

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<http://oversight.house.gov>

April 13, 2017

The Honorable Michael E. Horowitz
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Horowitz:

The Committee is investigating retaliation and certain instances of agency mismanagement involving a retired Special Agent (SA) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Jay Dobyns. I write to request information your office prepared regarding various Dobyns-related matters.

Dobyns has been the victim of repeated abuse and mismanagement at the hands of ATF and the Department of Justice (DOJ), following an undercover investigation of the Hells Angels.¹ At the conclusion of Dobyns's undercover work, carelessness and inattentiveness by ATF officials resulted in the release of Dobyns's identity and address, exposing him and his family to threats.² The threats coupled with ATF's failure to mitigate them led to a settlement agreement in 2007, and subsequently litigation about this agreement in the United States Court of Federal Claims.³ Among other things, the settlement agreement required ATF to pay more attention to threats to Dobyns and his family.⁴ They did not. By this point, however, because of Dobyns's ongoing tussle with ATF, he may have reached *persona non grata* status with the Bureau.⁵ Despite the 2007 agreement, retaliation and reprisal against Dobyns became commonplace.⁶

In 2008, a fire, later determined to be the result of arsonists, destroyed the Dobyns family house.⁷ His wife and two minor children were inside the dwelling at the time the fire started.

¹ See, e.g., Dobyns v. U.S., 118 Fed. Cl. 289 (2014); Dobyns v. U.S., 2014 U.S. Claims LEXIS 1579, at 7-11 (2014); DEP'T OF JUSTICE OFFICE OF INSPECTOR GENERAL, OIG REPORT ON ALLEGATIONS BY BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES SPECIAL AGENT JAY DOBYNS (2008) (hereinafter Sept. 2008 OIG Report).

² Dobyns v. U.S., 118 Fed. Cl. 289, 294-96.

³ *Id.* at 296-98. The Dobyns litigation has resulted in at least three published opinions. Dobyns v. U.S., 118 Fed. Cl. 289 (2014); Dobyns v. U.S., 2014 U.S. Claims LEXIS 1579 (2014); Dobyns v. U.S., 123 Fed. Cl. 481 (2015).

⁴ *Id.* at 298.

⁵ See generally *id.* at 298-300; and 310-11; SEPT. 2008 OIG REPORT.

⁶ *Id.* at 300.

⁷ *Id.* at 300-06.

Instead of investigating the arson and catching the criminals, ATF continued its vendetta against Dobyns. An ATF Office of Professional Responsibility report prepared by ATF SA Christopher Trainor examined the actions of two ATF officials—retired SA George Gillett and current SA William Newell. The report found these officials committed serious acts of wrongdoing, including attempting to frame SA Dobyns for the arson.⁸

Additional misconduct occurred when an attorney in ATF's Office of General Counsel, Valerie Bacon, attempted to convince the Special Agent in Charge of the Phoenix Field Division Thomas Atteberry not to reopen the arson investigation because doing so would likely damage ATF's prospects in an ongoing civil suit.⁹ The trial testimony from Atteberry on this is remarkable. He testified:

Q. . . . Did you get any kind of discouragement in any respect from anyone at ATF with respect to reopening this arson investigation?

A. Yes.

Q. Please explain.

A. When I was seeking guidance to reopen the investigation, I had a phone conversation with somebody from Counsel's office in ATF headquarters.

THE COURT: Can you be more specific, Agent? Do you know who it was?

A. I believe it was Valerie Bacon.

THE COURT: All right. Proceed.

A. I had a phone conversation, and I also believe I talked to her in person one time when she was in Phoenix, and I believe during the telephone conversation she made a comment to me that if you, meaning myself, reopen the investigation that would damage our civil case.¹⁰

Yet, a subsequent series of events occurred when Higman was caught threatening Trainor, the author of the OPR report. Higman made the threats in connection with the *Dobyns v. U.S.* trial in the United States Court of Federal Claims.¹¹ The Special Master, former United States Magistrate Judge John M. Facciola, summarized the Higman incident as follows:

⁸ OFFICE OF PROFESSIONAL RESPONSIBILITY, BUREAU OF ALCOHOL, TOBACCO, FIREARMS, & EXPLOSIVES, REPORT OF INVESTIGATION CASE NO. 20120079 (2012).

⁹ *Dobyns v. U.S.*, 2014 U.S. Claims LEXIS 1579, at *7–11 (2014).

¹⁰ *Id.*

¹¹ *Id.* at *7–8.

The Honorable Michael E. Horowitz

April 13, 2017

Page 3

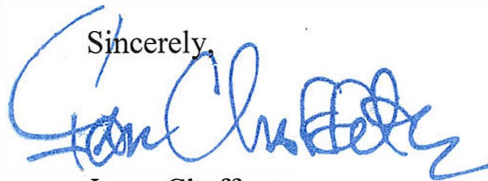
After the court issued its final opinion in this case, an ATF agent, Trainor, left a voicemail message for the judge and said that he had been threatened by another witness, Higman, also an ATF agent, and that one of the Department of Justice (DOJ) lawyers who had tried the case before the court had further threatened Trainor with damage to his career if he disclosed the Higman threat to the court.¹²

To assist the Committee with its probe, we request that your office provide any investigative reports or similar documents referring or relating to the Dobyns matter, including but not limited to those referenced here and those involving the aforementioned ATF officials Newell, Gillett, Higman and Bacon.¹³ If feasible, we would appreciate production of these materials by April 28, 2017.

Please produce all documents in electronic format to the Committees. In addition, please deliver your responses to the House Committee on Oversight and Government Reform Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

Should you have questions, please contact Steve Castor of the Committee staff at (202) 225-5074. Thank you in advance for your prompt attention to this request.

Sincerely,



Jason Chaffetz
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Member

¹² Dobyns v. U.S., 123 Fed. Cl. 481, 484 (2015).

¹³ The Committee in in possession of the 2008 OIG report referenced in footnote 1.