

October 8, 2002
The Honorable Robert Mueller
Federal Bureau of Investigation
935 Pennsylvania Ave., NW
Washington, DC 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.

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 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.

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

Sincerely,

Senator Patrick J. Leahy Senator Charles Grassley
Chairman, Judiciary Committee 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

Sen. Orrin Hatch
Ranking Member
Senate Judiciary Committee

Rep. Frank Wolf
Chairman
House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary

Rep. James Sensenbrenner
Chairman
House Judiciary Committee