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**Analysis of Disclosures, Agency Investigation and Report**

**OSC File Nos. DI-05-0240 and DI-05-0405**

**Summary**

Shane Daly, a former Department of the Army Civilian Police Officer at the Directorate of Emergency Services (DES), Fort Meade, Maryland, disclosed to OSC that Lt. Thomas Russell, Supervisory Police Officer, often carries a privately owned weapon while on duty and sometimes loads it with privately owned ammunition. He also alleged that Lt. Russell used hollow point ammunition in military rifles on the firing range, and provided hollow point ammunition to other police officers to use on the range. Mr. Daly contended that, in doing so, Lt. Russell violated Army regulation 190-56 and created a substantial and specific danger to public safety.

The Department of the Army investigated Mr. Daly's allegations and found them to be unsubstantiated. However, the agency investigation did uncover ambiguities and deficiencies in Fort Meade's policies and procedures for registering and storing privately owned weapons. It also found that Lt. Russell failed to secure necessary approval before acquiring training ammunition from the National Security Agency (NSA). According to the agency report, Fort Meade has taken appropriate corrective action to remedy these deficiencies.

**The Whistleblower's Disclosures**

Mr. Daly, who consented to the release of his name, has worked for the Army for 24 years and is a commissioned officer in the Army Reserves. He worked as a civilian police officer at Fort Meade from March 8, 2004, until November 3, 2004, when he was terminated. Mr. Daly is currently serving on active duty in Iraq.

According to Mr. Daly, Lt. Russell often carries his privately owned weapon – a Glock semi-automatic pistol – while on duty, in violation of Army regulation (AR) 190-56 (The Army Civilian Police and Security Guard Program), section 6-3. This regulation provides, in pertinent part,

Army civilian police and security guards will be provided with the weapons, ammunition, and security equipment needed to perform their assigned duties. . . . The use of privately owned firearms and/or ammunition by Federally employed Army civilian police and security guards is strictly prohibited.

Mr. Daly stated that he personally observed Lt. Russell carrying his privately owned weapon at work on the following dates: September 21st and October 5th, 15th, 20th, 25th, 27th, and 29th of 2004. In addition, Mr. Daly alleged that, on one occasion, Lt. Russell informed him that the privately owned weapon he was carrying at the time was loaded with his own ammunition.

Mr. Daly also alleged that, on several occasions in August and September of 2004, Lt. Russell fired hollow point ammunition on the Fort Meade firing range, using a military-owned weapon.<sup>1</sup> Mr. Daly further related that, on several occasions while they were practicing at the firing range, Lt. Russell gave him and several other police officers some of the hollow point ammunition and instructed them to fire it with their military-issued weapons, which they did. Lt. Russell informed Mr. Daly that he obtained the hollow point ammunition from police officers in the Anne Arundel County Police Department.

Mr. Daly alleged that the use of hollow point ammunition by Army civilian police officers not only violates AR 190-56, but also creates a substantial and specific danger to public safety. He explained that military weapons are designed to use a specific type of ammunition, known as "full metal jacket."<sup>2</sup> Therefore, loading a military weapon with nonconforming hollow point ammunition may cause the weapon to malfunction, or even explode, when fired. Mr. Daly asserted that the hollow point ammunition Lt. Russell used in his military-owned weapon and gave to the other officers to use in their weapons was old, thereby exacerbating the risk that the weapons might malfunction or explode. In fact, Mr. Daly related that much of Lt. Russell's hollow point ammunition appeared green and corroded.

Mr. Daly stated that, not only is it possible for one of the weapons to malfunction on the firing range, while loaded with the hollow point ammunition, but the hollow point ammunition could also damage a weapon in such a way as to cause it to malfunction at a later time, when it is loaded with proper ammunition. Thus, he contended that using hollow point ammunition in a military weapon renders the weapon less reliable, thereby endangering the safety of the police officer who carries the weapon on the job, as well as jeopardizing the safety of those whom he or she is assigned to protect. Because the Fort Meade police officers help to protect the grounds of the National Security Agency (NSA), among other duties, the quality and condition of their weapons and ammunition have national security implications, in addition to implications for the general safety and security of the other inhabitants of Fort Meade.

### **Department of the Army Investigation and Report**

According to the Department of the Army report, the agency conducted two separate investigations into Mr. Daly's allegations. The initial investigation was conducted by Lieutenant Colonel (LTC) Shelby Bell, then Commander, Headquarters Command, Fort Meade, in April and May of 2005. LTC Bell reviewed relevant documentary evidence and interviewed Mr. Daly, Lt. Russell, two management officials, and ten other witnesses believed to possess relevant information. In June 2005, the Office of Chief Counsel, U.S. Army Installation Management

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<sup>1</sup> A bullet with a cavity in the tip to facilitate expansion upon impact.

<sup>2</sup> A bullet with a jacket, usually of harder metal, encasing the core. The military uses a 9 mm bullet with a full metal copper jacket and a lead core.

Agency (IMA) determined that LTC Bell's investigation raised several collateral issues requiring further investigation. In July 2005, LTC Beverly Cornelius, Provost Marshal at Fort Eustis, Virginia, was appointed to conduct a second investigation. LTC Cornelius interviewed additional witnesses and gathered additional documentary evidence. Neither investigation substantiated Mr. Daly's allegations. However, the investigations did uncover ambiguities in Fort Meade's policies and procedures for registering and storing privately owned weapons. In addition, the investigators found that Lt. Russell failed to obtain necessary approval before he acquired hollow point ammunition from NSA.

According to the agency report, all of the witnesses, except Mr. Daly and Officer O'Neil, testified that they had never observed Lt. Russell carrying his privately owned weapon while on duty. Officer O'Neil recollected seeing Lt. Russell carrying his privately owned weapon in a small holster a "handful of times" between 10:00 a.m. and 11:00 a.m.; however, he did not know whether Lt. Russell was on or off duty at the time. Lt. Russell countered Officer O'Neil's testimony by pointing out that Officer O'Neil generally works the midnight shift from 11:00 pm until 7:00 am and rarely has the opportunity to interact with Lt. Russell, who usually works the day shift, beginning at 8:00 a.m.

The report similarly questions the accuracy of Mr. Daly's testimony. The investigators found that Lt. Russell did not yet own his Glock pistol on most of the dates Mr. Daly claims to have observed Lt. Russell carrying it. Mr. Daly claims to have personally observed Lt. Russell carrying his Glock pistol at work on September 21st and October 5th, 15th, 20th, 25th, 27th, and 29th of 2004. However, Lt. Russell produced a receipt from Lawmen Supply Company, Inc. showing that he purchased his Glock pistol on October 27, 2004. Maryland State Police Records indicate that the Glock pistol is the only handgun registered to Lt. Russell. Thus, it appears that Mr. Daly may have provided inaccurate information to investigators.

Although Lt. Russell denied ever carrying the Glock pistol while on-duty, he admitted that he carries the weapon for personal protection while traveling between his off-post residence and his work site. He claimed that he left the pistol and the ammunition in separate containers in his car during the workday, but he occasionally wore his empty, privately owned Glock holster while on duty. Lt. Russell asserted that he stopped carrying his Glock pistol during his daily commute after he became aware of Mr. Daly's allegations.

The investigators found that Lt. Russell failed to register his privately owned weapon with the Fort Meade Visitor Control Center. Lt. Russell stated that he was under the mistaken impression that police officers were exempt from the requirement to register privately owned weapons. The agency report states that, although the applicable regulations and policies are somewhat ambiguous, police officers are not exempt from the requirement to register privately owned weapons. The report notes that Lt. Russell did not store his Glock pistol properly on Fort Meade property; however, DES did not offer police officers secure locker space for storing their privately owned weapons.

According to the report, none of the witnesses corroborated Mr. Daly's allegation that Lt. Russell loaded his privately owned weapon with privately owned ammunition while on duty.

Lt. Russell asserts that his Glock pistol was never loaded when he was on Fort Meade property. Rather, he stored the ammunition in an ammunition clip. Furthermore Lt. Russell and numerous other police officers testified that they have only used government-issued ammunition in their official weapons while on duty.

The investigation did confirm, however, that the police officers had used hollow point ammunition in their government-issued weapons. Nevertheless, the agency concluded that the use of hollow point ammunition did not violate any laws, rules, or regulations and did not create a substantial and specific danger to public safety. The agency report explains that, in 2004, the Fort Meade DES experienced a shortage in training ammunition. In his capacity as DES Training Officer, Lt. Russell decided to explore alternative resources for obtaining ammunition for DES's semi-annual mandatory training exercises.

In September 2004, Lt. Russell requested ammunition from NSA, and NSA provided DES with some of its excess ammunition, consisting of approximately 9,000 rounds of 9mm Luger, Federal Premium hollow point ammunition. This ammunition was inspected by NSA firearms instructors to ensure its quality, and the investigators found that the ammunition was safe and in good condition. The agency report states that, in March 2005, the Department of the Army established a policy that law enforcement officers should use ball ammunition, rather than hollow point ammunition, due to the higher cost of hollow point ammunition. However, at the time of Mr. Daly's allegations in 2004, Army police officers were authorized to use hollow point ammunition for training purposes.

Although the investigators did not find any violation of Army regulation in connection with Lt. Russell's use of hollow point ammunition, they did find that he did not follow appropriate procedures for obtaining the ammunition. The agency report states that, before acquiring the ammunition from NSA, Lt. Russell failed to obtain approval from the Deputy Chief of Staff for Logistics, as required by AR 710-2.

The report lists several corrective actions planned or taken in response to the investigation. These corrective actions include the following:

- (1) Lt. Russell no longer carries his privately owned weapon on to Fort Meade.
- (2) The Fort Meade Garrison Commander initiated a review of installation policies for registering and storing privately owned weapons. Fort Meade will revise these policies, as appropriate, to ensure compliance with applicable laws and regulations.
- (3) Fort Meade will educate and train personnel regarding the policies for registering and storing privately owned weapons. These policies will also be published in the installation newspaper.
- (4) The IMA will review the procedures for forecasting and procuring training ammunition. The IMA has also recommended that appropriate guidance on this issue

be transmitted to all installations to ensure coordination with Army headquarters on future transfers of ammunition.

**Conclusion**

I have determined that the agency report contains all of the information required by statute and the findings appear to be reasonable.