



An Investigation of Alleged Misconduct by Then U.S. Attorney Scott Brady

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I. Introduction

On November 13, 2020, 16 career Assistant U.S. Attorneys (AUSA) with the Department of Justice (Department or DOJ), including an AUSA from the U.S. Attorney's Office for the Western District of Pennsylvania (USAO or WDPA), signed a letter to then Attorney General (AG) William P. Barr objecting to a change in Department policy regarding the investigation of election-related offenses. A few days later, on November 16, 2020, [REDACTED] [REDACTED] for the Executive Office of U.S. Attorneys (EOUSA) informed the U.S. Attorneys whose AUSAs signed the letter that the letter likely constituted both protected First Amendment speech and whistleblowing activity, and advised them to "take no action with these [AUSAs] based on the fact that they signed and submitted this letter or did so without your permission...[and to] avoid any negative comments or tone about the action the [AUSAs] took or the views expressed in the letter that could be viewed as retaliatory."

Subsequently, the Office of the Inspector General (OIG) received a complaint alleging that, on November 18, 2020, in response to a reporter's question about the letter during an unrelated press conference, then WDPA U.S. Attorney Scott Brady inappropriately referenced that the spouse of the AUSA from the WDPA who signed the letter had previously worked for the Attorneys General of the prior administration, thereby suggesting that partisan political considerations motivated the WDPA AUSA to sign the letter, seeking to undermine the WDPA AUSA's professional reputation, and creating potential security issues for the WDPA AUSA and his family given the charged political environment. Brady also noted in his response at the press conference that the WDPA AUSA had not provided advance notice to the USAO's leadership of his intent to sign the letter and did not discuss the letter with the USAO's ethics officer, implying that the AUSA's failure to do so implicated ethics issues.

Our investigation of this complaint comprised a review of email messages and Brady's mobile work phone, and interviews with five individuals with knowledge relevant to the allegation, including a voluntary interview with Brady.

We concluded that the manner in which Brady chose to respond to the reporter's question, by making intentionally derogatory public remarks about an AUSA in his office, was contrary to EOUSA's guidance, constituted poor judgment, was unbecoming of a U.S. Attorney or any Department leader, and reflected poorly on the Department. We further found that his statements to the OIG regarding a post-press conference call that he had with [REDACTED] for EOUSA sought to minimize the seriousness of EOUSA's [REDACTED] concerns regarding Brady's conduct.

II. Background

Brady first joined the USAO in 2004, and he was an AUSA in that office until 2010. After working in the private sector from 2010-2017, he became the U.S. Attorney for the Western District of Pennsylvania on December 23, 2017. Brady's resigned from this position as of February 28, 2021.

The WDPA AUSA who signed the letter to AG Barr [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Each U.S. Attorney designates at least one senior AUSA to serve a 2-year term as the District Election Officer (DEO), and on election day the DEOs receive and handle election fraud allegations. At the time of the events at issue, the WDPA AUSA was one of two DEOs whom Brady had designated for the USAO.

III. OIG Factual Findings and Analysis

A. Factual Findings

On November 9, 2020, then AG Barr issued a Department policy memorandum with the subject "Post-Voting Election Irregularity Inquiries," in which AG Barr authorized federal prosecutors to "pursue substantial allegations of voting and vote tabulation irregularities prior to the certification of elections," when "there are clear and apparently-credible allegations of irregularities that, if true, could potentially impact the outcome of a federal election in an individual State." The news media reported on AG Barr's memorandum, noting that many inside and outside of the Department viewed it as a reversal of long-standing Department policy. In addition, the news media reported that the Director of the Election Crimes Branch in the Department's Public Integrity Section resigned his position on November 9, 2020, in protest of AG Barr's memorandum and its ramifications.

On November 13, 2020, after discussion on a listserv for DEOs, 16 DEOs sent a letter to then AG Barr (DEO letter or letter), "urg[ing]" him to rescind his November 9, 2020 memorandum, which the DEOs stated in the letter was an "abrogation of the Department's Election Non-Interference Policy." The WDPA AUSA was one of the DEOs who signed the letter.

Prior to signing the letter, the WDPA AUSA told the USAO's [REDACTED] that he was considering doing so. The WDPA AUSA and [REDACTED] told the OIG that the WDPA AUSA was not seeking [REDACTED] permission to sign the letter, but rather the WDPA AUSA sought [REDACTED] counsel as a trusted colleague. The WDPA AUSA did not inform anyone else in his management chain that he planned to sign the

letter, and ██████████ did not alert ██████████ or Brady that the WDP AUSA planned to sign the DEO letter. The WDP AUSA did not discuss the letter with the USAO's other DEO, who did not sign the letter.

On November 13, 2020, at 1:26 p.m., after the WDP AUSA signed the DEO letter, the WDP AUSA sent an email to Brady, ██████████, ██████████, and the WDP AUSA's ██████████ and ██████████, alerting them that he had signed the letter, which he attached to the email. With the exception of ██████████, who orally expressed support for the WDP AUSA's decision to sign the letter, no one who received the email responded to it or discussed it with the WDP AUSA. The Department did not publicly release the DEO letter, but it was the subject of news media reporting beginning on November 13, 2020.

That same day, Friday, November 13, at 3:37 p.m., ██████████ of EOUSA sent an email to Brady and the other U.S. Attorneys whose DEOs signed the DEO letter, notifying them that EOUSA's General Counsel's Office would provide them with guidance the following week and suggesting that the U.S. Attorneys "refrain from taking any action in response to [the letter to then AG Barr] without first consulting with [EOUSA's General Counsel's Office]."

On Monday, November 16, 2020, EOUSA's ██████████ provided the following advice:

As a general rule, Federal employees may always write to, or speak with, their superiors about concerns they may have within their organization. As long as they are not insubordinate or unprofessional in their communications, they may voice their legitimate concerns. In this case, as I read it, the letter was written in a respectful and professional manner. Both the First Amendment and whistleblower issues are potentially triggered here. In my opinion, the letter sent by the DEOs would very likely be considered not only an allowable free speech right under *Pickering*,¹ but also protected whistleblowing under the Whistleblower Protection Enhancement Act (WPEA)... Therefore, while I recognize your dissatisfaction with your DEOs acting unilaterally in this situation, my best advice to you all is that you take no action with these DEOs based on the fact that they signed and submitted this letter or did so without your permission.

Recognizing your desire to address this in some fashion with your DEOs, for those of you who were not made aware of the letter before it was issued, it would be appropriate for you to let your DEO know that for future reference, you would ask that they consider notifying both the [First Assistant U.S.

¹ See *Pickering v. Board of Ed.*, 391 U.S. 563 (1968).

Attorney] and [U.S. Attorney] about any communications with senior leadership in the Department in advance of it being sent....

I would be remiss not to caution you that Congress fashioned the WPEA very broadly to cover virtually any communication of concern between an employee and those in their chain of command. I am quite certain that these DEOs would be considered to be whistleblowers under these facts. Accordingly, when speaking with your DEO about this concern and their need to provide you with advance notice of any communication to senior leadership, you should avoid any negative comments or tone about the action the DEO took or the views expressed in the letter that could be viewed as retaliatory.

The following morning, on November 17, 2020, Brady emailed EOUSA's [REDACTED] as follows:

Thanks for the clarification, [EOUSA's [REDACTED]]. I have refrained from engaging based on [REDACTED] of EOUSA's] email from Friday, but [I] will do so now. Quick question, however: is it fair to speak with my DEO about whether he believes he can follow the AG['s] directive and fulfill the duties of DEO in light [of] his stated objection?

These DEO designations are completely discretionary titles [that] have no status, rank or compensation attached to them. As such, removing someone's DEO designation should neither be viewed as retributive in the whistleblower context nor implicate any other protections, correct?

For context, I named two DEOs for this election cycle; the one who signed the letter never had any prior discussions with his co-DEO, who also serves as our USAO Ethics officer.

Please let me know what you think at your convenience, [EOUSA's [REDACTED] Thanks!

[REDACTED] responded later that morning as follows:

I agree it is fair to discuss with your DEO whether he feels he can still perform his duties as DEO. As to moving him out of the DEO position, the question really is whether he would view it is a negative action at this time. If he does, I believe it could open you up to a retaliation claim given the closeness in time between the letter to the AG and his "removal" from the position. That's not to say you couldn't move him out of it at a later date that is more removed from the sending of the letter.

Hope this helps.

Brady told the OIG that, due to EOUSA's legal advice, he did not remove the WDPA AUSA as a DEO. Brady said he also decided against asking the WDPA AUSA whether he could comply with the Attorney General's directive.

The next day, November 18, 2020, Brady held a press conference regarding charges his office brought against the Pittsburgh Water and Sewer Authority for violations of the Clean Water Act. The Clean Water Act case and the press conference were entirely unrelated to the DEO letter. However, at the end of the press conference, a reporter asked Brady two questions that did not concern the Clean Water Act charges: First, whether the USAO was investigating widespread voter fraud and second, whether Brady could confirm whether his office "signed on to a letter sent to the Attorney General...that [was] critical" of the Attorney General's memorandum stating that federal prosecutors could open voting fraud investigations "before the election results were certified." Brady responded:

I'll speak to both of those. First, I can't comment on any existing investigations. To the second, one of our two district election officers, who was married to the former chief of staff of Eric Holder and Loretta Lynch, did sign on to that, unbeknownst to anyone in leadership before he signed on to that; and did not talk about that with his fellow district election officer who's also our ethics advisor.²

The WDPA AUSA told the OIG that he was "shocked" when he learned of Brady's response to the reporter. According to the WDPA AUSA, he viewed Brady's answer as casting his decision to sign the letter as partisan, given that Brady referenced that his spouse had been affiliated with Attorneys General from the prior administration.

In the early evening on the day of the press conference, the WDPA AUSA sent an email to Brady, copying ██████████, ██████████, and the WDPA AUSA's ██████████ and ██████████ stating, in part, that Brady's reference to the WDPA AUSA's spouse's prior government service was "inappropriate and retaliatory" and constituted a "public, partisan attack against a colleague and his family member." Brady did not respond to the WDPA AUSA's email, either electronically or orally, and told us that he decided not to "engage" with the WDPA AUSA in light of EOUSA's ██████████ earlier guidance.

The OIG asked Brady to explain his reason for mentioning during the press conference the prior Department positions of the WDPA AUSA's spouse. Brady stated that he did not recall, but he was "trying to respond to...the question of whether [his] office signed onto the letter" and "wanted to make the distinction to the public that the Department speaks with one voice, and [his] office speaks with one voice." We asked Brady whether he could have met that goal without commenting on the fact that the WDPA

² At the time of the press conference, Brady did not know that, before signing the DEO letter, the WDPA AUSA told ██████████ that he may sign it.

AUSA's spouse worked as the former chief of staff of Eric Holder and Loretta Lynch. Brady responded, "Yes. Now, you know, in hindsight, I certainly do. You know, at the time, [it was an] off the cuff remark in a...15-second question, 15-second response that I had not prepped for,...but I do recognize I could have made that point differently."

However, Brady also told the OIG that, in retrospect, he did not find his response to the reporter to be at all troubling. Brady stated that this determination was based on the fact that everything he said "was factual" and in the public record; he never named the AUSA; "it was an off the cuff remark"; and he was not prepared for the question. When the OIG pressed Brady further to explain the relevance of the prior employment and position of the WDP AUSA's spouse, Brady responded: "The relevance was just context, right, to answer the question, to allow the listener and the public to draw their own conclusions." We provided Brady and his counsel with an opportunity to review and provide comments to our draft report. In response, Brady's counsel told us: "Brady recognizes and accepts that his remarks were ill-advised and that he should have taken a different approach to the reporter's question."

During his interview, we also asked Brady whether he talked to any of the WDP AUSA's supervisors before the press conference to ascertain whether the WDP AUSA spoke with any of them before signing the DEO letter. Brady stated that after he received the WDP AUSA's email informing him that the WDP AUSA had signed the letter, Brady spoke with [REDACTED] and the WDP AUSA's [REDACTED] and [REDACTED], all of whom said that the WDP AUSA had not spoken with them about signing the DEO letter. Brady told the OIG that he did not speak with [REDACTED] because [REDACTED] was not in the office that day, and he only spoke with the WDP AUSA's supervisors who were physically in the office. When asked if there was a reason he did not contact [REDACTED] [REDACTED] Brady responded that he assumed the WDP AUSA would have raised the issue of his signing the letter with his [REDACTED], who was his first line supervisor and [REDACTED], or with his [REDACTED]. In addition, Brady said that he "didn't think about it and [REDACTED] wasn't there," and he also assumed that if [REDACTED] had "been aware of it, he would have, somehow, informed one of us."

The OIG asked Brady whether he considered the guidance and advice EOUSA's [REDACTED] provided when responding to the reporter's question. Brady stated that he did not believe he reflected on EOUSA's advice "after" the press conference, and that he "understood his counsel and followed his counsel." We pressed Brady further by noting EOUSA's advice to "avoid any negative comments or tone...that could be viewed as retaliatory" and asking whether Brady viewed his response to the reporter as complying with EOUSA's advice. Brady responded that EOUSA's guidance was not to "be negative when you're talking to your DEO," and that he did not believe that anything he said was negative—"It was all factual and all public record."

Following the press conference, the WDP AUSA and ██████████ separately contacted EOUSA about Brady's response to the reporter.³ Consequently, on November 19, 2020, EOUSA's ██████████ called Brady "to tell him what the problem was" and "to make it very clear that he cannot make comments like that." He also told Brady that "he should have avoided the question; he shouldn't treat [the WDP AUSA] any differently than anybody else"; and he cautioned Brady "about doing anything that could be viewed as retaliatory." EOUSA's ██████████ told the OIG that Brady "made light" of the situation, "claiming that the individual" was "blowing it out of proportion"; said that he was "not going to have anything to do with this guy"; and stated, "Damn it, I'm not going to say anything to him."⁴

During his OIG interview, however, Brady provided a very different picture of his call with EOUSA's ██████████, telling the OIG that EOUSA's ██████████ was "almost apologetic" during the call and merely asked him to "refrain from any other public comments about [the WDP AUSA] or the letter." After reviewing a draft copy of this report, Brady's counsel provided the following additional information regarding Brady's response to EOUSA's ██████████:

Brady replied that he had no problem with [EOUSA's ██████████] advice and would not publicly address the issue again. Brady told [EOUSA's ██████████] that the situation was being blown out of proportion, and [he] said that the incident involved a brief question and answer at the end of a 20 minute press conference about an environmental case. Brady assured [EOUSA's ██████████] that he would avoid any retaliatory actions—or any actions at all. Brady said he would not change [the WDP AUSA's] DEO designation and did not intend to talk to [the WDP AUSA] about the situation.

The OIG asked EOUSA's ██████████ whether his tone or delivery during the call could be characterized as apologetic. ██████████ responded, "I don't think that I came across apologetic, other than just saying, I'm sorry I have to call you about this, but it is a problem, and it's something you have to be very careful about. So, if I sounded apologetic, it was just in that way, starting it off, but I can't think of any other way that I would have been apologetic."

³ At the time, EOUSA's internal website contained a link to the video of the press conference. The WDP AUSA requested that EOUSA remove the portion that referenced the WDP AUSA and his spouse, and EOUSA did so.

⁴ After reviewing a draft copy of this report, Brady's counsel asserted that EOUSA's ██████████ "did not opine on whether Brady should have answered the reporter's question" and that Brady never said "damn it," noting that Brady does not use that expression.

B. Analysis

We concluded that Brady's intentionally derogatory public remarks about an AUSA in his office sought to undermine the WDP AUSA's professional reputation; inappropriately suggested, by referencing his spouse's prior DOJ position, that partisan political considerations motivated him to sign the letter; and wrongly implied that he may have acted unethically by signing the letter without first consulting with the USAO's ethics officer. Such conduct by Brady was contrary to EOUSA's guidance to, among other things, "avoid any negative comments or tone about the action the DEO took or the views expressed in the letter that could be viewed as retaliatory," constituted poor judgment, was unbecoming of a U.S. Attorney or any Department leader, and reflected poorly on the Department. We further found that Brady's statements to the OIG regarding his post-press conference call with EOUSA's ██████████ sought to minimize the seriousness of EOUSA's ██████████ concerns regarding Brady's conduct.

The Department does not have formal, written "Standards of Conduct" that focus specifically on the conduct of U.S. Attorneys or other Department officials serving in high-level positions. Moreover, Brady's actions during the press conference did not amount to a personnel action under federal whistleblower laws. Accordingly, Brady's remarks to the reporter did not violate a specific policy, rule, regulation, or guideline such that it would constitute misconduct. The OIG intends to issue a Management Advisory Memorandum to the Department regarding the lack of formal, written "Standards of Conduct" for high-level officials.

Two days before the November 18 press conference, EOUSA's ██████████ clearly and unambiguously advised Brady and the other relevant U.S. Attorneys that the DEOs had the constitutionally and statutorily protected right to express their views in their November 13 letter to the AG, citing the First Amendment, Supreme Court authority, and the Whistleblower Protection Enhancement Act. EOUSA's ██████████ further advised them to "take no action with these DEOs based on the fact that they signed and submitted this letter or did so without your permission"; and, when speaking with those DEOs who signed the letter, the U.S. Attorneys should "avoid any negative comments or tone about the action the DEO took or the views expressed in the letter that could be viewed as retaliatory." EOUSA's ██████████ went on to note that, "In this case, as I read it, the letter was written in a respectful and professional manner."

Despite this advice, Brady affirmatively took action by the manner in which he responded to a reporter's inquiry about the DEO letter. His comments were unquestionably negative about the WDP AUSA having signed the letter in two respects.

First, Brady's statement suggested that the WDP AUSA had acted improperly and unethically by signing the DEO letter without first notifying the office's leadership and discussing it with the USAO's ethics officer. We determined that the WDP AUSA was not required to notify his leadership or the office's ethics officer of his intent to sign the letter

and did not violate any of his ethical obligations by signing the letter. As EOUSA's ██████ noted in his advice to Brady and the other affected U.S. Attorneys, the WDP AUSA's signing of the DEO letter was not improper in that he and the other signatories were engaged in First Amendment protected speech, which also could be construed as statutorily protected whistleblowing. Moreover, the WDP AUSA had in fact discussed with the office's ██████ his intention to sign the letter before doing so. Although Brady asked ██████ and the WDP AUSA's ██████ and ██████ whether the WDP AUSA had spoken with them about signing the letter, Brady did not ask his ██████ before making his inaccurate public assertion.

Second, and more concerning, was the manner in which Brady publicly attacked a long-tenured, career DOJ prosecutor who was a member of his own staff, even though he did not name him. Brady sought to impugn the WDP AUSA's character and discredit him by immediately noting that the WDP AUSA's spouse had served as Chief of Staff for former Attorneys General Holder and Lynch. Brady's statement, which was not even responsive to the question, transparently suggested, by referencing the previous employment of the WDP AUSA's spouse, that partisan political considerations motivated the WDP AUSA to sign the letter. Although Brady did not directly make that assertion, he told the OIG that he viewed the relevance of the reference to the WDP AUSA's spouse as "just context, right, to answer the question, to allow the listener and the public to draw their own conclusions." In doing so, Brady potentially exposed the WDP AUSA to future questions about his professional ethics and other possible repercussions arising from the polarized political climate.

Moreover, we concluded that Brady's response to the question at the press conference did not indicate a careless, off-the-cuff remark in response to an unexpected question as Brady maintained. The reporter asked Brady two questions, both unrelated to the topic of the press conference but both concerning issues that were then in the news—election fraud allegations in Pennsylvania and the DEO letter to then Attorney General Barr. Brady understood that it would be inappropriate to answer the first question regarding any ongoing USAO election investigations—and he responded by telling the reporter that he could not comment. By contrast, despite receiving specific guidance from EOUSA 2 days earlier to handle with care the issue of his DEO signing the letter, Brady believed it was appropriate to respond to the second question and did so by personally attacking an AUSA who worked in his office. We found it disturbing that, during our interview 11 weeks after the press conference, Brady told the OIG that, in retrospect, he did not find his response to the reporter to be at all troubling. However, after being given an opportunity to review the draft report, Brady acknowledged that his remarks were "ill-advised and that he should have taken a different approach to the reporter's question."

To be clear, Brady had appropriate alternatives available to him if he wanted to answer the reporter's second question about the DEO letter, rather than refusing to comment as he did for the first question. For instance, he could have simply answered the

reporter's actual question by saying that his office had not signed the letter, and that those prosecutors who did so were acting in their personal capacities. He could have added, if he wished to do so, that he disagreed with the letter. Instead, he chose to respond by attacking the WDP AUSA personally by citing his spouse's former DOJ positions and implying he may have acted unethically. Brady's comments about the WDP AUSA were unprofessional, inappropriate, and not what the Department should expect from U.S. Attorneys and other senior officials.

Finally, we found that, in his OIG interview, Brady sought to minimize the serious nature of his November 19 post-press conference conversation with EOUSA's ██████████ when he stated that EOUSA's ██████████ was "almost apologetic" during the call and merely asked him to "refrain from any other public comments about [the WDP AUSA] or the letter." EOUSA's ██████████ characterized the nature of their conversation differently, telling the OIG that, although he may have said to Brady at the outset of the call that he was sorry he had to call him about the matter, he was not at all apologetic during the call but rather made clear to Brady that his public comment was problematic, that he should not do anything that could be viewed as retaliatory against the WDP AUSA, and that he needed to avoid making such statements. In response to his admonition, EOUSA's ██████████ told us that Brady "made light" of the situation, "claiming that the individual" was "blowing it out of proportion." We credited EOUSA's ██████████ description of the call, rather than Brady's, because it was fully consistent with the prior counseling and advice EOUSA's ██████████ had given to the U.S. Attorneys generally and to Brady in particular, as well as with Brady's dismissive view of the significance of his press conference statement when the OIG questioned him about it. By contrast, Brady's portrayal of EOUSA's ██████████ as being "almost apologetic" during the call was entirely inconsistent with EOUSA's ██████████ prior actions, and we found it represented an effort by Brady to minimize the seriousness of his comments during the press conference.

IV. Conclusion

Brady exhibited poor judgment by making intentionally derogatory public remarks about an AUSA in his office in responding to a reporter's question at a press conference on November 18, 2020, and, during his OIG interview, minimized the serious nature of a post-press conference conversation that he had with EOUSA's ██████████ regarding his actions. Brady resigned from the Department as of February 28, 2021, and, therefore, is not subject to any action by the Department. We have provided a copy of this report to the Office of the Deputy Attorney General and to the Office of Professional Responsibility.