

U.S. Department of Justice
 Office of the Inspector General

REPORT OF INVESTIGATION

SUBJECT [REDACTED] Trial Attorney (Former) [REDACTED]		CASE NUMBER [REDACTED]	
OFFICE CONDUCTING INVESTIGATION Washington Field Office		DOJ COMPONENT Executive Office for United States Attorneys	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office WFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component EOUSA <input type="checkbox"/> USA <input type="checkbox"/> Other		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

SYNOPSIS

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the United States Attorney's Office for the District of Columbia (USAO-DC) regarding allegations that between [REDACTED] then DOJ trial attorney and former Assistant United States Attorney [REDACTED] improperly disclosed District of Columbia Superior Court grand jury materials to an unauthorized individual in the [REDACTED] area. Specifically, the information alleged that [REDACTED] provided grand jury transcripts to [REDACTED], while serving as an Assistant United States Attorney for USAO-DC.

The OIG investigation substantiated the allegation that [REDACTED] improperly disclosed Superior Court grand jury materials to an unauthorized individual in violation of Title 11 of the Code of the District of Columbia, Contempt Powers; Rule 6(e) of the DC Superior Court Rules of Criminal Procedure; and DOJ guidance.

USAO-DC employees told the OIG that they were given permission by the United States Attorney for the District of Columbia to discuss the details of an adjudicated case with [REDACTED]. However, none of the employees recalled being authorized to disclose grand jury materials to [REDACTED].

An OIG review of [REDACTED] e-mail revealed that [REDACTED] provided grand jury transcripts to [REDACTED] via his government e-mail address.

DATE	[REDACTED]	SIGNATURE	[REDACTED]
DATE	[REDACTED]	SIGNATURE	 Digitally signed by RUSSELL CUNNINGHAM Date: 2019.09.17 09:56:35 -04'00'
APPROVED BY SPECIAL AGENT IN CHARGE Russell W. Cunningham			

█████ admitted to the OIG that he provided grand jury transcripts to █████ however █████ denied that the disclosure was improper. █████ maintained that the secrecy of grand jury materials was dissolved through the discovery process at trial.

The USAO █████ declined prosecution of this matter.

The OIG has completed its investigation and is providing this report to the Executive Office for United States Attorneys (EOUSA) and the Office of Professional Responsibility (OPR) for appropriate action. The OIG is also providing this report to the U.S. Attorney's Office for the District of Columbia for any disclosure it may make to the Superior Court of the District of Columbia.

█████ resigned from the Department, █████.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

DETAILS OF INVESTIGATION

Predication

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the United States Attorney's Office for the District of Columbia (USAO-DC) regarding allegations that between [REDACTED], then DOJ trial attorney and former Assistant United States Attorney [REDACTED] improperly disclosed District of Columbia Superior Court grand jury materials to an unauthorized individual in the Washington, D.C. area. Specifically, the information alleged that [REDACTED] provided grand jury transcripts to [REDACTED] while serving as an Assistant United States Attorney for USAO-DC.

Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following DOJ employees:

[REDACTED]

- Former AUSA [REDACTED]

Review of the following:

- [REDACTED] DOJ e-mails;

[REDACTED]

Relevant Authority

Title 11-944 of the Code of the District of Columbia states:

[I]n addition to the powers conferred by section 402 of title 18, United States Code, the Superior Court, or a judge thereof, may punish for disobedience of an order or for contempt committed in the presence of the court.

Rule 6(e)(2)(B)(vi) of the DC Superior Court Rules of Criminal Procedure states:

An attorney for the government must not disclose a matter occurring before the grand jury. Exceptions to this are outlined in Rule 6(e)(3)(A) and include (i) an attorney for the government for use in performing that attorney's duty; and (ii) any government personnel that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal and District of Columbia criminal law. A person to whom information is disclosed under Rule 6(e)(3)(A)(i) and (ii) may use that information only to assist an attorney for the government in performing that attorney's duty to enforce federal and District of Columbia criminal law. An attorney for the government must promptly provide the court that impaneled the grand jury with the names of all persons to whom a disclosure has been made and must certify that the attorney has advised those persons of their obligation of secrecy under this rule.

DOJ Book, Federal Grand Jury Manual, Section 3.6, dated July 2009, states:

Production of grand jury information to a criminal defendant pursuant to a rule of discovery, the Jencks Act, or as a Brady disclosure does not put the material in the "public record."

Background

began his career as an AUSA resigned from the Department,

Unauthorized Disclosure of DC Superior Court Grand Jury Materials

The information provided to the OIG alleged that violated Rule 6(e) of the DC Superior Court Rules of Criminal Procedure by improperly disclosing grand jury materials to an unauthorized individual. Specifically, provided grand jury transcripts to

told the OIG that approached regarding . According to , approved a plan for the prosecutors, and , to have a background discussion with . said that he attended the first meeting with , along with and . told the OIG that i and had authorization from to speak to regarding the investigation, prosecution, and trial. also told the OIG that the release of grand jury transcripts was not a topic that was ever discussed with regard to the arrangement with .

told the OIG that he and were encouraged by to meet with to discuss the case. recalled that he spoke with on the telephone a few times and met with him at least once. recalled that , and possibly someone from the USAO-DC , was present when met with . could not recall if was present during the meeting, nor could he recall who from the may have been in attendance. explained that called him several times after the meeting because wanted to help him get in contact with a witness and main cooperator in the case; however, was not able to assist in these efforts.

further told the OIG that he was unaware that had turned over grand jury transcripts to . stated that he would have expected to consult with him prior to releasing grand jury material and the fact that released the transcripts "makes me feel uneasy." explained that, while there are exceptions to the Rule 6(e) secrecy requirements, his interpretation of the rule was that the secrecy of grand jury material would not have been lifted just because the material may have been turned over to defense counsel as part of discovery in a criminal case.

The OIG showed [REDACTED] an e-mail from [REDACTED] to [REDACTED], dated [REDACTED], which stated, "...just got a call from [REDACTED]. He confirmed he's meeting with you on Wednesday. Do not tell him about any GJ transcripts. Okay that you got trial transcripts on your own, but nothing else." [REDACTED] stated this was the first he had seen this e-mail and it "...was very upsetting to see." [REDACTED] stated that Rule 6(e) was not to be taken lightly and release of any grand jury material outside of discovery was something that he would "run up every flag pole" for proper approval.

The OIG further showed [REDACTED] two e-mails, dated [REDACTED], and [REDACTED], where [REDACTED] sent, via e-mail, grand jury transcripts to [REDACTED]. [REDACTED] response was, "...it's pretty shocking." [REDACTED] explained Rule 6(e) required permission from the court to disclose grand jury materials to anyone outside of attorneys and government employees involved in the grand jury matter. [REDACTED] reiterated that he did not believe the secrecy of a grand jury transcript was lifted because it had been turned over to defense counsel as part of discovery in a criminal case.

The OIG also showed [REDACTED] a list of 19 grand jury transcripts that were e-mailed by [REDACTED] to [REDACTED]

[REDACTED]

[REDACTED] told the OIG that he had been assigned as one of the USAO-DC [REDACTED] case. [REDACTED] explained that he did not have access to the grand jury folder on the shared computer drive; however, when a new grand jury transcript became available, [REDACTED] forwarded it to [REDACTED] via e-mail for processing. [REDACTED] explained that when he received a grand jury transcript, he forwarded it via e-mail back to [REDACTED] and to [REDACTED], then placed a hard copy in the corresponding witness folder. [REDACTED] stated that forwarding the transcript to both [REDACTED] and [REDACTED] was part of his organizational system.

The OIG showed [REDACTED] an e-mail from [REDACTED] to [REDACTED], dated [REDACTED], with the subject line "GJ Transcripts." In the body of the e-mail, [REDACTED] asked [REDACTED] to copy the .pdf file of 17 grand jury transcripts onto a disk. [REDACTED] stated that he did not recall this request from [REDACTED], nor did he recall if he placed the files on a disk as requested by [REDACTED]. [REDACTED] stated that the transcripts requested in this referenced e-mail were related to the South Capitol Street case. [REDACTED] did not know why [REDACTED] needed these transcripts as the trial and sentencing were completed by [REDACTED].

[REDACTED]

The OIG reviewed [REDACTED] e-mail from [REDACTED], which revealed that [REDACTED], in response to an inquiry from [REDACTED] in [REDACTED] regarding the length of time that it would take for transcripts of the trial to be prepared, offered to provide grand jury transcripts to [REDACTED]. Subsequently, [REDACTED] requested grand jury transcripts of at least 35 grand jury witnesses. Based upon the OIG's review, [REDACTED] provided 19 grand jury transcripts to [REDACTED] via e-mail. Additionally, [REDACTED] attempted to obtain a CD containing .pdf copies of at least 17 grand jury transcripts; however, the OIG was unable to locate documentation to determine whether [REDACTED] received those transcripts or provided them to [REDACTED].

Following the USAO-[REDACTED] criminal declination, the OIG conducted a compelled interview of [REDACTED] under oath. During the interview, [REDACTED] told the OIG that he did not know [REDACTED] prior to a meeting he attended at USAO-DC with [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] said that [REDACTED] set up the meeting and [REDACTED] recalled that [REDACTED], through [REDACTED], gave [REDACTED] and others involved in the prosecution of the [REDACTED] case authorization to cooperate with [REDACTED] and to provide insight into the case and its prosecution. [REDACTED] recalled he and [REDACTED] were told to give "full access" to [REDACTED]. Based upon this statement, [REDACTED] believed there were no limitations on what could be shared with [REDACTED].

[REDACTED] said that he believed he had authorization from [REDACTED] to be fully transparent in his cooperation with [REDACTED]. [REDACTED] admitted that no one specifically told him to provide [REDACTED] with grand jury materials; however, [REDACTED] believed that his cooperation with [REDACTED] included providing access to all materials related to the investigation, prosecution, and trial.

The OIG showed [REDACTED] an e-mail from [REDACTED] to [REDACTED], dated [REDACTED]. In the e-mail, [REDACTED] offered to [REDACTED], "...If you needed specific grand jury transcripts of witnesses who testified at trial – and as a result, whose GJ transcripts were necessarily disclosed to defense counsel and therefore are no longer fully covered by the restrictions of Rule 6(e) – let me know which ones you need."

The OIG further showed [REDACTED] an e-mail from [REDACTED] to [REDACTED] dated [REDACTED], and an e-mail from [REDACTED] to [REDACTED], dated [REDACTED], in which [REDACTED] provided [REDACTED] with electronic copies of 19 grand jury transcripts. Of these 19 transcripts, five contained the testimony of four grand jury witnesses [REDACTED].

The OIG also showed [REDACTED] an e-mail from [REDACTED] to [REDACTED], dated [REDACTED], with the subject line "GJ Transcripts." In the body of the e-mail, [REDACTED] asks [REDACTED] to copy the .pdf file of 17 grand jury transcripts onto a disk.

[REDACTED] said that he did not recall sending these three specific e-mails, nor did he recall receiving a CD containing the transcripts he requested. However, [REDACTED] admitted that he offered and provided grand jury transcripts to [REDACTED]. [REDACTED] said that he believed the secrecy of the transcripts was lifted because the transcripts were provided to the defense during discovery in the [REDACTED] trial. [REDACTED] said that his recollection was that all documents, including grand jury transcripts related to potential trial witnesses, including [REDACTED], were turned over to the defense counsel during the trial.

The OIG showed [REDACTED] an e-mail from [REDACTED] to [REDACTED], dated [REDACTED]. In the e-mail, [REDACTED] writes to [REDACTED], "...Just got a call from [REDACTED]. He confirmed he's meeting with you on Wednesday. Do not tell him about any GJ transcripts. Okay that you got trial transcripts on your own, but nothing else." [REDACTED] said that he did not recall this e-mail nor why he admonished [REDACTED] not to disclose the grand jury transcripts to [REDACTED], even though [REDACTED] believed the disclosure was acceptable. [REDACTED] stated that his understanding of

Rule 6(e) was that the secrecy applied only until the grand jury documents were turned over to the defense. [REDACTED] stated that it did not matter if the witness testified at trial, only if the materials had been turned over to the defense.

The OIG further showed [REDACTED] an e-mail from [REDACTED] to [REDACTED] [REDACTED], dated [REDACTED]. [REDACTED] was working [REDACTED] matter and wanted to share grand jury transcripts with a potential expert and/or cite them in a motion with the court. In the e-mail, [REDACTED] wrote to [REDACTED], "...In USAO-DC we took the position that once they [Grand Jury transcripts] were disclosed to the defense that Rule 6(e) no longer applied to the GJ transcripts." [REDACTED] could not provide the OIG with a reference to a written USAO-DC policy to support his belief, however, he stated that based on formal and informal training, as well as discussions with various supervisors, grand jury material was secret until you turned it over to the defense. [REDACTED] stated that grand jury material was "secret until it's not secret."

[REDACTED] said that [REDACTED] gave authorization to give [REDACTED] "full access" to the [REDACTED] investigation, prosecution, and trial. [REDACTED] stated that, in his opinion, providing the grand jury transcripts was part of this "full access." [REDACTED] said that he was never specifically instructed to provide these documents; however, [REDACTED] believed that in doing so, he was not in violation of Rule 6(e) because the grand jury transcripts were previously disclosed to the defense. [REDACTED] was adamant that because the transcripts were turned over as part of discovery, the secrecy part of Rule 6(e) no longer applied. [REDACTED] said that in hindsight, he probably would have requested some clarification; however, at the time it did not seem like an issue.

The USAO-[REDACTED] declined criminal prosecution of this matter.

OIG Conclusion

The OIG investigation substantiated the allegation that [REDACTED] improperly disclosed grand jury materials to an unauthorized individual in violation of Title 11 of the Code of the District of Columbia, Contempt Powers; Rule 6(e) of the DC Superior Court Rules of Criminal Procedure. [REDACTED] could not provide the OIG with any support for his claim that the USAO-DC took the position that grand jury transcripts are no longer subject to Rule 6(e) once they have been produced to the defense. In fact, the USAO-DC does not take that position, which is clearly contrary to the law. As an AUSA [REDACTED] at the time of this incident, [REDACTED] should have known that his actions violated the law and his claimed misunderstanding of the law is no excuse for this serious misconduct. The OIG found it particularly concerning given [REDACTED] long tenure at the Department that he, at a minimum, failed to seek any ethics advice from the USAO-DC or the Department's ethics office before providing at least 19 grand jury transcripts [REDACTED].

The OIG has completed its investigation and is providing this report to the EOUSA and OPR for appropriate action. The OIG is also providing this report to the U.S. Attorney's Office for the District of Columbia for any disclosure it may make to the Superior Court of the District of Columbia.