



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

July 21, 2020

Zoe Tillman
zoe.tillman@buzzfeed.com

Subject: Freedom of Information/Privacy Act Request [20-OIG-211]

Dear Ms. Tillman:

This responds to your Freedom of Information Act request to the Office of the Inspector General (OIG). Specifically, your request seeks the OIG report related to the Investigative Summary entitled: "Finding of Misconduct by a then Assistant United States Attorney for Conduct Prejudicial to the Government and Attempted Misuse of Position."

The report responsive to your request has been reviewed. It has been determined that certain portions of such report be excised pursuant to the Freedom of Information Act, 5 U.S.C. §552(b)(6) and (7)(C). Consequently, please find enclosed that information which can be released pursuant to your request.

If you are not satisfied with OIG's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552 (2012 & Supp. V 2017). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You may contact our FOIA Public Liaison, Deborah Waller, at (202) 616-0646 for any further assistance with your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services,

National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at 1-877-684-6448.

Sincerely,

Jeanetta M. Lee

Jeanetta M. Lee
Government Information Specialist
Office of the General Counsel

Enclosure

SUBJECT [REDACTED] Assistant United States Attorney (Former) [REDACTED]		CASE NUMBER [REDACTED]	
OFFICE CONDUCTING INVESTIGATION Dallas Field Office		DOJ COMPONENT Executive Office for United States Attorneys	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office DFO <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 or Department) Office of the Inspector General (OIG) initiated this investigation after receiving information from the Executive Office for United States Attorneys (EOUSA) alleging that [REDACTED], then Assistant U.S. Attorney (AUSA) [REDACTED], was arrested by the [REDACTED] Police Department [REDACTED] for Driving Under the Influence (DUI) while off-duty. The information further alleged that [REDACTED] was extremely belligerent, argumentative, and non-compliant with jail officials at the [REDACTED] County Sheriff's Office [REDACTED] during the booking process. Lastly, the information also alleged that [REDACTED] was "seemingly trying to use his official position to avoid any adverse action taken against him."

The OIG investigation substantiated that during the DUI arrest, [REDACTED] displayed conduct unbecoming a federal employee when he was intermittently verbally abusive, non-compliant, and threatening towards the arresting officers and jail officials. Furthermore, the OIG substantiated that [REDACTED] misused his position when (1) he suggested to the arresting officers that he be released after they learned he was a federal prosecutor; and (2) he attempted to gain favorable treatment at the jail by threatening to sue, prosecute or cause jail officials to lose their jobs after it was communicated to them that he was a federal prosecutor.

The OIG interviewed nine law enforcement officials, including the [REDACTED] arresting officers and [REDACTED] jail officials, as well as a U.S. Department of Homeland Security (DHS) employee who was present at the jail during the booking and intake process. All of the witnesses corroborated that [REDACTED] was intermittently verbally abusive to either them or their colleagues and that he called many of them derogatory names, including homophobic slurs. The witnesses also stated that [REDACTED] either threatened to sue many of them, or cause them to lose their jobs. The witnesses further stated that [REDACTED] became non-compliant with commands and he tried to provoke some of the officers to physically strike him.

DATE	March 3, 2020	SIGNATURE	[REDACTED]
PREPARED BY SPECIAL AGENT			
DATE	March 3, 2020	SIGNATURE	ROBERT BOURBON
APPROVED BY SPECIAL AGENT IN CHARGE		Robert A. [Signature]	Date: 2020.03.03

The OIG obtained and reviewed both the video and audio recordings from the body cameras of the [REDACTED] arresting officers and the [REDACTED] video footage (without audio) from the jail. These reviews revealed that [REDACTED] was verbally abusive and mildly uncooperative towards his arresting officers and then became increasingly non-compliant at the jail. When [REDACTED] was first arrested, he told the officers that the arrest would cause him to lose his job. He then stated that he was an attorney and that he practiced civil law. At one point during the transport, he asked the arresting officers if they could instead take him home and they declined. It was not until later in the transport and only in response to direct questioning from the arresting officers regarding his employment that [REDACTED] identified himself as a federal prosecutor. Immediately after this exchange [REDACTED] did not request anything from the arresting officers. [REDACTED] did articulate a fear for his personal safety at the jail as a result of his being a prosecutor. The OIG's review of the jail video footage revealed that [REDACTED] appeared to argue with jail officials and physically resist their control techniques.

The arresting officer also stated [REDACTED] made repeated attempts to have them let him go after [REDACTED] had made his position as an AUSA clearly known to them once their body cameras were turned off upon arrival at the jail. Prior to [REDACTED] arrival, the supervisor at the jail was made aware that [REDACTED] was a federal prosecutor. Witnesses told the OIG that [REDACTED] was profane and verbally abusive toward them, and that [REDACTED] threatened to either sue them, prosecute them, or have them terminated. [REDACTED] also made statements witnesses believed were intended to intimidate them, such as, "Don't you know who I am?"

During the investigative process, the OIG contacted [REDACTED], through his attorney, [REDACTED], in an attempt to conduct a voluntary interview; however, [REDACTED] attorney advised that [REDACTED] already submitted his DOJ resignation to take effect [REDACTED], and that he declined to be interviewed. While the OIG has the authority to compel testimony from current Department employees, the OIG does not have the authority to compel or subpoena testimony from former Department employees, including those who retire or resign during the course of an OIG investigation.

[REDACTED] was charged with DUI, a misdemeanor violation [REDACTED]. [REDACTED], [REDACTED] pleaded guilty to DUI and his sentencing was deferred [REDACTED], during which time he will be under court-ordered supervision, participate in a drug and alcohol assessment, and have a breath analyzer attached to his vehicular ignition system for six months. The OIG did not develop evidence of other criminal conduct (apart from the DUI violation) to present for prosecution.

[REDACTED] resigned from his position with the Department effective [REDACTED].

The OIG has completed its investigation and all administrative actions are complete. The OIG is providing this report to EOUSA and to the Department's Office of Professional Responsibility for their information.

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

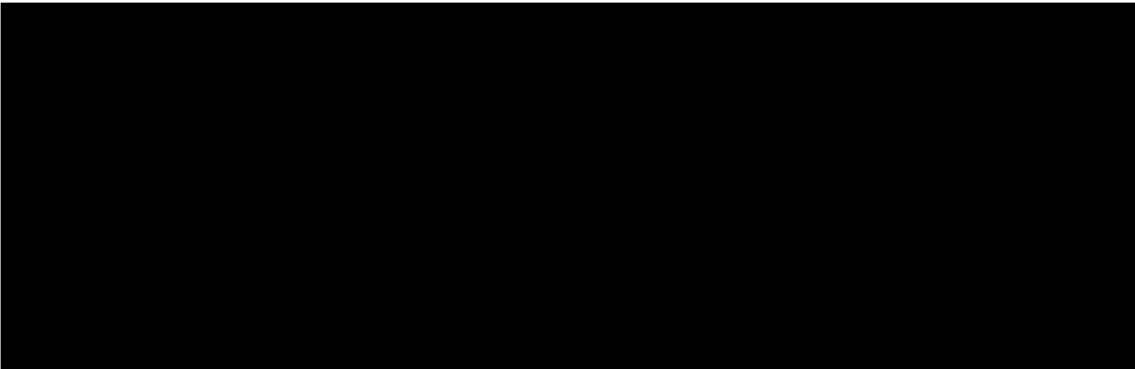
The Department of Justice (DOJ or Department) Office of the Inspector General (OIG) initiated this investigation after receiving information from the Executive Office for United States Attorneys (EOUSA) alleging that [REDACTED], then Assistant U.S. Attorney (AUSA) [REDACTED] [REDACTED] was arrested by the [REDACTED] Police Department [REDACTED] for Driving Under the Influence (DUI) while off-duty. The information further alleged that [REDACTED] was extremely belligerent, argumentative, and non-compliant with jail officials at the [REDACTED] County Sheriff's Office [REDACTED] during the booking process, lastly, the information also alleged that [REDACTED] was "seemingly trying to use his official position to avoid any adverse action taken against him."

The OIG investigation only involved the allegations regarding [REDACTED] off-duty arrest, [REDACTED] verbal abuse of and threatening statements towards law enforcement officials during the booking process, and his misuse of position. The OIG did not investigate the DUI arrest of [REDACTED]

Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following personnel who witnessed [REDACTED] behavior following his arrest:



Review of the following:

- [REDACTED] report concerning the DUI arrest of [REDACTED] authored by [REDACTED]
- [REDACTED] audio and video footage from the body cameras worn by [REDACTED]
- [REDACTED] video (no audio available) from the cameras at the jail.

Background

The OIG learned that following [REDACTED] arrest for DUI on [REDACTED], he retained a local defense attorney to represent him in the DUI matter, [REDACTED] was contacted [REDACTED], through his attorney, but announced that he already submitted his resignation with the Department to take effect [REDACTED] and refused to submit to a voluntary OIG interview. While the OIG has the authority to compel testimony from current Department employees, the OIG does not have the authority to compel or subpoena testimony from former Department employees, including those who retire or resign during the course of an OIG investigation.

Verbally Abusive and Threatening Comments to Law Enforcement Officials

The information provided to the OIG alleged that [REDACTED] had been extremely belligerent towards jail officers and staff, using very profane language, calling many of the officials derogatory names, including homophobic slurs, and being very argumentative/non-compliant when requested to do anything during the booking/intake process.

The OIG reviewed 5 C.F.R. § 735.203, which states: “An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.”

All witnesses interviewed by the OIG similarly stated that at times [REDACTED] was verbally abusive to them or their colleagues, calling many of them derogatory names. All nine witnesses interviewed by the OIG heard [REDACTED] use the homophobic slur “faggot” directed toward them or their colleagues.

[REDACTED] told the OIG that during the arrest, [REDACTED] was fairly cooperative at first. [REDACTED] told [REDACTED] that he was a federal prosecutor and repeatedly told [REDACTED] that he could lose his job for being arrested. However, [REDACTED] did not articulate that he should not be arrested simply due to his position as an AUSA. [REDACTED] told the OIG that [REDACTED] made several derogatory comments towards him while using profanity repeatedly, calling him names like “dumb rookie,” “faggot,” and “retarded” for a period of approximately 10-15 minutes. [REDACTED] told the OIG that [REDACTED] was “agitated” during his breathalyzer test at the jail and continued to attempt to belittle him. At one point, [REDACTED] told [REDACTED] to sit down and [REDACTED] refused, asking “Are you going to make me?” and stating, “I wish you would hit me.” [REDACTED] eventually sat down without officers having to place their hands on him. [REDACTED] told [REDACTED] that he was being treated differently because he had an education.

[REDACTED] told the OIG that after [REDACTED] was pulled over for suspicion of DUI and was eventually arrested by her and [REDACTED], [REDACTED] was cooperative during the field sobriety test. When they arrived at the jail after they arrested [REDACTED], [REDACTED] became upset and began “cussing” at them. [REDACTED] mainly directed his statements toward [REDACTED] not [REDACTED]. [REDACTED] called [REDACTED] “stupid” and told [REDACTED] he was only arresting [REDACTED] because he was an attorney. [REDACTED] called [REDACTED] a “faggot” and a “pussy,” continued to use profanity, and sought to belittle [REDACTED] intelligence. [REDACTED] defied [REDACTED] verbal commands, but eventually complied without the use of force. [REDACTED] told the OIG that [REDACTED] did not threaten to have the jobs of [REDACTED] and [REDACTED], or tell them they would face any disciplinary action for arresting him.

[REDACTED] personnel, including [REDACTED], and [REDACTED], as well as [REDACTED], all reported hearing [REDACTED] call them or their colleagues a “retard” or “retarded.” [REDACTED] and [REDACTED] recalled [REDACTED] calling them or their colleagues a “bitch” or “bitches.” [REDACTED], along with [REDACTED], stated [REDACTED] became non-compliant with commands and verbally attempted to get some of the officers to physically strike him.

[REDACTED] told the OIG that [REDACTED] became upset while using the jail phone, threw his paper down containing his pin code provided by the jail to make phone calls, and said, “f this” or “f you.” [REDACTED] then told [REDACTED] to place his hands behind his back and [REDACTED] asked him if he was a “f-ing tough guy.” [REDACTED] then handcuffed [REDACTED]. [REDACTED] told the OIG that [REDACTED] refused to walk to the cell on his own, so [REDACTED] had to pull him to the cell. When they reached the cell, [REDACTED] refused [REDACTED] commands to go to his knees and told [REDACTED] to break his wrist. [REDACTED] told the OIG that [REDACTED] continued to say “no” when given commands and yelled curse words at the officers. When left alone in his cell, [REDACTED] immediately began to kick or bang on the cell

door, so they removed him from the cell and took him to a medical bench. [REDACTED] told the OIG that [REDACTED] continued to refuse his commands, so he escorted him walking backwards in an arm bar. [REDACTED] told [REDACTED] he would “sue his ass,” and asked [REDACTED] if he knew who he was.

[REDACTED] told the OIG that she also witnessed [REDACTED] throw down a packet of papers while making phone calls and yelling at [REDACTED]. [REDACTED] saw [REDACTED] handcuff [REDACTED] and heard [REDACTED] shout at the officers, saying things like, “fuck you faggots” and “stupid bitches.” [REDACTED] also told the OIG that [REDACTED] said, “I will prosecute every single one of you.” [REDACTED] witnessed [REDACTED] refuse verbal commands and heard [REDACTED] tell [REDACTED] to break his wrist during handcuffing. [REDACTED] told the OIG that [REDACTED] continued to defy verbal commands after he was placed on his knees and then stomach in the cell. After being left in the cell, [REDACTED] began pounding on the door. [REDACTED] was then brought out of the cell and taken to a medical bench as a safety precaution. [REDACTED] continued to refuse verbal commands, saying “fuck you” when given orders to sit, and officers had to physically force [REDACTED] to sit on the bench. [REDACTED] told the OIG that officers gave [REDACTED] multiple opportunities to comply with their commands because they knew who he was, but [REDACTED] continually refused and was non-compliant for most of the time she dealt with him.

[REDACTED] told the OIG that while [REDACTED] was explaining to [REDACTED] that he would need to begin wrapping up his phone calls, [REDACTED] got upset. [REDACTED] told [REDACTED] something like, “Do you know who the fuck I am?” [REDACTED] then threw down his pin code that allowed him to make phone calls and began shouting at [REDACTED]. [REDACTED] told the OIG that [REDACTED] handcuffed [REDACTED] because of his aggressiveness and escorted [REDACTED] to a holding cell. [REDACTED] told the OIG that [REDACTED] was yelling the word “faggot” a lot toward [REDACTED] and [REDACTED] and was generally talking badly to anyone he came in contact with at that point. [REDACTED] assumed [REDACTED] was threatening [REDACTED] job by stating things like, “Do you know who I am?” and “Wait until I get out.” [REDACTED] refused to follow verbal commands and was not cooperative. [REDACTED] told the OIG that [REDACTED] repeatedly used profanity such as the “f word.” [REDACTED] interacted with [REDACTED] for approximately 10-15 minutes and described [REDACTED] behavior during that time period as “non-compliant” and “very drunk.”

[REDACTED] told the OIG that before [REDACTED] arrived she had been told that a federal prosecutor was being brought into the jail. Upon his arrival, [REDACTED] reassured [REDACTED] that he would be in protective custody while at the jail. After medical screening and intake, [REDACTED] took [REDACTED] to the telephone area and told him how to contact a bail bondsman. [REDACTED] then went to her office, but returned to the telephone area a few minutes later after hearing [REDACTED] and [REDACTED] yelling near the phone when [REDACTED] was attempting to handcuff [REDACTED]. [REDACTED] told the OIG that [REDACTED] began calling [REDACTED] names like “faggot” and “retard,” and said, “Do you know who I am?” [REDACTED] also told the OIG that [REDACTED] refused commands to kneel in the cell and continued to antagonize [REDACTED] by saying things like “hit me, big boy” repeatedly. [REDACTED] began banging on the cell door immediately after the officers left him in the cell, so they took him out of the cell and brought him to a medical bench. [REDACTED] told the OIG that [REDACTED] refused to change out of his clothes and into a jail uniform, and again attempted to get officers to hit him. [REDACTED] told the OIG that [REDACTED] behavior was aggressive, uncooperative, belligerent, disrespectful, and uncooperative.

[REDACTED] told the OIG that he heard [REDACTED] call [REDACTED] a “faggot,” a “bitch,” and a “mother fucker.” [REDACTED] told the OIG that [REDACTED] was antagonistic to basically anyone he came in contact with. [REDACTED] refused [REDACTED] commands to give him his clothes when they were attempting to change him into the jail uniform. [REDACTED] told the OIG that he believed [REDACTED] first got upset while standing by the phone and that [REDACTED] wanted to continue using the phone. [REDACTED] told the OIG that he believed that [REDACTED] was attempting to “bait” all of the officers he came in contact with. [REDACTED] told [REDACTED] and the other officers that they were all “gay” when they made him change clothes. [REDACTED] told [REDACTED], “I’m going to have your fucking job,” without providing details. [REDACTED] told the OIG that he heard [REDACTED] tell [REDACTED] that he would “kick his ass.” [REDACTED] also told the OIG that [REDACTED] would not follow commands when the officers attempted to remove the handcuffs from him.

██████ told the OIG that he heard from other officers that ██████ was kicking the door and he was asked to go talk with ██████. When ██████ attempted to find out what had happened, ██████ began calling ██████ a “retard,” a “faggot,” and a “fat ass,” and asked him, “Do you know who the fuck I am?” ██████ told ██████ he was a federal prosecutor. ██████ told the OIG that he believed that ██████ first told the officers who he was so that he could be put in protective custody, but later told them that to make the officers scared of who he was. ██████ called ██████ and others names like “retard” and “faggot” repeatedly and used other profanity toward them. ██████ told the OIG that ██████ threatened him and his colleagues by stating, “You don’t know who you are messing with. I’m going to have all of your jobs.” ██████ told the OIG that ██████ was antagonizing him and attempting to have ██████ put his hands on him. ██████ squared off his body with ██████ and said something like, “Do you want to punch me?” ██████ ordered ██████ to his knees several times to put him in restraints and ██████ refused, stating that ██████ would have to make him. ██████ told the OIG that he placed ██████ in a wrist lock and then ██████ physically complied with his commands. ██████ told the OIG that ██████ “appeared very intoxicated and belligerent.”

The OIG obtained and reviewed video and audio recordings from the body cameras of the ██████ arresting officers and ██████ video footage (no audio available) from the jail. This revealed that ██████ was mostly compliant during the initial arrest by the ██████ and that ██████ became non-compliant at the jail when he refused to walk on his own. Following ██████ refusal to walk on his own, ██████ escorted ██████ backwards in handcuffs, while applying an arm bar, as they went from the cell to the medical bench. In segments of the jail video footage, ██████ appears to argue with jail officials and physically resist their control techniques, including by refusing to sit on the medical bench. In the video, officers are seen forcing ██████ to sit on the bench, ██████ immediately stands backup, and ██████ appears to shout at the officers.

OIG’s Conclusion

The OIG investigation substantiated the allegation that ██████ was verbally abusive and threatening toward law enforcement officials following his arrest, which was conduct unbecoming a federal employee and prejudicial to the government. *See* 5 C.F.R. § 735.203.

██████ Attempted Misuse of his Position

The information provided to the OIG alleged that ██████ was “seemingly trying to use his official position to avoid any adverse action taken against him.”

The OIG reviewed 5 C.F.R. § 2635.702, Use of public office for private gain, which states, in pertinent part: “An employee may not use his public office for his own private gain.” This regulation further provides that “[a]n employee shall not use . . . his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise, to himself . . .” 5 C.F.R. § 2635.702(a).

The OIG reviewed two separate matters concerning the alleged misuse of position by ██████ (1) ██████ reference to his position when attempting to have the arresting officers release him without charge prior to his arrival at the jail; and (2) ██████ reference to his position when making threatening and intimidating statements towards law enforcement officials at the jail in an attempt to gain favorable treatment by having fewer restrictions placed on him while in custody at the jail.

Concerning ██████ reference to his position prior to his arrival at the jail, the OIG’s review of the ██████ body camera footage showed that when ██████ was first told he was being arrested, ██████ told the arresting

officers ██████ that he was going to lose his job without specifying his occupation. ██████ then told the arresting officers that he was a lawyer who practiced civil law. Later, while being transported to the jail, ██████ asked if the arresting officers could take him home instead, and the arresting officers denied his request. Finally, while still being transported to the jail, ██████ fully identified himself as a federal prosecutor and AUSA, but did not immediately make any additional attempts to have the arresting officers let him go after doing so, and instead cited personal safety concerns about being housed with other inmates at the jail. For example, on the arresting officers' body camera footage ██████ can be heard saying, "I'm a federal prosecutor. I could get killed when I get to jail." ██████ told the OIG that ██████ later continued to make attempts to have them let him go. Although ██████ did not specifically articulate that he should be released because of his position as a federal prosecutor, ██████ told the OIG that he believed ██████ was using his position to get out of the arrest, rather than just out of fear for his safety because of the number of times ██████ mentioned his occupation and that fact that he would lose his job because of the arrest. ██████ told the OIG that ██████ said he was an attorney and that he could lose his job if he were arrested for a DUI. ██████ estimated that ██████ said more than five times that he could lose his job because of the arrest. ██████ told the OIG that she believed that ██████ let them know his position in order to tell them who he was and to instill fear in them. ██████ and ██████ both told the OIG that ██████ told them they were only arresting him and treating him this way due to his occupation and education level.

Concerning ██████ reference to his position at the jail, ██████ the on-scene supervisor at the jail, told the OIG that she was told ██████ was a federal prosecutor prior to his arrival and was prepared to place him in protective custody per the jail's standard protocol. Other witnesses at the jail, such as ██████ and ██████ told the OIG that they were informed that ██████ was a federal prosecutor prior to ██████ arrival. Additionally, several officers at the jail told the OIG that ██████ identified himself as a federal prosecutor while at the jail. For example, ██████ told the OIG that he heard ██████ repeatedly tell the officers that he was a federal prosecutor. ██████ and ██████ all stated that at the jail ██████ either threatened to sue them, prosecute them, or cause them to lose their jobs. For example, ██████ ██████ ██████ and ██████ told the OIG that ██████ became very agitated when he was told that it was time to get off the telephone and said, among other things, "Do you know who I am?" Similarly, ██████ told the OIG that when he explained to ██████ that it was standard procedure to change out of his street clothes, ██████ refused and said, "You don't know who the fuck I am. I am a federal prosecutor. You can't do this to me." ██████ further stated ██████ repeatedly told them he was a federal prosecutor and said, "You can't do this to me." You are abusing my rights." ██████ officials stated that ██████ was separated from the general population due to the nature of his position, but he did not receive special treatment that another official in a similar position would not have received.

OIG's Conclusion

The OIG investigation concluded that ██████ attempted to misuse his position to gain an advantage to which he was not entitled. Specifically, ██████ repeatedly asked the arresting officers to release him and verbally abused and threatened jail officials when he was asked to submit to normal prisoner protocols in an attempt to gain favorable treatment at the jail by having fewer restrictions placed upon him than other prisoners. When confronted with routine restrictions, such as limitations on telephone use, placement in a cell, and changing into the jail uniform, ██████ became belligerent and abusive and repeatedly stated things like, "Do you know who I am?" ██████ also threatened to sue, prosecute, or have the jobs of jail officials after it was clearly made known to them that ██████ was a federal prosecutor. This conduct was an attempt to use a public office, position, or title to coerce or induce another person to provide a benefit within the meaning of 5 C.F.R. § 2635.702.