August 26, 2003

The Hon. John Ashcroft
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C., 20530-0001

REQUEST FOR REFERRAL AND INVESTIGATION

Dear General Ashcroft:

We hereby request that the United States Department of Justice make a referral to an independent agency for a formal investigation into misconduct within the FBI concerning that agency's failure to investigate and prosecute serious crimes against children. This investigation must include a review of the following allegations which have been verified through the sworn deposition testimony of FBI agents and other current active duty law enforcement officials, including two Assistant United States Attorneys, and one active duty Special Agent employed by the United States Customs Service. Additionally, two independent medical doctors who treat or have treated Native American children for child-sex crimes confirmed these allegations in written statements.

Moreover, according to the sworn testimony of two AUSAs and one doctor, the failure of the FBI to protect children on Indian reservations is ongoing.

For the reasons set forth in this letter, we hereby request an independent review of the following credible allegations:

1. Whether the FBI has, since November, 1999, failed to properly and fully investigate allegations of child crime (including child rape and molestation cases) on the Fort Berthold and Turtle Mountain reservations. If that question is answered in the affirmative, we hereby request a full review, nationwide, of the FBI's Indian child abuse program.

2. Whether the FBI improperly recommended the case of [redacted] for a declination of prosecution.

3. Whether the FBI failed to properly investigate physical evidence (including computers) and failed to properly execute search warrants to search for evidence of child sex crimes in the case of John Vigestad.

4. Whether the FBI failed to search for other victims of John Vigestad's criminal sex-abuse conduct, by failing to interview one known victim, by failing to interview other potential victims and by failing to follow-up on credible information that other victims may exist.

5. Whether the FBI's Inspection Division employees use investigatory procedures which ensure that misconduct within FBI offices will not be detected and which permit managers within FBI offices to use the inspection process to retaliate against whistleblowers or employees who have filed EEO claims.

6. Whether the FBI's Minneapolis Division failed to properly investigate child-rape cases on Indian Reservations, failed to properly investigate internet pornography cases and failed to properly conduct a search for other potential victims of a known internet pornographer/child rapist.

7. Whether the ASAC of the Minneapolis Division, who had full knowledge of all or most of these allegations, should be subjected to an internal disciplinary process and/or whether this ASAC should be prohibited from becoming an Acting Assistant Director for the FBI's Office of Professional Responsibility ("OPR").

We understand that at or shortly after the time these incidents occurred the FBI was alerted to these allegations and failed to properly or fully investigate these claims. We also understand that the Department of Justice has a conflict of interest in this matter, based on the fact that it impacts numerous employees of the DOJ (both within the FBI and within the United States Attorneys office) and because the DOJ is a named defendant in a lawsuit which concerns these cases (i.e. Civil Action No. 01-CV-1407). Furthermore, although these allegations reference incidents which primarily occurred between 1999-2001, numerous sworn depositions related directly to these incidents were taken of DOJ and FBI employees in 2002-03. We understand that no employee of the DOJ has independently reviewed the admissions and statements made in these depositions and investigated the significant allegations which these depositions appear to have confirmed. Consequently, we hereby request that the investigation into these allegations be formally referred to an independent department or commission for full review.

If DOJ does not intend to refer these allegations to an independent agency, please inform us of this decision within fifteen days of your receipt of this letter. If we do not receive a response to this request, we will assume that the Department of Justice will be seeking an independent review of these matters

The National Whistleblower Center has obtained public record documents from the case of *Turner v. Ashcroft*, Civil Action 01-CV-1407 currently pending in U.S. District Court for the District of Minnesota. This case is currently scheduled for trial in 2004. The documents include depositions of current and former FBI agents, including the current Supervisory Agent in Charge of the Salt Lake City office of the FBI (who apparently is being considered for the position of Assistant Director for the FBI Office of Professional Responsibility), and current employees of the United States Attorneys office in North Dakota. The case also centers on misconduct and malfeasance within the Minneapolis Division of the FBI. This division is already under investigation by the DOJ Office of Investigation for the misconduct of current and former agents (including misconduct related to the potential criminal theft of property from the 9/11 Ground Zero crime scene in New York City).

I. MISCONDUCT AND MALFEASANCE IN PEDOPHILE INVESTIGATIONS

Vigestad Case → **BACKGROUND**

On September 23, 1999, FBI Special Agent (SA) Jane Turner and U.S. Customs Service Special Agent Anthony Onstead learned that Mr. John Vigestad had been arrested by local law enforcement for child-crime related conduct. Because Vigestad had used a computer to download child pornography, there was federal jurisdiction over the case. At this time the FBI and the Customs Service had joint jurisdiction over internet child pornography cases. Turner contacted the responsible Assistant U.S. Attorney and a federal case was opened. SA Turner and SA Onstead commenced an investigation of Mr. Vigestad in Minot, North Dakota for federal violations concerning the sexual exploitation of a child, child pornography, and production and distribution of child pornography. Vigestad eventually pled guilty to only one federal count of sexual exploitation of children.

SA Turner, a nationally recognized expert on child sexual abuse matter, identified that Vigestad displayed all the elements of a serial pedophile. Additionally SA Turner identified that other victims besides the one identified by Mr. Vigestad and other pedophiles could be developed through investigation. (Ex. 5, Page 1). After working on the case for less than one day, the FBI removed SA Turner from the investigation and assigned the case to FBI SA Peter Klokstad. SA Onstead, as an employee of the Customs Service, remained on the case. Very strong evidence exists that: (1) the FBI engaged in malfeasance/misconduct in the investigation of the case, and; (2) SA Turner was improperly removed from the case.

The concerns raised and/or documented by both the initial FBI agent assigned to the case and the Customs Agent who co-worked the case include the following: the victim not being interviewed, search warrants not being served on Vigestad's home or work computer, failure to timely freeze Vigestad's e-mail accounts, and failure to conduct interviews of possible child

victims in Indian Country. (Ex. 6, Page 1.) These actions are standard investigative actions designed to obtain details of criminal conduct, identification of other victims, the location of evidence that may be lost or destroyed and to provide closure to the victim. These claims were supported by the deposition testimony of SA Onstead. (Ex. 2, Page 3).

EVIDENTIARY SUPPORT

The following documents support a finding that the investigatory failures are evident by the following sworn testimony and letters of government agents, the State's Attorney of Ward County North Dakota, and court documents:

- Exhibit 1, Deposition of Special Agent Anthony Onstead, a 14 year veteran with the United States Customs Services at the time of the Vigestad investigation. This deposition of an independent federal law enforcement officer confirms the following: (1) that investigatory misconduct/malfeasance occurred in the Vigestad case, and (2) that SA Turner did not engage in any unprofessional or inappropriate conduct during that case and that the FBI had no sound basis to remove her from the investigation;

- Exhibit 2, a September 25, 1999 letter by SA Onstead regarding the Vigestad investigation;

- Exhibit 3, Deposition of Peter Klokstad, an eight year veteran of the FBI at the time of the Vigestad investigation and a former attorney specializing in family law. Agent Klokstad was assigned to the case after Turner's removal. He admitted in the deposition to facts which support a finding of investigatory malfeasance;

- Exhibit 4, Deposition of James Burrus, the ASAC of the Minneapolis Division during the Vigestad case. Mr. Burrus, in sworn testimony taken on July 10, 2003, still attempted to justify the malfeasance which occurred in the Vigestad case. Mr. Burrus is currently the SAC of Salt Lake City and has apparently been named an Acting Assistant Director for FBI OPR;

- Exhibit 5, a September 24, 1999 letter from SA Turner which sets forth facts relevant to the Vigestad investigation. As an expert in child sexual offense cases. SA Turner's sworn testimony identifies investigatory activities which should have been undertaken in the Vigestad case. The fact that the FBI never engaged in an appropriate and competent investigation of this major pedophile case was confirmed by Onstead;

- Exhibit 6, a September 28, 1999 letter from State's Attorney Doug Mattson to SA Turner. This letter supports SA Turner's position that it was not proper to remove

her from the Vigestad case;

- Exhibit 7, Deposition of James Casey, the Assistant Inspector in Place (AIIP) of the Indianapolis Inspection Division who performed an inspection on the Minneapolis Division in October of 1999;

- Exhibit 8, a signed and sworn statement of Wendy Loucks, an FBI agent.

MISCONDUCT AND MALFEASANCE IN CRIMINAL INVESTIGATION

The following acts of malfeasance and investigative failures in the Vigestad case conducted by the Federal Bureau of Investigation require your immediate attention and corrective action:

1. Failure to properly secure e-mail accounts resulted in loss of evidence directly related to finding victims.

   a. Agent Klokstad never took any steps to determine who Mr. Vigestad's internet provider was or to contact that provider to ensure that evidence was not lost. Ex. 3, Tr.132. (Klokstad).

   b. SA Onstead however testified that the FBI had improperly failed to freeze the AOL computer account kept by Vigestad. Ex. 1, Tr. 69-73. (Onstead).

   c. AOL only keeps their unread e-mail for approximately 28 days and, on the 29th day, e-mail will be deleted from their servers. As a result of failure to secure the account, potentially 12 days of email messages between September 12 and September 24, were lost from the Vigestad home computer. This evidence could have been important to the investigation. Ex. 1, Tr. 69-70 (Onstead).

   d. Additionally, SA Onstead testified the FBI improperly failed to identify or freeze e-mail accounts from Vigestad's work computer. That e-mail account was *never* frozen and all of the information in that account was lost forever. Ex. 1, Tr. 81-82 (Onstead).

   e. Incoming e-mail attachments could contain images of child pornography which could identify other targets of an investigation and potentially identify other abused children and take them out of abusive situations. Ex. 1, Tr. 72 (Onstead).

   f. Burrus acknowledges the importance of recovering data from an AOL (or other internet providers account) since they can be time sensitive.

However, Burrus attempted to justify the malfeasance in the Vigestad case and testified, under oath, that he did not believe the failure to preserve such an account is in itself a failure in an investigation. Ex. 4, Tr. 135-7 (Burrus).

2. Failure to search the work computer of an admitted pedophile.

   a. Agent Klokstad never requested any search warrant for Vigestad's work computer nor made any inquiry to determine if it had been seized or searched. Ex. 3, Tr. 131-2 (Klokstad).

   b. Agent Klokstad did not take any steps to obtain access to the work computer. He justified this failure by relying upon hearsay. Specifically, he relied upon an apparent statement that the pedophile himself apparently made to the local law enforcement, asserting that he did not engage in child pornography at work. Ex. 3, Tr. 133 (Klokstad). An FBI agent should not rely upon a hearsay statement from an indicted pedophile in determining where evidence might be found. Instead, two experts in child crime matters both strongly urged that the work computer be searched. Ex. 5, Page 3 (Turner); Ex. 1, Tr. 82-3 (Onstead).

   c. As a case manager, Mr. Klokstad can make recommendations about where to issue search warrants; yet, he never made any recommendations to have the work computer searched. Ex. 3, Tr. 133-4 (Klokstad).

   d. SA Onstead testified the FBI failed to approve a search warrant for a second computer used by Vigestad at work and failed to ever conduct a search of Vigestad's work location. Ex. 1, Tr. 81-87; 98 (Onstead). Using her expertise in child exploitation, SA Turner stated that a thorough search of all locations should be conducted since pedophiles have "trophy photographs," and large collections of photographs in a location which they perceive to be secure. Ex. 5, Page 2 (Turner).

3. Failure to properly secure a computer resulting in potential compromise of the integrity of the evidence.

   a. SA Onstead testified the FBI failed to conduct a proper forensic examination of the computer used by Vigestad. The FBI agent involved (SA Florez) conducted part of his examination of the computer prior to giving the computer to Onstead. Ex. 1, Tr. 63-65 (Onstead).

   b. The hard drive should have been copied prior to the examination, and the examination should have been conducted on the copied version of the hard

drive. Ex. 1, Tr. 75-81 (Onstead).

c. Conducting a forensic examination on the original hard drive without making a copy can impact the integrity of a hard drive. Making a copy of the hard drive is always done to prevent modifications to the original media and prevent objections by attorneys that the contents of the hard drive were tampered with. Ex. 1, Tr. 75-6 (Onstead).

4. Failure to interview a known child victim.

a. One of the initial concerns raised on September 23, 1999 by SA Onstead and SA Turner concerned a need to interview the one known child abuse victim. Ex. 1, Tr. 93 (Onstead); Ex. 5, Page 3 (Turner); Ex. 6, Page 1 (Mattson).

b. By letter dated September 25, 1999, Onstead expressed the need to interview the young boy as soon as possible not only to recount his victimization but to possibly identify other victims, the location of evidence that might be lost or destroyed in turn and to provide closure to the victim and get him treatment. Ex. 2, Page 2 (Onstead).

c. It is well established that victims, such as the child victim in the Vigestad case, need to be interviewed. Ex. 1, Tr. 93-4 (Onstead).

d. Mr. Burrus acknowledges that interviewing a child victim is normally one of the things done. Ex. 4, Tr. 138 (Burrus).

e. Mr. Burrus does not believe that the failure of local law enforcement to interview the victim was in and of itself a concern that there was a problem with the investigation. Ex. 4, Tr. 139 (Burrus).

f. SA Turner identified the failure to interview the victim as a problem area in the investigation. Ex. 5, Page 3 (Turner)

g. The child-victim was never interviewed. Ex. 3, Tr. 136 (Klokstad). Klokstad conceded that he did not interview the child. Ex. 3, Tr. 136 (Klokstad).

h. SA Onstead testified the FBI failed to follow proper law enforcement procedures when they failed to interview the one known victim of Vigestad's criminal conduct. Ex. 1, Tr. 93-96 (Onstead).

i. Mr. Burrus, in his July 2003 deposition, attempted to justify and/or

downplay the failure to interview the child-victim in this case.

j. First, Burrus refused to admit that SA Onstead's concerns about interviewing the young victim were consistent with his understanding of why child victims should be interviewed. Ex. 4, Tr. 140 (Burrus). Second, Burrus testified that the fact that law enforcement did not interview the victim, and that SA Turner and Mr. Onstead had not interviewed the victim, did not cause Mr. Burrus concern. Ex. 4, Tr. 142-3 (Burrus).

k. Mr. Burrus was also questioned about whether it would be proper to accept a plea deal with a defendant prior to the victim even being interviewed. Burrus admitted that, except for the Vigestad case, he knew of no case during his 20 years at the FBI in which a guilty plea was entered and a victim who was not deceased was never interviewed. Ex. 4, Tr. 141 (Burrus). Despite having been the ASAC in charge of the Vigestad investigation, and despite his prior experience as an FBI agent, Burrus refused to endorse Onstead's opinion as to why child abuse victims should be interviewed (See Onstead letter dated September 25, 1999). Burrus testified that he "could not" render an opinion concerning the failure to conduct an interview of the child in the Vigestad case, because he needed more information. Ex. 4, Tr. 140 (Burrus). Burrus testified that "the fact that law enforcement hadn't interviewed the victim . . . just doesn't cause me the concern that it seems to you [i.e. "You" was referring to counsel for SA Turner]. Ex. 4, Tr. 142-3 (Burrus).

l. SA Onstead indicates that the importance of interviewing the victim is to help identify evidence such as photographs, videotape, and locations of Mr. Vigestad's property where evidence might be hidden. Ex. 1, Tr. 94-5 (Onstead).

m. SA Onstead's experiences with child pornography indicate that pornographers were themselves exploited as children, meaning a young victim might turn into a pedophile himself unless he receives medical/psychological help. Ex. 1, Tr. 96 (Onstead).

5. Failure to conduct follow-up investigation after learning an admitted pedophile had a 6th grade Indian child accompany him into a private hot tub despite knowing the pedophile's spouse had told authorities that the admitted pedophile was visibly sexually aroused by this incident.

a. Mr. Klokstad was made aware by Mr. Vigestad's wife that she found Mr. Vigestad in a hot tub with male students from the Indian Reservation, yet

Klokstad never attempted to identify any of these Indian children. Ex. 3, Tr. 141(Klokstad).

b. Neither did Mr. Klokstad cause any other authority to try to learn the identity of the Indian children or have them interviewed. Ex. 3, Tr. 141 (Klokstad).

c. Mr. Klokstad could not recall in his deposition whether Mrs. Vigestad reported that she noticed her husband had an erection while in the hot tub with a 6th grade boy. Ex. 3, Tr. 142 (Klokstad).

d. Mr. Klokstad could not recall during his deposition whether Mrs. Vigestad informed him that Mr. Vigestad admitted to having oral sex with a nine-year old. Ex. 3, Tr. 142 (Klokstad).

g. SA Onstead testified the FBI obtained information regarding other potential victims of Vigestad's child abuse and failed to conduct any follow-up investigation. This specifically relates to credible information obtained about other potential victims who resided on local Indian Reservations. Ex. 1, Tr. 102 (Onstead).

6. Failure to conduct follow-up investigations after the FBI learned a pedophile had close personal contact with minors at his work and after the pedophile's spouse had identified specific concerns over these interactions with said minor.

a. Although Mrs. Vigestad expressed her concern that Mr. Vigestad had hired a teenage boy at work, Agent Klokstad never interviewed the teenage boy. Ex. 3, Tr. 135 (Klokstad).

b. Mr. Vigestad's wife expressed her concerns to Mr. Klokstad that Mr. Vigestad was working with the teenage boy at his office, yet Klokstad never interviewed him. Ex. 3. Tr, 134-5 (Klokstad).

c. Mr. Klokstad testified that the FBI obtained information regarding other potential victims of Vigestad's child abuse and failed to conduct any follow-up investigation. This specifically relates to credible information obtained about other potential victims who were with Vigestad at his work site. Ex. 3; Tr. 135-7 (Klokstad).

After-the-fact Justification

d. Agent Klokstad, a former attorney in family law, licensed in North Dakota and Minnesota, testified that if there was additional evidence on the work

computer about internet pornography, no more charges could have been added to increase the penalty since Mr. Vigestad already received the maximum penalty for distribution charges. Ex. 3, Tr. 6-7;136-7 (Klokstad).

e. Agent Klokstad stated he does not know if Mr. Vigestad, should he have been charged with 20 additional counts of child pornography, would have faced a longer sentence. Klokstad said he did not know because he is not an Assistant US Attorney. Ex. 3, Tr. 137 (Klokstad).

f. Agent Klokstad testified he is an Assistant Division Counsel for the FBI. Ex. 3, Tr. 8 (Klokstad).

As set forth above, the FBI failed to conduct the following investigatory actions in the Vigestad case:

* Failure to fully secure an e-mail account on one computer in which internet pornography was uploaded;

* Failure to secure an e-mail account from a second computer (located at the defendant's place of employment) in which the convicted pedophile had full access and use;

* Failure to search one computer in which the pedophile had full access and use at work;

* Improper reliance upon hearsay statements from a convicted pedophile in determining whether to conduct a search;

* Failure to conduct an investigation after learning that sixth grade Indian children may have had improper contacts with a convicted pedophile;

* Failure to conduct an investigation after being informed by the defendant's wife that she had concerns regarding improper contacts between the convicted pedophile and a teenage minor at the pedophile's workplace;

* Failure to interview the one known victim of the pedophile;

* Acceptance of a plea agreement for a single-count conviction, without ever interviewing the one known child victim, without conducting leads into other potential criminal conduct, without conducting a number of necessary searches and without knowing whether a plea to one count as opposed to multi-counts would impact the public interest;

* Failure to investigate SA Turner's numerous allegations related to this case;

* Failure to assess the suitability of a manager who had supervisory responsibility over this case, who had direct knowledge of most of SA Turner's concerns about these matters and who, in July, 2003, still refused to acknowledge the fact that there were investigatory flaws in the Vigestad case.

II. MISCONDUCT AND MALFEASANCE IN CHILD ABUSE CASES ON INDIAN RESERVATIONS

On July 10 and 11, 2002, two current Assistant United States Attorneys ("AUSA") employed in the North Dakota U.S. Attorney's office were subjected to sworn depositions. The depositions of these two AUSAs are hereby incorporated into this complaint in their entirety. *See* Exhibit 9, Deposition of Janice Morley (July 10, 2002) and Exhibit 10, Deposition of Clare Hochhalter (July 11, 2002). In addition, the complete case file of Nathan [redacted] is incorporated into this allegation in its entirely. These documents are readily available to the FBI and/or are in the control and possession of the FBI.

In addition to the sworn testimony of two AUSAs, a letter written by Dr. Ellen Dar also confirms the allegation that the FBI failed to protect a child-victim on an Indian reservation. Ex. 12 ("To Whom It May Concern" dated January 22, 2001).

These documents demonstrate that child abuse crimes on Indian reservations, which fall within the jurisdiction of the FBI, have been mishandled. Furthermore, the FBI has failed to assign qualified agents to investigate these crimes. As a result, child rape investigations have not been properly pursued and cases have been mishandled.

STATEMENT OF THE FACTS

The facts contained in these depositions, along with facts that are readily available from many other witnesses, demonstrate the following:

1. SA Turner worked as a field agent in Indian Country during the 1990's. During that time period, she established herself as an expert in child crimes and had an extremely productive and accomplished record working with the North Dakota U.S. Attorney's office. SA Turner was considered one of the best FBI agents working Indian Country. *See* Deposition of Hochhalter, Tr. 20. SA Turner's exceptional performance on child-crime cases was noted by the two AUSAs and by the former US Attorney for North Dakota. *See* Deposition of Morley, Tr. 30, 31 and 47.

2. On or about July 2, 1999, a 3-year-old male child, Nathan [redacted] was treated at the Indian Health Service ("IHS") at the Turtle Mountain Indian Reservation in

North Dakota for injuries to his rectum. He was then transferred to a Minot N.D. hospital for further treatment of perirectal tearing. These injuries were consistent with the child having been raped. The child resided within the exterior boundaries of the Turtle Mountain reservation and consequently, the FBI had jurisdiction to investigate this potential heinous example of sexual abuse.

3. The father of the child reported to the hospital officials that the child had been injured in an automobile accident. The local tribal investigator and the FBI field agent who had primary responsibility over the Turtle Mountain reservation accepted the story that the injuries were caused by an automobile accident. The child was returned to his parents and no steps were initiated to protect the child from additional abuse and/or to monitor the treatment of the three-year-old child.

4. Later, in July, 1999, SA Turner visited the Minot hospital on an unrelated sexual abuse matter. A doctor working at the hospital (who had treated [redacted]e and another unrelated victim whose case had been properly investigated and successfully prosecuted by SA Turner) asked SA Turner why nothing was being done on the [redacted] case, given that the other sexual abuse case had been properly handled. The doctor informed SA Turner that the injuries of the 3-year-old boy were among the worst she had seen and that her staff had been traumatized over the incident. The doctor expressed her concerns over the welfare of the child and the fact that the child had been returned to his family without any government intervention. Based on SA Turner's knowledge of child crimes, and her many years of experience working sexual offender-related crimes, she immediately recognized that the concerns of these doctors needed to be fully investigated. In fact, when the case had been initially reported to the FBI field office, SA Turner had suggested to the responsible field agent (SA Peter Klokstad) that the matter be investigated as a rape.

5. After the conversation with the doctor, SA Turner contacted the AUSA handling the Turtle Mountain reservation and was informed that the case had been declined because he had been informed there was no evidence of sex abuse and that the injuries arose from a car accident. Based on the facts known to SA Turner, she recognized that the auto accident explanation was preposterous on its face, and that no professional law enforcement organization could reasonablely accept such a patently outrageous explanation.

6. After being informed of the declination, SA Turner properly reopened the [redacted] case and performed the following standard investigative actions: (1) interviewed the medical professionals; (2) visited the reservation and conducted interviews of witnesses; (3) sought subpoenas from the AUSA and obtained the medical records.

7. Based on SA Turner's investigative methods, SA Turner developed evidence that the alibi given by the child's father was patently false. The fact that the father's explanation of the injuries was demonstrably false, combined with the forensic medical evidence, clearly indicated that the child had been brutally raped. Based on SA Turner's investigation, the U.S. Attorney's office reconsidered its prior declination and opened the case as a criminal matter.

8. Moreover, SA Turner learned that critical evidence relevant to investigating the crime had not been properly secured by the FBI and were not in the case file or the hospital file relevant to the [redacted] case. Specifically, based on her interviews with medical personnel, SA Turner had learned that photos had been taken of the child during the child's treatment in the hospital. Taking such pictures of the victim while the wound is fresh is standard investigative technique. The failure to take such pictures under the circumstances in this case could be considered gross negligence. The review of the photos not only documents the extent of the injuries potentially caused by a rapist, but proper examination of the injuries recorded in the photographs can document the true cause of the injuries. After learning that pictures had been taken, but not properly secured by the FBI (in fact, these pictures were never even examined by the FBI prior to the initial declination), SA Turner returned to the hospital on two occasions to conduct extensive searches for the photos. During the second visit (February, 2000), SA Turner solicited assistance for the search from the entire emergency room staff, and the second search was successful. The photos were located, and they supported Turner's belief that a brutal child rape had occurred.

9. Upon review of the case file, it is evident that the original case agent (Klokstad) failed to conduct any of these basic and standard investigatory tactics. Moreover, this initial failure to properly investigate such an obvious case of child rape raised a series of questions as to how the FBI was handling non-Turner-assigned child rape cases. It also raised concerns about how the FBI could have permitted the child to be returned to the household of the offender, after the child had been hospitalized for perirectal tearing - injuries consistent with sodomy and rape.

10. After conducting her initial investigation, SA Turner recommended that the suspect be polygraphed. This recommendation was made in writing on February 3, 2000, and was submitted to supervision (Ray Morrow).

11. On April 5, 2000, SA Turner was removed from the [redacted] case. SA Turner never requested to be removed from the case and her removal from the case was inconsistent with the law enforcement mission of the FBI.

12. At the time of her removal from the case, SA Turner notified management that the polygraph had never been conducted. She again recommended the polygraph of

the suspect. She also recommended that the case be reassigned outside of the Minot field office and that the reassigned agent should have proper background and experience in child rape crimes. She also based the recommendation on the fact that there had been potential law enforcement misconduct in this case.

13. SA Turner's recommendation regarding the reassignment of the [redacted] case was never followed. Instead, the case was assigned back to SA Klokstad.

14. Apparently, the FBI never acted on SA Turner's two requests for a polygraph, and so the responsible AUSA made a renewed requests for a polygraph. Finally, on October 13, 2000, a polygraph was administered. [redacted]'s father confessed to an act of sodomy on his son during that examination.

15. For the entire 18- month period since the crime was first reported, the victim had remained in the household of the father. Prior to the confession, SA Turner had repeatedly raised legal (and moral) concerns regarding the FBI's responsibility regarding victims of sexual abuse in Indian Country and the damage caused by placing infant children back in the household with the offender.

16. Based in part on SA Turner's re-investigation into the [redacted] rape, management in the Minneapolis Division punished SA Turner. FBI management strongly criticized SA Turner's reopening of the [redacted] case and attacked her, in writing, for reopening a case which, in turn, made a fellow SA look incompetent. FBI management used the [redacted] case to justify other adverse actions against SA Turner. At the same time, the agent who failed to properly investigate the case was not subject to any discipline and, in fact, was given expanded job duties. This agent has, since the [redacted] matter, been named as the Assistant Legal Advisor for the Minneapolis Division. He was also provided a "statistical accomplishment" for that case, whereas Turner was not.

17. As set forth in the sworn testimony of the AUSAs responsible for the [redacted] case, SA Turner was responsible for the reopening of the case and for obtaining the conviction in that matter. According to the AUSAs, SA Turner's conduct in this matter was exemplary. The AUSAs' testimony supports the conclusion that the FBI's criticism of SA Turner's conduct in this matter was inappropriate and retaliatory.

18. SA Turner's actions in [redacted] were used, in part, by FBI management as a justification for removing SA Turner from working on child-related crimes. It was used, in part, as a justification for removing SA Turner from working in North Dakota on Indian Reservation crimes. As set forth in the depositions of the AUSAs, the United States Attorney's office did not support the removal of SA Turner from cases in North Dakota. Moreover, given SA Turner's excellent

reputation in the investigation of child crimes, there was a concern regarding how the FBI would investigate child crimes after her removal. In fact, juxtaposing SA Turner's handling of the [redacted] case with how that case would have been handled had she not intervened creates a major concern over how child rape cases were investigated before and after SA Turner's forced transfer from the State of North Dakota.

19. According to the depositions of the AUSAs, these concerns were justified. After SA Turner's removal from North Dakota, the FBI did not open any child crime cases in the relevant reservations. Moreover, medical professionals employed at these reservations have again raised concerns that child rape cases are not being properly investigated. SA Turner has the names, addresses and phone numbers of various medical professionals who would fully support this most serious allegation.

20. Documentation highly relevant to the [redacted] case is apparently missing from the case file. Moreover, the FBI officially credited SA Klokstad with having solved this case. The involvement of SA Turner was never credited or recognized in any official FBI document, and SA Turner's attempts to have her exemplary work in this case reflected in her performance reviews have been repeatedly denied. These facts support a finding that the FBI has attempted to cover up the FBI's initial failure to properly investigate credible evidence of a child rape.

21. A doctor who examined the child at the time of the incident confirmed the FBI's investigatory failures in a 2001 letter.

III. CONTINUING FAILURE TO INVESTIGATE CHILD ABUSE CASES ON INDIAN RESERVATIONS

The National Whistleblower Center has obtained credible information that the FBI has failed to investigate numerous child rape and molestation cases on Indian reservations. Both the [redacted] case and the Vigestad case provide support for this conclusion. In [redacted], the FBI botched a child rape case, and in the Vigestad case, the FBI failed to investigate credible leads that other Indian children had been victimized by Mr. Vigestad. However, the depth of the FBI's failure to conduct proper investigations appears to be systemic and ongoing.

Two active-duty Assistant United States Attorneys testified under oath that the number of child abuse/rape prosecutions initiated since SA Turner was removed from her position in North Dakota significantly dropped, and was at a near- zero rate on some reservations. *See*, exhibits 9 and 10. SA Turner was removed from her position in November, 1999, and the two depositions were taken in July 2002. Consequently, the time period in which child abuse cases were not properly investigated has been extensive, and the FBI cannot allege that these failures were transitional in nature. Moreover, the National Whistleblower Center has learned that one doctor

currently working at or near an Indian reservation in North Dakota wrote a formal letter to members of the United States Senate informing these members of the FBI's investigatory failures regarding child crime cases.

In regard to the testimony of the AUSAs, AUSA Morley testified that, since SA Turner was removed from her position in North Dakota (November, 1999), there have been no child rape prosecutions conducted on the Turtle Mountain and Fort Berthold reservations. Tr. 54, line 6. Also, at the time of her removal, there was concern that removing SA Turner from North Dakota would result in fewer child-crime investigations on these reservations. Tr. 51, lines 8-9; Tr. 62, lines 13-15. That concern has been borne out over time.

The second AUSA confirmed these concerns. According to Hochhalter, the two Indian reservations at issue still had a high number of child- related criminal activities involving sexual and physical abuse. However, since SA Turner's removal, the Indian reservations had received "dismal" attention. Tr. 31, line 2. Her removal negatively affected the FBI's ability to detect, prevent, and stop crime. Tr. 30, lines 8-13. Mr. Hochhalter pointed out that, after her removal, he has not worked with anyone with the same level of experience and skills as Turner. Tr. 20, lines 9-10. Her removal caused the AUSAs to be less effective in prosecuting child cases. Tr. 58, lines 21-24.

On October 31, 2002, Dr. Margaret Nordell, M.D, wrote a letter to two members of the Senate Judiciary Committee. In this letter, Dr. Nordell confirmed that, since 1999, the FBI has failed to properly investigate Indian child-rape cases on at least two reservations:

> **"Local doctors have observed physical injuries to children which are consistent with sexual abuse. When SA Turner worked in Minot, these types of cases were investigated and successfully prosecuted. Since she left, there has been a complete vacuum concerning federal efforts to properly protect children."**

Ex. 11, Nordell to Leahy (October 31, 2002).

IV. SYSTEMIC MALFEASANCE WITHIN THE FBI'S INSPECTION DIVISION

In 1999, after an FBI agent "whistleblower" had filed allegations within the FBI that the Minneapolis Division had improperly failed to investigate child abuse cases, the FBI Inspection Division conducted a review of that office. However, the National Whistleblower Center has recently learned that the FBI Inspection Division followed procedures which permitted the FBI to hide the allegations of misconduct and use the inspection as a means of retaliation. Based on the

sworn testimony of one of the inspectors, it appears as if the failure of the 1999 Minneapolis Division inspection was the result of a systemic problem within the FBI's Inspection Division. This problem may provide some evidence as to why the FBI has been unable to internally police itself on a number of various issues over time.

In July, 2003 James Casey was deposed. Mr. Casey is a GS-15 FBI agent and was a member of the 1999 Minneapolis Division inspection team. Mr. Casey testified that the inspectors who prepared a report critical of the whistlelbower *did not independently review any facts related to the whistleblower.* Instead, the "inspector" merely accepted as "true" all of the allegations he obtained from the very supervisors who had been accused of misconduct and discrimination. In short, the Inspection report, which the FBI regularly used as an "independent confirmation" of its case against the whistleblower, was merely an unconfirmed rehashing of the managers' unconfirmed allegations against the whistleblower. Thus, retaliatory and false allegations were "presumed to be true" by the inspector, and he conducted *no* independent review. Ex. 7, Tr. 30-31; 37, lines 13-22 (Casey Deposition).

* Inspector Casey explained how the assumption that a manager is telling the truth results in no independent verification of allegations against employee whistleblowers:

  Q: And when you conduct these investigations, do you - as I understand it, you operate under the assumption that the supervisors will be fully candid?

  A: Yes.

  Q: And that is one of the reasons why, you know, essentially the assumption of the supervisor being candid, is that one of the reasons why in your mind you would not need to conduct independent verifications of information provided to you?

  A: Correct.

  Ex. 7, Tr. 37, lines 13-22 (Casey).

* Inspector Casey confirmed in his deposition that the Inspection Division has no safeguards to prevent managers from misusing the inspection process to file false and misleading allegations against employee whistleblowers. Because the inspectors are apparently trained to believe that whatever the manager says is true, there are no safeguards against the FBI from misusing its Inspection process. Ex. 7, Tr. 51 (Casey Deposition) . In fact, even if an employee informs the inspector that they are the subject of reprisal, inspector Casey was not aware of any mechanism to address that concern. Ex. 7, Tr. 53, lines 2-6 (Casey Deposition).

* The whistleblower was never even questioned regarding the truthfulness of any of the allegations filed against her. Casey Deposition, Tr. 29-30. In fact, the inspection "protocol" apparently does not permit an employee from commenting on the negative information provided by supervisors. Within the inspection process, according to Casey, there is no procedure whatsoever for an inspector to "go over each allegation and get the employee's side of the story." Ex. 7, Tr. 30, lines 3-7 (Casey Deposition).

* Not only did Casey not obtain the whistleblower's side of the story, he did not interview *one FBI witness* who actually had first- hand information, about employees' performances, as a law enforcement officer. Ex. 7, Tr. 34, lines 4-14 (Casey Deposition) . For example, no FBI employee was interviewed who ever actually "observed" the whistleblower performing" her " law enforcement function," such as interrogating witnesses, testifying in court or making arrests. *Id.* Instead of contacting any such FBI witnesses, the inspector presumed the supervisors were telling the truth and consequently did not need to conduct any type of valid audit or review.

* Depositions conducted in a pending court case regarding this whistleblower (i.e. depositions conducted in Jane Turner's Civil Rights Act) have now confirmed that *all* of the allegations contained in the Inspection Division report were either false and/or were taken out-of-context. Thus, the FBI supervisors who provided the false and misleading information to the Inspection Division engaged in serious misconduct.

* Due to this lack of safeguards, Casey took no steps whatsoever to ensure that his findings regarding the whistleblower were not somehow impacted due to a potential reprisal. For example, Casey knew that the whistleblower had filed an EEO complaint against the very managers who were providing Casey with negative information. Casey did not engage in *any* "quality assurance" process to ensure that the fact Turner had filed an EEO complaint would not taint the investigation. Moreover, Casey made no inquiry as to whether the information he was being provided (which turned out to be false and misleading) was provided by supervisors in retaliation for the EEO complaint. Ex. 7, Tr. 50-51 (Casey Deposition). These apparent performance failures were, according to the testimony, actually mandated by the FBI inspection rules.

The potential negative impact of the Inspection Division's defective procedures is evident in the case of Jane Turner.

At the time of the 1999 Inspection Division review of SA Turner's performance, the only other female agent (Wendy Loucks) who was directly supervised by SA Turner's supervisor supported SA Turner's allegations that SA Turner had been subjected to discrimination. This is

highly significant because Ms. Loucks is now a supervisor with the FBI, and she clearly had no reason to provide testimony which could help SA Turner. Her signed and sworn statement is attached as exhibit 8. In this statement she affirms, under oath, that some of the FBI's conduct against SA Turner was discriminatory. Significantly, all of the managers (including Burrus) who "swore" that there was no discrimination against Turner conceded that they never interviewed the only other female agent who reported to the supervisor what Turner initially complained about. Burrus' failure to interview Wendy Loucks, prior to reaching a determination that SA Turner was not subjected to discrimination, is additional evidence supporting a finding that Burrus should not work in OPR. Additionally, the Inspection Division overlooked this witness and her evidence when they conducted their investigation. The failure of the Inspection Division to interview this witness appears to be part of the systemic problem within that division.

In her sworn statement, SSA Loucks answered the question "Are there any discriminatory practices being perpetrated in the Division?" with the following answer: "The brief answer to this question is yes." Ex. 8, page 2 (Loucks Statement) . Loucks goes on to provide a number of examples of discriminatory conduct. However, the Inspection Division ignored this information and never attempted to investigate the allegations of discrimination that they were provided and which were clearly relevant to the inspection.

Specifically, Loucks testified to the following:

> **"In some cases, I have felt I have had to stretch the bounds of rational reasoning in order to justify SSRA's decisions with respect to their impact on SA Turner."**

This testimony from SSRA Loucks concerned an attempt made by the FBI to keep SA Turner from working on a major pedophile case.

The record demonstrates that Mr. Burrus and others within the FBI relied, in part, upon an inspection report filed by the FBI Inspection Division in November, 1999 to justify a forced transfer of SA Turner from North Dakota to Minneapolis. As set forth above, reliance upon a so-called "independent" Inspection Division report is clearly inappropriate. These reports contain no independently verified information and are clearly the subject of abuse by FBI managers interested in retaliating against an employee.

REQUESTED ACTION

The performance of the agents, inspectors and supervisors involved in these matters must be fully investigated. Moreover, conduct of the FBI in investigating child abuse crimes on Indian reservations must be subjected to a full and comprehensive review. Finally, the practice of the

FBI Inspection Division of "assuming" supervisors are telling the truth, even in cases in which employees have alleged discrimination and reprisal, must be fully reviewed.

As set forth above, this matter must be referred to an independent body. We would formally object to any referral to the FBI OPR, the DOJ OPR, the DOJ OIG and/or any U.S. Attorney's office. All of the allegations in this letter must be fully reviewed.

Thank you in advance for your prompt attention to these matters. If you have any questions, please do not hesitate to contact us.

Respectfully submitted,

Stephen M. Kohn
Chairman of the Board of Directors

Kris J. Kolesnik
Executive Director

CC: Senator Charles E. Grassley
Committee on the Judiciary
United States Senate

Senator Patrick J. Leahy
Ranking Member
Committee on the Judiciary
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