

his crops to feed his family, and he touches a landmine and his family no longer has a father.

That is why we should ban them.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### FBI MISMANAGEMENT—PART 4

##### IG ASKS FBI DIRECTOR TO CORRECT RECORD

Mr. GRASSLEY. Mr. President, I rise today to continue my observations about major problems in the FBI's crime lab, and about the Bureau's failed leadership. This is my fourth such statement.

My colleagues are no doubt curious about the harshness of my criticisms of the Bureau's leadership. But my critique directly matches the level of the Bureau's misleading of the public.

I have not been unfair or unmeasured in my comments. I dare say, I have been softer on the FBI than others in Congress. Yet the ranks of those of us who are perturbed are growing swiftly.

I have raised these issues for two reasons: First, to use the Justice Department's and FBI's own documents to show where the Bureau is misleading the public; and second, to contribute an understanding of why it is happening.

I will briefly remind my colleagues of what I already revealed before this body. Many of the allegations of the lab's whistleblower—Dr. Frederic Whitehurst—are being substantiated. FBI documents are showing that. In previous statements, I have referenced three problem cases, examined by the Justice Department's Inspector General, that were uncovered by the press. The three cases are those of ALCEE L. HASTINGS, George Trepal, and Walter Leroy Moody. The conduct of specific FBI agents in each of these cases is in question.

Second, the FBI tried to explain Dr. Whitehurst away by questioning his credibility, and saying no one else backs up his allegations. But now we know that is false. At least two other scientists have backed him up. One has been made public. The other is fixing to.

Third, we now know that the FBI investigated these same allegations, knew about the problems, and covered them up. They did not fix them. They covered them up. The IG, then, took an independent look and flushed out the problems. The Bureau is now doing a mad scramble to control the damage.

At the heart of its damage control operation is an effort to mislead. And that effort comes right from the top of the FBI. Right from the Director himself—Louis Freeh.

But their scheme is unraveling, Mr. President. I rise today, to assist in the unraveling process. The public has a right to know what the FBI is covering up. And I am here to help them know.

The latest case of misleading by the FBI involves the public testimony of Mr. Freeh approximately 2 weeks ago. On March 5, Mr. Freeh testified before the House Appropriations Subcommittee on Commerce, Justice, State. The chairman is Representative HAROLD ROGERS of Kentucky.

During the hearing, Mr. Freeh was asked why the FBI placed Dr. Whitehurst on administrative leave. In response, Mr. Freeh stated:

[T]he action that was taken against Mr. Whitehurst was taken solely and directly on the basis of the recommendation by the Inspector General and their findings with respect to Mr. Whitehurst....

Mr. Freeh also said the IG, Mr. Michael Bromwich, was notified about the action and had not objected. Mr. Freeh concludes by saying:

The only reason that action was taken was because of what the Inspector General wrote and recommended to the FBI.

When the IG found out what Director Freeh had stated, he fired off a letter the very next day. He demanded that Mr. Freeh correct the record in three specific areas.

First, the FBI has consistently maintained that it was not just the IG report that factored into action against Dr. Whitehurst. I know this, Mr. President, because the Deputy Director, Weldon Kennedy, told me the same thing. The other reason involves the FBI's belief that Dr. Whitehurst would not answer questions in an administrative inquiry. It seems the FBI Director is using the IG report to hide behind. In my view, he wants the public to think he was forced by the IG to take action against a whistleblower.

Second, the IG says it is inaccurate for Mr. Freeh to say the IG did not object to action against Dr. Whitehurst. In fact, the IG spent over a year objecting to such treatment of Dr. Whitehurst. I had not known this before, Mr. President. According to the IG, representatives of the FBI had an active campaign—for more than a year—to take action against the whistleblower. The IG spells this out in detail in his letter.

That sounds suspiciously like retaliation against a whistleblower. And as you know, Congress has passed statutes prohibiting retaliation against whistleblowers. But it would certainly explain why the FBI is over-reacting to the IG's report, with respect to Dr. Whitehurst. I suspect that the IG would have had nothing but praise for Dr. Whitehurst, and the Bureau's response would still be, "See? The IG recommends that we fire Whitehurst!"

I met on January 28 with then-Deputy Director Kennedy. I asked him

what it was in the IG report that he thought gave the FBI grounds to take action against Dr. Whitehurst. I am bound to maintain the confidence of what is contained in the report that Mr. Kennedy cited. But let me assure you, Mr. President. When you see the report, you will be scratching your head in bewilderment. I was.

Third, the IG says no such recommendation pertaining to Dr. Whitehurst is in his report.

These were the three specific points about which the IG took issue with Mr. Freeh. If I could offer a translation, I will bet Mr. Bromwich thought Mr. Freeh misled the subcommittee. If Mr. Bromwich indeed reached that conclusion, the facts would be on his side.

The IG's request that Mr. Freeh correct the record was responded to on March 11. In letters to both Mr. Bromwich and Mr. ROGERS, Mr. Freeh appears to do what some of his agents have been accused of doing in a courtroom—cutting corners to get a conviction.

I ask unanimous consent that those three letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF JUSTICE,  
OFFICE OF THE INSPECTOR GENERAL,  
Washington, DC, March 6, 1997.

Hon. LOUIS J. FREEH,  
Director, Federal Bureau of Investigation, U.S.  
Department of Justice, Washington, DC.

DEAR DIRECTOR FREEH: I am writing to urge you to correct testimony you gave during your appearance yesterday before the House Subcommittee on Appropriations. I have reviewed the videotape of your testimony and believe that your response to a question regarding Dr. Whitehurst is incorrect in three respects.

Your testimony was as follows:

Q. (By Chairman Rogers) Now why was Mr. Whitehurst suspended?

A. What I can say in the open session, sir, is that the action that was taken against Mr. Whitehurst was taken solely and directly on the basis of the recommendation by the Inspector General and their findings with respect to Mr. Whitehurst, which they furnished us in writing. We notified the Inspector General and the Deputy Attorney General's office that we were going to take administrative action. They did not object to it. The only reason that action was taken was because of what the Inspector General wrote and recommended to the FBI. And when that is public, I think you will be satisfied.

First, we have consistently been informed that the FBI did not take administrative action against Dr. Whitehurst "solely and directly on the basis of the recommendation by the Inspector General and their findings with respect to Mr. Whitehurst," as you testified. Rather, Deputy Counsel James Maddock has informed us (and others) on several occasions that the FBI's action was also taken because of Dr. Whitehurst's refusal—after being administratively compelled—to testify in 1996 in the matter regarding leaks of information about the laboratory. Indeed, that dual rationale was contained in the memo from Weldon Kennedy to the Deputy Attorney General, a copy of which was sent to me, on January 24, 1997, notifying her of the FBI's intention to place Whitehurst on administrative leave that afternoon.

Second, it was inaccurate to say that I "did not object" when the FBI notified my office that it intended to place Dr. Whitehurst on administrative leave. In fact, at a meeting held on January 21, I expressed my opposition when Mr. Maddock informed us that the FBI intended to take such action against Dr. Whitehurst. This was consistent with the position that I had taken over the course of more than a year when FBI representatives had repeatedly proposed firing Whitehurst or placing him on some sort of administrative leave. Although it is correct that I did not specifically respond to Mr. Kennedy's January 24 memorandum informing the Deputy Attorney General of the FBI's decision to place Dr. Whitehurst on leave that same afternoon—or formally reiterate my objection to taking any action against Dr. Whitehurst—it was because I had already made my views known rather than because I agreed with the FBI's proposed action.

Third, your testimony implies that we specifically recommended that Dr. Whitehurst be placed on administrative leave based on the draft report. The draft report in fact contains no such recommendation, nor can it be fairly construed to imply that such action should be taken while the draft was being reviewed.

Because I believe the inaccuracies in your testimony should be corrected as promptly as possible, I urge you to write to Chairman Rogers and Congressman Mollohan to correct the record. Should sharing this letter with the Appropriations Subcommittee assist in correcting the record, please feel free to include it with your correction.

Very truly yours,

MICHAEL R. BROMWICH,  
*Inspector General.*

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION,  
*Washington, DC, March 11, 1997.*

Mr. MICHAEL R. BROMWICH,  
*Inspector General, U.S. Department of Justice,  
Washington, DC.*

DEAR MR. BROMWICH: In your letter of March 6, 1997, you state that it is your understanding that the FBI did not place Frederic Whitehurst on administrative leave solely on the basis of the recommendations set forth in your draft report. Your understanding is correct and I am writing to clarify my prior statement in that regard.

In a memorandum to Deputy Director Kennedy dated January 23, 1997, I recused myself from any Whitehurst-related disciplinary or administrative matters contained in the OIG report regarding the FBI Laboratory. Instead, I designated the Deputy Director to make or review all such decisions. It is my understanding that Deputy Director Kennedy based the decision to place Mr. Whitehurst on administrative leave on the following two grounds: (1) the FBI's receipt of notice in your draft findings that you intend to recommend that the FBI consider whether Mr. Whitehurst can continue to usefully serve the FBI in any capacity; and, (2) Mr. Whitehurst's refusal to answer questions, in direct contravention of an order to cooperate by an FBI Acting Assistant Director, with regard to an investigation into allegations that Mr. Whitehurst, without authorization, disclosed official information to the media.

We maintain that either of these grounds, standing alone, suffices to justify the temporary personnel action with respect to Mr. Whitehurst. However, as you know, the Department of Justice advised against taking any action concerning Mr. Whitehurst's refusal to cooperate with the leak investigation until you issued your draft report on the Laboratory investigation. Therefore, upon review of your draft findings with respect to

Mr. Whitehurst, we notified your office that the FBI would be placing Mr. Whitehurst on administrative leave. As we advised Mr. Whitehurst in a letter dated January 24, 1997, this action did not constitute an adverse action, did not indicate inappropriate conduct on his part, and did not involve any loss of pay. However, because your draft findings put the FBI on notice of potentially serious problems with respect to Mr. Whitehurst and other Laboratory employees, the FBI would have been remiss had it failed to take temporary actions with respect to these individuals.

We received your draft report on the FBI Laboratory on January 21, 1997. On January 24, 1997, after reviewing your findings and recommendations, the FBI temporarily reassigned two Laboratory employees to positions outside the Laboratory, temporarily reassigned one employee within the Laboratory, and placed one employee, Mr. Whitehurst, on administrative leave with pay. You indicate in your letter that, at a meeting on January 21, 1997, you expressed opposition to the decision to place Mr. Whitehurst on administrative leave. I understand this topic was only briefly addressed and that the discussion moved on to other topics, which may account for why both Mr. Maddock and Mr. Collingwood do not recall your comments on this issue. Furthermore, as you concede in your letter, you did not respond to the Deputy Director's memorandum dated January 24, 1997, in which he informed the Deputy Attorney General that Mr. Whitehurst would be placed on administrative leave that afternoon.

Finally, you are correct that the draft report does not specifically recommend that Mr. Whitehurst be placed on administrative leave. I did not intend to imply that to the Subcommittee. However, it is significant that, after a 17-month investigation of the Laboratory, Mr. Whitehurst is the only FBI employee whose suitability for continued employment you question. Your findings also make clear that the majority of Mr. Whitehurst's allegations are unfounded and that he is often unable to distinguish fact from conjecture. I believe that the Subcommittee would have considered your draft findings with regard to Mr. Whitehurst helpful in balancing your testimony before them on February 26, 1997, that "[w]e have found substantial problems based on the allegations that Dr. Whitehurst made to us."

In order to clarify the entire record, I recommend that we provide the Subcommittee Chairman and Ranking Minority Member with your draft findings concerning Mr. Whitehurst in executive session and request that the findings be treated confidentially. I believe a fair reading of these findings supports Deputy Director Kennedy's decision to place Mr. Whitehurst on administrative leave with pay pending the finalization of your report on the FBI Laboratory and our review of that report to the extent it concerns Mr. Whitehurst's employment.

I appreciate your having provided me with an opportunity to address your concerns.

Sincerely,

LOUIS J. FREEH,  
*Director.*

U.S. DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION,  
*Washington, DC, March 11, 1997.*

Hon. HAROLD ROGERS,  
*U.S. House of Representatives, Chairman, Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations, Washington, DC.*

DEAR MR. CHAIRMAN: Enclosed please find a letter to me from Michael R. Bromwich, Inspector General, Department of Justice, dated March 6, 1997, as well as my response to that letter.

As indicated by Mr. Bromwich, my testimony before the Subcommittee on March 5, 1997 was incomplete with regard to the decision to place Frederic Whitehurst on administrative leave. Although I recused myself from any Whitehurst-related disciplinary or administrative matters, I understand from former Deputy Director Kennedy that he based the decision to place Mr. Whitehurst on administrative leave on two grounds: (1) the FBI's receipt of notice in Mr. Bromwich's draft findings that he intends to recommend that the FBI consider whether Mr. Whitehurst can continue to usefully serve the FBI in any capacity; and, (2) Mr. Whitehurst's refusal to answer questions, in direct contravention of an order to cooperate by an FBI Acting Assistant Director, with regard to an investigation into allegations that Mr. Whitehurst, without authorization, disclosed official information to the media. In response to Subcommittee questioning, I failed to include the second basis for Deputy Director Kennedy's decision. I have submitted an amendment to the record in this regard.

In light of the Subcommittee's concerns regarding the decision to place Mr. Whitehurst on administrative leave, I believe that Mr. Bromwich's draft findings with respect to Mr. Whitehurst should be provided to you in full. As you can see from the enclosed correspondence, I have urged Mr. Bromwich to share his draft findings with you in executive session in order to clarify the record and explain one of the underlying bases for the FBI's temporary action with regard to Mr. Whitehurst. Mr. Bromwich objects to providing you with these draft findings and has directed that I not quote from them in testimony or correspondence with the Subcommittee.

I appreciate the opportunity to clarify my prior testimony and look forward to providing you and the Subcommittee members a thorough briefing following the release of Mr. Bromwich's final report on the FBI Laboratory.

Sincerely,

LOUIS J. FREEH,  
*Director.*

Mr. GRASSLEY. Mr. President, to begin with, Mr. Freeh, in his letter to the IG—just as Mr. Kennedy did with me—believes that he can interpret the IG's report better than the IG can. He is saying to the IG, in effect, "I don't care what you meant to say about Dr. Whitehurst. I care about what you said." He then plays a game of semantics and interprets the IG report as he wishes, not as the IG intended.

Then, elsewhere in the letters, Mr. Freeh takes a few pot shots at Dr. Whitehurst and at the IG. I understand why he would take pot shots at the IG. After all, the IG did an independent investigation of the crime lab. He apparently, according to news accounts, found credibility in many of Dr. Whitehurst's allegations. And that contradicts the FBI's own findings, which were nothing more than a whitewash of the exact same allegations. And the whitewash was done under this current director, Director Freeh. And Director Freeh personally signed off on the review. So, yes, I understand what would motivate the FBI Director to go after the IG.

But it is less clear why Mr. Freeh, before a subcommittee of Congress and later under his own signature, would go after Dr. Whitehurst. Why would the

FBI Director involve himself, by misleading the public and the subcommittee, in an attack on Dr. Whitehurst? After all, Mr. Freeh recused himself from matters dealing with Dr. Whitehurst. Last week, I released the document showing the recusal.

What kind of recusal is this? Is this part of a Kafka novel? Now, everyone in the entire Justice Department, including the FBI, knows how the FBI Director feels about Dr. Whitehurst. When decision-time comes to fire or retain Dr. Whitehurst, everyone has the message, directly from the FBI Director, regarding what he thinks about Dr. Whitehurst.

Finally, Mr. President, since I am on the subject of misleading. On March 5, the same day Mr. Freeh misled the Nation and the subcommittee on the IG report, he misled the public in another way. He announced in a press release the enhancement of a more independent Office of Professional Responsibility, or OPR. The new head of OPR would report directly to Mr. Freeh and his deputy.

But how can it be independent? It reports directly to Mr. Freeh and his deputy. Am I again reading one of Kafka's novels? Think of how reassuring the new, independent OPR is for Dr. Whitehurst, given what the Director said about him this past week.

The one truism that I have uncovered in all this, Mr. President, is this: The FBI has shown, beyond a shadow of a doubt, that it cannot police itself. This institution—the U.S. Congress—has bent over backward over the years to give the FBI what it says it needs. We have done it in good faith. We have done it without performing the necessary oversight. We put too much trust in the FBI. The FBI has squandered our trust.

In the coming weeks and months, I will attempt to show that, at the expense of fighting crime effectively, the FBI has engaged in a colossal campaign to build its empire. They have done it right under the noses of our oversight committees, the Judiciary Committees—of which I have been a member since I came to the Senate.

What the FBI needs is a good dose of oversight. They need to be reined in. There needs to be more independent oversight of their management. There needs to be more accountability of their budget, which has grown too large too quickly.

The FBI's leadership has come under fire because of its response to problems that have surfaced. It has chosen to mislead rather than acknowledge. That tells me, the Bureau is more worried about its image than its product.

Until the FBI acknowledges it cannot police itself, and works with Congress to establish more and better oversight, the FBI's leaders will keep taking heavy criticism from Capitol Hill.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of a letter from Dr. Whitehurst's attorneys to Director Freeh, dated

today, taking the Director to task for his testimony and correspondence. I believe this letter will provide the necessary context for the public to judge whether Mr. Freeh's pot shots were fair.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

KOHN, KOHN & COLAPINTO, P.C.,  
ATTORNEYS AT LAW,  
Washington, DC, March 17, 1997.

Hon. LOUIS J. FREEH,  
Director, Federal Bureau of Investigation, U.S.  
Department of Justice, Washington, DC.

DEAR DIRECTOR FREEH: We have read with great interest your letters dated March 11, 1997 sent to Mr. Michael R. Bromwich, the Inspector General ("IG") of the U.S. Department of Justice ("DOJ") and the Honorable Harold Rogers, Chairman, U.S. House of Representatives Subcommittee on Commerce, Justice, State, and Judiciary of the Committee on Appropriations, respectively. These two letters directly concern our client, Dr. Frederic Whitehurst, Supervisory Special Agent, Federal Bureau of Investigation ("FBI"), and relate to testimony you provided to the Subcommittee on March 5, 1997.

As a threshold matter, we understood that you had recused yourself from involvement with any administrative action concerning Dr. Whitehurst's employment with the FBI or his whistleblower allegations that have been investigated as part of the DOJ IG "Whitehurst Review." Nonetheless, by publishing your opinions concerning Dr. Whitehurst to a wide national audience, by providing testimony about his employment status and by requesting an executive session with a committee of the U.S. Congress to discuss matters related to Dr. Whitehurst, you clearly have not recused yourself from these matters. Furthermore, we were informed by a member of the news media prior to your testimony that you intended to answer questions concerning the actions the FBI took regarding Dr. Whitehurst. Thus, your comments about Dr. Whitehurst do not appear to have been spontaneous or accidental.

By widely publishing your very negative opinions about Dr. Whitehurst you have called into question the effectiveness of any purported "recusal" in matters related to the FBI crime lab or Dr. Whitehurst's employment.

In your letter to Mr. Bromwich you have deliberately distorted and published selected "draft" findings of the Inspector General in a manner clearly intended to discredit Dr. Whitehurst. You have alleged that the IG has concluded that "the majority of Mr. Whitehurst's allegations are unfounded and that he is often unable to distinguish fact from conjecture."

We highly doubt that the IG reached such conclusions or whether such conclusions will be contained in any final report issued by that office. Our review of more than 10,000 pages of documents released by the FBI pursuant to a court order and other publicly available materials related to the IG report, demonstrate that the vast majority of Dr. Whitehurst's major allegations have been fully substantiated. These include, but are not limited to, the allegation about misconduct in the Judge Hastings matter, major problems in the handling of evidence in the Oklahoma City Bombing matter, major problems in the FBI lab work and testimony in the World Trade Center Bombing matter, confirmation that Dr. Whitehurst's reports have been illegally altered and that illegally altered lab documents have been used as evidence in courts of law, confirmation that in a case you prosecuted the FBI Crime Lab did

not follow proper protocols or properly evaluate the evidence, the withholding of exculpatory evidence in the case of the bombing of an airliner, confirmation that the contamination of the FBI Lab with the explosive residue PETN was not properly addressed, confirmation that your subordinates took adverse action against Dr. Whitehurst based on his lawful testimony in the World Trade Center case and his lawful actions of filing allegations of misconduct with the Department of Justice and confirmation that you were fully aware that the FBI crime lab could not meet the minimum standards of accreditation one year before the Oklahoma City Bombing tragedy occurred.

In regard to your statement that Dr. Whitehurst could not "distinguish fact from conjecture," the fact that many of his most important allegations have been fully validated belies this point.<sup>1</sup>

We are very distressed at your apparent ignorance of the controlling FBI regulations and Executive Orders which govern Dr. Whitehurst's whistleblowing activities. As you should be well aware, in order to encourage employee whistleblowing, these regulations actually provide for and require the reporting of "conjecture."

We had assumed you were fully aware of Executive Order 12731 signed by President George Bush on October 17, 1990. This Executive Order, along with the published "supplementary information" interpreting this Order, were directly provided to every employee of the U.S. Department of Justice, including Dr. Frederic Whitehurst. In being provided a copy of this packet of information Dr. Whitehurst was informed that "These standards apply to all Department of Justice employees. Please read and retain them for future reference." Exhibit 1, U.S. Department of Justice, "This Package Contains Important Ethics Materials, The Executive Order On Conduct and the Standards of Conduct" (undated), attached hereto. As a loyal and dedicated public servant and federal law enforcement officer, Dr. Whitehurst read this packet of information. The Executive Order contained in the packet states as follows: "Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities." Ex. 1, quoting from Executive Order 12731, Part I Section 101(k) (emphasis added).

As you can see, under this Executive Order, Dr. Whitehurst was under a mandatory duty to report certain allegations to the "appropriate authorities." Pursuant to this obligation he in fact informed you and others within the FBI of very serious problems in the FBI crime lab. After the FBI failed to take action on these allegations Dr. Whitehurst fully informed the Inspector General of these allegations.

In regard to your purported concern over "conjecture," the DOJ packet also contained the explanatory notes concerning Executive Order 12731, Part I Section 101(k) which were written by the Office of Government Ethics ("OGE") and included as part of the final rule making governing the Executive Order. These comments make explicit what is implicit in the Executive Order, i.e., that federal employees had a duty to "overreport" indications of misconduct and that the appropriate authorities would determine whether allegations were "spurious." The OGE explained this reasoning as follows:

<sup>1</sup>As I am sure you are aware, Mr. James Maddock, FBI Deputy General Counsel, and the individual appointed to serve as the FBI's "point man" concerning matters related to Dr. Whitehurst, personally informed us on several occasions in late 1996 that the FBI knew the IG had validated many of Dr. Whitehurst's allegations and that the FBI either had or would take corrective action. Mr. Maddock's statements are at odds with your characterization of the IG's findings.

"Five agencies suggested changes to §2635.101(b)(11) [the OGE Code of Federal Regulations provision which incorporated the requirements of Executive Order 12731, Part 1 Section 101(k)], the principle requiring disclosure of fraud, waste, abuse and corruption. The recommendation by two agencies to change "shall" to "should" was not adopted. Section 2635.101(b)(11) is a verbatim restatement of the principle enunciated in the Executive order and the recommended substitution of precatory for mandatory language would change the principle. *The Office of Government Ethics does not share those agencies' concern that the principle will elicit frivolous reporting. The Government's interest in curbing waste, fraud, abuse and corruption is better served by overreporting than by underreporting, and the authorities to whom such disclosure are to be made can best determine the merits of allegations and ensure that harm does not result from any that are spurious.*"

Exhibit 1, quoting from Federal Register p. 35007 (emphasis added).

In addition, the OGE warned that agencies could not require employees to apply "complex legal principles" when determining whether to report potential "improprieties." *Id.* Thus Dr. Whitehurst, who read these regulations prior to filing any allegations with the Office of Inspector General, or the FBI for that matter, acted pursuant to mandatory authority when he reported potential violations of complex legal matters such as improper withholding of Brady information by the FBI and DOJ, potential perjury, the use of improper scientific procedures and the lack of scientific integrity at the FBI lab.

Thus, it is incumbent upon the Director of the FBI to insure that all FBI employees report any allegations of misconduct, and to err on the side of "overreporting" these kinds of concerns. We are very troubled that your office has not enforced the requirement that employees are under a mandatory duty to disclose indications of misconduct. Instead of strictly enforcing the law, you have publicly attacked Dr. Whitehurst for doing exactly what he was required to do under federal law.

Not only was Dr. Whitehurst required to report his concerns pursuant to Executive Order, the OGE regulations and the Department of Justice employee handbook, the FBI's own internal procedures regarding employee conduct required that Dr. Whitehurst report "any indication" of "possible" misconduct, whether proven or not, to the appropriate authorities. Section 1-22(c) of the FBI Manual of Administrative Operations and Procedures (MAOP) states as follows:

"Each employee has the responsibility to report promptly, any indication of possible exploitation or misuse of Bureau resources; information as to violations of law, rules or regulations; personal misconduct. . . ."

Exhibit 2, FBI MAOP Section 1-22 (emphasis added), attached hereto.

Once again, it is clear that Dr. Whitehurst had to report unproven and "possible" "indications" of misconduct to the appropriate authorities. It is fundamentally wrong for you to challenge his right to "overreport," and ridicule his allegations as "conjecture" in the face of these legal mandates and in the face of the severe crisis that has gone unaddressed within the crime lab. To make matters even worse, you were fully aware of many of these problems in 1994, yet you failed to approve an independent review of these matters and failed to correct these problems.

In your March 11th letter to Mr. Bromwich you also state that Dr. Whitehurst could have been placed on leave as a result of his "refusal to answer questions, in direct contravention of an order to cooperate by an FBI Acting Director, with regard to an in-

vestigation into allegations that Mr. Whitehurst, without authorization, disclosed official information to the media." Once again, your characterization of events is neither complete nor accurate. Dr. Whitehurst was asked to answer questions concerning an investigation conducted by the Inspector General about an alleged leak of information to a journalist. Dr. Whitehurst was originally informed that his cooperation with this investigation was completely voluntary. Specifically, the Special Investigative Counsel assigned by the IG to conduct the investigation stated that the interview would be "voluntary" and that Dr. Whitehurst could "terminate" the interview "at any time." Exhibit 3, Hutchison to Kohn, February 13, 1996, attached hereto. The fact that this interview was originally scheduled as a "voluntary" interview is consistent with the manner in which the IG conducted its interviews during the course of the IG's "Whitehurst Review." Documents reviewed by Dr. Whitehurst's counsel demonstrate that FBI employees were informed by the IG of their right to refuse to answer questions and the fact that such refusal would not result in any adverse actions.

Unfortunately, the FBI issued an instruction that Dr. Whitehurst could not fully communicate with his private attorneys concerning the proposed interview. This instruction was clearly retaliatory, unconstitutional and illegal. The DOJ was informed that as long as this instruction stood, we would instruct our client not to answer any questions and that the government's restriction on Dr. Whitehurst's communications with his private counsel would be challenged in federal court. Exhibit 4, Cochran and Kohn to Reno (March 27, 1996) attached hereto.

On March 19, 1996, after the FBI was informed of our objections to the improper restrictions on Dr. Whitehurst's communications with counsel, and after Dr. Whitehurst had been informed that the interview would be "voluntary," the FBI Acting Assistant Director ordered Dr. Whitehurst to "appear" and answer questions on a mandatory basis. Exhibit 5, Thompson to Whitehurst (March 19, 1996), attached hereto. This order was issued almost three weeks after the FBI was informed of our objections and position regarding the government's interference with Dr. Whitehurst's communications with counsel.<sup>2</sup> See, Ex. 4.

Unfortunately, your letters of March 11th are not the first time you have treated Dr. Whitehurst in a disrespectful fashion. In 1994, after Dr. Whitehurst contacted your Office of General Counsel and, in good faith, attempted to communicate his concerns about the crime lab, the Office of General Counsel, with your specific concurrence, ridiculed him as a "perfectionist" who "refuses to compromise or be realistic about his expectations of the LD [Laboratory Division]". Memorandum of May 26, 1994, initialed by FBI General Counsel H.M. Shapiro. These types of derogatory characterizations are inconsistent with the regulations governing FBI employee-whistleblowing. It is highly unprofessional for the FBI to personally deride an individual who had the courage to come forward and point out problems within

<sup>2</sup>Notably, a subsequent attempt by the FBI to force Dr. Whitehurst to answer hostile questioning by arbitrarily switching a voluntary interview to a mandatory one was enjoined by court order. In September, 1996 the FBI once again ordered Dr. Whitehurst to submit to a mandatory interview and provide information to a prosecutor. The retaliatory nature of that instruction was so obvious that a U.S. District Court Judge issued a temporary restraining order and a permanent injunction prohibiting the mandatory interview. Ex. 6, *U.S. v. McVeigh*, Orders of Judge Matsch (Sept. 12, 1996 and Oct. 29, 1996).

the crime lab. Frankly, we are shocked at the complete disrespect toward Dr. Whitehurst you have repeatedly shown or approved. Given the FBI's record in its dealings with Dr. Whitehurst we are not surprised that you objected to the IG's February 26, 1997 testimony confirming that the IG had "found substantial problems [at the FBI crime lab] based on the allegations that Dr. Whitehurst made to us." Freeh to Bromwich, p. 2 (March 11, 1997). The FBI's pattern of attacking Dr. Whitehurst and ignoring the real problems which exist in the crime lab are not consistent with the goals of law enforcement.

In your letter to Mr. Bromwich you suggest that Congress should be briefed in "executive session" about undisclosed issues related to Dr. Whitehurst. The inference you clearly intended to leave with any person who read this letter borders on blatant "McCarthyism". You suggest that Dr. Whitehurst engaged in misconduct which needed to be "treated confidentially." The facts indicate that the FBI's treatment of Dr. Whitehurst and its indifference in responding to his serious allegations will be recorded as one of the saddest chapters in law enforcement history.

In the future, if you intend to provide any member of Congress with a "confidential" briefing regarding Dr. Whitehurst, we hereby request that we be notified in advance of this briefing and that you request permission for Dr. Whitehurst's counsel to attend any such briefing and respond to the information you place before Congress.

Finally, your letters of March 11th referenced above were filed in violation of the Privacy Act and other applicable federal laws. We hereby request that you take immediate steps to correct the inaccurate information contained in your letters. Pursuant to the Privacy Act we also hereby request that a copy of this letter be sent to all persons to whom you provided a copy of your March 11th letters. In addition, pursuant to the Freedom of Information Act, 5 U.S.C. §552, the Privacy Act, 5 U.S.C. §552a and the February 5, 1997 Order issued by the Honorable Gladys Kessler in *Whitehurst v. FBI, et al.*, C.A. No. 96-572(GK) (D.D.C.) we hereby request immediate access to all documents directly or indirectly related to: (a) the subject matter of this letter; (b) all interactions with the U.S. Congress related to Dr. Whitehurst; (c) all notes concerning any conversations between the FBI and the DOJ IG; (d) all documents related to and a complete accounting of all disclosures of information made about Dr. Whitehurst from any FBI employee to any person outside of the FBI (including, but not limited to, the Director of the FBI, the FBI Deputy Director, Mr. Jim Maddock, Mr. Weldon Kennedy, the office of public affairs, of office of congressional affairs, the Acting Assistant Director, Laboratory Division and Mr. D.W. Thompson); (e) all documents in any manner related to the above-referenced March 11, 1997 letters signed by the FBI Director; and (f) all documents in any manner related to any briefing given by any FBI employee to any Member of the U.S. Congress, or any person employed by the U.S. Congress or a Member thereof.

We also request that fees be waived concerning our FOI/PA request because this information will significantly contribute to the public interest and the public's understanding of the operation of its government. In addition, we request that this FOIA and Privacy Act request be expedited given the intense public interest in these matters.

Thank you in advance for your prompt attention. We expect full compliance with the

FOIA and Privacy Act requests contained herein within ten days.

Sincerely yours,

STEPHEN M. KOHN,  
MICHAEL D. KOHN,  
DAVID K. COLAPINTO,  
*Attorneys for Dr. Whitehurst.*

Mr. GRASSLEY. Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HAGEL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### APPOINTMENT OF AN INDEPENDENT COUNSEL TO INVESTIGATE ALLEGATIONS OF ILLEGAL FUNDRAISING

The Senate continued with the consideration of the joint resolution.

Mr. HAGEL. Mr. President, I rise today in support of Senate Joint Resolution 22, asking that an independent counsel be appointed to investigate the alleged illegal fundraising activities in the 1996 Presidential campaign.

It is in the best interest of both the Nation and the Congress that an independent counsel be appointed. In light of the continued severity of the allegations that arise on a nearly daily basis, this is the only way to properly investigate wrongdoing and prosecute where laws were broken. The requests for an independent counsel have been bipartisan. I have twice written Attorney General Janet Reno and asked that an independent counsel be appointed. To date, I have not received a reply.

We need an independent counsel to supplement congressional hearings. Only an independent counsel has the power to bring charges against those alleged of breaking the law. Congress will investigate, as we should—that is our responsibility—but we need someone looking into this with the ability to prosecute.

I also fear whether Congress will be able to bear the entire responsibility for investigating these alleged campaign finance abuses and still act on the important issues awaiting our attention. We were elected by the people to address the challenges facing America. We were elected to solve problems.

As we look forward to the 21st century, America is faced with serious challenges. Domestically, we must come to terms with our Federal budgetary problems, our national debt, the burden of taxes and regulations, the threat of crime, the explosive growth projected in entitlement programs. Internationally, we need to reshape a foreign policy, a foreign policy that will guide us through the uncharted and potentially treacherous waters of the post-cold-war era. This is a time of great hope, a time of great promise for the world. The fulfillment of this hope

and promise will come only if America demonstrates bold, imaginative leadership, leadership that seizes the moment.

Determining the direction our Nation will take beyond the year 2000 is a very critical debate, one that all the Nation should be involved with. The issues involved require and deserve the full attention of this body. We must not be held hostage by partisan bickering over campaign finance investigations and daily allegations of political wrongdoing.

For example, Medicare's slide into bankruptcy will not wait for a determination of whether campaign finance laws were broken in last year's Presidential campaign. Action needs to be taken now to save Medicare, or America's seniors will pay the price.

If we allow the poison of political retribution and revenge to dominate the Congress, we will never be able to work together on these very important issues. The congressional hearings are important. Surely they are important. Surely they must go forward. But we need to get to the bottom of this mess. At the same time, we cannot allow these hearings to overshadow the present challenges facing this body.

Political leaders frequently express their dismay at the lack of confidence and trust the American people have in them and in all political institutions. However, we bring it on ourselves when the image we present to the American people is one of constant partisan wrangling and bitter accusations.

When we allow our system to become polarized and paralyzed, the American people have to wonder who is on the job, who is looking out for their interests, who is governing America.

The American people are tired of the lack of civility and the inflammatory rhetoric that too frequently dominate the political discourse in Washington. They are tired of the gridlock that results when both ends of Pennsylvania Avenue put political considerations before the Nation's business. The American people want action. They want their elected representatives to give their full attention to the challenges facing this country. They deserve nothing less.

The destiny and legacy of our people is that we have always risen to meet the challenges put before us. As we lead America and the world into the 21st century, we must build on this legacy. Big challenges lie ahead. We fail our children and the children of the world if we allow ourselves to become bogged down in political intrigue and fail to address these important issues now.

Criminal investigations should be taken out of politics. Prosecuting wrongdoing should be done without regard to politics. The Attorney General needs to appoint an independent counsel now.

I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. COLLINS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. AL-LARD). Without objection, it is so ordered.

#### REPORT RELATIVE TO THE EMERGENCY WITH RESPECT TO IRAN—MESSAGE FROM THE PRESIDENT—PM 22

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

##### *To the Congress of the United States:*

I hereby report to the Congress on developments concerning the national emergency with respect to Iran that was declared in Executive Order 12957 of March 15, 1995, and matters relating to the measures in that order and in Executive Order 12959 of May 6, 1995. This report is submitted pursuant to section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c) (IEEPA), section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa-9(c). This report discusses only matters concerning the national emergency with respect to Iran that was declared in Executive Order 12957 and does not deal with those relating to the emergency declared on November 14, 1979, in connection with the hostage crisis.

1. On March 15, 1995, I issued Executive Order 12957 (60 *Fed. Reg.* 14615, March 17, 1995) to declare a national emergency with respect to Iran pursuant to IEEPA, and to prohibit the financing, management, or supervision by United States persons of the development of Iranian petroleum resources. This action was in response to actions and policies of the Government of Iran, including support for international terrorism, efforts to undermine the Middle East peace process, and the acquisition of weapons of mass destruction and the means to deliver them. A copy of the order was provided to the Speaker of the House and the President of the Senate by letter dated March 15, 1995.

Following the imposition of these restrictions with regard to the development of Iranian petroleum resources, Iran continued to engage in activities that represent a threat to the peace and security of all nations, including Iran's continuing support for international terrorism, its support for acts that undermine the Middle East peace process, and its intensified efforts to acquire weapons of mass destruction. On May 6, 1995, I issued Executive Order 12959 to further respond to the