

BOSTON'S CHIEF JUDGE: OPR ISN'T DOING ITS JOB

The Chief Judge in Boston just sent Michael Mukasey a letter suggesting DOJ's process for investigating and responding to misconduct from government prosecutors isn't working.

The chief federal judge in Boston has urged the new US attorney general to crack down on prosecutors who commit misconduct and to force Justice Department lawyers to be truthful in court.

Chief Judge Mark L. Wolf, in an extraordinary letter to Attorney General Michael B. Mukasey, skewered the Justice Department's mild and secret discipline of Assistant US Attorney Jeffrey Auerhahn in 2006 for misconduct that Wolf said required him to order the "release from prison of a capo and associate of the Patriarca family of La Cosa Nostra."

After a closed disciplinary hearing, US Attorney Michael J. Sullivan gave Auerhahn a letter of reprimand for withholding evidence while handling a racketeering case in the 1990s against members of the New England Mafia.

"The [Justice] Department's performance in the Auerhahn matter raises serious questions about whether judges should continue to rely upon the department to investigate and sanction misconduct by federal prosecutors," wrote Wolf, who last July, after expressing frustration with his punishment, took the unusual step of asking the Massachusetts Board of Bar Overseers to launch disciplinary proceedings against Auerhahn.

Wolf also wrote that "the department's failure to be candid and consistent with the court has become disturbingly common in the District of Massachusetts."

[snip]

Wolf wrote Mukasey that he hoped the Justice Department "will soon again discharge its duties in a manner that commands the trust of federal judges and the people of the United States." [my emphasis]

The rebuke is interesting not for the details surrounding Auerhahn's misconduct (though I am concerned that Auerhahn has been assigned to the antiterrorism unit, since terrorism prosecutions are already prone to misconduct in Bush's post-9/11 nightmare), but for the way it relates to several other recent events:

- DOJ Inspector General Glenn Fine has argued to Congress that DOJ's continued use of the Office of Professional Responsibility to investigate legal wrongdoing subjects lacks transparency and exposes such investigations to political influence
- OPR has a number of important ongoing investigations—including the investigation of whether OLC violated legal ethics in its advice regarding Bush's illegal wiretap program
- In developments that seem to be associated with the torture tape destruction,

D0J recently got caught lying to Leonie Brinkema in the Moussaoui case

In other words, Judge Wolf is not the only one who believes the government is acting improperly. And the suggestion that OPR is not doing its job to punish legal wrong-doing ought to raise real concerns about OPR's more high-profile investigations.

And, just to pre-empt Looseheadprop's mention of this, here are some pertinent words from James Comey's farewell speech (which, incidentally, D0J appears to have moved or taken off their website [Update: Thanks to MadDog for finding a copy]).

Fifth, and last, I expect that you will appreciate and protect an amazing gift you have received as an employee of the Department of Justice. It is a gift you may not notice until the first time you stand up and identify yourself as an employee of the Department of Justice and say something – whether in a courtroom, a conference room, or a cocktail party – and find that total strangers believe what you say next.

- *That gift – the gift that makes possible so much of the good we accomplish – is a reservoir of trust and credibility, a reservoir built for us, and filled for us, by those who went before – most of whom we never knew. They were people who made sacrifices and kept promises to build*

that reservoir of trust.

- *Our obligation – as the recipients of that great gift – is to protect that reservoir, to pass it to those who follow, those who may never know us, as full as we got it.*
- *The problem with reservoirs is that it takes tremendous time and effort to fill them, but one hole in a dam can drain them. The protection of that reservoir requires vigilance, an unerring commitment to truth, and a recognition that the actions of one may affect the priceless gift that benefits all.*

It looks like Judge Wolf believes DOJ has sprung a hole in that dam. And I doubt he's the only one who thinks so.