



U. S. Department of Justice

Office of the Inspector General

By Facsimile and Regular Mail

December 21, 2006

The Honorable Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036

Re: OSC File No. DI-06-0784

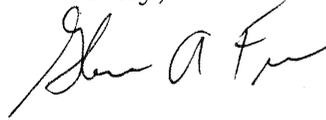
Dear Mr. Bloch:

Enclosed is a copy of the Office of the Inspector General (OIG) report entitled, *OIG Report On Allegations by United States Marshals Service Employee Scott Flood*. The Office of Special Counsel (OSC) referred this matter to Attorney General Alberto R. Gonzales on July 11, 2006. In that letter, you requested that the Department of Justice investigate allegations by Scott Flood, Commander, Special Operations Group (SOG), United States Marshals Service (USMS), that the USMS had withheld funds from SOG's budget that Congress specifically appropriated for SOG. Flood also alleged that because SOG did not receive its full appropriation, it did not have sufficient funds to provide necessary training to its members, and that this budgetary shortfall poses a substantial and specific danger to public safety. Attorney General Gonzales delegated his authority to review and sign this report to the OIG, and we have communicated with OSC about the timing of this investigation.

The enclosed report summarizes the results of our investigation, which did not substantiate the allegations. We intend to transmit this report to the USMS after you have made your determinations pursuant to 5 U.S.C. § 1213(e)(2). Accordingly, please inform us when those determinations have been made.

If you have any questions about the enclosed report, please contact me or Martha Hirschfield, Attorney Advisor, at 202 616-0640.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn A. Fine". The signature is written in a cursive style with a large initial "G".

Glenn A. Fine
Inspector General

Enclosure

cc: Catherine McMullen, Chief
Disclosure Unit



**U.S. Department of Justice
Office of the Inspector General**

OIG Report on Allegations by United States Marshals Service Employee Scott Flood

December 21, 2006

I. Introduction

By letter dated July 11, 2006, the United States Office of Special Counsel (OSC) forwarded to Attorney General Alberto R. Gonzales allegations raised by Scott Flood, Commander of the Special Operations Group (SOG) of the United States Marshals Service (USMS).¹ According to Flood's allegations to OSC, "in Fiscal Years 2004, 2005, and 2006, the USMS withheld funds from SOG's budget that Congress specifically appropriated for SOG," and that, in so doing, violated the Purpose Act, 31 U.S.C. § 1301. Flood alleges that because SOG has not received its full appropriation since 2004, SOG does not have sufficient operating funds and that this shortfall poses a substantial and specific danger to public safety. Flood also alleges that the USMS failed to comply with Congressional direction to close down its Hazardous Response Unit (HRU) and reassign its funding, duties, personnel, and resources to SOG. Finally, Flood alleges that the USMS has improperly refused to reimburse SOG for funds that SOG expends in training other governmental agencies.

Flood's allegations were referred to the Office of the Inspector General (OIG) for investigation. To investigate these allegations, the OIG reviewed numerous documents provided by Flood and by the USMS. We also interviewed Flood; Lloyd Allgaier, a Supervisory Deputy Marshal who has acted as Administrative Officer for SOG for the last 2 years; Maureen Pan, USMS Chief of Budget Formulation; John May, USMS Chief of Budget Execution; and Anthony Corbitt, USMS Assistant Chief of Budget Execution.

This report describes the findings of our investigation. We first provide a brief factual background, then analyze the evidence regarding each of Flood's allegations.

II. Factual Background

The USMS created SOG in 1971 to handle the USMS's response to high-threat or large civil disturbances. SOG members execute tactical missions such as crowd control at high-profile protests and riots, security at high-profile criminal trials, and fugitive extraditions. In recent years, SOG has participated in various missions, such as deployment to Washington, D.C. to support local law enforcement in apprehending snipers John Muhammed and Lee Malvo; transportation and security surrounding the trial of Zacarias Moussaoui; response to the September 11, 2001, attack on the Pentagon; removal of protestors

¹ Flood is on temporary duty assignment to the USMS's Justice Prison and Alien Transportation System. An Acting SOG Commander was named on June 11, 2006.

on Vieques Island in Puerto Rico; and protection of Cuban refugee Elian Gonzales.

SOG is based at Camp Beauregard in Alexandria, Louisiana. It operates with a full-time staff of approximately 11, including 8 Deputy Marshals and 3 support staff (although some positions have not been filled in recent years). SOG teams are staffed on an as-needed basis by Deputy Marshals from throughout the 94 USMS districts. Deputy Marshals qualify for SOG membership through a rigorous training process and perform SOG duties on a collateral-duty basis. The SOG Commander reports to the Assistant Director of the USMS Operations Support Division.

Before fiscal year (FY) 2004, Congress did not provide specific funding for SOG. Beginning in FY 2004, specific amounts for SOG were identified in Congressional Conference Committee Reports, although not in the appropriations statutes themselves.

III. OIG Analysis of Flood's Allegations

A. Alleged Misuse of Earmarked Funds

Flood maintains that in FYs 2004, 2005, and 2006, Congress specifically earmarked funds for SOG, and that the USMS misdirected those funds, thereby violating the Purpose Act, 31 U.S.C. § 1301.² However, we determined that the language pertaining to specific funds for SOG is contained in Conference Committee Reports, not the appropriations statutes themselves. See Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3 (2004); Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, 118 Stat. 2804 (2004); Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, 119 Stat. 2290 (2005). According to the Government Accountability Office's Principles of Federal Appropriations Law, "[r]estrictions on a lump-sum appropriation contained . . . in legislative history are not legally binding on the department or agency unless they are carried into (specified in) the appropriations act itself, or unless some other statute restricts the agency's spending flexibility." Principles of Federal Appropriations Law, Vol. II at 6-6 (3d ed.). See also Lincoln v. Vigil, 508 U.S. 182, 192 (1993) ("where Congress merely appropriates lump-sum amounts without statutorily restricting what can be done with those funds, a clear inference arises that it does not intend

² The Purpose Act, 31 U.S.C. § 1301(a), provides that: "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." In essence, this Act requires that public funds may be used only for the purpose for which they were appropriated, and items must be charged to the correct appropriation.

to impose legally binding restrictions, and indicia in committee reports and other legislative history as to how the funds should or are expected to be spent do not establish any legal requirements on the agency”) (internal quotations omitted).

Funding for SOG during FYs 2004, 2005, and 2006 was not specified in the appropriations acts themselves, nor did the enacted appropriations legislation place any restrictions on the USMS’s use of the funds with respect to SOG. Accordingly, we conclude that the USMS’s spending on SOG in FYs 2004, 2005, and 2006 did not violate any law.

Although the legislative history to appropriations statutes describing where funds should be allocated is not legally binding, agencies typically follow the language of Conference Committee Reports. See Lincoln, 508 U.S. at 193, (“an agency’s decision to ignore congressional expectations may expose it to grave political consequences”). We examined whether the USMS followed the conference report language that directed how SOG should be funded. We believe that in most instances, the USMS carried out the intent of the appropriators, as reflected in the conference language and reports from the USMS to Congress.

1. Fiscal Year 2004

For FY 2004, the Conference Committee Report stated:

The conference agreement includes \$1,473,000 for training and equipment for the Special Operations Group. The USMS shall submit a spending plan for such funds to the Committees on Appropriations not later than January 15, 2004.

H.R. Conf. Rep. 108-401, at 46 (2003). Flood’s complaint is that the Conference Committee Report states that the funds are for “training and equipment,” but the USMS used those funds to cover daily operating expenses, such as payments on the annual lease for the SOG Tactical Center (SOGTC), utilities, maintenance, medical services, and other costs associated with the SOGTC, such as vehicle maintenance and repair, ammunition, and travel. According to Flood, much of the \$1,473,000 (later reduced to \$1,457,000 as the result of two rescissions) funded areas other than “training and equipment.”

Documents provided by the USMS show that it in fact obligated \$1,648,194, and spent \$1,614,139 for SOG operating expenses in FY 2004. Moreover, on January 29, 2004, the USMS submitted the spending plan that Congress requested to the Department’s Assistant

Attorney General for Administration (AAGA). That plan subsequently was forwarded to the Appropriations Committees on April 29, 2004, and they raised no objections to it.

The USMS spending plan clearly shows that, of the \$1,457,000 available, it intended to use \$173,000 for initial training for deputies to qualify for membership in SOG, \$127,000 for semi-annual sustainment training, and \$57,000 for equipment. The plan also stated that the USMS intended to spend \$568,000 to pay the lease on the SOGTC facility – which is where SOG conducts its training – as well as \$106,000 for utilities, \$139,000 for contract maintenance services, \$101,000 for facility nurse and medical services, and a variety of other expenditures, all of which relate to the operation of the SOGTC.

While Flood suggests that it was improper to fund operating costs out of this “training and equipment” allocation, we concluded that the USMS acted within its discretion in interpreting the Conference Committee language as funding SOG’s base operating costs rather than constituting a program enhancement. Although Congress did not provide specific funding for SOG before FY 2004, the amount identified in the Conference Committee report corresponds to the amount that USMS spent on SOG’s base operating costs the previous year. Moreover, the USMS informed the Appropriations Committees of its spending plans and received no objections.

2 Fiscal Year 2005

For FY 2005, the Conference Committee Report stated:

The conference agreement provides \$2,835,000 in base resources for the Special Operations Group (SOG), which includes funding for the 11 existing SOG positions.

H.R. Conf. Rep. 108-792 (2004). Flood alleges that, based on his contacts with Congressional committee staff members, Congress originally intended to provide SOG with \$3,756,000 and that this amount was reduced to \$2,835,000 with the understanding that salaries and expenses for SOG positions would be covered out of the general USMS salaries and expenses appropriation. He accuses the USMS of violating the will of Congress by using the \$2,835,000 in “base resources” to cover SOG salaries and expenses.

The language of the Conference Committee Report does not support Flood’s argument. The Report states that the \$2,835,000 in base resources “includes funding for the 11 existing SOG positions.” The USMS used the funds in that manner. Documents provided by the

USMS show that, after rescissions, SOG was allocated \$2,797,000. The USMS spent \$1,924,067 on payroll expenses for the 11 employees at the SOGTC, and it obligated another \$1,535,051, and spent \$1,264,482, for SOG operating expenses. The total amount obligated for SOG was \$3,459,118. The total amount spent was \$3,188,549.

3. Fiscal Year 2006

For FY 2006, the Conference Committee Report stated:

The conference agreement provides \$4,414,000 in base resources for the Special Operations Group.

H.R. Conf. Rep. No. 109-272, at 1145 (2005). After rescissions, this amount was reduced to \$4,356,000. Flood alleges that only \$1,400,000 of this amount has been made available for SOG's use, and that \$1,164,000 of this amount was being used to fund "special assignments" related to SOG – which he alleged were supposed to be funded through a separate "special assignments" account.³

Documents provided by the USMS show that it obligated \$1,263,202, and spent \$1,064,146 on operating expenses for SOGTC in FY 2006. An additional \$1,548,141 was spent on salaries and expenses for SOG personnel.⁴ The USMS also obligated \$313,476, and spent \$313,213, on a selections class for new SOG members. In addition, the USMS obligated \$484,546, and spent \$429,830, on hurricane response-related expenses for SOG. It also expended a total of \$103,406 on body armor for SOG deputy marshals. Including transfers made to the districts for travel, the USMS obligated a total of \$3,856,782 for SOG expenses in FY 2006. At the close of the fiscal year, SOG had spent \$3,602,747.

In total, the USMS obligated approximately \$500,000 less for SOG than specified in the Conference Committee Report. However, the USMS attributed this difference to the three administrative and three deputy vacancies within SOG during much of FY 2006. According to information provided by the USMS, salaries and benefits for the six

³ Flood's allegations with respect to FY 2006 appear to be based in large measure on a letter dated June 22, 2006, from USMS Director John Clark to U.S. Senator David Vitter from Louisiana. That letter suggests that some of the SOG funds would be spent on "special assignments." However, the USMS provided documents to us demonstrating that SOG funds were not diverted to special assignments.

⁴ Based on a comparison with the previous year's funding, the USMS determined that Congress intended the FY 2006 amount to include salaries and expenses.

vacant positions (one purchasing agent, two program analysts, and three deputy marshals) would have come to a total of \$597,523. Because USMS had concluded that a portion of the FY 2006 appropriation was intended to cover salaries and expenses, it did not obligate funds to cover salaries and expenses for vacant positions.

B. Alleged Failure to Transfer Hazardous Response Unit to SOG

In addition to his allegations regarding the use of SOG funds, Flood alleges that the USMS failed to follow Congressional direction to transfer the HRU to SOG. In particular, in FY 2005 the Appropriations Conference Committee Report directed the USMS

to transfer the funding, duties, and personnel of the Hazardous Response Unit (HRU) to SOG, and to submit a report to the Committees on Appropriations no later than April 5, 2005, on any additional personnel and funding requirements that will accompany the HRU transfer, as well as on the proper location of such transferred personnel.

H.R. Conf. Rep. 108-792 (2004).

In a report submitted to the Department of Justice Assistant Attorney General for Administration on April 18, 2005, and forwarded to Congress on June 16, 2005, the USMS detailed how it would transfer HRU funding, duties, and personnel to SOG. The report stated that “13 positions, 13 FTE, and \$1,976,000 associated with the Hazardous Response Unit have been transferred to the Special Operations Group.” Report at 1. The report also “propose[d] to transfer an additional \$200,000 to SOG for equipment, travel, and training.” *Id.* However, the report noted that the HRU unit transferred to SOG would remain in Washington, D.C. and that “the 13-member unit in the Washington, D.C. area will continue to report to the SOG commander.” *Id.* at 6.

The essence of Flood’s complaint appears to be that this transfer never occurred or occurred in name only. Flood is correct that the HRU personnel and equipment were not relocated from the Washington, D.C. area to the SOGTC in Louisiana. Instead, the USMS created a SOG group in the Washington, D.C. area comprised of former HRU members. However, nothing in the Conference Committee Report language mandated a relocation of the HRU to Louisiana. To the contrary, the USMS was directed to report to Congress on the “proper location” for personnel transferred from HRU to SOG, which the USMS did. Accordingly, we conclude that the USMS was acting within its discretion when it created a SOG group in the Washington, D.C. area.

However, we determined that, contrary to what the USMS told the Appropriation Committees in its April 2005 Report, the transferred HRU personnel never reported to the SOG Commander.⁵ In an electronic mail message to Commander Flood from Arthur Roderick, Assistant Director of USMS Operations Support Division, dated August 10, 2005, Mr. Roderick states: "For the time being SOG/HRU at HQ[] will continue to report to [Chief Inspector] Bill Snelson and myself. They will not be utilized for any SOG mission without my approval. This is only the first part in the transition." Likewise, it appears that the \$200,000 for "equipment, travel, and training" that the USMS proposed transferring to SOG was never credited to SOG.

The USMS explained that at approximately the same time that it was directed to transfer HRU funding and personnel to SOG, there was considerable disarray within the HRU. Because the fate of the former HRU group had been in limbo for some time, many individuals in the group had taken other positions in the USMS and elsewhere. By the time the transfer to SOG occurred, 4 of the 13 positions in the HRU were vacant. Three more unit members left within a few months of the transfer. In addition, during this same time period there was a change in leadership at the USMS. Unlike his predecessor, the new Director of the USMS was not interested in maintaining a SOG unit in the Washington, D.C. area, and the personnel who were assigned to that group (the transferred HRU members) dispersed to other positions within the agency. Given this fluid situation, USMS officials said that the command structure for the Washington area SOG personnel was never fully sorted out before the group was disbanded entirely.

According to Maureen Pan, USMS Chief of Budget Formulation, the USMS anticipated when it wrote its report regarding the HRU transfer in March 2005 that there would be substantial equipment, travel, and training needs for the transferred personnel. However, Pan explained that because there were so few people who actually transferred, the \$200,000 was never moved into the SOG account. Instead, the money remained in the "special assignments" fund, where it would have been expended on other Operations Support Division activities.

We concluded that the report that the USMS provided to the Appropriations Committees regarding this transfer made statements concerning the command structure and the transfer of equipment, travel, and training funds to SOG that later turned out to be inaccurate, and should have been corrected. However, we found no evidence that the USMS intended to mislead the Committees.

⁵ The Conference Committee Report did not specify any particular command structure for the former HRU personnel.

C. Reimbursement of Training Expenditures

Flood alleges that SOG was not reimbursed for training that it conducted at SOGTC for other law enforcement agencies. Information provided to us by the USMS demonstrates that this assertion is incorrect.

Before any training of personnel from other law enforcement agencies takes place, the SOG Commander and the guest agency are required to enter into a reimbursable agreement delineating the cost of the training that SOG will provide. That agreement is signed at headquarters by the USMS Comptroller and the Assistant Director for Management and Budget Division (MBD). MBD then issues reimbursable funding to SOG's internal account, which is tracked separately from ordinary funding. Once the reimbursable funding is allocated, SOG can provide the services to the outside agency according to the terms of the reimbursable agreement, and use the reimbursable funding to pay expenses related to the training. Contrary to Flood's allegations, there is no evidence that SOG paid training expenses for other agencies "out of pocket."

D. Substantial and Specific Threat to Public Safety

Flood alleges that SOG personnel have not received necessary training, and this poses a threat to public safety. However, Flood's allegations regarding public safety derive from his allegations regarding misappropriation of funds. In sum, Flood alleges that because SOG has been under-funded, it has been unable to conduct necessary training or maintain or purchase necessary equipment.

As discussed above, we concluded that the USMS did not violate any law, rule, or regulation in funding SOG for FYs 2004-2006, and that it complied with the direction set forth in the Conference Committee Reports. While Flood may not agree with the level of financial support that SOG received, this was a policy decision dictated primarily by Congressional appropriations and a decision that was within the USMS' discretion.



July 20, 2007

Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036

Re: OSC File No. DI-06-0784

Dear Mr. Bloch:

Enclosed is a copy of the Office of the Inspector General (OIG) supplemental report entitled, *Supplemental OIG Report On Allegations by United States Marshals Service Employee Scott Flood*. On December 21, 2006 the OIG provided your office with a report addressing allegations that had been raised by the Commander of the Special Operations Group (SOG) of the United States Marshals Service (USMS) and referred by OSC to the OIG for investigation. By electronic mail dated February 9, 2007, OSC asked the OIG to prepare a supplemental report to address specifically the Office of Special Counsel's questions regarding certain of Flood's allegations related to training, weaponry, body armor, staffing of high-profile trials, and administrative vacancies. We believe that this report addresses those questions.

If you have any questions about the enclosed report, please contact Martha Hirschfield, Attorney Advisor, at 202 616-0640.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn A. Fine".

Glenn A. Fine
Inspector General

Enclosure

Cc: Catherine McMullen, Chief
Disclosure Unit

Office of the Inspector General
United States Department of Justice

SUPPLEMENTAL OIG REPORT ON ALLEGATIONS BY
UNITED STATES MARSHALS SERVICE EMPLOYEE
SCOTT FLOOD

July 20, 2007

I. Introduction

On December 21, 2006, the Office of the Inspector General (OIG) provided to the Office of Special Counsel (OSC) a report entitled, *OIG Report on Allegations by United States Marshals Service Employee Scott Flood*. That report addressed allegations raised by Scott Flood, who previously served as Commander of the Special Operations Group (SOG) of the United States Marshals Service (USMS).¹

The OIG's report concluded that the USMS had not violated any law, rule, or regulation in funding SOG for fiscal years 2004-2006; that the USMS followed congressional direction when it transferred its Hazardous Response Unit to SOG; that SOG was appropriately reimbursed for training that it conducted for other law enforcement agencies; and that any allegations of inadequate training or equipment were wholly dependent on the question of whether SOG had received adequate funding.

By electronic mail dated February 9, 2007, OSC asked the OIG to prepare a supplemental report to address four specific issues. In particular, OSC asked the OIG to determine whether:

- (1) SOG was unable to provide quarterly training to its agents, (2) SOG's body armor had expired and/or its weapon systems were outdated, and (3) SOG was unable to fully staff high-profile trials.

In addition, OSC asked the OIG to address Flood's allegation "that USMS did not allow him to fill three vacant administrative positions . . . which affected SOG's ability to function properly and to carry out its mission." OSC asked the OIG to determine whether these allegations were substantiated and, if so, whether the USMS had taken corrective action.

To investigate these allegations, the OIG reviewed documents that had been provided by Flood and by the USMS in connection with our original report, as well as a proposed policy directive pertaining to SOG provided by the USMS in connection with this supplemental report. We also interviewed the following SOG personnel:

David Robertson, Acting SOG Commander since June 11, 2006, and a SOG member from 1990 to 1996;

¹ Flood is on temporary duty assignment to the USMS's Justice Prison and Alien Transportation System. An Acting SOG Commander was named on June 11, 2006.

Walter Sanborn, Deputy SOG Commander and a SOG member since 1998. Sanborn served as SOG's Tactical Operations Commander from 2004 to 2007;²

Supervisory Deputy U.S. Marshal Drew Koschny, who has been with SOG since 1995 and is responsible for SOG's inventory of weapons;³ and

Supervisory Deputy U.S. Marshal Rodney Johnson, who has been with SOG since 1990.

In addition, we spoke with Arthur Roderick, Assistant Director of the Investigative Services Division of the USMS. Roderick previously served as the Assistant Director of the Operations Support Division, of which SOG is a part. Finally, with regard to the currency and adequacy of SOG's weapons systems, we consulted with Randall Smith, Unit Chief of the Drug Enforcement Agency's (DEA) Firearms Training Unit.

This report describes the findings of our supplemental investigation.

II. Quarterly Training

In his initial letter to the OIG dated August 28, 2006, Flood alleged that "the SOG unit has not conducted Sustainment training in two years, although policy calls for this training to be held at least two times a year." In its Report of Disclosures Referred for Investigation, OSC stated that Flood alleged "that USMS policy requires SOG employees to receive training on a quarterly basis."

SOG personnel generally refer to periodic training to sustain the skills necessary to carry out SOG missions as sustainment training. We found that the USMS has no formal requirement that SOG conduct such training for its deputies with any particular frequency.

We determined that a proposed USMS policy directive, dated June 6, 2003, would have required SOG members to attend sustainment training and qualify with SOG-issued firearms quarterly. However, this directive was never finalized.

² In his initial letter to the OIG dated August 28, 2006, Flood recommended that the OIG interview both Sanborn and Johnson.

³ Koschny is a certified armorer for a wide variety of weapons, including many of those used by SOG. An armorer is someone who has received training in the maintenance and repair of a particular firearm or weapons system.

Sanborn confirmed to the OIG that there is no formal policy regarding the frequency of sustainment training for SOG members. However, he told the OIG that SOG tries to follow the minimum training recommendations set forth by the National Tactical Officers Association, which recommends 192 hours of training per year. Sanborn stated that SOG has tried to meet this goal by holding training sessions of eight to ten days in length, for ten hours a day, twice a year, but, as discussed below, has not always been able to do so.

According to a report prepared by Flood in June 2005, the last time SOG had held sustainment training prior to that date was November 2004. We asked Sanborn to check SOG's records regarding the frequency of sustainment training. He reported that SOG's official records were poor, but that according to his personal records SOG had last held sustainment training in January 2003. Sanborn also reported that SOG held sustainment training in May 2007 and is planning to hold sustainment training again this fall. Sanborn attributed the gap in training to lack of funds.

Accordingly, it appears that while the USMS has no formal policy identifying the amount of training required for SOG members, SOG did not hold sustainment training between at least November 2004 and May 2007. Sanborn told the OIG that he believed that this approximately 2½ year training gap was less than ideal, and that teamwork within SOG had suffered as a result. However, he also pointed out that throughout this period, SOG members had continued to receive general firearms training through their districts and had received SOG-specific training on an ad hoc basis when they were called out on SOG missions. In addition, Sanborn said that no SOG members were permitted to use weapons for which they were not currently qualified.

III. Body Armor

In his initial letter to the OIG, Flood alleged that "SOG deputies do not all possess the proper uniforms and equipment," and that much of what was issued to them years ago "has been damaged or rendered unserviceable." As noted above, OSC asked the OIG to look particularly at the question of the adequacy of SOG's body armor.

As we described in our original report, most SOG personnel perform SOG duties on a collateral basis. All Deputy U.S. Marshals, including those who perform SOG duties collaterally, are issued tactical vests with body armor through their districts (standard issue vests), and these vests are replaced on a 5-year schedule. Accordingly, Deputy

Marshals assigned to SOG on a collateral basis have this standard issue vest available to them.

According to Johnson, who is responsible for all of SOG's accountable property other than weapons, SOG owns approximately 30 sets of heavy duty tactical vests with body armor (heavy duty vests). Johnson said that these heavy duty vests have not been issued to individual SOG members but are maintained at the SOG Tactical Center for SOG-specific missions. Johnson said that these vests were acquired in approximately 1999 and 2000. Johnson reported that although not all the heavy duty vests have manufacture or expiration dates printed on them, such vests typically have a 5-year lifespan and that accordingly, SOG's vests would have reached their expiration dates in approximately 2004 or 2005.

Sanborn told the OIG that SOG purchased heavy duty vests because they were capable of defending against higher caliber weapons than the standard issue vests. Sanborn explained that tactical operations groups such as SOG may face heavier weaponry than conventional law enforcement, and therefore should have vests capable of standing up to such weaponry. Sanborn also told the OIG that, until recently, SOG deputies rarely needed the heavy duty vests and instead routinely used the standard issue vests for SOG missions.

According to Sanborn, after September 11, 2001, and the start of the Iraq war in 2003, SOG members had an increasing need for heavy duty vests. Sanborn told the OIG that the supply of heavy duty vests available to SOG members was supplemented in late 2003 when the State Department purchased approximately 30 heavy duty vests for use by SOG members who were going to Iraq. Sanborn reported that these 30 vests, which are still current and in use, were initially issued to individual SOG members but have since been circulated among SOG members deployed to Iraq (that is, when a SOG member with a State Department-issued vest returns from Iraq he or she provides the vest to a deploying colleague). In addition, Sanborn reported that in recent years, many SOG members have purchased their own heavy duty vests and have used these personally-owned vests during SOG operations.

Sanborn said that he was not aware of any instance in which a SOG member had been sent on a mission with expired equipment; however, he acknowledged that in some instances SOG members have used equipment that they have purchased themselves or that had been lent to them by other SOG members.

According to Robertson and Sanborn, the USMS is currently in the process of replacing its standard issue vests. Although as issued these

new vests will not meet SOG's specific needs, Robertson stated that SOG plans to customize the vests to make them suitable for SOG's needs by tailoring their shape and adding protective plates. Robertson believes that these customized vests, which will be issued to SOG deputies individually, will be adequate to replace the heavy duty vests that SOG had previously purchased and that are now expired.

In sum, the heavy-duty vests that SOG purchased in 1999 and 2000 are now expired; however, SOG has supplemented its supply of heavy-duty vests from other sources and plans to customize the new standard issue vests to meet its needs.

IV. Weapons Systems

In his initial letter to the OIG, Flood alleged that SOG "cannot fund standardized weapons systems," so that "half of the unit carries and deploys different weapons systems from the other half." He also alleged that "ninety percent of SOG's long weapons are in non-deployable status and are considered unsafe by today's standards." OSC asked the OIG to examine whether SOG's weapons were "outdated."

According to Koschny, since at least 1998 SOG's weapons have been on a par with the weapons issued to similar law enforcement agencies. Koschny reported that the SOG-issued handgun is a custom .45 caliber pistol made by Springfield Armory. This pistol was introduced approximately 4 years ago and has been procured in batches. Currently, about 80 percent of SOG deputies have the Springfield 1911. The remaining SOG deputies use the Glock 22 pistol issued by the districts.

Koschny stated that SOG also maintains submachine guns, which are kept at the SOG Tactical Center and assigned to SOG personnel on a mission-specific basis. Currently, SOG uses Heckler & Koch (HK) MP5's that were purchased in the early 1990's. Koschny described the HK MP5 as the number one special operations tactical submachine gun in use throughout the world. Koschny also reported that SOG is in the process of replacing the MP5 and has recently ordered 120 new .223 caliber rifles, which will be Colt M-16s or similar.

Koschny also reported that SOG owns a small number of counter-sniper rifles that were procured in the mid-1990s and that are periodically reconditioned to maintain their accuracy, as well as a few HK G3 .762 caliber fully-automatic rifles for use in counter-sniper support situations. In addition, SOG owns approximately 30 Remington 870 12-gauge pump shotguns and approximately 26 Benelli M3 shotguns that were acquired in roughly 2000 or 2002.

Finally, Koschny said that SOG owns four M60 machine guns and four M249 machine guns, and is in the process of procuring four M240 machine guns.

We discussed with DEA Firearms Training Unit Chief Smith the information provided by Koschny regarding SOG's weaponry. Smith told the OIG that he had no reservations about the currency, quality, or variety of SOG's arsenal.

IV. Staffing High Profile Trials

In its Report of Disclosures Referred for Investigation, OSC stated that Flood alleged that he had been "unable to fully staff some high-profile trials," including the trial of Zacarias Moussaoui. OSC asked us to address in this supplemental report whether SOG was unable to fully staff high-profile trials.

As noted in our original report, one of SOG's responsibilities is to provide security at high-profile trials. Sanborn was the Tactical Operations Commander responsible for staffing such security details from the end of 2004 until the beginning of 2007. As he described the process, the district in which a high-profile trial is going to be held makes a request to SOG for security. The Tactical Operations Commander makes a recommendation to the SOG Commander as to whether SOG should staff the trial. The SOG Commander then forwards the recommendation to the Assistant Director for Operations Support, who authorizes funding for the assignment.

According to Sanborn, under ideal circumstances security teams for such missions would consist of up to 12 people: a 2-person sniper team; at least 8 other deputies to man lead and follow vehicles, including 2 drivers trained in evasive maneuvers to man the limousine carrying the defendant; and a 2-person courthouse perimeter security team.

Sanborn stated that because SOG deputies perform their duties on a collateral basis and because district operations are understaffed, SOG was frequently unable to assemble the ideal 12-person team. In effect, SOG deputies could not be freed from their duties in their districts to staff high-profile trials. In addition, Sanborn said that because there was insufficient funding to select and train new SOG deputies, there were not enough SOG members to draw from in order to staff such trials. Sanborn stated that there were many times during his 2 years as Tactical Operations Commander that SOG sent between six and eight deputies to staff high-profile trials - including the John Walker Lindh and Zacarias Moussaoui trials.

However, Sanborn said that in instances when SOG has been unable to send a full 12-member team, regular Deputy U.S. Marshals in the district in which the trial was taking place, as well as local law enforcement officers, have been used to supplement the SOG team. Sanborn told the OIG that he did not believe that using smaller SOG teams had posed any threat to public safety in any case of which he was aware.

V. Administrative Vacancies

In its Report of Disclosures Referred for Investigation, OSC stated that Flood "maintains that the Tactical Center currently has three vacant administrative positions, which USMS management has not allowed him to fill." As a consequence, Flood alleged that he "has struggled to maintain the facility and obtain necessary supplies to stay in operation." OSC asked the OIG to address in this supplemental report this allegation.

Sanborn confirmed to the OIG that three administrative positions at the SOG Tactical Center remained vacant for over a year, and that SOG was without any on-site support staff during this period. Roderick, who was Assistant Director for the Operations Support Division during this period, explained that at the time the SOG administrative positions became vacant there were pending against Flood various allegations of mismanagement and harassment brought by administrative staff, including an allegation that Flood had had a close relationship with a contractor that adversely affected the working environment for support staff. Roderick explained that in consultation with the USMS General Counsel's Office, EEO staff, and union representatives, he decided that he would not fill the SOG administrative vacancies until the allegations against Flood had been resolved. According to Roderick, support functions for the SOG Tactical Center were adequately performed by headquarters personnel during this period.

After Flood was placed on a temporary duty assignment and an Acting SOG Commander was named in June 2006, two of the administrative positions were filled. The third vacancy was transferred from the SOG Tactical Center to the Operations Support Division headquarters. Acting SOG Commander Robertson told the OIG that he is satisfied with having two support positions at the Tactical Center.

VI. Conclusion

In sum, our investigation concluded the following:

1. SOG has no formal requirement regarding the frequency of sustainment training. However, after an approximately 2½ year gap, sustainment training for SOG members has resumed.
2. The heavy-duty vests that SOG acquired in 1999 and 2000 expired in approximately 2004 and 2005. SOG has supplemented its supply of heavy-duty vests from other sources and plans to customize the standard-issue vests currently being procured through the districts to meet SOG specifications.
3. SOG's weapons are not outdated.
4. Understaffing at SOG and throughout the USMS prevented SOG from sending 12-person security details to some high-profile trials. Deputy U.S. Marshals and local law enforcement were used to supplement the SOG teams at these trials.
5. The USMS left three administrative positions at the SOG Tactical Center vacant while allegations against Flood were pending. Since an Acting SOG Commander was appointed, two of the administrative vacancies have been filled and the third was transferred to USMS headquarters.