

A Review of the FBI's Response to John Roberts' Statements on *60 Minutes*



Office of the Inspector General
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I. INTRODUCTION

This report describes the Office of the Inspector General's (OIG) investigation of allegations that officials in the Federal Bureau of Investigation (FBI) retaliated against John Roberts, a Unit Chief in the FBI's Office of Professional Responsibility (OPR), for comments he made on the television program *60 Minutes*. On the October 27, 2002, *60 Minutes* broadcast, Roberts made statements critical of the FBI's investigation and adjudication of employee misconduct, suggesting that there was a continuing double standard of discipline in the FBI. After the broadcast, allegations arose that senior FBI officials, including Robert Jordan, the newly appointed Assistant Director (AD) in charge of FBI OPR, engaged in a course of retaliatory conduct against Roberts. Allegedly, Jordan angrily confronted Roberts and chastised him for his statements on *60 Minutes*, referred Roberts to the OIG for investigation because of his appearance on *60 Minutes*, criticized Roberts during an FBI OPR all-employees meeting at which Roberts was not present, and selected another FBI OPR Unit Chief who had less experience than Roberts to be the FBI OPR Acting Deputy Assistant Director (DAD). Jordan and other FBI officials denied that they engaged in any retaliatory actions against Roberts for his statements on *60 Minutes*.

On November 8, 2002, Senators Patrick Leahy and Charles Grassley wrote to FBI Director Robert Mueller expressing their concern about the alleged retaliation against Roberts and seeking the FBI's response to a series of questions about the matter. (See Attachment 1.) In response, the FBI referred the allegations to the OIG and requested an investigation of them. We agreed to investigate the matter.

During the course of our investigation, the OIG interviewed more than 20 FBI employees, including Roberts, his wife Brenda Roberts (who works as Jordan's secretary in FBI OPR), Jordan, FBI Director Mueller, FBI Deputy Director Bruce Gebhardt, and FBI Executive Assistant Director (EAD) for Administration W. Wilson Lowery. The OIG also interviewed many of the FBI OPR Unit Chiefs, special agents, and administrative employees who were present at the FBI OPR all-employees meeting. In addition, we obtained FBI documents relating to the allegations of retaliation and the *60 Minutes* broadcast, including e-mails and notes taken during the all-employees meeting.

This report describes the results of our investigation. The report first provides a timeline of relevant events. It then discusses the background to the allegations, including the structure of FBI OPR, what was aired on the *60 Minutes* program, and the reaction by FBI employees. The report then describes in detail several meetings among FBI managers and two meetings between Roberts and Jordan after the broadcast. It also describes what was said at the FBI OPR all-employees meeting on November 6. The report next examines the decision by Jordan to appoint an Acting DAD of OPR. The final section of the report provides our analysis and conclusions regarding the allegations.

TIMELINE OF KEY EVENTS

2001

July 18, 2001	Roberts testifies before Congress about a double standard of discipline in the FBI
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2002

September 2, 2002	Jordan becomes Assistant Director in charge of OPR
September 25	Roberts' attorney requests permission for Roberts to be interviewed by <i>60 Minutes</i>
October 8	FBI gives Roberts permission to be interviewed by <i>60 Minutes</i>, with certain restrictions Roberts is interviewed by <i>60 Minutes</i>
October 27	<i>60 Minutes</i> broadcast
October 28	Jordan meets with FBI Director Mueller about <i>60 Minutes</i> broadcast
October 29	Jordan and Lowery meet to discuss letter referring Roberts' allegations to the Inspector General Lowery, Gebhardt, and Mueller meet to discuss referral letter Jordan and Lowery meet with Roberts in Lowery's office
October 30	Jordan gives Roberts a copy of the referral letter to the Inspector General
November 1	FBI sends letter to <i>60 Minutes</i> responding to the broadcast; FBI posts letter on FBI Intranet
November 5	Jordan changes OPR all-employees meeting from November 7 to November 6
November 6	Roberts is out of the office on sick leave In the morning, OPR Unit Chiefs' meeting is held In the afternoon, OPR all-employees meeting is held FBI posts position for OPR Deputy Assistant Director
November 8	Senators Leahy and Grassley write to FBI Director Mueller expressing concern about treatment of Roberts
November 12	Jordan appoints OPR Unit Chief Brian Fortin to serve as OPR Acting Deputy Assistant Director

II. BACKGROUND

A OPR's Structure

FBI OPR investigates and adjudicates allegations of misconduct against FBI employees. OPR is composed of six units: two Internal Investigative Units, two Adjudication Units, one Administrative Unit, and one Law Enforcement Ethics Unit (LEEU). The two Internal Investigative Units review allegations of misconduct, investigate and determine the relevant facts, and send the results of the investigations to the two Adjudication Units, which evaluate the evidence and recommend appropriate discipline. The recommended discipline has to be approved by the FBI OPR Assistant Director. The two Internal Investigative Units have approximately 20 employees in total, and the two Adjudication Units have approximately 20 employees in total.

The FBI OPR Administrative Unit provides administrative support to FBI OPR and consists of approximately 14 employees. The FBI OPR LEEU, located at the FBI's training academy in Quantico, Virginia, was established in 1995. Its mission is to teach ethics to FBI personnel and monitor the overall integrity of the FBI's components. At the time of the *60 Minutes* broadcast, the LEEU had four employees.

A Unit Chief heads each OPR unit. All Unit Chiefs report to Jordan, the Assistant Director in charge of OPR. Prior to March 2002, OPR also had a Deputy Assistant Director. That position has been vacant since March 2002 when the former Deputy Assistant Director, John O'Connor, retired.

Before July 2001, the FBI had sole jurisdiction to investigate allegations of misconduct by FBI employees; the OIG could not investigate misconduct in the FBI without the express permission of the Attorney General or the Deputy Attorney General. In July 2001, the Attorney General expanded the jurisdiction of the OIG to allow it to investigate misconduct throughout the Department of Justice (Department), including in the FBI.¹ As a result, the OIG now reviews all allegations of misconduct in the FBI and determines which ones it will investigate and which ones FBI OPR should investigate. Normally, the OIG investigates

¹ See Attorney General Order 2492-2001 and 28 C.F.R. § 0.29. In November 2002, this expansion of the OIG's jurisdiction was codified in statute by the 21st Century Department of Justice Appropriation Authorization Act (Pub. L. 107-273).

allegations of misconduct against high-level FBI officials, allegations that would likely result in criminal prosecution if proved, and allegations that present the FBI with a conflict of interest or that the OIG believes should be investigated by an entity outside the FBI. Currently, the OIG is conducting approximately 40 investigations of misconduct against FBI employees. The majority of investigations of misconduct against FBI employees, however, are still investigated by FBI OPR. Each year, OPR receives approximately 3000 allegations of misconduct against FBI employees and opens approximately 700 cases.

Although the FBI organization chart indicates that OPR reports to the EAD for Administration, Jordan told the OIG that he reports to FBI Deputy Director Gebhardt on substantive matters and to EAD Lowery on administrative matters.²

B. Roberts' FBI Career

Roberts has worked for the FBI since 1984. He initially served as a special agent in the FBI's Paducah, Kentucky, Resident Office and then in the FBI's Miami Division. In 1990, he was assigned to FBI OPR as a supervisory special agent to investigate misconduct cases. In 1993, he was assigned to the FBI's Inspection Division as an Assistant Inspector. In 1994, he transferred to the Boston Division of the FBI. In 1995, he was assigned to work on the internal investigation of the FBI's actions in the Ruby Ridge case. Roberts was one of two FBI Inspectors in Charge of that investigation, working with the Department Task Force and then with the Acting United States Attorney for the District of Columbia, who led the Department's investigation of the handling of the Ruby Ridge matter.³ In 1997, Roberts was transferred to FBI OPR and made the Unit Chief of Internal Investigative Unit II, his current position.

During his time in OPR, and during his work on the Ruby Ridge matter, Roberts investigated various allegations of misconduct against high-level FBI officials. As a result of his work, Roberts has raised allegations to the FBI, the Department, and Congress that a double standard of discipline exists in the FBI. For example, on July 18, 2001, he testified before the Senate Judiciary Committee

² In late January 2003, Director Mueller decided to change the reporting structure to make OPR report directly to the FBI Director and Deputy Director.

³ For a detailed description of the investigation of the FBI's actions in the Ruby Ridge matter, see the OIG's report entitled "A Review of Allegations of a Double Standard of Discipline at the FBI," November 15, 2002.

about investigations of misconduct within the FBI, including the Ruby Ridge case, and the perception of a double standard of discipline in the FBI.

Roberts is married to Brenda Roberts, who has served as the secretary to the FBI OPR Assistant Director since January 2001. She is currently Jordan's secretary.

C. Jordan's FBI Career

Jordan has been employed by the FBI since 1980. Prior to joining the FBI, he was an Assistant District Attorney in Philadelphia. During his career at the FBI, he was assigned to the FBI's Boston Field Division to work on public corruption cases; the Public Corruption Unit at FBI Headquarters; the FBI's San Diego Field Division, where he worked on a large-scale judicial corruption case; and the Newark Field Division, where he served as an Assistant Special Agent in Charge (ASAC) of that office. In 2000, he was transferred to FBI Headquarters to become the chief of the FBI's Integrity in Government/Civil Rights Unit, where he had oversight of public corruption, government fraud, and civil rights investigations.

On August 19, 2002, Jordan was appointed to be the Assistant Director in charge of FBI OPR. Jordan assumed that office on September 2, 2002.⁴

D. Roberts' and Jordan's Relationship

According to many accounts, prior to the *60 Minutes* broadcast on October 27, Jordan and Roberts had a positive and professional relationship. For example, Roberts told others in OPR after Jordan arrived that Jordan was an asset to OPR and credited him with good work. Roberts also told the OIG that he made many complimentary statements about Jordan during his *60 Minutes* interview, none of which was broadcast. Several OPR employees also informed the OIG that Roberts had commented to them that Jordan seemed to represent a positive change for OPR. For example, one OPR employee said that after meeting Jordan, Roberts

⁴ Michael DeFeo, the former Assistant Director, served as the head of FBI OPR from June 1996 until he retired in September 2002.

had said that Jordan was a nice change of pace, open to opinions, and willing to listen.⁵

When Jordan was away from the office on two occasions before the *60 Minutes* broadcast, he appointed Roberts, who was the most senior Unit Chief in OPR, as the Acting Assistant Director in his place. These two times occurred when Jordan attended a conference for two days in early October and when he went on annual leave from October 14 to October 23. During his absences, Jordan authorized Roberts to attend all meetings and exercise all authority on Jordan's behalf.

III. THE 60 MINUTES BROADCAST

A. The 60 Minutes Interview

According to Roberts, in late September 2002, *60 Minutes* contacted his attorney and requested an interview of Roberts by correspondent Ed Bradley. Roberts' attorney sought permission from the FBI for Roberts to be interviewed. In a letter dated October 8, 2002, Michael Kortan, the Chief of the Public Affairs Section in the FBI's Office of Public and Congressional Affairs, gave Roberts permission to be interviewed. Kortan's letter stated that he understood Roberts would be asked to address general issues regarding the FBI's culture but would not be asked to comment on confidential FBI matters or open investigations. The letter reminded Roberts that he was restricted from discussing any official FBI information in 12 broad categories. (A copy of Kortan's letter is Attachment 2.) Jordan also was given a copy of the letter.

Roberts said that he believed that *60 Minutes* would interview him about the subject of his testimony to Congress in July 2001, which concerned investigations of misconduct in the FBI and the alleged double standard of discipline. Roberts told us that he did not receive any instructions from the FBI, other than Kortan's letter, about the *60 Minutes* interview. Neither Jordan nor Lowery talked to Roberts about the interview in advance. Roberts said that one official from the FBI's Office of Public and Congressional Affairs spoke to him before the interview and was critical of *60 Minutes*, and how it had portrayed the FBI in the

⁵ Several employees also said that Brenda Roberts expressed a positive reaction to Jordan when he took office, and that she said she thought Jordan was going to be a breath of fresh air for OPR.

past, but the official did not instruct Roberts not to do the interview or tell him what to say during the interview.

On October 8, Roberts was interviewed for about 50 minutes by *60 Minutes* correspondent Ed Bradley. Roberts' attorney was present during the interview to ensure that Roberts followed the restrictions in the FBI letter. Roberts told the OIG that during the interview he made numerous complimentary statements about Jordan. He also said that although he knew that Sibel Edmonds, a former FBI contract employee who had made various allegations about misconduct in the FBI's translation program, was going to be interviewed by *60 Minutes*, Roberts thought that *60 Minutes* was going to broadcast separate segments about Edmonds and him.

B. The Broadcast

The *60 Minutes* broadcast containing excerpts of Roberts' interview aired on Sunday, October 27. The program mainly concerned allegations by Edmonds that the FBI had not translated thousands of foreign language documents and that the FBI's foreign language program was riddled with incompetence and corruption.⁶ (A transcript of the *60 Minutes* broadcast is Attachment 3.)

The *60 Minutes* segment also included an interview of Senator Grassley, who stated that he believed Edmonds was credible because people within the FBI had corroborated much of her story. Ed Bradley stated on the program that critical shortages of Middle Eastern translators had plagued the FBI for years and that the FBI had hired more foreign language translators after the terrorist attacks on September 11, 2001, but the FBI admitted that it had difficulty performing background checks on the translators. Edmonds said that an FBI contract translator had tried to recruit her into an organization that was the subject of an FBI investigation. Edmonds said she complained repeatedly about this other translator, but no one in the FBI wanted to hear it. Senator Grassley stated that the Edmonds case fell into a pattern of behavior by the FBI to sweep embarrassing information under the rug, then "eventually they shoot the messenger."

The *60 Minutes* segment then aired the following excerpts from its interview of Roberts:

⁶ The OIG is currently investigating Edmonds' claims.

BRADLEY: Special Agent John Roberts, a chief of the FBI's Internal Affairs Department, agrees. And while he is not permitted to discuss the Sibel Edmonds case, for the last 10 years, he has been investigating misconduct by FBI employees and says he is outraged by how little is ever done about it.

ROBERTS: I don't know of another person in the FBI who has done the internal investigations that I have and has seen what I have and that knows what has occurred and what has been glossed over and what has, frankly, just disappeared, just vaporized and no one disciplined for it.

BRADLEY: Despite a pledge from FBI Director Robert Mueller to overhaul the culture of the FBI in light of 9/11, and encourage Bureau employees to come forward to report wrongdoing, Roberts says that in the rare instances when employees are disciplined, it's usually low-level employees like Sibel Edmonds who get punished and not their bosses. (Clip of FBI Director Robert Mueller)

ROBERTS: I think the double standard of discipline will continue no matter who comes in, no matter who tries to change. You - - you have a certain - - certain group that - - that will continue to protect itself. That's just how it is.

BRADLEY: No matter what happens?

ROBERTS: I would say no matter what happens.

BRADLEY: Have you found cases since 9/11 where people were involved in misconduct and were not, let alone reprimanded, but were even promoted?

ROBERTS: Oh, yes, absolutely.

BRADLEY: That's astonishing.

ROBERTS: Why?

BRADLEY: Because you - - would think that after 9/11, that's a big slap on the face. 'Hello! This is a wake up call here.'

ROBERTS: Depends on who you are. If you're in the Senior Executive level, it may not hurt you. You will be promoted.

BRADLEY: In fact, the supervisor who Sibel Edmonds says told her to slow down her translations was recently promoted. Edmonds has filed a whistle-blower suit to get her job back, but last week, US Attorney General Ashcroft asked the court to dismiss it on grounds it would compromise national security. And also on the grounds of national security, the FBI declined to discuss the specifics of her charges, but it says it takes all such charges seriously and investigates them.

IV. REACTION TO THE *60 MINUTES* BROADCAST

A. Monday, October 28

On the morning of October 28, several FBI OPR employees watched a tape of the program in the office. A few told us that they thought Roberts' statements were factual or that they were not surprised by what he had said. Several, however, told us that they were troubled that Roberts' statements appeared to give credibility to Edmonds's claims, and some said they wondered why Roberts was raising old cases related to the alleged double standard. Others said they did not understand what Roberts was referring to when he claimed that cases disappeared or that nothing would change in the FBI, no matter who "comes in."

Throughout the FBI, many employees and managers expressed their opinions about the *60 Minutes* broadcast and Roberts' statements. For example, in an e-mail to Jordan, FBI Deputy Director Gebhardt stated, "If we have internal problems then I would rather find solutions and fix them, rather than tell the world on *60 Minutes*. In my opinion, Roberts brought discredit to the FBI Badge, and the 27,000 employees of the FBI. I can't remember when I've been this disappointed."⁷ Jordan's response to Gebhardt's e-mail started with "I could not agree with you more. There was the obvious direct shot at the Director (and myself) with the quote, 'I think the double standard of discipline will continue no matter who comes in, no matter who tries to change.'"

Jordan was clearly upset by what Roberts said on the show. Jordan told the OIG that he first learned the show was going to be aired when Brenda Roberts told him the segment would be shown on Sunday, October 27. Jordan said he watched the show on Sunday night, but that the portion with Roberts went by so quickly that he was not certain what Roberts had said until the next day, when Jordan obtained a transcript of the broadcast. According to Jordan, after reading the transcript, his initial reaction was that Roberts had either "lied or misstated

⁷ In our interview with him, Gebhardt stated that when he saw the show he was extremely disappointed with Roberts' comments. Gebhardt said that the FBI has been working hard to fix internal problems and striving to make changes, and that Roberts' statements were one person's opinion that cast a negative light on the FBI as a whole, not just one unit or Division. Gebhardt also said that to his knowledge Roberts had not brought any of his present concerns to FBI management prior to airing them on *60 Minutes*. Gebhardt said that when he wrote the e-mail he thought that Roberts had brought discredit to the FBI and its 27,000 employees, and he believes that today.

material fact” when he claimed that cases “disappeared” or “just vaporized.” Jordan also said that he thought that Roberts was either not telling the truth or was commenting on his own behavior, because as the Unit Chief of an Internal Investigations Unit, Roberts was responsible for reporting all allegations of misconduct to the OIG. As a result, Jordan questioned how cases could have disappeared or vaporized. Jordan said it seemed incredible that Roberts would claim that cases were not being reported or pursued when it was his responsibility to do just that. Jordan also said that he did not know which cases Roberts was referring to and Roberts had never reported such misconduct to him.

Jordan said he also was startled by Roberts’ comment that things would remain the same no matter who was in charge at the FBI. Jordan took that as a criticism of him despite the fact that he had been the Assistant Director of OPR for less than two months. Jordan said that when he was appointed to be the Assistant Director, Director Mueller had instructed him to make changes, which Jordan was in the process of doing, and that he had discussed with Roberts many of the changes planned or under way.

B. Meeting with Director Mueller on October 28

According to Jordan, on Monday morning, October 28, he was asked to come to the Director’s office, where he met briefly with Director Mueller about the *60 Minutes* program.⁸ Jordan said Director Mueller asked if Jordan had seen the program and if Jordan knew to what Roberts was referring, and Jordan said he had seen the program but did not know what Roberts was referring to. Director Mueller then asked if it was true that cases vanished or disappeared. Jordan replied he had no information or facts to back up Roberts’ statements that cases were vaporizing or disappearing, and that Roberts either misspoke or was misquoted. Jordan also mentioned that Roberts himself was responsible for reporting cases to the OIG. He said the Director then asked Jordan to discuss the matter with EAD Lowery and get back to him on what to do.

⁸ In our interviews with FBI managers, we found some confusion as to the exact dates, times, and persons who attended the meetings from October 28-30. We believe, based on the evidence and the recollections of the participants, that the following description reflects the dates of the meetings and the persons who attended.

C. Meetings on October 29

1. Jordan and Lowery Meeting

Lowery was out of town on October 28 and returned to the office on October 29. He met with Jordan on the morning of October 29 to discuss the *60 Minutes* broadcast and Roberts' allegations. Lowery said that he and Jordan reviewed the transcript of the show and were troubled by Roberts' implication that things were not done correctly at OPR, no matter who was in charge. Lowery said he asked Jordan if he knew of any basis for Roberts' allegations, and Jordan responded that he did not. Lowery said that Jordan told him they should refer the allegations raised by Roberts to the OIG. Lowery further stated that Jordan suggested they meet with Roberts and advise him of their intention to refer his allegations to the OIG.

Jordan also said that he and Lowery discussed Roberts' responsibility, and the responsibility of any FBI employee, to report any allegations of misconduct to OPR or the OIG, and that if Roberts was aware of misconduct, as he proclaimed on *60 Minutes*, he should report it to the OIG. Jordan said they decided to draft a letter to the OIG describing the *60 Minutes* interview and referring Roberts' allegations of misconduct to the OIG. In addition, Jordan said he wanted to write a letter of rebuttal to *60 Minutes* to correct the statements made by Roberts.

2. Meeting with Director Mueller

Lowery and Deputy Director Gebhardt met with Director Mueller later that same day. Lowery said the meeting was brief, and that they advised the Director that they intended to send Roberts' allegations to the OIG and that Lowery and Jordan would meet with Roberts to advise him of this action. Lowery said the Director agreed with the proposed referral to the OIG.⁹

Gebhardt also confirmed that he and Lowery went into the Director's office to inform him of their intention to refer Roberts' allegations to the OIG. Gebhardt said that at no time did they ever discuss referring Roberts' actions to the OIG, only his allegations.

⁹ Gebhardt, Lowery, and Director Mueller all thought that Jordan also attended this meeting, but Jordan said he remembered clearly that he was not present.

Director Mueller told us he strongly believed that two allegations raised by Roberts in the *60 Minutes* broadcast – that a double standard continued to exist and that cases were “disappearing” or “vaporizing” – needed to be investigated by an independent party. Director Mueller said that after he had read the *60 Minutes* transcript, it appeared that the allegations raised by Roberts were current, ongoing allegations and not historical, and that these allegations should be referred to the OIG for investigation. He said he understood that Jordan and Lowery were going to meet with Roberts to inform him of this course of action and that a formal referral letter was going to be sent to the OIG requesting an investigation. Director Mueller said that he never was involved in any discussion about referring Roberts to the OIG for investigation. Director Mueller said that it was his belief that referring the matter to the OIG would resolve the issues raised by Roberts. He said that sometime after Lowery and Jordan had spoken with Roberts, Lowery informed the Director, in a very brief meeting, that everything was fine.¹⁰

3. Meeting among Jordan, Lowery, and Roberts

At 5:00 p.m. on October 29, Jordan, Lowery, and Roberts met in Lowery’s office.¹¹ Their versions of what was said during this meeting, and the tone of the meeting, differed markedly.

According to Roberts, he was contacted at about 4:00 that afternoon and told to meet with Jordan at 5:00. Roberts said his initial thought was that they would discuss how to make improvements in OPR. Roberts said that when he went to Jordan’s office at 5:00, Jordan appeared very cold and stoic, and they walked across the hallway to Lowery’s office.

According to Roberts, in Lowery’s office Jordan read the portion of the

¹⁰ Director Mueller said he did not instruct Jordan to have a meeting with OPR staff to discuss Roberts or the *60 Minutes* program, and that he was unaware that such a meeting was planned. Director Mueller said he was next informed that he had received a letter from Senators Grassley and Leahy (dated November 8) asking why the FBI was referring Roberts to the OIG. Director Mueller said the FBI forwarded a copy of the FBI’s referral letter to the Senators’ staff, which showed that the FBI was referring Roberts’ allegations to the OIG, not Roberts himself.

¹¹ Lowery and Jordan both stated that prior to this meeting they did not seek guidance from anyone else on the matter, including the FBI Office of General Counsel, as to how to proceed or what to say when meeting with Roberts.

60 Minutes transcript with Roberts' statements and asked what he had meant by the comments. Roberts said it was clear that Jordan was very angry and was taking the comments personally. Roberts said Jordan specifically asked about Roberts' comments that the double standard problem continued to exist after September 11. Roberts said he had been restricted from talking about specific cases on *60 Minutes*. He said he mentioned the Ruby Ridge and the Potts retirement party cases. He said he did not go into detail about those cases during his interview, but raised them to illustrate the double standard. He said Jordan responded that Roberts had not been clear on *60 Minutes* and asked about the comments referring to current double standard problems. Roberts said he told Jordan about a case involving an FBI agent who was being disciplined more harshly for making improper comments than an FBI Special Agent in Charge (SAC) who had made comparable offensive comments in a public forum. Roberts believed the harsher discipline for the agent reflected a double standard. Jordan responded that this case was not on his watch, and Roberts replied that the agent had just received the letter of censure at the end of September, after Jordan started as the Assistant Director of OPR. Roberts said that Lowery asked him to repeat what had occurred in the SAC case, and Roberts did.¹²

According to Roberts, Jordan then stated that he was "referring this to the OIG." Roberts said that when Jordan made this statement he was holding the *60 Minutes* transcript in his hand. Roberts interpreted Jordan's statement to mean that Jordan was referring Roberts to the OIG and that Jordan was accusing him of misconduct. Roberts said he replied that he had done nothing wrong, that he had approval to appear on *60 Minutes*, and that he had been instructed not to mention specific cases on the program, which he had not done. According to Roberts, Jordan again said that he was referring "this" to the OIG, and Roberts replied, "You have to do what you have to do. I have done nothing wrong." At that point, according to Roberts, Lowery said "we have work to do," which indicated that the meeting was over.

¹² Roberts had informed Jordan of his concerns about this case previously. On October 17, 2002, Roberts had sent a routing slip to Jordan, which attached a copy of the letter of censure for the agent who was being disciplined for the improper remarks. The routing slip stated "Bob, I think we are causing OPR unnecessary problems. If you check the [SAC] case you will find his actions more egregious than the [agent's] actions. [The SAC] gets counseling and [the agent] gets a letter [of censure]. It just does not make sense and we are leaving OPR open to criticism. We have to fix this. Your thoughts?" Roberts said Jordan never responded to the note.

Roberts said no pleasantries were exchanged at the meeting, and that he believed Jordan and Lowery were angry. He said he left the meeting with a clear message that he had done something wrong, and that Jordan and Lowery were going to refer him to the OIG. Roberts told a colleague in OPR that he had been “read the riot act” in the meeting. Roberts also told the colleague that Jordan had a copy of the *60 Minutes* transcript and was angry about the statements Roberts had made.

Jordan’s and Lowery’s accounts of the meeting differed significantly from Roberts’ version. Jordan said that at the meeting he reviewed with Roberts the *60 Minutes* transcript and Roberts’ statements that cases were disappearing from OPR and that senior employees have gone unpunished. He said he asked Roberts what he was talking about and that Roberts responded that he was talking about Ruby Ridge and Waco.¹³ Jordan said he replied that this was not part of the transcript. Jordan told us he did not recall Roberts mentioning the SAC case in this meeting, although Jordan acknowledged that he was familiar with the issue.¹⁴

Jordan said he told Roberts that his allegations would be referred to the OIG and a letter was being written to that effect. Jordan said that he recalled Roberts saying near the end of the meeting that he had done nothing wrong and that they must do what they had to do.

Jordan described the meeting as “very businesslike.” Jordan stated that Roberts “seemed fine with the OIG referral,” although Jordan said that Roberts “seemed puzzled as to what this was all about.”

¹³ Jordan acknowledged to us that Roberts may have also mentioned the Potts retirement party case.

¹⁴ Jordan said he recalled the routing slip from Roberts that discussed the SAC matter and the difference in discipline between the SAC and the special agent. Jordan stated to us that by the time he received the routing slip, the matter was “a done deal.” He said that the issue raised by Roberts about the difference in penalties was not that clear-cut, and that the agent’s comments were more egregious than the SAC’s comments. Jordan added that OPR adjudicates 700 cases in one form or another annually, and someone could pick out one case and find fine points of law or fact to contest. Jordan also added that the SAC case had been completed and was not pending. Finally, he stated that the routing slip was sent by Roberts on October 17, when Jordan was on leave and Roberts was the Acting AD for OPR, and that Roberts had full authority during that time to take steps to correct what he saw as anything wrong with the discipline imposed in the agent’s case.

Lowery told the OIG that the purpose of the meeting was to communicate with Roberts, not to criticize or discipline him. Lowery said the meeting was short, lasting approximately six to seven minutes. Lowery said that Jordan read Roberts' portion of the *60 Minutes* transcript and that Lowery and Jordan "asserted [their] concerns about his allegations and statements." Lowery said that they explained their intention to send a letter requesting that the OIG investigate the allegations made by Roberts during the program, and they asked Roberts to give the OIG his full cooperation. Lowery said that Roberts stated to them that he had positive things to say about Jordan during the *60 Minutes* interview, but those statements were not aired on the broadcast. According to Lowery, Jordan thanked Roberts for those statements, but stressed that they must go by what aired on the program. Lowery said that they advised Roberts that they would provide him a copy of the letter to the OIG, and Roberts responded that we should get on with what we need to do. Lowery said that "not a cross word was spoken, no criticism was issued, and no one raised his voice."¹⁵

D. October 30 Referral Letter to the Inspector General

Jordan drafted a referral letter to the Inspector General on October 29. He gave a copy of the draft to Lowery, who forwarded it to Kenneth Wainstein, the FBI General Counsel. Wainstein suggested specifying in the letter the actual statements Roberts made in the *60 Minutes* broadcast, and those quotations were added.¹⁶

The letter, signed by Jordan and addressed to the Inspector General, referred to Roberts' appearance on *60 Minutes* and his statements regarding disparate treatment for different levels of FBI employees. It quoted Roberts' comments about cases disappearing and that the double standard of discipline would continue. The letter stated that Roberts' comments indicated a lack of confidence in the ability of FBI OPR to address these issues and concluded:

These remarks raise serious issues of concern to us. Given the gravity of [Roberts'] remarks, and his lack of confidence in this office to address these issues, we have directed Unit Chief Roberts to contact

¹⁵ Lowery said he did not recall any discussion of the SAC case.

¹⁶ The letter that was sent to the Inspector General, dated October 30, 2002, and signed by Jordan, added additional quotes from the transcript. (A copy of the letter is Attachment 4.)

your office to provide additional details. Please contact me if I can be of further assistance in this matter.

Jordan said that on October 30, following an OPR Unit Chiefs meeting, he gave Roberts a copy of the letter. According to Jordan, when Roberts looked at the letter he asked, "What's this?" Jordan said Roberts appeared surprised by the content of the letter and must have misunderstood what was said at the meeting the day before. Roberts told Jordan he thought Jordan was going to report his conduct to the OIG. Roberts also stated that during his interview with *60 Minutes* he had said some wonderful things about the Director, Lowery, and Jordan. Jordan said Roberts stated that in his *60 Minutes* remarks he had been referring to old cases that he was prohibited from discussing on the program.

Jordan said he told Roberts that even though a handful of people at CBS heard him say that he was referring to old cases, millions of people who watched the broadcast were given a different message. Jordan said he told Roberts that "he who creates ambiguity shall have that ambiguity resolved against him," and that Roberts had created the ambiguity, not Jordan. Jordan said he also mentioned that his 82-year-old mother, who was in a nursing home, had contacted him after the program and told Jordan that she had thought the FBI was "on the level," and asked if Jordan would ever be able to change the FBI.

According to Roberts, he received the letter on the morning of October 30, when he went into Jordan's office to discuss with Jordan the assignment of OPR cases. Roberts said he told Jordan that his unit had twice as many investigations pending (with three fewer supervisors) than the other Internal Investigative Unit, and that he intended to assign his cases to supervisors in the other OPR Investigative Unit. Roberts said he had discussed this with the other Unit Chief, who had concurred, and Jordan agreed with this proposal.

Roberts said that Jordan then raised the *60 Minutes* broadcast. According to Roberts, Jordan stated that he had received calls about the program from FBI SACs, and they had informed Jordan "I had better check my shorts, because I may be bleeding from my own guy." Roberts said he clearly remembered this comment and found it very disturbing. He said that Jordan then commented about his mother seeing the *60 Minutes* show from a hospital bed, and that Roberts responded that, as he had told Jordan before, "[I] had sung your praises and I couldn't be more specific. I had permission to be on that show." Roberts said he

also raised the SAC case again and the fact that he had previously informed Jordan about the matter. Roberts said he told Jordan he had put a routing slip in Jordan's box that discussed the case and "how bad that makes us look."¹⁷

According to Roberts, Jordan then said that Roberts had "dissed" Jordan and the FBI Director on *60 Minutes*, and that Roberts "must have been naive to go before *60 Minutes* and expect them to put everything on. You are my senior guy and millions of people heard what you said." Roberts said he asked Jordan if he was "thinking about getting rid of me," and Jordan responded "no." Roberts said that Jordan then provided him with a copy of his referral letter to the OIG. Roberts said he was surprised by the contents of the letter, because he had understood from the meeting the afternoon before that he was going to be referred to the OIG.

Jordan told the OIG that he did not recall ever using the term "dis" in any conversation with Roberts, and that he doubted he did because it is not a term he typically uses. However, he said that he could not say with certainty that he did not use this phrase in a conversation that had occurred weeks earlier. Jordan added that he has used the phrase about "bleeding internally" in other conversations as a reference to someone who is unaware that something is wrong, but he did not recall using the specific phrase "bleeding from my shorts" in this meeting with Roberts. Jordan said he questioned Roberts about why he had made the comments about the Director and Jordan on *60 Minutes*. Jordan said he definitely told Roberts that he thought Roberts' comments created a reasonable inference that the Director and Jordan were not honest in their handling of OPR cases. Jordan said he believed he told Roberts that his inference that the OPR process was corrupt or that neither the Director nor Jordan would ever change the process was a "slap in the face."

E. FBI's Response to *60 Minutes*

The FBI drafted a response to the *60 Minutes* broadcast, which it sent to *60 Minutes* on November 1, 2002, and also posted on its Intranet website.¹⁸ This letter, signed by Michael Kortan, Chief of the FBI's Public Affairs Section, first

¹⁷ Jordan said he did not recall Roberts mentioning the SAC case again, but he could not recall for certain.

¹⁸ The letter is Attachment 5 to this report.

discussed the FBI's foreign language program and the FBI's security program. It then stated:

Finally, contrary to allegations in your story, reports of employee misconduct are given high priority and exhaustively investigated, and punishment is imposed in an equal manner. While allegations of disparate treatment were raised in the early and mid 1990's, the FBI has implemented policies to protect against actual or perceived unfairness in the disciplinary process. Importantly, under Director Robert S. Mueller, any serious allegation of wrongdoing made against an FBI employee is reviewed by the Department of Justice, Office of the Inspector General – making it impossible for misconduct to be ignored, much less rewarded, as alleged in Sunday's report.

V. NOVEMBER 6 MEETINGS

Jordan said that in the next several days, the *60 Minutes* broadcast continued to be discussed in OPR and throughout the FBI. For example, on November 4, Jordan received an e-mail from an OPR employee complaining about Roberts' statements on *60 Minutes* and questioning whether Roberts had received approval to be on the show.¹⁹ In addition, Jordan said that during a meeting of FBI Assistant Directors, Lowery discussed the *60 Minutes* broadcast and stated that Roberts had been asked to report his knowledge of misconduct to the OIG.

Jordan said that after these two events, he realized he needed to address OPR employees about the *60 Minutes* broadcast. He said he believed he needed to reassure them about their work and mission. He said that OPR employees were questioning if Roberts' statements were true or false, and Jordan believed that this uncertainty warranted a management response. He added that from his legal education he recalled case law suggesting that failure to reply to a direct accusation of misconduct can be perceived as evidence of an admission.

¹⁹ The e-mail also stated, "I'm surprised that someone with so little faith in the OPR process can be allowed to continue to have such an instrumental role. Testifying before Congress was one thing, but airing our dirty laundry on national TV is wrong. Years ago, the Bureau either promoted an employee and got them out of a particular area, or gave them a loss of effectiveness transfer. Don't we do either anymore?" Jordan's response to the e-mail stated, "Your observations are accurate and probably reflect the opinions of others..."

He said he therefore decided to discuss the *60 Minutes* interview at OPR's monthly all-employees meeting. He e-mailed Lowery on November 4, stating "I will probably have to address this matter with OPR as a whole."²⁰

OPR's regular monthly all-employees meeting was scheduled for Thursday, November 7. Jordan said that because he was going to be on annual leave on November 7 and 8, he asked his secretary, Brenda Roberts, to change the meeting to the afternoon of Wednesday, November 6.²¹

A. Unit Chiefs' Meeting

On the morning of Wednesday, November 6, Jordan held the weekly meeting of OPR Unit Chiefs, which is regularly scheduled on Wednesday mornings. Attending this meeting were Thomas Monroe (the Unit Chief of Internal Investigative Unit I); Brian Fortin (the Unit Chief of Adjudication Unit I); Daniel Dubree (the Unit Chief of Adjudication Unit II); Dennis Franko (the Unit Chief of the Administrative Unit); and Patrick Kiernan from the LEEU (attending on behalf of LEEU Unit Chief Belinda Johns).

Roberts was on sick leave on November 6 and had a doctor's appointment that afternoon. Attending the meeting in his place was Supervisory Special Agent Judith Chilen, who worked under Roberts in Internal Investigative Unit II, and was the Acting Unit Chief in Roberts' absence.

According to our interviews of the participants in the meeting and our review of their notes, Jordan began the meeting with routine business. One of the topics he mentioned was the fact that a vacancy announcement for the OPR Deputy Assistant Director position would be posted that afternoon.

Also on the meeting agenda was an item described as the "Monthly OPR Meeting Agenda." Toward the end of the Unit Chiefs' meeting, Jordan addressed this issue, discussing his intent to raise Roberts' *60 Minutes* interview at the all-employees meeting. Jordan stated that he had received many inquiries about the Roberts interview and was concerned about how the show affected OPR. Jordan reported that Roberts had permission to appear on *60 Minutes*. Jordan then said he

²⁰ Lowery did not respond to the e-mail.

²¹ Brenda Roberts said that on November 5 Jordan changed the date of the meeting. Jordan said he could not remember exactly when he decided to change the date of the meeting, but he would not dispute Brenda Roberts' recollection that it was changed on November 5.

intended to read quotes from the transcript at the meeting, and Jordan then read Roberts' statements from the transcript of the *60 Minutes* program to the group. Jordan discussed two quotes from the transcript: the "vaporization" quote and the statement about things not changing no matter who comes in to the FBI. Jordan stated that he had directed Roberts to report the disappearing cases to the Inspector General. Jordan also said that other positive comments made by Roberts about the FBI did not make it on the show. Jordan said that the show left a negative impression about the FBI, that "we're not on the level," and he said that he was not going to let that happen on his watch. Jordan stated that he was being asked a lot of questions about the interview, both inside and outside OPR, and that as a manager he could not ignore the issue, but needed to address it with OPR.

According to several participants at the meeting, someone mentioned that Roberts was not going to be in the office that day. Jordan responded that he wished Roberts could be at the all-employees meeting, but that Jordan was scheduled to be out of the office for the rest of the week and that he did not want to put off the discussion for another month until the next scheduled all-employees meeting. According to several participants, Unit Chief Daniel Dubree suggested that Roberts be allowed to participate by speakerphone. Jordan asked Judith Chilen to contact Roberts and advise him about the availability of coming into the office for the meeting or participating by speakerphone.

Jordan told us that he asked Chilen and Dubree to take notes at the all-employees meeting, because he believed that whatever he said would be controversial or misquoted.

According to Jordan, after the Unit Chiefs' meeting he privately told Brenda Roberts, his secretary, that he was going to discuss the *60 Minutes* interview at the all-employees meeting and that she might be uncomfortable. Although normally attendance at these all-employee meetings is mandatory, Jordan told Brenda her presence at this meeting was optional. Jordan said that Brenda did not respond. He said he asked her if she understood what he was saying, and she responded that she could not talk to him.²²

²² Brenda Roberts reported to us that when Jordan told her she might be uncomfortable at the meeting, she replied that she would be okay, and that when he tried to engage her in conversation, she said she would rather not comment.

Patrick Kiernan told us that when he returned to the LEEU at Quantico following the Unit Chiefs' meeting that morning, he wished that he had spoken up during the meeting about Jordan's intention to address OPR without Roberts being present.²³ Kiernan stated that he believed the issues from the *60 Minutes* broadcast needed to be addressed, but he believed there was a better way to do it than what Jordan was intending. Kiernan therefore called Jordan and suggested that if he intended to talk about Roberts and *60 Minutes* at the all-employees meeting, Jordan needed to choose his words very carefully. Kiernan told Jordan this was a sensitive situation, and with one wrong word it could be perceived as retaliatory or derogatory against Roberts. Kiernan also suggested to Jordan that he should consider waiting to have the meeting until Roberts was back in the office, stating that the issue had already gone on for a couple of weeks (from the October 27 broadcast to November 6), so why not wait for Roberts to be present. Kiernan said that even having Roberts on the speakerphone was not the same as Roberts being present at the meeting. Kiernan also said to Jordan he thought it would be a good idea for Jordan to call Roberts and give him a choice of how to attend the meeting, by speakerphone or in person, and give Roberts a heads-up as to Jordan's intended remarks.

Kiernan said that in response to these suggestions, Jordan stated that he understood what Kiernan was saying but felt he could not ignore the issues at hand and would give Roberts an opportunity to address the group or respond to Jordan's comments. Jordan also stated that he did not want to call a special meeting to address this issue because then all the focus would be on Roberts.

Jordan acknowledged to us that Kiernan called him after the Unit Chiefs' meeting, stated that Roberts was a whistleblower, and expressed concerns about Jordan's plan to address the *60 Minutes* issue at the all-employees meeting. Jordan said he told Kiernan he was aware of what Kiernan was saying but that he saw no reason not to discuss the issues with OPR personnel. Jordan said he therefore decided to continue with the meeting as planned.

Chilen called Roberts that morning, as Jordan asked, to discuss the all-employees meeting. Chilen told us that when she began to tell Roberts about the

²³ Kiernan has worked in the LEEU since 1998 and was the primary author of the LEEU's report examining whether a double standard of discipline existed in the FBI. See the OIG Report discussed in footnote 3, entitled "A Review of Allegations of a Double Standard of Discipline at the FBI."

Unit Chiefs' meeting and Jordan's planned discussion of the *60 Minutes* broadcast at the all-employees meeting that afternoon, Roberts seemed upset and wanted to know why Jordan had not called him about it. Roberts questioned Chilen why she was put in the middle of the matter. Chilen asked Roberts whether he wanted to attend the meeting via speakerphone, but Roberts declined, stating that he had a doctor's appointment that precluded him from participating in the meeting.

Roberts told us that he was on sick leave November 6, and that he had a pre-arranged doctor's visit during the time Jordan had scheduled the all-employees meeting. Roberts said he told Chilen that he would inform Jordan there was no need to have him on a conference call during the meeting. Roberts told us that he had never heard of someone participating in an all-employees meeting via speakerphone and saw no need to participate. Roberts said he spoke with his wife, Brenda, and told her to leave Jordan a message that it was not necessary for him to participate by telephone.

B. All-Employees Meeting

We interviewed approximately 20 people who attended the all-employees meeting on November 6, and also reviewed notes from the meeting taken by several participants. While the attendees did not remember in identical detail what was said, there was little substantive difference on many details among most people we interviewed, and the notes from the meeting were generally similar. However, several people differed in their recollection about the tone of the meeting and their interpretation of what was said. The following is our best reconstruction of what was said at the meeting, based upon notes taken during the meeting and the recollections of participants.

The meeting began with Jordan making standard announcements, including birthdays, anniversaries, and awards. Among the substantive topics he then discussed, Jordan announced that the FBI Director had given him permission to fill the OPR Deputy Assistant Director slot.

Jordan next discussed the *60 Minutes* broadcast. Jordan began by stating that he had heard from FBI employees who asked him about the *60 Minutes* show. Jordan said that a lot of people say the FBI is a family, and he believed that to be true. He added, "We bond together because our work doesn't make any friends." Jordan said that there are disagreements in any family. He said that it was difficult for him to talk about those disagreements. He said that it would be easier to do and say nothing about the disagreements, but he was not that kind of manager.

Jordan said that Roberts had been offered the chance to participate in the meeting by speakerphone but that he had declined. Jordan reported that he (Jordan) was going to be on leave for the rest of the week, and he did not want to wait another month to address the issue. Jordan said he would have preferred to keep the matter private, but 80 million people had seen the *60 Minutes* broadcast.

Jordan said that there might be some misperceptions about what had happened and what was said, so he wanted to put some facts on the table. He said that through an attorney Roberts had asked permission to be interviewed by *60 Minutes*, and that the FBI's Office of Public and Congressional Affairs had given Roberts permission in writing, as long as he did not discuss specific cases.

Jordan explained that the *60 Minutes* segment focused on a contract linguist at the FBI. Jordan read portions of the transcript, including Roberts' statements. Several participants at the meeting provided us varying perceptions about how he read the transcript. Brenda Roberts stated to us that when Jordan read the transcript, his voice and expression showed his distaste for what Roberts had said. Brenda Roberts also said that when Jordan read Senator Grassley's statements, his voice changed, and he read Senator Grassley's remarks in disgust.

Most others we interviewed stated that Jordan read the transcript in a conversational tone, without inflection, in a strong tone, confident, or emphatic. No one other than Brenda Roberts indicated that Jordan read Senator Grassley's comments in disgust.²⁴

However, several attendees said it was clear that Jordan was upset by the broadcast. For example, one employee stated to us it seemed that Jordan had taken personally Roberts' comments that nothing would change no matter who was in charge; another said it was her belief that Jordan took Roberts' comments as a slap to his leadership.

After reading from the transcript, Jordan said that he believed that what was aired on the broadcast was not the totality of what Roberts had told *60 Minutes*.

²⁴ The notes of the meeting and the participants' recollections are unclear as to exactly which portions of the transcript Jordan read. It is undisputed that he read Roberts' statements. Jordan stated that he did not recall mentioning Senator Grassley's name at all, and most other attendees did not remember Jordan discussing Senator Grassley. However, two sets of notes indicate that Jordan either read Senator Grassley's statements from the broadcast or mentioned his name.

He said the portion of Roberts' remarks that *60 Minutes* decided to use would lead a reasonable person to believe that there are "ongoing cover-ups of misconduct in the FBI." Jordan said that this was not true, and that every FBI employee has an obligation to report misconduct in the FBI. Jordan said he was uncertain what Roberts was referring to when he stated that cases were disappearing or vaporizing, and that he had directed Roberts to contact the Inspector General and provide the specific allegations to him. Jordan said that he had written a letter to the Inspector General, quoting the transcript, and that he had asked Roberts to provide to the Inspector General whatever information he was referring to.

Jordan repeated that Roberts told him that he had said a lot of favorable things about OPR that were not broadcast, but that in reality CBS airs what it wants. Jordan said that in Roberts' defense, what was aired was probably quoted in the most unfavorable light. He said 5 CBS executives probably heard the entire interview, but 80 million viewers heard only what was broadcast.

Jordan then stated "he who creates ambiguity will have that ambiguity resolved against him." He did not explain what he meant by that statement.

Regarding Roberts' statement in the broadcast that nothing is going to change in the FBI, Jordan said that to the extent that it was a reflection on him, Roberts was wrong. Jordan said he had told the FBI Director that he would "play this job straight up, like every other job I've ever had." Jordan added that no one in the organization could make him "cover up," and anybody who saw Jordan cover up anything had an obligation to go to the Inspector General.

Jordan stated that it was difficult to talk about the *60 Minutes* broadcast. He said he thought highly of Roberts, that he had faith in his integrity, but that the best of families have issues and problems, and that the most dysfunctional family is the one that doesn't talk about things.

At that point, Jordan opened the meeting to questions. One OPR employee asked what the FBI Director's response was to the *60 Minutes* interview. Jordan said he did not want to speak for the Director but he believed the Director's response would be the same as his.

A second OPR employee stated that Roberts' comments had stigmatized all of OPR and had given all of OPR a bad name, and asked what they were supposed to say when asked questions about Roberts' comments. Jordan responded that he had no answer for that question. He said that many FBI employees were wondering about "our integrity." Jordan said he had asked the Director if he could

issue a rebuttal to *60 Minutes*. Jordan said that *60 Minutes* was not in the business of telling “both sides,” but the FBI had sent a letter to *60 Minutes*.

A third employee asked if there had been any discussion about how to remove people from their job who had been in it too long and had lost their effectiveness. According to most attendees, Jordan gave no response to this question.²⁵

A fourth employee stated that OPR now had a double responsibility to prove its integrity, and related this situation to the ongoing crisis within the Catholic Church.

Jordan ended the meeting by saying that it was not true that he and the Director could not fix things, that he had only been here for two months, and he asked the OPR employees to give him a chance to make things better. He then stated he loved being their boss.

C. Brenda Roberts

Roberts’ wife, Brenda, said that at the all-employees meeting, she became upset by what Jordan was saying and began feeling very warm and very sick. She stated that she could not believe that Jordan was “destroying” her husband in front of everyone. She said she did not think she would physically make it through the meeting and thought she would pass out. Another employee, who saw her hand shaking, held her hand during the meeting. Brenda Roberts said that everyone kept looking over to her and she tried to maintain her composure.

She said there was a solemn atmosphere after the meeting, and another employee asked her if she was okay. She replied that not one person came to Roberts’ defense during the meeting. She said she then collapsed at a desk while leaving the meeting, and began sobbing. Another employee brought her cold towels. Brenda Roberts said that she began walking back to her office, but she started breathing rapidly and her head was hot. She then went to the FBI’s Health Services Unit. She said her blood pressure was very high, and she remained at the Health Services Unit until her blood pressure went down. She said she then returned to work, but she found herself crying repeatedly.

²⁵ Brenda Roberts stated that Jordan responded, “Good point, let me think about that.” One other person said he responded something to the effect of “good question.” No one else told us they recalled Jordan responding at all. Jordan stated he was non-responsive to the question.

D. Aftermath of the All-Employees Meeting

Both Brenda Roberts and John Roberts told us that after the all-employees meeting they believed there was a change in attitude towards them by OPR staff. John Roberts stated that he believed his professional standing was severely damaged by Jordan's comments, which were relayed to him by other employees. He said people looked away or down when he passed them, and there was no small talk. He said that it appeared to him that OPR employees were uncomfortable with him, and that the mood in the office toward him was very cold.

Brenda Roberts also stated that since the all-employees meeting there has been a chilled atmosphere toward her and employees avoid looking at her. She said that since the meeting she found herself looking at the floor when walking in the halls, and other employees who normally spoke to her now avoided her.

Others we interviewed, however, denied that they have treated Roberts or his wife differently. They said that Roberts continued to handle his responsibilities the same as before the *60 Minutes* broadcast, and he was treated by other staff similarly to before the broadcast. Many said that Roberts remained upbeat and positive in the office, and that they did not witness any changes in his demeanor or how others treated him. Some said that Brenda Roberts talked less to others. One said that after the *60 Minutes* interview, Brenda Roberts seemed more withdrawn and that people have not ignored her but have respected her desire not to talk.

VI. APPOINTMENT OF AN ACTING DEPUTY ASSISTANT DIRECTOR IN OPR

As noted above, the FBI OPR Deputy Assistant Director (DAD) position had been vacant since the former DAD retired in March 2002. Shortly after assuming office, Jordan requested permission to fill the position. He received permission to advertise for the position, and the position was posted on November 6, the day of the all-employees meeting. At that meeting, Jordan announced the posting of the DAD position. However, he did not disclose or discuss with any employee that he intended to fill the position on an acting basis.

On November 12, 2002, in an electronic communication to all OPR staff, Jordan announced that he was appointing Brian Fortin to be the Acting DAD until

the position was filled permanently.²⁶ Fortin said he was unaware that an Acting DAD would be appointed until Jordan named him to the position.

Jordan told the OIG that until the permanent DAD position was posted, he could not appoint an Acting DAD, since the position did not “exist” according to the FBI’s Administrative Services Division. He said that when he received permission to post the permanent position, he decided to appoint an Acting DAD, because he thought it would take 90 to 120 days to get a permanent DAD in place. He said that he chose Fortin to be the Acting DAD because he was well respected, was an attorney, and was actively seeking promotions, including positions outside of OPR, and that Fortin’s having the Acting DAD position could help him further his career. Jordan said one of his critical rating elements is to support the development of subordinates. Jordan said he advised Fortin that he would not look to appoint him to the permanent position, but that this temporary appointment would provide Fortin with invaluable experience in being considered for a promotion.

We asked Jordan why he did not select Roberts to fill the Acting DAD position, since Roberts was the most senior Unit Chief in OPR and had been assigned to be the Acting Assistant Director when Jordan had gone on leave two times before the *60 Minutes* broadcast. Jordan responded that he knew that Roberts was not seeking promotion. Jordan told us that in approximately late September or early October 2002, he had briefed Director Mueller about various issues in OPR, including Jordan’s naming Roberts as an Acting AD in Jordan’s absence. Jordan told Director Mueller that Roberts had previously informed him that he had been passed over for transfers and promotions, and that because of historical events Roberts believed he would not be given a fair opportunity for advancement. Director Mueller informed Jordan that he wanted to see Roberts’ name in a “package” for promotional opportunities and asked Jordan to relate that to Roberts on the Director’s behalf. Jordan said he told Roberts about the Director’s comments, stating that although Jordan was not looking for Roberts to

²⁶ Fortin has been employed by the FBI since 1989. From 1990 to 1997, he worked as a special agent primarily on domestic terrorism and international terrorism cases in the New York Field Office. From August 1996 through February 1997, he served as an Acting Supervisory Special Agent in the New York Field Office. In April 1997, he was transferred to FBI Headquarters to work cases in the International Terrorism Section. In January 2000, he became an Assistant Inspector in the Inspection Division. In December 2000, Fortin became the Unit Chief of OPR’s Adjudication Unit I.

leave OPR, the Director had opened the door for him to seek promotions, if he wanted. Jordan said that since that time, however, he was not aware of Roberts applying for any promotions.

Jordan acknowledged to us that the *60 Minutes* interview had an impact on his decision to select Fortin as the Acting DAD. Jordan told us that he believed if he selected Roberts for the Acting DAD position “during this post-*60 Minutes* environment, it could have a negative impact on OPR.” Jordan also stated that Roberts had been the Acting AD for several weeks during Jordan’s absence and had the opportunity to open cases, but Roberts “chose not to do that”; rather Roberts went on television and said “we’re corrupt.” Jordan said he felt that Roberts “had his shot at being promoted,” but that Roberts diminished the ability of OPR to do its job by his statements on *60 Minutes*.

Jordan said he did not consult anyone regarding his choice of Fortin for the Acting DAD position. He said he did not believe this was a “big call,” and was an easy managerial decision. He said he did not consult with his supervisors, Gebhardt and Lowery, who were busy handling important FBI matters. Jordan also said he did not discuss with any of his Unit Chiefs why they were not picked.

Roberts told us that he considered it significant that he was not made the Acting DAD. He noted that prior to the *60 Minutes* broadcast, he had been appointed Acting Assistant Director on two occasions and was never criticized for his performance in that position and, in fact, understood that Jordan was pleased with his performance.

Roberts said that no one talked to him about the position before Fortin’s selection. Roberts said that he had no idea that Jordan planned to fill the position on a temporary basis. He said that the information he had received from Jordan prior to Fortin’s appointment led him to believe that this position would not be filled with an Acting DAD. Roberts also noted that Fortin was junior to him both in tenure within the FBI and time within OPR, and that unlike Roberts, Fortin had not had field supervisory experience. Roberts said that he believed being named Acting DAD would have been significant because it would have enhanced his credibility and his ability to obtain a promotion.

Roberts said that he had last applied for a promotion a couple of years ago. He said because of his age and his ability to retire in a year, he thought there was no benefit in applying for ASAC positions now. He said that an ASAC position would be a lateral move with no increase in pay and he would have to remain in that position for a couple of years before he could realistically be promoted again.

He said he had considered applying for DAD positions at FBI Headquarters, but he did not specifically mention this to Jordan during any of their conversations. He added that he did not apply for the permanent FBI OPR DAD position because he thought that would be a fruitless exercise on his part, in light of the reaction to the *60 Minutes* interview, his not being named Acting DAD, and his involvement in the Ruby Ridge and Potts investigations.

No one in FBI OPR to whom we spoke had been consulted or was aware that an Acting DAD would be appointed. Fortin said Jordan did not tell him why he was selected. Many people we interviewed in OPR were surprised that Fortin, rather than Roberts, was selected to be the Acting DAD. They stated that they thought that Roberts, as the most senior OPR Unit Chief and the person who served as the Assistant Director in Jordan's absence, would have been selected for the position.²⁷

VII. OIG ANALYSIS

Based on the evidence we found, we do not conclude that Jordan or other FBI officials intended to harass or threaten Roberts for his statements on *60 Minutes*. We also do not conclude that the evidence supports many of the allegations about Jordan's and the FBI's actions towards Roberts after the *60 Minutes* broadcast. However, we conclude that some of the allegations were substantiated and we believe that Jordan exhibited poor judgment in several instances, particularly several of his statements at the OPR all-employees meeting. In addition, we believe that Jordan passed over Roberts for the Acting DAD position in large part because of Roberts' statements on *60 Minutes*, an action that left the clear appearance of retaliation.

With regard to the meeting between Roberts, Jordan, and Lowery on October 29, we have little doubt that the meeting was tense and that it was apparent that Jordan was angry about Roberts' statements on *60 Minutes*. We believe that Jordan clearly communicated his belief that the statements were a "slap" at him (and the FBI Director). Jordan objected to the broadcast's implication that cases continued to "disappear" and "vaporize," that a double standard of discipline would continue no matter who was in charge, and that there

²⁷ Several OPR employees mentioned that Roberts' unit had a backlog of cases, and they thought it would be counterproductive for Jordan to select Roberts to be the Acting DAD in light of the backlog.

were cases since September 11 where FBI employees who had committed misconduct “were not reprimanded and were even promoted.” Jordan told us that he thought that Roberts had either lied or deliberately misstated facts on the *60 Minutes* broadcast. Although the October 29 meeting may have been “businesslike” (as Jordan described it), and no one may have raised his voice or uttered a “cross word” (as Lowery described it), we have no doubt that Roberts understood Jordan was upset with him.²⁸

However, we do not believe that Jordan or Lowery threatened Roberts, and we do not conclude that Jordan stated in the meeting that he was referring Roberts to the OIG on misconduct charges, as Roberts believed at the time. Roberts told us that at the October 29 meeting, after Jordan read from the transcript of the broadcast and while holding the transcript in his hand, Jordan said he was referring “this” to the OIG. We think there was a miscommunication between Roberts and Jordan about the “this” that Jordan was referring to the OIG. Roberts interpreted Jordan’s statement as accusing him of misconduct and that his actions were being referred to the OIG; Roberts therefore responded that he had done nothing wrong. In fact, Jordan and Lowery intended to, and did, refer Roberts’ allegations that cases disappeared or vaporized to the OIG for review; they were not referring Roberts to the OIG for misconduct.

When Roberts received the referral letter the next day, he was surprised to learn that he was not being referred to the OIG for misconduct, and that the OIG was being asked to review Roberts’ allegations. Roberts then told Jordan that he had thought Jordan was going to report him to the OIG. This was a misunderstanding on Roberts’ part.

We also believe that there was a difference in what Roberts intended by his statements aired on *60 Minutes* and the implication they left. Roberts told us that with regard to his statement that he knew “what has been glossed over and what has, frankly, just disappeared, just vaporized and no one disciplined for it,” he was

²⁸ Roberts also contended that animus directed at him from Jordan and Lowery would not have occurred without the concurrence of Director Mueller. For example, Roberts stated he doubted that Jordan would have told him that the Director had been “dissed” by his comments unless Jordan had first-hand knowledge of the Director’s opinion. Roberts also noted that Jordan invoked the Director’s name in response to a question at the all-employees meeting. However, we found no evidence to substantiate the claim that Director Mueller had any animus towards Roberts or communicated to Jordan that he agreed with Jordan’s position about Roberts’ statements on *60 Minutes*.

referring not to the actual investigations of cases by OPR, but rather to the adjudication of discipline. He cited Ruby Ridge and the Potts retirement party as prime examples of cases where he believed discipline in a case had “disappeared.” However, both of these cases occurred before Jordan was appointed to head the FBI OPR and before Director Mueller joined the FBI.²⁹

Roberts then was asked on the *60 Minutes* broadcast about a double standard of discipline, which Roberts believes to be a continuing and intractable problem. Roberts stated on the broadcast that he thought that the double standard of discipline would continue “no matter who comes in.” Then, when asked whether “people were involved in misconduct and were not, let alone reprimanded, but were even promoted,” Roberts responded “absolutely.” However, Roberts told us he did not mean to imply that investigations of cases continued to “vaporize,” but he does believe that within the FBI there still exists a “club atmosphere” that does not seem to allow for change. He said that there was a continuing difference between higher level and lower level FBI employees in how cases were adjudicated by the FBI and how people were promoted, even when under investigation or after being disciplined. He cited as examples of this the SAC case mentioned earlier in this report and several other recent cases. He told us that he did not believe that Director Mueller, Jordan, or FBI upper management could change that double standard.³⁰

However, the juxtaposition of Roberts’ comments on *60 Minutes* that he knew of cases that “disappeared” with his claims about a continuing double standard of discipline left the clear impression that he believed investigations of misconduct continued to disappear and that he was implicating Jordan and Director

²⁹ The OIG currently is reviewing cases cited by Roberts to the OIG as showing a continuing double standard of discipline in the FBI.

³⁰ We reviewed whether Roberts had informed Jordan before the *60 Minutes* broadcast about his concerns regarding the handling of the SAC case. As discussed above, we found that Roberts had sent a routing slip to Jordan on October 17 describing Roberts’ concerns about what he perceived as a difference in treatment between the SAC’s discipline and the discipline for an agent who Roberts believed had made similar comments. Roberts also mentioned this issue to Jordan during their discussions on October 29 and 30, and Jordan responded something to the effect that this had not occurred on his watch. Jordan acknowledged to us that he had seen the routing slip previously, but he stated that the SAC case was not pending and that he thought the agent’s comments were more egregious than the SAC’s comments. This case is one of the cases the OIG is in the process of reviewing.

Mueller in continuing cover-ups. We can understand Jordan's concern about the implication left by the *60 Minutes* broadcast that he and OPR were complicit in allowing cases to disappear, particularly since Jordan was new to OPR.

We believe it was not improper for the FBI to refer to the OIG the allegations Roberts made on *60 Minutes*, given the seriousness of the charges. In fact, this was a prudent step for the FBI to take, in light of the conflict it would present for the FBI to investigate those claims itself.

With regard to the FBI's rebuttal letter to *60 Minutes* that it posted on the FBI Intranet site, we do not believe there was anything improper about the letter or the posting. In the letter, the FBI responded to the program without attacking Roberts. We do not criticize the FBI for making its position known, either to FBI employees or to *60 Minutes*.

With regard to the November 6 all-employees meeting, we do not believe that Jordan intended to retaliate against Roberts or attempted to threaten or undercut him by discussing the *60 Minutes* program at the meeting. Nor do we fault Jordan for discussing statements from the program with OPR staff, who were understandably concerned about the implication of the program. As to Jordan's remarks at the meeting, we think most of them were not inappropriate. By and large, we think Jordan did not cross the line in what he said or make retaliatory statements towards Roberts. Most of the OPR staff we interviewed did not interpret Jordan's remarks as retaliatory to Roberts, and most appreciated that Jordan addressed the *60 Minutes* broadcast with them.

For example, we do not conclude that Jordan's reference to the FBI as a "family" was intended to send a message that no employee should raise allegations of misconduct or criticize the FBI to outsiders. Almost everyone we interviewed stated that this phrase is commonly used throughout the FBI, and they read no sinister meaning from Jordan's use of the term. The FBI employees we interviewed did not believe he was using the phrase to warn them not to go outside the FBI or that he was threatening those who did. We also did not substantiate, as was alleged, that Jordan read the *60 Minutes* transcript in a disgusted tone, or that he showed distaste for Senator Grassley when referring to him.

However, we concluded that Jordan exhibited poor judgment with regard to several aspects of the November 6 meeting. First, with regard to the timing of the meeting, Jordan learned that Roberts could not attend the meeting on November 6 because he was on sick leave that day. The meeting had been scheduled originally for Thursday, November 7, but because Jordan was scheduled to be on leave on

November 7 and 8, he moved the meeting up one day. At the Unit Chiefs' meeting on the morning of November 6, Jordan disclosed that he intended to discuss the *60 Minutes* program at the all-employees meeting later that day. At that time, he learned that Roberts was not in the office that day. In response to a suggestion from a Unit Chief, Jordan asked a subordinate in Roberts' unit to notify Roberts of the meeting and offer him the opportunity to participate by speakerphone.

We believe that Jordan should have talked to Roberts personally about what he planned to discuss at the all-employees meeting.³¹ We also think Jordan should not have discussed this topic at a meeting that Roberts could not attend. While Jordan said he did not want to wait another month to address the issue, and he did not want to call a special all-employees meeting to address the *60 Minutes* issue by itself, he could have rescheduled the all-employees meeting for a few days later – the following week – when both he and Roberts would be in the office.³² We agree with Kiernan's suggestions to Jordan that he wait until Roberts was back in the office to have the meeting, and that offering Roberts a chance to participate by speakerphone, even if he were available, was not the same as him being there.

Second, we believe that it would have been prudent for Jordan to consult with FBI officials before the all-employees meeting to seek guidance on what he could and should say. The meeting presented a sensitive situation and Jordan needed to choose his words carefully. We believe that Jordan would have been wise to seek guidance from the FBI Office of General Counsel. Although Jordan informed his supervisor, Lowery, that he intended to address the broadcast at the meeting, he sought no guidance or legal advice on what he planned to say. While we do not suggest that a manager must always seek legal guidance before addressing his staff, this situation was particularly sensitive and presented unusual issues, and Jordan would have been well advised to seek legal guidance.

Third, we are concerned about a statement Jordan made – both to Roberts on October 29 and during the all-employees meeting on November 6 – that “he who creates ambiguity shall have that ambiguity resolved against him.” It is not clear what Jordan meant by this statement, or what Jordan was implying about what the

³¹ Jordan told us he did not call Roberts because he thought that further conversation with Roberts about the *60 Minutes* broadcast “would add fuel to the fire.”

³² Jordan told us that he considered putting off the meeting until the following week, but that concern in OPR about the program was “mounting.” He said he did not want to have a staff meeting that talked about anniversaries and birthdays but “ignore[d] the elephant in the room.”

“resolution” against Roberts would or should be. Jordan told us that Roberts’ inference that OPR was not “on the level” was an ambiguous statement that could not be supported. Jordan said his quote was not a threatening statement, but a comment that “the one who creates language is responsible for the conclusions or reasonable inferences drawn from that language.” Jordan said his anticipated “resolution is that the truth will come out and that John Roberts will have to answer in some forum for what he said to millions of CBS viewers. Simply, the resolution is the truth.”

Yet, Jordan’s statement implied that Roberts would have some action resolved against him. Although Jordan stated that he meant that the resolution of Roberts’ statements on *60 Minutes* was simply that the truth would ultimately prevail, that inference is not at all clear. Rather, a reasonable inference from Jordan’s statement was that some action would be taken against Roberts for his comments on *60 Minutes*. We question Jordan’s use of this statement, which itself was ambiguous.

Fourth and even more troubling was Jordan’s lack of response to a question at the all-employees meeting about whether there had been any discussion about how to remove people from their job who had been in it too long and had lost their effectiveness. Clearly, this question referred to Roberts. According to multiple witnesses, Jordan did not respond to the question. In our view, this lack of response left the impression that Jordan agreed with the statement or, at a minimum, did not repudiate it. Instead of saying he had no intention of forcing Roberts to leave OPR, Jordan said nothing.³³

Finally, we believe Jordan’s selection of Fortin to be the Acting DAD, and particularly the time and manner in which Jordan made the selection, left the clear appearance of retaliation against Roberts for his statements on *60 Minutes*.³⁴

³³ Jordan also had not repudiated an OPR employee’s e-mail earlier in the week expressing a similar sentiment. The employee’s e-mail suggested surprise that someone with so little faith in the OPR process could be allowed to continue to play such an instrumental role in OPR. Jordan responded to the e-mail with a vague statement that the writer’s observations were accurate and probably reflected the opinions of others. See footnote 19.

³⁴ As a First Amendment issue and under the Whistleblower Protection Act, courts and the Merit System Protection Board have analyzed cases in which public employees have suffered adverse consequences for critical statements they made about their employers. See, e.g., Pickering v. Board of Education, 391 U.S. 563 (1968); Oliver v. Dep’t of Health and Human Servs., 34 M.S.P.R. 465 (1987). (The Whistleblower Protection Act does not apply to most FBI (continued))

Before the broadcast, Jordan had selected Roberts twice to be the Acting AD in his absence. Roberts also was the most senior Unit Chief in OPR. However, shortly after the *60 Minutes* appearance, and just after the all-employees meeting, Jordan selected Fortin to be the Acting DAD while the permanent position was being filled. Jordan said he selected Fortin because he was an attorney, was well respected, and was seeking promotions.

Yet, Jordan acknowledged that Roberts' *60 Minutes* interview affected his choice. For example, Jordan stated to us that he believed that if he selected Roberts for the Acting DAD position "during this post-*60 Minutes* environment, it could have a negative impact on OPR." Jordan added that Roberts had been the Acting AD for several weeks during Jordan's absence and had "a shot at being promoted" and had the "opportunity to open cases," but Roberts "chose not to do that" and instead went on *60 Minutes* and said "we're corrupt."

Before making his selection of Fortin, Jordan did not determine whether Roberts, or anyone else in OPR, was interested in the position. After the selection, Jordan did not discuss with Roberts, or anyone else, why he selected Fortin instead of Roberts. Many of the OPR employees we interviewed told us they were surprised that Jordan had selected Fortin for the Acting DAD position, not Roberts, the most senior Unit Chief and the person who had filled in as the Acting Assistant Director for Jordan in his absence. Several told us it appeared to them the selection was in retaliation for the *60 Minutes* interview.

(continued)

employees, but there are similar regulations addressing alleged retaliation in the FBI. See 28 C.F.R. Part 27.) According to this case law, the interests of the employee in speaking out about matters of public concern are balanced against the employer's interest in promoting the efficiency of the public agency. As described by the Supreme Court, pertinent considerations in conducting this balancing include "whether the statement impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, or impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise." Rankin v. McPherson, 483 U.S. 378, 388 (1987). Roberts' statements clearly addressed a matter of public concern, since the issue of the FBI's investigation and adjudication of allegations of misconduct has received significant public attention. On the other side of the equation is the consideration of the FBI in promoting the efficiency of its operation. We believe the balance in this case would be a close question. However, whether or not Jordan's selection of Fortin rather than Roberts would be deemed to constitute retaliation in a legal sense, we believe the way Jordan handled the appointment left the clear appearance of retaliation against Roberts.

In sum, we recognize that the statements by Roberts on *60 Minutes* complicated Jordan's selection of someone to fill the Acting DAD position. However, we believe Jordan's selection of Fortin, including the timing of it and the way it was handled, left the clear appearance of retaliation against Roberts.

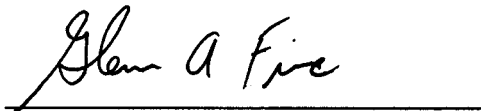
VIII. CONCLUSION

We do not believe that Jordan intended to threaten or harass Roberts for his statements on *60 Minutes*. We also do not believe that it was improper for Jordan and Lowery to refer the allegations Roberts made on *60 Minutes* to the OIG for review. Nor do we conclude it was improper for Jordan to address the *60 Minutes* interview at the all-employees meeting.

Yet, while most of Jordan's statements at the meeting were not inappropriate, we believe he exhibited poor judgment in several respects. We believe that he should have attempted to schedule the meeting when Roberts could attend or at least personally told Roberts about the meeting and what he intended to say. We also believe he would have been wise to seek guidance about the meeting and what he could and should say about the *60 Minutes* broadcast. We question the appropriateness of Jordan's statement at the meeting that "he who creates ambiguity shall have that ambiguity resolved against him." Even more troubling was his lack of response to a question that suggested that Roberts should be removed from OPR. Finally, we believe Jordan's selection of another Unit Chief to be the Acting DAD, including the timing of it and the way it was handled, left the appearance of retaliation against Roberts for his statements on *60 Minutes*.

2/21/03

Date



Glenn A. Fine
Inspector General

ATTACHMENT 1

EDWARD M. KENNEDY, MASSACHUSETTS
JOSEPH R. BIDEN, JR., DELAWARE
HERBERT ASHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
RUSSELL D. FEINGOLD, WISCONSIN
CHARLES E. SCHUMER, NEW YORK
RICHARD J. DURBIN, ILLINOIS
MARIA CANTWELL, WASHINGTON
JOHN EDWARDS, NORTH CAROLINA

CRRIN G. HATCH, UTAH
STROM THURMOND, SOUTH CAROLINA
CHARLES E. GRASSLEY, IOWA
ARLEN SPECTER, PENNSYLVANIA
JON KYL, ARIZONA
MIKE DEWINE, OHIO
JEFF SESSIONS, ALABAMA
SAM BROWNBACK, KANSAS
MITCH MCCONNELL, KENTUCKY

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

November 8, 2002

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue, NW
Room 7142
Washington, D.C. 20535

Dear Director Mueller:

We write to alert you of allegations that senior officials at the Federal Bureau of Investigation (FBI) have taken retaliatory actions against Unit Chief ("UC") John Roberts, of the FBI's Office of Professional Responsibility (OPR) and his wife after his FBI approved appearance on the CBS news show "60 Minutes," which was broadcast Sunday, October 27.

The salient allegations are that Robert J. Jordan, Assistant Director ("AD") of the Office of Professional Responsibility and Executive Assistant Director ("EAD") W. Wilson Lowery, Jr., two members of your new management team, engaged in a course of retaliatory action against UC Roberts in the ten days since his televised appearance, in which he discussed continuing problems at the FBI.

As you know, UC Roberts has a record of decades of distinguished and unblemished service at the FBI, including testimony before the Senate Judiciary Committee regarding some of the issues that you agreed needed attention at your confirmation hearings as FBI Director. Among the most disturbing aspects of the recent allegations, then, is that these senior FBI officials invoked your name in expressing displeasure at Roberts' recent criticisms of the Bureau in a public forum.

Among other actions, we have been told that AD Jordan angrily confronted UC Roberts after the "60 Minutes" show aired and told him during a meeting that his appearance was a personal insult ("a dis") to both he and to you. Then, on a day when UC Roberts was out sick, AD Jordan held an all hands staff meeting (including UC Roberts' colleagues, subordinates, and his wife, who is an employee in OPR) at which the transcript of the "60 Minutes" program was read aloud. After reading the transcript, AD Jordan stated that the FBI was a "family" (and by implication that problems should be handled in private) and allegedly facilitated negative comments about UC Roberts by his colleagues, including at least one comment indicating, in effect, that UC Roberts be transferred from his post or fired, which AD Jordan said should be considered. We understand that AD Jordan also said at the meeting that you agree with his assessment of UC Roberts and his comments. UC Roberts' wife was so upset by the incident that she required brief medical assistance immediately after the meeting ended.

The Honorable Robert S. Mueller, III
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In addition, EAD Lowery called UC Roberts to his office, where he and AD Jordan initiated an aggressive and hostile conversation about his broadcast remarks. EAD Lowery and AD Jordan angrily challenged UC Roberts to support his allegations with specific examples – an ironic request since the FBI had approved Mr. Roberts public appearance on the condition that he *refrain* from discussing many of the specific cases that he knows of as the longtime head of the FBI's own Office of Professional Responsibility. They then told UC Roberts that they were asking the Justice Department's Office of the Inspector General (OIG) to look into the matter and wrote the OIG a terse letter to that effect.

Although it might be possible in other cases to argue that a referral letter based on such allegations to the IG is an appropriate course of action, it seems difficult to make that case in this matter. UC's Roberts' comments were made in the public domain, with prior FBI approval, and neither UC Roberts nor the OIG needed a formal letter of referral to follow up on matters within OIG jurisdiction already. Viewed in light of the simultaneous informal efforts that FBI officials were making to encourage a negative reaction to UC Roberts' actions, the referral letter appears to be an effort to sidestep responsibility for FBI missteps and to send a discouraging message to future employees who consider public criticism of the FBI.

The FBI also is trying to discredit UC Roberts by posting on the FBI's intranet a letter that disputes UC Roberts' comments. The letter, from Michael Kortan in the Office of Public and Congressional Affairs to "60 Minutes," is available for every employee in the nation to read and observe how senior officials in headquarters react to whistleblowers and public criticism.

These actions have humiliated UC Roberts and his wife in front of their colleagues and caused him to fear for his job. Moreover, the reprisals potentially undermine UC Roberts' authority as head of OPR's Internal Investigative Unit II. Finally, and of equal importance for the future of the FBI, these types of actions have a chilling effect on others who might make whistleblower disclosures or truthful yet critical comments to the media.

We urge you in the strongest possible terms to ensure any retaliation ceases immediately, and that appropriate corrective action is taken against any responsible officials. UC Roberts' comments were certainly not flattering to the FBI, but they did not violate any written code of conduct. Indeed, his remarks were quite similar to his testimony before the Senate Judiciary Committee in July 2001, and you have also acknowledged (in public settings) that such reporting should be encouraged within the FBI.

UC Roberts' recent comments also echoed the conclusions of the September 1, 1999 study entitled "FBI Senior Executive Service Accountability – A Higher Standard Or A Double Standard?" This study, prepared by the Law Enforcement Ethics Unit of the FBI Academy, concluded that: "The effects of disparate disciplinary action in the FBI between lower-level employees and senior management has had and will continue to have a severe detrimental

The Honorable Robert S. Mueller, III

November 8, 2002

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impact.”

We also note that your office is in possession of a draft report from the OIG that is critical of the FBI for its double-standard in discipline, where senior bureaucrats get away with violations that rank-and-file agents are severely punished for. As you know, this OIG investigation has its origins, in part, in internal investigations that UC Roberts has conducted. Of course UC Roberts' contributions to this report make him a target for further retaliation.

You have repeatedly pledged – both in public and personally to us in private – that you will not tolerate retaliation against FBI whistleblowers. Indeed, in several response letters to us, you have cited the November 7, 2001 memo that you sent to all FBI employees stating that you will not tolerate retaliation against whistleblowers. We urge you to follow through on these words with actions and take the appropriate corrective action against EAD Lowery and AD Jordan.

We hope that your actions in this and other critical matters in the FBI at this time, including an allegation of retaliation against an agent who reported thefts from Ground Zero by FBI agents, will bear out your prior pledges.

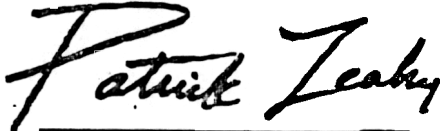
In light of these allegations, please answer the following questions:

1. What role, if any, did you have in the actions described above?
2. Did AD Jordan in fact read from the “60 Minutes” transcript in front of all OPR employees? Did EAD Lowery or any of Jordan’s superiors instruct him to do that in any way?
3. Did AD Jordan disclose that Roberts was represented by counsel? Did EAD Lowery or any of Jordan’s superiors in any way instruct him to do that?
4. Do you believe the actions of EAD Lowery and AD Jordan are consistent with the letter and spirit of your November 7, 2001 memo that states you do not tolerate reprisals against those who expose wrongdoing inside the FBI?
5. We also request that you make EAD Lowery and AD Jordan available as soon as possible to answer questions from our staff and other interested staff of oversight committees about this matter.

The Honorable Robert S. Mueller, III
November 8, 2002
Page 4

We look forward to your prompt response to these questions and any other additional information you wish to provide in this matter.

Sincerely,



PATRICK LEAHY
Chairman



CHARLES E. GRASSLEY
United States Senator

cc:

Special Agent John Roberts
Unit Chief, Office of Professional Responsibility
Federal Bureau of Investigation

The Honorable Glenn A. Fine
Inspector General
Department of Justice

The Honorable Orrin Hatch
Ranking Member
Senate Judiciary Committee

The Honorable Frank Wolf
Chairman
House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary

The Honorable F. James Sensenbrenner, Jr.
Chairman
House Judiciary Committee

ATTACHMENT 2



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

October 8, 2002

VIA TELECOPY
202/342-6980

Stephen M. Kohn
Kohn, Kohn & Colapinto
3233 P Street, N.W.
Washington, D.C. 20007-2756

Re Request from *60 Minutes* to Interview Special Agent John E. Roberts

Dear Mr. Kohn

This is in response to correspondence from your office dated October 4, 2002, indicating that, based upon your advice, Special Agent John E. Roberts will be interviewed by *60 Minutes*. We understand Mr. Roberts will be asked to address general issues regarding FBI culture and will not be asked to comment upon confidential FBI matters or open and pending investigations.

As you know, your client executed an employment agreement when he entered on duty with the FBI that applies to the disclosure of official FBI information. That agreement prohibits disclosure (without prior approval from the Director or his delegate) of information obtained in an employee's official capacity concerning the following:

Information protected from agency disclosure by the Privacy Act;

Information that is classified or the disclosure of which could otherwise harm national security;

Information that reveals sensitive law enforcement, intelligence, or counter-intelligence techniques, sources or methods; or that reveals the sensitive, confidential, or proprietary techniques, sources, or methods of other agencies or governmental entities;

Information that would reveal grand jury material protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure;

Information that would reveal the identity of a confidential source or informant;

Stephen M. Kohn

Information that relates to any sensitive operational details or the merits of any ongoing or open investigation, inquest, probe, prosecution, appeal, or case;

Information that consists of the proprietary information of another, including trade secrets;

Information pertaining to wiretaps or intercepts protected or regulated by Title III (18 U.S.C. §§ 2510-2520);

Information pertaining to currency transaction reports regulated or protected by 31 U.S.C. § 5319;

Tax return information regulated or protected by 26 U.S.C. § 6103;

Information protected from disclosure by any other Federal statute or regulation; and,

Information exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) unless the material is clearly already in the public domain.

Your client, therefore, may be interviewed as long as he complies with the above-noted restrictions. Any request for further information should be respectfully declined.

Sincerely,



Michael H. Kortan

Section Chief,

Public Affairs Section

Office of Public and Congressional Affairs

- John E. Roberts
Unit Chief, Internal Investigative Unit II
Office of Professional Responsibility
Federal Bureau of Investigation

- Robert J. Jordan
Assistant Director
Office of Professional Responsibility
Federal Bureau of Investigation

ATTACHMENT 3

SHOW: 60 Minutes

DATE: October 27, 2002

LOST IN TRANSLATION

ED BRADLEY, host:

Lost in Translation is the story of hundreds, if not thousands, of foreign language documents that the FBI neglected to translate before and after September 11th because of problems in its language department, documents that detailed what the FBI heard on wiretaps and learned during interrogations of suspected terrorists. Sibel Edmonds, a translator who worked at the FBI's language division, says the documents weren't translated because the division is riddled with incompetence and corruption. Edmonds was fired after reporting her concerns to FBI officials. She recently told her story behind closed doors to investigators in Congress and to the Justice Department. Tonight she tells her story to us.

(Footage of Edmonds and Bradley; FBI agents carrying boxes out of house; Edmonds and Bradley)

BRADLEY: (Voiceover) Because she is fluent in Turkish and other Middle Eastern languages, Edmonds, a 32-year-old Turkish-American, was hired by the FBI soon after September 11th and given top-secret security clearance to translate some of the reams of documents seized by FBI agents who, for the past year, have been rounding up suspected terrorists across the United States and abroad.

Ms. SIBEL EDMONDS: The first two months after the September 11 event, we--the agents out there in--in--in New York, LA, other field offices, they were working around the clock. And I would receive calls from these people saying, 'Would you please prioritize this and--and translate it?'

(Footage of Edmonds sitting at desk; Edmonds and Bradley)

BRADLEY: (Voiceover) But Edmonds says that to her amazement, from the day she started the job, she was told repeatedly by one of her supervisors that there was no urgency; that she should take longer to translate documents so that the department would appear overworked and understaffed. That way, it would receive a larger budget for the next year.

Ms. EDMONDS: We were told by our supervisors that this was the great

opportunity for asking for increased budget and asking for more translators. And in order to do that, don't do the work and let the documents pile up so we can show it and say that we need more translators and expand the department.

BRADLEY: So you--you have FBI agents who are in the field relying on your translation work in order to move their cases forward, and your supervisor is saying, 'Slow down. Let the cases pile up'?

Ms. EDMONDS: Correct.

BRADLEY: I mean, how is it possible that the focus wasn't on terrorism, particularly after 9/11?

Ms. EDMONDS: It was not. At least in that department, it was not.

(Footage of Bradley and Edmonds)

BRADLEY: (Voiceover) Edmonds says that the supervisor, in an effort to slow her down, went so far as to erase completed translations from her FBI computer after she'd left work for the day.

Ms. EDMONDS: The next day, I would come to work, turn on my computer and the work would be gone. The translation would be gone. Then I had to start all over again and retranslate the same document. And I went to my supervisor and he said, 'Consider it a lesson and don't talk about it to anybody else and don't mention it.'

BRADLEY: What's the lesson?

Ms. EDMONDS: The lesson was don't work, don't do the translations. Go out and spend two hours lunch breaks, you know. Go and--don't go and get coffee downstairs. Go eight blocks away. Just chat with your friends. But don't do the work because--and this is our chance to increase the number of people here in this department.

(Footage of Edmonds sitting at desk; Grassley speaking at podium; Grassley and Bradley)

BRADLEY: (Voiceover) Sibel Edmonds put her concerns about the FBI's language department in writing to her immediate superiors and to a top official at the FBI. Edmonds says for months, she got no response. She then turned for help to the Justice Department's inspector general, which is investigating her claims, and to Senator Charles Grassley because his committee, the Judiciary Committee, has direct oversight of the FBI.

Did she seem credible to you? Did her story seem credible?

Senator CHARLES GRASSLEY (Republican, Iowa): Absolutely, she's credible. And the reason I feel she's very credible is because people within the FBI have corroborated a lot of her story.

(Footage of woman working at computer; Kevin Taskasen speaking with woman; prisoners at Guantanamo Bay; Taskasen; Edmonds and Bradley)

BRADLEY: (Voiceover) The FBI has conceded that some people in the language department are unable to adequately speak English or the language they're

supposed to be translating. Kevin Taskasen was assigned to Guantanamo Bay in Cuba to translate interrogations of Turkish-speaking al-Qaida members who had been captured after September 11th. The FBI admits that he was not fully qualified to do the job.

Ms. EDMONDS: He neither passed the English nor the Turkish side of this language proficiency test.

BRADLEY: So that means if, for example, you had a--a terrorist detained at--at Guantanamo who had information about an attack being planned in the future against the United States, that person would not have been in a position to translate that?

Ms. EDMONDS: Correct. He wouldn't.

BRADLEY: mean, that's hard to imagine.

Ms. EDMONDS: But that's the case.

(Footage of exterior of J. Edgar Hoover FBI Building; recovery effort at World Trade Center bombing in 1993; exterior of FBI Building; recovery effort at World Trade Center bombing in 2001; GAO documents on foreign languages; Grassley and Bradley)

BRADLEY: (Voiceover) Critical shortages of experienced Middle Eastern language translators have plagued the FBI and the rest of the US intelligence community for years. Months before the first World Trade Center bombing in 1993, one of the plotters of the attack was heard on tape having a discussion in Arabic that no one at the time knew was about how to make explosives, and he had a manual that no one at the time knew was about how to blow up buildings. None of it was translated until well after the bombing, and while the FBI has hired more translators since then, officials concede that problems in the language division have hampered the country's efforts to battle terrorism, and according to congressional investigators, may have played a role in the inability to prevent the September 11th attacks. Earlier this year, the General Accounting Office reported that the FBI had expressed concern over the thousands of hours of audiotapes and pages of written material that have not been reviewed or translated because of a lack of qualified linguists.

Sen. GRASSLEY: If--if they got word today that within--in a little while, the Hoover Dam was going to be blown up, and it takes a week or two to get it translated, as was one of the problems in this department, you know, you couldn't intervene to prevent that from happening.

BRADLEY: So you think that this place does need an overhaul essentially?

Sen. GRASSLEY: It needs to be turned upside down.

(Footage of exterior of FBI Building; FBI agent; foreign flags; Bradley)

BRADLEY: (Voiceover) In its rush to hire more foreign language translators after September 11th, the FBI admits it has had difficulty performing background checks to detect translators who may have loyalties to other governments, which could pose a threat to US national security.

Take the case of Jan Dickerson, a Turkish translator who worked with Sibel

Edmonds. The FBI has admitted that when Dickerson was hired last November, the bureau didn't know that she had worked for a Turkish organization being investigated by the FBI's own counterintelligence unit, and they didn't know...

(Footage of Turkish Embassy; Edmonds and Bradley)

BRADLEY: (Voiceover) ...she'd had a relationship with a Turkish intelligence officer stationed in Washington who was the target of that investigation. According to Sibel Edmonds, Jan Dickerson tried to recruit her into that organization, and insisted that Dickerson be the only one to translate the FBI's wiretaps of that Turkish official.

What was her reaction when you didn't go along with--with her plan?

Ms. EDMONDS: She got very angry, and later she threatened me and my family's life.

BRADLEY: Threatened you?

Ms. EDMONDS: Correct.

BRADLEY: Did--did you take her threat seriously?

Ms. EDMONDS: Oh, yes. She said, 'Why would you want to place your life and your family's life in danger by translating these tapes?'

(Footage of Edmonds working at desk; State Department building; aerial view of the Pentagon; Edmonds and Bradley)

BRADLEY: (Voiceover) Edmonds says that when she reviewed Dickerson's translations of those tapes, she found that Dickerson had left out information crucial to the FBI's investigation; information that Edmonds says would have revealed that the Turkish intelligence officer had spies working for him inside the US State Department and at the Pentagon.

Ms. EDMONDS: We came across at least 17, 18 translations, communications that were extremely important for--for the ongoing investigations of these indivi--individuals.

BRADLEY: And she had not translated these--these--this information?

Ms. EDMONDS: No, she had marked it as 'not important to be translated.'

BRADLEY: Specifically, what kind of information did she leave out of her translation?

Ms. EDMONDS: Activities to obtain the United States military and intelligence secrets.

(Edmonds working; Edmonds and Bradley)

BRADLEY: (Voiceover) Edmonds says she complained repeatedly to her bosses about what she'd found on the wiretaps and about Jan Dickerson's conduct, but that nobody at the FBI wanted to hear about it. She says not even the assistant special agent in charge.

Ms. EDMONDS: He said, 'Do you realize what you are saying here in your allegations? Are you telling me that our security people are not doing their jobs? Is that what you're telling me? If you insist on this investigation, I'll make sure in no time it will turn around and become an investigation about you.' These were his exact words.

(Footage of FBI letter to Edmonds; Bradley)

BRADLEY: (Voiceover) Sibel Edmonds was fired this past March. The FBI offered no explanation, saying in the letter only that her contract was terminated completely for the government's convenience.

But three months later, the FBI conceded that on at least two occasions, Jan Dickerson had, in fact, left out significant information from her translations. They say it was due to a lack of experience and was not malicious.

(Footage of exterior of home; Chicago Tribune article; Grassley and Bradley)

BRADLEY: (Voiceover) Dickerson recently quit the FBI and now lives in Belgium. She declined to be interviewed, but two months ago, she told the Chicago Tribune that the allegations against her are preposterous and ludicrous. Senator Charles Grassley says he's disturbed by what the Dickerson incident says about internal security at the FBI.

Sen. GRASSLEY: You shouldn't have somebody in your organization that's compromising our national security by not doing the job right, whether it's a lack of skills or whether it's intentional.

BRADLEY: Based on your experience, does the Sibel Edmonds case fall into any pattern of behavior, pattern of conduct on--on the part of the FBI?

Sen. GRASSLEY: The usual pattern. Let me tell you, first of all, the embarrassing information comes out, the FBI reaction is to sweep it under the rug, and then eventually they shoot the messenger.

(Footage of John Roberts leaving building; Roberts and Bradley)

BRADLEY: (Voiceover) Special agent John Roberts, a chief of the FBI's Internal Affairs Department, agrees. And while he is not permitted to discuss the Sibel Edmonds case, for the last 10 years, he has been investigating misconduct by FBI employees and says he is outraged by how little is ever done about it.

Mr. JOHN ROBERTS: I don't know of another person in the FBI who has done the internal investigations that I have and has seen what I have and that knows what has occurred and what has been glossed over and what has, frankly, just disappeared, just vaporized, and no one disciplined for it.

(Footage of Robert Mueller speaking at podium; Roberts; Edmonds working; Roberts and Bradley)

BRADLEY: (Voiceover) Despite a pledge from FBI director Robert Mueller to overhaul the culture of the FBI in light of 9/11, and encourage bureau employees to come forward to report wrongdoing, Roberts says that in the rare instances when employees are disciplined, it's usually low-level employees like Sibel Edmonds who get punished and not their bosses.

Mr. ROBERTS: I think the double standard of discipline will continue no matter who comes in, no matter who tries to change. You--you have a certain--certain group that--that will continue to protect itself. That's just how it is.

BRADLEY: No matter what happens?

Mr. ROBERTS: I would say no matter what happens.

BRADLEY: Have you found cases since 9/11 where people were involved in misconduct and were not, let alone reprimanded, but were even promoted?

Mr. ROBERTS: Oh, yes. Absolutely.

BRADLEY: That's astonishing.

Mr. ROBERTS: Why?

BRADLEY: Because you--you would think that after 9/11, that's a big slap on the face. 'Hello! This is a wake-up call here.'

Mr. ROBERTS: Depends on who you are. If you're in the senior executive level, it may not hurt you. You will be promoted.

BRADLEY: In fact, the supervisor who Sibel Edmonds says told her to slow down her translations was recently promoted. Edmonds has filed a whistle-blower suit to get her job back, but last week, US Attorney General Ashcroft asked the court to dismiss it on grounds it would compromise national security. And also on the grounds of national security, the FBI declined to discuss the specifics of her charges, but it says it takes all such charges seriously and investigates them.

(Announcements)

ATTACHMENT 4



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

October 30, 2002

Honorable Glenn A. Fine
Inspector General
Department of Justice
Washington, D.C.

Dear Mr. Fine

On October 27, 2002, John Roberts, a Unit Chief in our Office of Professional Responsibility appeared in a broadcast of the CBS News program "60 Minutes." During the broadcast, Unit Chief Roberts was interviewed regarding disparate disciplinary treatment for different levels of FBI employees. A full transcript of his comments is attached; however, he is quoted as saying that:

"I don't know of another person in the FBI who has done the internal investigations that I have and seen what I have and that knows what has occurred and what has been glossed over and what has, frankly, just disappeared, just vaporized, and no one disciplined for it."

"I think the double standard of discipline will continue no matter who comes in, no matter who tries to change. You--you have a certain--certain group that--that will continue to protect itself. That's just how it is."

"Depends on who you are. If you're in the senior executive level, it may not hurt you. You will be promoted

Other comments later in the interview (also attached) indicate his lack of confidence in the ability of this office to address these issues. There is an implication that improprieties have continued since September 11, 2001. Further, these allegations relate to your draft report concerning an alleged double standard of discipline in the FBI.

Honorable Glenn A Fine

These remarks raise serious issues of concern to us. Given the gravity of his remarks, and his lack of confidence in this office to address these issues, we have directed Unit Chief Roberts to contact your office to provide additional details. Please contact me if I can be of further assistance in this matter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Robert J. Jordan".

Robert J. Jordan
Assistant Director
Office of Professional
Responsibility

Enclosure

ATTACHMENT 5



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

November 1, 2002

Mr. Don Hewitt
Executive Director
"60 Minutes"
525 W. 57th St.
New York, NY 10019-2901

Dear Mr. Hewitt

I am concerned that Sunday's report on the FBI's foreign language translation program may have left viewers with wrong impressions in several important areas.

First, preventing terrorism is the top priority of the FBI. There is no greater focus or urgency. Over the past two years, the FBI has doubled its linguist workforce and has dramatically reduced or eliminated existing backlogs. Since 9/11, we've continued to aggressively recruit and hire translators to keep pace with a workload increase of more than 50%. Moreover, the same January, 2002, General Accounting Office report referenced in the story actually *commended* the FBI's foreign language program's management and strategic planning as a model worthy of imitation throughout the government.

Second, the FBI's security program for all employees and for employees and contractors in the language services program, in particular, is robust, and we are confident that safeguards are in place in the program to protect national security.

Finally, contrary to allegations in your story, reports of employee misconduct are given high priority and exhaustively investigated, and punishment is imposed in an equal manner. While allegations of disparate treatment were raised in the early and mid-1990's, the FBI has implemented policies to protect against actual or perceived unfairness in the disciplinary process. Importantly, under Director Robert S. Mueller, any serious allegation of wrongdoing made against an FBI employee is reviewed by the Department of Justice, Office of Inspector General - making it impossible for misconduct to be ignored, much less rewarded, as alleged in Sunday's report.

I appreciate this opportunity to clarify some possible misconceptions and hope that this can be brought to the attention of your viewers as soon as possible.

Sincerely,

Michael P. Kortan
Chief, Public Affairs Section