both the training conference and the Potts retirement dinner or had some other explanation for traveling to Washington, D.C., October 9-10, 1997.

With respect to the concern about a double standard in disciplining SES and non-SES (GS-15 and below) employees, the FBI's Law Enforcement Ethics Unit conducted a study in September 1999, which concluded that a perception of such a double standard existed. The investigation of misconduct relating to the Potts retirement dinner was cited to support this conclusion. In response, in August 2000 FBI Director Louis Freeh created a single disciplinary system for all FBI employees.

The travel cost to the government for individuals who attended the Potts retirement party was \$3,217. This amount includes \$1,864 for the two FBI employees who received letters of censure for "inappropriate travel" and one employee who retired before receiving such a letter. The balance of \$1,353 was the cost associated with the three others who attended the retirement dinner and who, although not disciplined, were investigated.

The FBI is unaware, based on an internal review, of any employees traveling to Washington, D.C., at government expense to attend events surrounding Director Louis Freeh's retirement in June 2001.

Investigation of Alleged Improper Conduct Was Thorough

On October 22, 1997, the FBI's Office of Professional Responsibility and Justice's Office of Professional Responsibility initiated a joint investigation into allegations that the FBI Training Division's Assistant Director and Section Chief improperly scheduled a training conference so that special agents in charge who traveled to Mr. Potts' retirement dinner could be reimbursed for their travel costs.

The FBI and Justice investigators reviewed the actions of eight SES employees—the FBI Training Division's Assistant Director and Section Chief and six special agents in charge who registered for the October 10 training conference and incurred travel costs for October 9-10, 1997.

The joint investigation was thorough and included over 60 interviews and sworn depositions from key witnesses. It determined that in September 1997, the Assistant Director for the Training Division started planning and organizing a retirement dinner to be held for Mr. Potts on Thursday, October 9, 1997, in Arlington, Virginia. Shortly

¹ The actions of the Assistant Director and Section Chief of the FBI Training Division in Quantico, Virginia, and six special agents in charge who registered for the training conference and traveled during the 2 days on which the dinner and conference were held (Oct. 9-10, 1997) were reviewed. All of the individuals who were investigated, except two of the special agents in charge, are now retired from the FBI.

afterward, the Assistant Director instructed his Section Chief to notify special agents in charge in all of the FBI field offices that a one-day training conference—entitled “New Agent Curriculum and Training Conference”—would be held at the FBI Training Academy in Quantico, Virginia, on Friday, October 10, 1997. The Section Chief’s October 2, 1997, notice to special agents in charge contained no conference outline or schedule and informed recipients that space was limited to 25 individuals on a first-come-first-served basis. The course instructor was given 3 days to prepare for the conference.

According to investigators, approximately 140 persons attended Mr. Potts’ retirement dinner on October 9, 1997, including many special agents in charge. However, only two special agents in charge attended the training conference the following day at Quantico, although six had previously confirmed that they would attend. The conference, including lunch, lasted approximately 90 minutes.

FBI Took Disciplinary Action and Subsequently Addressed Concerns About a Double Standard

The investigation was completed in November 1998. At that time, the FBI had two disciplinary systems—one for non-SES employees and one for SES employees,² which include all FBI special agents in charge. The SES disciplinary policy required the FBI’s Office of Professional Responsibility to provide the results of its investigations of SES members to the Deputy Director. The Deputy Director was to then determine whether to convene an SES Board, consisting of SES members, to review the investigative findings and make recommendations to the Deputy Director on what disciplinary action, if any, to take. According to policy, the subsequent decision of the Deputy Director on disciplinary action was final, with no provision for appeal.

Accordingly, after completing its joint investigation with Justice, the FBI’s Office of Professional Responsibility referred its findings to the Deputy Director and recommended that he convene an SES Board. The referral also recommended that the SES Board determine (1) whether the FBI Training Academy’s Assistant Director and Section Chief “neglected their duty by inviting up to 25 SACs [special agents in charge] to a curriculum conference of dubious substance to justify travel to the Potts retirement dinner”; (2) whether some special agents in charge committed misconduct through falsification of travel vouchers; and (3) whether, based on a preponderance of the evidence, one special agent in charge lied under oath when interviewed in connection with the investigation.³ A statement of disciplinary precedent for SES and non-SES employees accompanied the Office of Professional Responsibility’s referral to the Deputy Director. The statement showed that discipline for the types of offenses investigated by the Office of Professional Responsibility varies considerably depending on the particular facts and circumstances.

² Overall FBI disciplinary policy for SES employees at the time was governed by an April 1998 administrative and policy manual titled *Federal Bureau of Investigation Senior Executive Service Policy*.

³ The special agent in question was recommended for a letter of censure after passing a polygraph test. The special agent retired before receiving a letter.

An SES Board convened, reviewed the investigative findings, and on December 12, 1998, sent a memorandum to the Deputy Director that contained its analysis of the investigation and its recommendations for disciplinary action. The SES Board recommended to the Deputy Director that three special agents in charge be issued letters of censure for inappropriate travel and that the Training Division's Section Chief receive a 15-day suspension for neglecting his duty by failing to exercise proper administrative oversight of the October 10, 1997, conference. In January 1999, the Deputy Director adopted the SES Board's recommendations for the three special agents in charge, but one agent retired before receiving a letter of censure. The Deputy Director did not adopt the Board's recommendation to suspend the Section Chief for 15 days, because he found it to be "unnecessarily harsh." Instead, he issued a letter of censure to the Section Chief in January 1999 for failing to oversee the conference. The Board also recommended that the Training Division's Assistant Director receive a letter of censure and that individual retired before receiving it.

As a result of the disciplinary action taken in the Potts investigation, in September 1999 the FBI's Law Enforcement Ethics Unit addressed the issue of whether a double standard existed within the FBI regarding discipline of SES and non-SES employees. The Ethics Unit study concluded that FBI employees perceived that the discipline administered to SES employees was less severe than that administered to non-SES employees who committed comparable infractions. The study cited the disciplinary actions taken as a result of various investigations, including actions taken as a result of the investigation of misconduct relating to the Potts retirement dinner, as evidence of a double standard. The Ethics Unit study was critical of the SES Board's recommendation to issue letters of censure to the special agents in charge in the Potts retirement dinner investigation. The study stated, "A fair and reasonable reading of the final OPR [Office of Professional Responsibility] report clearly shows both voucher fraud and lack of candor on the part of several SACs." In response to the study, on August 15, 2000, former FBI Director Freeh announced the creation of a single disciplinary system for all FBI employees to replace the two separate disciplinary systems for SES and non-SES employees.

Cost Associated With Travel to Retirement Dinner

The total cost to the government for travel associated with the retirement dinner was \$3,217. This amount includes travel costs of \$1,864 for the two special agents in charge who were censured and the one who retired before being censured.⁴ The total also includes travel costs of \$1,353 for three other special agents in charge who attended both the training conference and the retirement dinner and who were not disciplined.

FBI Unaware of Employee Travel Associated With Retirement Events for Former Director Freeh

As you are aware, the Committee was informed in June 2001 that then FBI Director Freeh was not available to appear at a Committee hearing because he had announced his retirement and the hearing would be held on his last day in office. The Committee was informed that FBI employees from around the country would be

⁴ The Training Division's Section Chief, who was also disciplined, did not incur travel costs.

traveling to Washington, D.C., to be photographed with Director Freeh on the day of the hearing.

In response to our query about travel at government expense by FBI employees to attend farewell ceremonies, photograph opportunities, or other retirement events for Director Freeh, the FBI's Assistant Director of the Office of Public and Congressional Affairs told us that after conducting an internal review, the FBI is unaware of any such travel. He subsequently told us that the FBI had no way to document which employees attended the retirement events at their own expense, nor could it tell us how many employees paid their own expenses. The Assistant Director also said that Director Freeh did not want people to travel to Washington, D.C., to hear his brief message to FBI employees because he knew that it would be sent to all employees in due course. He said that the FBI did not announce Director Freeh's departure until shortly before the day he retired.

Agency Comments

The FBI's Office of Professional Responsibility and Office of Public and Congressional Affairs provided comments on a draft of this letter, in which they concurred with the letter and its findings. We made their suggested language changes where appropriate.

As arranged with your offices, unless you announce its contents earlier, we plan no further distribution of this letter until 30 days after the date of the letter. At that time, we will send copies of the letter to interested congressional committees, the Attorney General, and the Director of the FBI. This letter will also be available at www.gao.gov. If you have any questions about this investigation, please call me at (202) 512-7455 or Senior Special Agent Andrew O'Connell at (202) 512-7449. Senior Special Agent Russell Rowe, Senior Analyst Shelia James, and Senior Attorney Barry Shillito made key contributions to this letter.



Robert H. Hast
Managing Director
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