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**Analysis of Disclosures, Agency Investigation and Reports,
Whistleblower Comments, and Comments of the Special Counsel**

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Summary

The whistleblower, Charles Cape, was responsible for telecommunications security in an eight-state area in the southwestern United States, including four border states: Arizona, New Mexico, California, and Texas. Mr. Cape disclosed that in 2004 and 2005, the Department of Homeland Security (DHS) failed to allocate sufficient funds to support the acquisition of wireless telecommunications equipment and technologies as intended by Congress, and instead used the monies for non-wireless procurements. Mr. Cape alleged that the failure to support wireless communications at the southwestern U.S. border rendered the border unsafe for agents and vulnerable to terrorist infiltration.

The Secretary, DHS, asked the Office of the Inspector General (OIG), DHS, to investigate Mr. Cape's allegations. The OIG found no evidence to substantiate the allegation that money allocated by Congress for wireless initiatives was improperly spent on non-wireless initiatives. The report acknowledged the need for adequate technologies for border patrol agents in the southwest, and cited the Secure Border Initiative and *SBI_{net}* as recent efforts to provide Border Patrol agents with the means to protect themselves against violence from criminal traffickers.

OSC finds that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.

The Whistleblower's Disclosures

Mr. Cape, who consented to the release of his name, was the Integrated Wireless Network Zone Manager, Southwest Zone, GS-0391-15, based in Arizona, a position within the DHS, Office of the Chief Information Officer (OCIO), Wireless Management Office (WMO). He was sent to Arizona in 2004 with a mandate to assess existing tactical communications capabilities of agents working along the border. He was also tasked with implementing the Integrated Wireless Network (IWN) for DHS.¹ In this capacity, he requested \$20 million in Fiscal Year (FY) 2004, for initial projects, which he described as quick fixes to address gaps in the communications system.

¹ The IWN is a joint effort between the Departments of Homeland Security, Justice, Treasury, and Interior to establish an integrated communications system.

In many places along the 1,989 mile border with Mexico, agents' radios do not receive signals. Agents must rely on satellite phones, which do not allow for communication between agents in the field, but route calls through a dispatcher, delaying the communication of critical information and requests for assistance. In the Tucson sector, agents use antiquated analog communication systems, rather than more reliable digital systems. Mr. Cape's initial request included money for the conversion to narrowband tactical communications systems, and the purchase of weather balloon mounted repeaters, to improve signals in mountainous and low-lying areas. He also proposed the use of wide-area radar along the border, to assist agents in tracking suspects through rugged terrain. Finally, he recommended the purchase of laptop computers for agency vehicles.

Mr. Cape alleged that Congress allocated to DHS approximately \$100 million in FY 2005, and \$86 million in FY 2004, to be used on wireless initiatives. The FY 2004, appropriations law allocated \$185 million for "development and acquisition of information technology equipment, software, services, and related activities for the Department of Homeland Security, and for the costs of conversion to narrowband communications, including the cost of operation of the land mobile radio legacy systems...." The FY 2005, appropriations law allocated \$208 million "for the development and acquisition of information technology equipment, software, services, and related activities for the Department of Homeland Security, and for the costs of conversion to narrowband communications, including the cost for operation of the land mobile radio legacy systems...."

According to Mr. Cape, rather than using these funds to support wireless initiatives such as the conversion to narrowband communications, the Chief Technology Officer at DHS, OCIO, Lee Holcomb, authorized the expenditure of approximately \$74 million to pay for non-wireless initiatives, using funds specifically allocated to the WMO. WMO funds were to be used to support, among other things, Mr. Cape's initiatives on the southwestern border. Instead, DHS used this money to make such non-wireless procurements as the Homeland Secure Data Network (HSDN), which Mr. Cape acknowledged is important but is not the type of wireless program intended to be paid for out of the WMO budget.

Mr. Cape alleged that although he requested funds for the projects he proposed, he received no money for wireless initiatives in FY 2004 or 2005. He believes that this violated the intent and spirit of the appropriations legislation, and represents gross mismanagement and a gross waste of WMO funds.

Mr. Cape contended that because of the lack of money for wireless technologies, border patrol agents in the southwest are in greater danger. He accompanied the agents on patrol and observed the number and nationalities of individuals pouring in through the border. Agents encounter in large numbers illegal immigrants from Mexico, China, Guatemala, and Afghanistan, among other countries. Mr. Cape believes that because of the lack of adequate technologies to support agents, the southwestern U.S. border is vulnerable to terrorist infiltration. In addition, Mr. Cape has observed that agents are exposed daily to unnecessary risks; an agent working alone may encounter a large group of immigrants, armed drug smugglers, or terrorists. He has been in the field with agents in the Yuma and Tucson sectors and has experienced first-

hand the inability to communicate with the dispatch office. The ability to call for back-up assistance under these circumstances is critical to the safety of agents and the public.

DHS Report

The OIG conducted the investigation of Mr. Cape's allegations. The OIG reviewed the Appropriations Act language for FY 2004 and 2005. In addition, the OIG reviewed materials prepared by the OCIO, WMO, on its funding and expenditures for those fiscal years, and materials used to brief House and Senate Appropriations staffs in August 2005. The OIG also interviewed OCIO and WMO officials. The investigation found no violations of law, rule, or regulation, and no evidence of mismanagement or waste of funds.

The report discussed the FY 2004, DHS Appropriations Act (Pub. L. 108-92), which allocated \$185 million "[f]or development and acquisition of information technology equipment, software, services, and related activities for [DHS], and for the costs of conversion to narrowband communications, including the cost of operation of the land mobile radio legacy systems." By the terms of the Act, this amount was to remain available until expended. The related conference report allocated \$100 million of this amount for "wireless programs." The FY 2005, Appropriations Act (Pub. L. 108-334) allocated \$208 million for the same purposes, and similarly, the related conference report allocated \$86 million of this amount for the "wireless program."

The report pointed out that the FY 2004 and 2005, Appropriations Acts do not specify the amounts to be spent on wireless programs. The related conference reports do not define what is included under "wireless programs," and, in any event, do not have the force and effect of law.

According to the report, the WMO, within the OCIO, is responsible for the development of policy and strategy for the use of wireless technologies across DHS. A WMO-prepared funding and expenditure summary shows that in FY 2004 and 2005, a total of \$203.24 million was expended on wireless programs, including \$31.6 million brought forward from FY 2003. Most of the expenditures appear to be directly related to wireless initiatives, including \$8.54 million spent on southwest border investments. The summary also lists some items whose connection to the wireless program is less clear. A WMO official said that even a "wireless" program is not all wireless, but some non-wireless programs (such as HSDN) can be used to support the movement of encrypted material to the field in the event an emergency. The official acknowledged that at least one program cited by Mr. Cape, the \$15.68 million for General Services Administration support to the Federal Protective Service, was not connected to any wireless program, but represented the Chief Information Officer's portion of the total amount allocated to DHS.

WMO briefed the House and Senate appropriations staff on the above wireless program expenditure summary in August 2005. A WMO official stated that the appropriations staff raised no objections to the summary, and the FY 2006, Appropriation Act and related conference report raised no concerns regarding this issue.

Significantly, the report acknowledged the need for adequate technologies for border patrol agents in the southwest. It stated that the southwest border initiatives cited above included some that were specifically recommended by Mr. Cape. The Department is striving to address these vulnerabilities with whatever resources are available. The report cites the rollout of a comprehensive, multi-year plan to secure America's borders and reduce illegal migration, entitled the Secure Border Initiative (SBI). Under this plan, the report states, DHS has placed special emphasis on the need to provide Border Patrol agents with the means to protect themselves against violence from criminal traffickers.

In June, 2006, the agency supplemented its response after OSC's request that Mr. Cape be interviewed, and for additional explanation of SBI specifically as it related to the southwest border. The supplemental report stated that the discussions with Mr. Cape yielded no information that altered conclusions regarding the use of funds.

The supplemental report also stated that the OIG has monitored developments in SBI, providing advice to the department and testimony to Congress. OIG also discussed with Mr. Cape his concerns regarding the new-start SBI program. In addition to immigration reforms, SBI features a significant multi-year acquisition called *SBI_{net}*. This will deliver new technology and tactical infrastructure to secure our borders. DHS has publicly identified the problems with border security, including the issues raised by Mr. Cape, and has asked private industry to propose solutions drawing on the best government and commercial technologies to meet the challenges of securing the border. A formal request for proposals in support of this initiative was released on April 11, 2006, and a contract is scheduled for award in September 2006.

The supplemental report again stated that DHS acknowledges and shares Mr. Cape's concerns about the safety of Border Patrol agents and the vulnerabilities of America's borders to smuggler and terrorist infiltration. In pursuing SBI and *SBI_{net}*, DHS has placed special emphasis on the need to provide Border Patrol agents with the means to protect themselves.

DHS subsequently verbally confirmed that security issues identified by an April 2005 audit of the HSDN program have been resolved, and that HSDN operates as a single, integrated classified network allowing the sharing of information among intelligence agencies, law enforcement and disaster management and emergency operations centers.

The Whistleblower's Comments

Mr. Cape provided what he characterized as his "ultimate end of tour report" in response to the DHS reports. He explained that during his 38-plus years of military and civil service, he always strived to do the right thing. He truly believes that he did the right thing when he reported these now investigated violations. It has become apparent to him that federal agencies do not have to follow congressional instructions as to appropriations and flaunt this at every turn. He states that this can only be stopped by Congress, or their intent on appropriations will become meaningless.

In this case, the Appropriations Committee stated that monies were to be used for only wireless projects. However, the project cited by DHS as supporting wireless systems, HSDN, is not, and does not connect to, a wireless system, nor will it ever be able to become a wireless system. At his interview, which was only achieved by OSC intervention, the IG auditor admitted that HSDN was a flawed system and has not properly worked. It is not connected to any wireless system. Either the investigators decided to overlook this fact, to accept the information given to them to cover up the wrongdoing, or their investigation is totally flawed. Mr. Cape identified himself as one of the leading wireless experts in the federal government, noted as such by his selection as one of the "FED 100" individuals.

Mr. Cape stated that he served in the southwest and was responsible for the continuity and telecommunications infrastructure for eight states, as it pertains to responding to terrorist attacks and future systems. He did not receive any support from WMO, as to assets, to support the Border Patrol and all other federal agencies. WMO also failed to provide him with sufficient assets to insure the upgrade to the security of the border for telecommunications improvements. He stated that he can now note with high satisfaction that his actions led to the Integrated Wireless Network (IWN) Program contract being awarded and that all wireless monies are now being utilized for only wireless programs and projects that will secure the border.

Mr. Cape eventually revealed to the local press the situation he encountered, which included his numerous proposals for improvements (now in place) for border security using wireless enterprise architecture. He also reported the complete lack of cooperation from his superiors at headquarters. It was only after the local press reported the situation that his concerns reached the Secretary. He is heartened that the Secretary has incorporated many of his proposals and he believes the country will be stronger for it. However, it remains apparent to Mr. Cape that this would not have happened if he had not made the ultimate sacrifice to end his government career by exposing the situation. He brought this situation to light out of a compelling sense of duty to his country, and out of a desire to accomplish his mission and protect the citizens of this country.

He stated in closing that he stands by his beliefs that he accomplished the mission he was sent to do by former DHS Secretary Tom Ridge. He brought to light the misuse of assets and proposed viable solutions that have finally been integrated into the end-state solution. He can look back on his 21 year military career and his 18 year civil service career with pride and no regrets.

Conclusion

I am encouraged by the Secretary's commitment to improving technology at the borders, and strongly support the continued focus on providing Border Patrol agents with all available tools for communication and protection in their fight against criminal trafficking and terrorist infiltration at the borders. Based on my review of the original disclosures and the agency's report, I have determined that the agency's report contains all of the information required by statute and that its findings appear to be reasonable.