



U.S. OFFICE OF SPECIAL COUNSEL

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The Special Counsel

December 2, 1999

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-97-1151

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report from The Honorable Roger C. Viadero, Inspector General, U.S. Department of Agriculture, sent to me pursuant to 5 U.S.C. §§ 1213(c) and (d). I transmitted the disclosure to The Honorable Daniel R. Glickman, Secretary of the Agriculture Department. Secretary Glickman delegated authority to Mr. Viadero to sign and review the report. The report sets forth the findings and conclusions of Mr. Viadero's review of disclosures of information allegedly evidencing an abuse of authority by officials at the U.S. Department of Agriculture (USDA), Foreign Agricultural Service (FAS), Mexico City, Mexico.

The whistleblower, Mr. James E. Patterson, provided comments to the agency report to this office, which I am also transmitting. We have carefully examined the original disclosures and reviewed the agency's response and Mr. Patterson's comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that the findings in the agency's report are reasonable and contain all of the information required by statute.

Specifically, Mr. Patterson alleged that in 1996, USDA officials engaged in an abuse of authority when they: searched Mr. Patterson's private living quarters without his consent; refused to permit him to return to Mexico City to retrieve his personal effects and property from his residence; and refused to provide him with the means to retrieve his automobile from Mexico City. Mr. Patterson stated that USDA officials "unfairly targeted" him for investigation because they perceived him to be the source of an "unauthorized release of information," and because he was sympathetic to the interests of the U.S. tomato industry in its trade dispute with Mexico.

In addition, Mr. Patterson provided a copy of a letter from Representative John L. Mica, to the USDA, Office of the Inspector General (OIG), in which Representative Mica requested that the OIG investigate a number of matters connected with Mr. Patterson's

allegations. In his letter, Representative Mica also raised concerns that Ambassador James R. Jones and Mr. Marivn Lehrer, Agricultural Trade Director may have been acting, or at least appeared to act, against United States interests during trade negotiations over the import of Mexican tomatoes.

On May 18, 1999, the Office of Special Counsel (OSC) requested a copy of the USDA reply to Representative Mica's inquiry, in order to assist it in its review of the matter. The OIG, however, advised OSC that any such requests must be accompanied by a subpoena. Therefore, I transmitted this information to Secretary Glickman for an investigation of the allegations described above and a report, pursuant to 5 U.S.C. §§ 1213(c) and (g).

According to the agency's report, the investigation findings did not support Mr. Patterson's claim of misconduct by Foreign Agricultural Service officials or the United States Ambassador to Mexico. The report stated that Mr. Patterson was evacuated from Mexico on July 16, 1996, for medical evaluation because he failed to maintain his medical treatment pursuant to his clearance requirements and because he had threatened the Agricultural Minister-Counselor. After arriving in Washington D.C., Mr. Patterson underwent a mental and physical examination. As a result of the examination, and the fact that the USDA Minister-Counselor and his staff "feared" Mr. Patterson, he was assigned a "Class 5 status." This status precluded Mr. Patterson from being posted to a duty station outside the United States. FAS determined that the decision to evacuate Mr. Patterson was directly related to health and safety issues and did not infringe on Mr. Patterson's rights or result in unfair treatment.

Because Mr. Patterson was unable to return to Mexico based on the assignment of the "Class 5 status," his personal effects, including his automobile, remained in Mexico and needed to be shipped back to Washington D.C. The report noted that pursuant to Foreign Service Manual regulations¹ GSA was authorized to make arrangements for the return of an employee's effects, including entering U.S. government property to pack an employee's private possessions. In reply to an inquiry from the Deputy Assistant Administrator, Mr. Patterson stated that his vehicle registration title was either in his car or apartment, thus, the employee assigned to witness the pre-pack survey was directed to look for the title.

During the pre-pack survey, a classified cable and sensitive internal Embassy documents, which contained information leaked to the press, were found at Mr. Patterson's residence. Soon thereafter, FAS investigated Mr. Patterson's culpability with respect to the documents found at his residence. As a result of the investigation, Mr. Patterson was charged with failure to safeguard a "confidential" document and with unauthorized release of "sensitive" yet unclassified information, in violation of Standards of Ethical Conduct and State Department procedures.

¹ 6 FAM §§ 182.1(11), (12), 172(2) and 178(C).

According to the report, “[i]n what was initially thought to be a matter unrelated to Mr. Patterson,” the FAS Administrator directed the FAS compliance staff to investigate a leak of sensitive internal Embassy documents concerning U.S./Mexico tomato trade issues on July 23, 1996. FAS stated that prior to the discovery of the documents at Mr. Patterson’s residence on August 9, 1996, Mr. Patterson was not a subject of the FAS investigation. The report indicated that the discovery of the documents was incidental to the authorized pre-pack survey and the search for the title to Mr. Patterson’s car.

With respect to the allegation that Mr. Lehrer inappropriately requested help from a Mexican tomato industry official to assist in the search for his missing daughter, the report explained that FAS’ Compliance Branch had investigated this allegation and the OIG reviewed the results of the investigation. The FAS Compliance Branch determined that contrary to Mr. Patterson’s belief, Mr. Lehrer did contact the proper authorities in a timely manner. Specifically, Mr. Lehrer contacted the U.S. Embassy and Mexican police authorities, as well as, the Mexican “tomato industry official,” to ask for help in locating his daughter. Shortly after Mr. Lehrer contacted the tomato industry official, he was notified by this acquaintance that his daughter had been located at a bus station.

The Agricultural Minister-Counselor advised that Mr. Lehrer’s request for help from the Mexican tomato industry official did not cause a conflict of interest or influence subsequent negotiations over the importation of Mexican tomatoes into the United States. Moreover, the report stated that Mr. Lehrer, in his capacity as Trade Director, “[d]id not deal with or have responsibility for trade policy issues.” The report concluded that the lengthy investigations, as well as research of relevant regulations and statutes, did not support a finding of misconduct by any FAS officials, other than Mr. Patterson.

In his comments, Mr. Patterson stated that he had problems with the information contained in the report. Mr. Patterson stated that he did not give approval for anyone to search his residence in Mexico. Mr. Patterson also denied that he had any classified documents at his residence, and he denied that he faxed “sensitive internal agency documents” to the press. In addition, Mr. Patterson stated in his comments that he never worked on the U.S./Mexican tomato trade dispute while he was at the Embassy. Finally, Mr. Patterson commented on his prohibited personnel practice complaint, a completely separate matter, which OSC closed on February 25, 1998, following the agency’s approval of Mr. Patterson’s disability benefits. While Mr. Patterson may disagree with the conclusions of the investigation, his comments do not provide additional evidence concerning any wrongdoing by FAS officials.

Pursuant to 5 U.S.C. § 1213(e)(2), I have concluded that the findings in the report are a reasonable response to the disclosure and meet the statutory requirements of section 1213(d). As required by section 1213(e)(3), I have sent copies of the report and Mr. Patterson’s comments to the Chairman of the Senate Committee on Agriculture, Nutrition, and Forestry

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and the Chairman of the House Committee on Agriculture. We have also filed a copy of the report and Mr. Patterson's comments in our public file and closed the matter.

Respectfully,



Elaine Kaplan

Enclosures