



U.S. OFFICE OF SPECIAL COUNSEL

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October 15, 2001

The Special Counsel

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

Re: OSC File Nos. DI-00-1814, DI-00-2108, DI-00-2083 and DI-00-2151

Dear Mr. President:

In accordance with 5 U.S.C. § 1213(e)(3), I am transmitting a report provided to me pursuant to 5 U.S.C. §§ 1213(c) and (d) by the Honorable Janet Reno, former Attorney General and a supplemental report from the Honorable Kevin D. Rooney, former Acting Commissioner of the Immigration and Naturalization Service. I am also transmitting supplemental responses from Ms. Dea Carpenter, Deputy General Counsel, and Mr. Owen Cooper, General Counsel, Immigration and Naturalization Service. The reports and supplemental response set forth the findings and conclusions of the former Attorney General and the former Acting Commissioner upon investigation of disclosures of information allegedly evidencing violations of law, rule, or regulation, gross mismanagement, a gross waste of funds and an abuse of authority by officials at the Department of Justice (DOJ), Immigration and Naturalization Service (INS), National Firearms Unit (NFU), Altoona, Pennsylvania.

The whistleblowers provided comments on the agency report to this office pursuant to 5 U.S.C. § 1213(e)(1). I am also transmitting those comments.

We have carefully examined the original disclosures and reviewed the agency's responses and the whistleblowers' comments. Pursuant to 5 U.S.C. § 1213(e)(2), I have determined that certain aspects of the agency's findings—particularly its decision to take no disciplinary or other action against the primary subject of the investigation before he retired, and its decision not to refer the case to the U.S. Attorney for consideration of possible criminal prosecution—do not appear reasonable.

The Whistleblowers' Disclosures

The National Firearms Unit, which is located in Altoona, Pennsylvania, serves as the central resource within INS for all aspects of its firearms program. It provides oversight of INS inventory of guns and ammunition, as well as maintenance and repair services, and disposes of all seized and excess firearms and ammunition. NFU is also responsible for maintaining the Firearms Inventory System and conducting Firearms Accountability Reviews.

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The whistleblowers are employees of NFU. They made numerous allegations of misconduct primarily concerning the actions of Mr. Gary Runyon, the former NFU Director. Mr. Runyon retired from his position on October 3, 2000. The whistleblowers' allegations are summarized below:

Allegation 1. Mr. Runyon regularly instructed the Training Specialist/Armorers (TSAs), to perform personal tasks for him during official time, using government equipment in violation of 5 C.F.R. §§ 2635.704 and 2635.705. In addition, when an employee questioned performing such tasks as cutting gun sight dovetails for 12 rifles belonging to Mr. Runyon and his friends, the employee was told by Mr. Runyon that his performance appraisal would be adversely affected if the work was not done.

Allegation 2. In March 2000, Mr. Runyon removed three gold-plated Winchester Model 94 lever-action rifles from the Historical Reference Vault for parts for his personal collection of Winchester lever-action rifles. Thereafter, he instructed three NFU employees to strip the parts from the rifles, destroy the receivers, and deliver the parts to him. The whistleblowers noted that spare rifle parts are stored in the armory but no one has seen the Winchester parts since they were delivered to Mr. Runyon.

Allegation 3. In March 2000, Mr. Runyon directed a TSA to make parts for an antique sewing machine that belonged to Ms. Karen Severn, Mr. Runyon's supervisor. According to the whistleblowers he directed the employee to take the machine apart and thoroughly clean it. It was alleged that two NFU employees performed these tasks during official time.

Allegation 4. In January 2000, Mr. Runyon transported his wife to and from the airport in a government-owned vehicle.

Allegation 5. In January 2000, Mr. Runyon used INS Federal Express labels to ship a lever-action rifle he purchased for his private gun collection from Las Vegas to Pennsylvania.

Allegation 6. In 1995, Mr. Runyon used a government vehicle to deliver furniture to his son in Washington, D.C.

Allegation 7. In 1995, Mr. Runyon used a government truck to move his personal firearms and black powder from his residence in Virginia to his new residence in Pennsylvania.

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Allegation 8. In 1995, Mr. Runyon stored his Corvette sports car in the NFU garage for 6 months because he did not have anywhere else to store it.

Allegation 9. Mr. Runyon frequently gave NFU employees ammunition seized by the INS for their personal use. When asked by employees if this was permissible, the whistleblowers allege that Mr. Runyon told them that he took seized ammunition home and used it.

Allegation 10. Mr. Runyon required the TSAs to carry firearms, on and off duty, in violation of Section 287(a) of the Immigration and Nationality Act (INA), 5 C.F.R. § 287.5, and INS Administrative Manual Section 20.012. In addition, they allege that Mr. Runyon issued Colt M4 machine guns, Remington 870 shotguns, Beretta .40 cal. pistols, body armor and ballistic helmets to each of the TSAs.

Allegation 11. In 1999, Mr. Runyon authorized non-INS employees to fire the INS M4 and M16 machine guns and Beretta 96D pistols at the NFU range. The TSAs were directed to take individuals, who were at NFU to demonstrate the new AMIS computer program, to the range and assist them in shooting the firearms.

Allegation 12. Mr. Runyon engaged in a gross waste of funds by purchasing a CNC lathe and a CNC milling machine. The milling machine's acquisition cost was \$116,239.10 and the lathe machine's acquisition cost was \$146,478.20. The whistleblowers stated that as a repair facility NFU does not engage in mass production and that such highly technical equipment is not necessary. They also alleged that minimal training on these machines was provided and most TSAs do not know how to use them. In addition, NFU has other lathe and milling machines that are in perfect working order.

Allegation 13. Mr. Runyon engaged in unethical practices. In January 1997, Mr. Runyon and three other NFU employees attended a national shotgun show in Las Vegas, Nevada. While in Las Vegas, Mr. Runyon permitted Remington Arms Gun Company to purchase show tickets and dinner for him and the other NFU employees. The whistleblowers allege that after the event, Mr. Runyon ordered the employees not to speak about the evening because they were not allowed to accept gifts valued at over \$20 from any vendor.

The Department of Justice's Investigation and Reports

The DOJ investigation substantiated a number of the allegations involving NFU employees. The majority of the misconduct, however, involved violations of law, rule or regulation and mismanagement by Mr. Runyon, the former director. After

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Mr. Runyon retired, INS states that it lost the opportunity to take any disciplinary action against him. Further, his supervisors felt that further consideration of legal action was unnecessary. The INS also declined to forward the matter to the U.S. Attorney's Office for possible criminal prosecution. A summary of the agency's findings and conclusions follows.

The INS investigation substantiated **Allegation No. 1** and determined that NFU personnel worked on non-government firearms in violation of 5 C.F.R. §§ 2635.704 and 2635.705. Mr. Runyon admitted that NFU personnel worked on non-government firearms. The report also states that some of the work was performed on firearms owned by local police departments as part of an approved informal INS practice predating the creation of the NFU. He denied, however, and the investigation was unable to conclude, that NFU armorers made parts for non-government firearms.

The INS has issued written policies and procedures in response to these findings. Specifically, the servicing of government and personally owned firearms has been addressed in the revised NFU Standard Operating Procedures (NFU SOPs) implemented on May 31, 2001.¹ Finally, the NFU has suspended the informal practice of servicing firearms owned by other governmental entities pending consideration of formal contractual agreements with those agencies.

The investigation also substantiated **Allegation No. 2**, in part, confirming that Mr. Runyon removed government firearms and took them to his home. The report states that these actions constitute a violation of 5 C.F.R. § 2635.704 and INS Firearms Policy, Subsection 18, regarding the possession of firearms. The investigation was unable to substantiate the allegation that employees were directed to remove parts from the firearms that Mr. Runyon then took home. He maintained that the firearms were returned intact to the NFU and denied that he retained parts of or whole government firearms. The report noted that Mr. Runyon's assertion was supported by transaction records of the Asset Management Information System and included a copy of those records with the report. In response to these findings, the agency issued SOPs on the issuance, control, and disposal of weapons and other government property.

Allegation No. 3 was substantiated by several witnesses and by Mr. Runyon's admission that he directed two INS employees to disassemble, clean and make parts for an antique sewing machine that belonged to his supervisor, Ms. Karen Severn. The INS determined that Ms. Severn's receipt of this personal benefit from public resources was a violation of 5 C.F.R. §§ 2635.704 and 705, even though she contended that she did not know government employees had done the work.

¹ The revised NFU SOPs referenced herein are included in the materials submitted with the INS report.

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In view of the finding made against Ms. Severn, the INS drafted a proposal for disciplinary action against her. Ms. Severn was notified of a proposed one-day suspension on October 4, 2001, for failure to fulfill her supervisory responsibility and poor judgment. In addition, INS has revised administrative guidance pertaining to the misuse of government equipment in the NFU SOP.

Allegations 4 and 7 regarding Mr. Runyon's use of government vehicles to take his wife to the airport and transport personal property when he moved from Pennsylvania to Virginia were substantiated through Mr. Runyon's admission and NFU vehicle records. The agency determined that Mr. Runyon's actions constituted a violation of 31 U.S.C. §§ 1344 and 1349(b).

Mr. Runyon's admission did not include **Allegation No. 6**, that he had misused a government vehicle to move his son's property. The report states that the INS did not investigate that allegation further because Mr. Runyon's admission covers the more serious charges and the agency could not develop any evidence that the son's property was involved. Therefore, this allegation is unsubstantiated.

The report states that administrative guidelines on the misuse of government vehicles are already set forth in NFU SOPs so no new policies were drafted in response to these violations. However, the report notes that employees ignoring guidelines on the misuse of government vehicles should be promptly disciplined.

INS substantiated **Allegation No. 5**, that Mr. Runyon used a government Federal Express account to ship a personally owned firearm. The allegation was substantiated through the statements of several employees and Mr. Runyon's admission. His actions were determined to constitute violations of 5 C.F.R. §§ 2635.101(b)(9) and 2635.704(a). Because the proper use of government property is already addressed in the NFU SOPs, INS took no additional action in response to this finding.

The INS investigation substantiated **Allegation No. 8** concluding that Mr. Runyon stored his personal vehicle in the NFU garage without permission for 10 to 12 months. His conduct was determined to be a violation of 5 C.F.R. §§ 2635.101(b)(9) and 2635.704(a). The report states that the proper allocation and use of employee parking is addressed in the NFU SOPs; therefore, no additional action was taken.

Allegation No. 9 implicated four different issues concerning the misuse and inadequate accounting for ammunition. The report notes that the whistleblowers alleged that Mr. Runyon (a) gave employees seized ammunition for their own personal use; (b) took ammunition from NFU without accounting for it and sold it to non-government employees; (c) gave ammunition to subordinates without proper accounting; and (d) signed for approximately 122,890 rounds of ammunition from March 6, 1996 to June 30, 2000.

The agency's investigation into this matter was unable to substantiate allegations 9(a) and 9(b). Allegation 9(c) was substantiated through the testimony of several employees and the information gathered in the investigation, which revealed a number of improper practices in the handling of ammunition. The transfer of ammunition to Ms. Healy, while a technical violation of Subsections 17 and 22 of the NFU Firearms Policy, was determined insubstantial because she immediately returned it.

Finally, the report substantiated allegation 9(d), in part, stating that Mr. Runyon routinely violated Subsection 22.H of the INS Firearms Policy on accounting for ammunition. The investigation revealed that the amount of ammunition charged to Mr. Runyon (122,890 rounds) was unusual given normal usage levels. According to the report, some 90,000 of these rounds of ammunition that were charged to Mr. Runyon were later transferred with management's approval and proper documentation to other agencies. While the investigation did not uncover any evidence that any of the ammunition charged to Mr. Runyon was sold, some 30,000 rounds of ammunition remain unaccounted for. INS did not, however, refer this matter to the U.S. Attorney's Office for evaluation of possible criminal prosecution.

In response to this matter, the INS has put in place heightened accounting requirements in the NFU SOPs for ammunition distributed to NFU employees. INS acknowledged that Mr. Runyon's ammunition use might be a violation of 18 U.S.C. §641, which states that government property may not be knowingly converted to personal use.

The INS investigation substantiated **Allegation No. 10** that Mr. Runyon required TSAs to qualify and carry firearms in certain circumstances. The assignment of firearms to non-officer corps staff, in this instance TSAs, is a violation of section 287(a) of the Immigration and Naturalization Act, 8 C.F.R. § 287.5 and the INS Firearms Policy. The allegation also referred to "sawed off shotguns." However, no evidence of the illegal modification of firearms or illegal firearms was uncovered. As such, the portion of the allegation that referred to "sawed off shotguns" was not substantiated. Specific instructions for issuing firearms within the NFU are set forth in the new NFU SOPs.

Allegation No. 11 was substantiated. During the course of the investigation, Mr. Runyon admitted that employees and civilians were permitted to use government firearms on the NFU range as part of an activity called, "Fun Day." He also admitted that non-INS employees were permitted to fire machine guns and a Beretta pistol when they came to the facility to demonstrate a computer program. The events took place on both a scheduled and ad hoc basis.

The INS investigation characterized the events as improper because unauthorized persons were permitted to use NFU equipment and facilities for improper purposes. In addition, the report noted that, on occasion, the improper activities interfered with the

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legitimate activities of NFU and visiting employees. Mr. Runyon's activities were determined to be a violation of 5 C.F.R. §§ 2635.704 and 705, and Subsection 83.A.10 of the INS Firearms Policy. The report notes that INS has eliminated any "Fun Day" activities and adopted specific guidelines on who is authorized to use the NFU range are provided in the NFU SOPs.

Allegation No. 12 involved a charge of gross waste of funds stemming from the purchase of a CNC lathe and a CNC milling machine at a cost of \$262,000. This allegation was substantiated. The investigation found that the purchase itself was in order but found that the equipment had little application to NFU tasks. The NFU has determined that this equipment is surplus; the INS Office of Administration is in the process of identifying a means of disposal.

In a supplemental response, the agency stated that the equipment was not essential for the mission of the NFU. According to the response, less sophisticated equipment was available at the NFU that met the agency's needs. The response concluded that inadequate research was conducted prior to the purchase of the lathe and milling machine.

In response to this investigation, specific requirements have been added to the NFU SOPs. The SOPs now impose budget planning and budget execution requirements. They also limit the authority of the NFU Director to purchase capital equipment.

The INS report substantiated **Allegation No. 13** in part. Mr. Runyon and others were found to have engaged in unethical behavior by accepting gratuities from Remington Arms Gun Company in January 1997. This conduct was determined to be a violation of 5 C.F.R. § 2635.202. The investigation was not able to substantiate that Mr. Runyon instructed a subordinate not to disclose receipt of the improper gifts. In this instance, the employees involved were also issued proposed disciplinary actions for their conduct. NFU already has in place prohibitions against the acceptance of gifts; therefore, no additional policies or actions were deemed necessary.

As an additional corrective measure to the many allegations substantiated against Mr. Runyon, the INS Office of Administration considered seeking a refund from him for the costs associated with his misuse of government property, facilities and accounts. After a review of this option, however, the agency decided not to pursue reimbursement due, allegedly, to the difficulty in establishing the fair market value of the government property and services used.

As noted above, due to the violations and misconduct uncovered, the NFU put in place new SOPs and new management. The NFU has made copies of the new SOPs available to all staff. The INS Firearms Policy has also been reviewed for conformity with relevant laws, rules or regulations. Where necessary, as in the definition of individuals

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authorized to carry firearms, the policy has been reworded to avoid ambiguity or overlap. The new NFU Director participates in formal meetings discussing any changes to the Firearms Policy. Further, the NFU Director's supervisor is aware of both the problems and the proper internal controls that should be followed in order to avoid a reoccurrence in the future. Finally, the agency also proposed disciplinary action against six employees for their actions.

The Whistleblowers' Comments

Allan L. Cornett. Mr. Cornett commented that the investigation was a "white wash." He stated that individuals who were aware of Mr. Runyon's misconduct and did nothing were not held accountable. He also expressed disappointment that Mr. Runyon was allowed to retire without any corrective or disciplinary action taken against him. In addition, he opined that some people interviewed during the course of the investigation committed perjury. Finally, Mr. Cornett found the new policies and procedures put in place by the INS inadequate, and suggested that in order for real change at the agency to occur, individuals in positions of authority must be replaced.

Walter Diaczenko. Mr. Diaczenko expressed concern that the investigation did not include an interview with Mr. John Jacobs, the Former Assistant Director, whom Mr. Diaczenko stated had attempted to notify upper management of Mr. Runyon's misconduct. Mr. Diaczenko believes that the failure to include Mr. Jacobs in the investigation gives the appearance that INS management is trying to protect themselves. In addition, Mr. Diaczenko stated that Mr. Runyon perjured himself in the investigative interviews and asserts that INS management allowed him to retire knowing that he was involved with numerous improprieties.

Mr. Diaczenko also noted the considerable stress the NFU personnel and whistleblowers have experienced as a result of Mr. Runyon's conduct. Instances of retaliation and changes in job duties were also noted by Mr. Diaczenko.

Marsha S. Healy. Ms. Healy stated that the INS is eager to excuse the bad, volatile and "evil" behavior of Gary Runyon, the former NFU Director. Allowing him to retire and thus, escape prosecution does not negate the fact that he created a very hostile work environment for the NFU employees. Additionally, she states that the Findings and Corrective Actions are useless because some of the same personnel that received proposed personnel actions were later promoted. Finally, Ms. Healy notes that the investigation hurt the whistleblowers more than it hurt the INS and found that it is disheartening that the investigation only resulted in revised standard operating procedures.

Special Counsel's Comments and Recommendation

I have concluded that the findings in the agency's report, and supplemental responses appear reasonable, except in the following respects:

- 1) The agency's decision not to take disciplinary action against Mr. Runyon, in the face of substantial evidence of wrongdoing, does not appear reasonable. At the time of Mr. Runyon's retirement request, the agency had already collected more than sufficient evidence to propose his removal. In failing to propose removal before Mr. Runyon retired, the agency allowed him to escape accountability. As the whistleblowers' comments suggest, this represented a demoralizing response to serious misconduct by a high-level official.
- 2) The agency's failure to transmit the report's findings and conclusions regarding Mr. Runyon to the U.S. Attorney's Office for review of possible criminal prosecution, does not appear reasonable. As noted, at the time the report was issued, Mr. Runyon had retired from the INS. It was determined, however, that Mr. Runyon was involved in numerous instances of violations of law, rule, and regulations, and abuse of authority. Evidence of these violations was corroborated by numerous NFU employees, independent of Mr. Runyon's admissions. Given that fact, the agency's rationale for not referring the case—that Mr. Runyon's admissions could not be used against him in a criminal prosecution—does not appear reasonable. The agency has also observed that the Office of Inspector General did not refer the case for a criminal investigation when it first received allegations of misconduct concerning Mr. Runyon. But that initial determination to handle the matter administratively did not preclude INS from subsequently referring the matter, once its investigation uncovered potential criminal misconduct. Indeed, there is substantial evidence that Mr. Runyon may have committed perjury in his sworn statements made during the investigation.

Conclusion

Based on the representations made in the report and as stated above, I have determined, pursuant to section 1213(e)(2), that the findings in the agency's report appear reasonable except as outlined above.

As required by section 1213(e)(3), I have sent a copy of the reports, supplemental responses, and the whistleblowers' comments to the Chairmen of the Senate

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and House Committees on the Judiciary. We have also filed copies of the reports and supplemental responses and the whistleblowers' comments in our public file and closed the matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Elaine Kaplan", written in a cursive style.

Elaine Kaplan

Enclosures