



**U.S. Customs and
Border Protection**

November 9, 2010

Mr. William E. Reukauf
Associate Special Counsel
Office of Special Counsel
1730 M Street, Suite 218
Washington, D.C. 20036-4505

RE: OSC File No. DI-10-2335

Dear Mr. Reukauf:

The enclosed report is in response to your referral of allegations that may constitute gross mismanagement and a substantial and specific danger to public safety at the U.S. Customs and Border Protection (CBP), Canine Center Front Royal, Front Royal, Virginia. The Secretary, Department of Homeland Security, referred this matter to the CBP Office of Internal Affairs for investigation and the Commissioner designated me as the official responsible for providing your office with the Department's report pursuant to 5 U.S.C. § 1213. The Department's findings are presented in the enclosed report.

Please do not hesitate to contact my office at (202) 344-1800 should you require further information regarding these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Tomscheck".

James F. Tomscheck
Assistant Commissioner
Office of Internal Affairs

Enclosure

cc: General Counsel, Department of Homeland Security

U.S. Office of Special Counsel (OSC) File Number DI-10-2335

1. SUMMARY OF THE INFORMATION WHICH FORMED THE BASIS FOR THE INVESTIGATION

In a letter dated July 9, 2010, the U.S. Office of Special Counsel (OSC) requested the Department of Homeland Security (DHS) to conduct an investigation regarding an allegation received by OSC alleging that employees at the U.S. Customs and Border Protection (CBP) Canine Center Front Royal (CCFR), Front Royal, Virginia, are engaged in conduct that may constitute gross mismanagement and a substantial and specific danger to public safety. Specifically, Doctor (Dr.) Megan Keyes, Veterinarian/Medical Officer, CBP CCFR, reported to the OSC that training methods used by CBP personnel to train detector dogs include prolonged canine choking (choke-off techniques), which is, in her opinion, inhumane, causes physical and behavioral problems for the dogs and is contrary to agency policy. Dr. Keyes maintained that this type of training produces detector dogs that can be dangerous to their handlers and to the traveling public. Furthermore, Dr. Keyes contended that the choking methods have caused serious injury to dogs in training and could potentially render the detector dogs unable to serve in the capacity for which they were trained. Dr. Keyes provided OSC photographs of injuries sustained by two dogs named Yuron and Rocky. Dr. Keyes also submitted a copy of a February 8, 2008, memorandum issued by CBP Assistant Commissioner (AC) Thomas Winkowski, Office of Field Operations (OFO), to all OFO personnel prohibiting the use of choke-off techniques.

Dr. Keyes' allegations contained in the OSC letter of July 9, 2010, are summarized as follows:

- In January 2010, OTD Canine Programs Division introduced its revised training program that included a choking method, which involved choking the dogs as a means of getting the animal to release a reward toy.
- Dr. Keyes explained that the dogs are given reward toys when they respond to and properly detect the substance being sought.
- The rationale for the choking method was that choking the dog to release the reward toy increases the dog's "prey drive" by increasing its aggressive behavior.
- Repeated choking of dogs in this matter in training has been documented to cause serious injury, including laryngeal, tracheal, esophageal and cervical spinal damage, and is known to adversely affect canine thyroid function.
- Concerns about the adverse effects of the choking method on dogs, and the attendant danger it poses for canine handlers and the public, have been raised previously by CBP officials.
 - AC Winkowski issued a memorandum on February 8, 2008, to all the Directors of Field Operations noting an increase in reported detector dogs biting canine handlers and members of the traveling public incidents. The memo further instructed that the choking method was neither acceptable nor permitted by OFO.
- In spite of this prohibition, the OTD continues to include the prolonged choking of detector dogs in its training curriculum.
- In January 2010, Dr. Keyes personally witnessed the choking technique during a training class.
- Dr. Keyes has treated detector dogs in the training program who have suffered injury via the training method in her capacity as a veterinarian for the CCFR.

On May 3, 2010, she examined a dog named Yuron for hemorrhages of the eyes and strangulation injuries to his neck, confirmed that Yuron had been choked several times during training and concluded that the injuries were the result of the choking procedure.

In June 2010, she examined a dog named Rocky for hemorrhages of the eyes shortly after he was subjected to the choking technique.

- Upon completion of OTD training, the detector dogs are transferred to OFO to begin field assignments that include interaction with their handlers and the public.
- The OTD training program appears to be in contravention of the OFO prohibition against choking detector dogs, and ignores the documented safety concerns and increase in injuries to canine handlers and the public.
- The OTD training program appears to disregard the potential for serious injuries to the dogs, which could render them incapable of carrying out the CBP mission for which they have been trained.

A. CHOKE-OFF OF REWARD OBJECT TECHNIQUES

CBP Office of Internal Affairs Washington Field Office special agents' (hereafter WFO agents) review of the unified CBP Canine Detection Handlers curriculum and lesson plans revealed two choke-off techniques referred to as the "5 & 7" and the "straight line" which are being taught to students. To employ the "5 & 7" choke-off technique a person:

- Straddles the canine and grabs the canine's collar at the 5 o'clock and 7 o'clock positions right behind the point of the canine's jaw.
- Squeezes their legs together, turning their palms up and bringing their elbows in and slowly applies upward pressure on the collar.
- Continues to apply pressure until the canine opens its mouth and releases the reward object.
- Maintains control of the canine's head, backs up two steps and sets the canine down.

To employ the "straight line" choke-off technique a person:

- With the leash hooked to the live ring on a chain and the dead ring on the back of the canine's neck, moves the chain up right behind the point of the canine's jaw.
- Maintains tension slowly lifting the canine's front feet off of the ground.
- Continues to apply pressure until the canine opens its mouth and releases the reward object.
- Maintains control of the canine's head, backs up two steps and sets the canine down.

B. THE CBP CANINE PROGRAM

On March 1, 2003, the Department of Homeland Security (DHS) was created, effectively uniting the canine resources of the former U.S. Customs Service, U.S. Border Patrol, U.S. Immigration and Naturalization Service (INS) and the Animal Plant Health Inspection Service of the U.S. Department of Agriculture under a new agency entitled U.S. Customs and Border Protection (CBP).

Before the creation of DHS, the U.S. Customs Service maintained the Canine Enforcement Training Center (CETC) in Front Royal, Virginia, and the U.S. Border Patrol/INS maintained the National Canine Facility (NCF) in El Paso, Texas, at Biggs Army Air Field.

In the Fall of 2005, the CETC and the NCF were consolidated under the CBP Office of Training and Development (OTD). As a result of this consolidation, the CETC was renamed Canine Center Front Royal (CCFR) and the NCF was renamed Canine Center El Paso (CCEP).

On October 1, 2009, the Office of Field Operations (OFO) Canine Program and the Office of Border Patrol (OBP) Canine Program merged to create an integrated CBP Canine Program. The CBP Canine Program is headquartered in El Paso, Texas, and this unification established an organizational structure and operational procedures for a single integrated canine program within CBP and OTD. In order to maintain a solid program with two delivery sites (CCFR and CCEP), an integrated core curriculum was developed with the goal of utilizing the best practices from the two former training programs.

The CBP Canine Program has the responsibility of training canine instructors, canine handlers and canines to assist CBP in its mission. With over 1,300 canine teams, the CBP Canine Program is the largest and most diverse law enforcement canine program in the country.

2. DESCRIPTION OF THE CONDUCT OF THE INVESTIGATION

On July 27, 2010, WFO agents received a copy of the OSC referral memorandum and attachments, which included photographs taken by Dr. Keyes documenting the alleged injuries sustained by two CBP working dogs named Yuron and Rocky, and a copy of the February 8, 2008, memorandum issued by AC Winkowski to all OFO personnel prohibiting the use of choking techniques as a means of getting a detector dog to release a reward toy.

During the period from August 11 through August 18, 2010, WFO agents interviewed 33 of 53 employees assigned to the CCFR to obtain information regarding the alleged abusive nature of the choke-off technique. Of the 33 witnesses who were interviewed, 29 of them work exclusively with the canines either as Course Developers/Instructors (CDIs), Animal Caretakers (kennel staff) and canine health providers, which included Dr. Keyes and her staff (Animal Health Technicians). The remaining four employees were CCFR management officials at the CCFR. All of the 33 witnesses provided sworn statements.

The following CCFR employees were interviewed, and each provided a sworn statement:

- Veterinarian Medical Officer Dr. Megan Keyes
- Animal Health Technician/Staff Assistant Wade Grim
- Animal Health Technician Deborah Wingate
- Animal Health Technician Kathy Simmons
- Animal Health Technician Laurie Doherty
- Animal Caretaker Foreman Becky Gilmore
- Animal Caretaker Sandra Baker
- Animal Caretaker Allison Richardson
- Animal Caretaker Jennifer Talbot
- Animal Caretaker Mary French
- Animal Caretaker Martha Weakley
- Animal Caretaker Tanzy Noorda
- Animal Caretaker Walter Myers

- Customs and Border Protection Officer (CBPO)/CDI Wade Smith
- CBPO/CDI Kenneth Molitor
- CBPO/CDI Randal Gerlach
- CBPO/CDI Jeffrey Gabel
- CBPO/CDI Richard Demille
- CBPO/CDI Michael Burrola
- CBPO/CDI Edward Kruzel
- CBPO/CDI Michael Merickel
- CBPO/CDI Ronald Miller
- CBPO/CDI Darnell Smith
- CBPO/CDI Jose Saldivar
- CBPO/Training Specialist/CDI Morris Berkowitz
- CBPO/Training Specialist/CDI Donald Blair
- CBPO/Branch Chief Timothy Spittler
- CBPO/Assistant Director Barbara Wilson-Weaber
- CBPO/Branch Chief Anthony Grassi
- Supervisory Border Patrol Agent/Assistant Director Kevin Le Van
- Border Patrol Agent (BPA)/CDI Edward Wagner
- BPA/CDI Keith Hoops
- BPA/CDI Stephen Crump

On August 25 and 26, 2010, WFO agents contacted several federal and local law enforcement agencies in an attempt to conduct a limited benchmarking of other agencies using choking techniques in their canine programs.

During the period from August 31 through September 1, 2010, WFO agents traveled to El Paso and conducted limited interviews of two CCEP contracted private veterinarians, the only CBP animal health technician on site, and two CCFR CDIs who were attending CCEP training. WFO agents documented the results of all interviews in sworn statements.

The following CBP contractor veterinarians and employees were interviewed in El Paso, Texas:

- Veterinarian Dr. Orlando Garza, El Paso Animal Hospital
- Veterinarian Dr. Katherine Nenni, Desert East Animal Hospital
- Animal Health Technician Robin Syverson
- CBPO/CDI Mary Smith
- CBPO/CDI Carnell Green

On September 9, 2010, WFO agents obtained and reviewed former and current CBP Canine Detector training curriculums and lesson plans.

During the period from September 2 through 16, 2010, WFO agents interviewed OTD AC Patricia Duffy, OFO AC Winkowski and CBP Canine Program Director Clark Larson and each provided a sworn statement.

On September 21, 2010, WFO agents obtained a CCFR canine injury report from Dr. Keyes listing 81 canine injuries and diagnosis during the period from September 23, 2008, through September 20, 2010.

3. SUMMARY OF EVIDENCE OBTAINED FROM THE INVESTIGATION

- In October 2009, AC Duffy consolidated the management of CCFR and CCEP canine programs and selected former OBP Canine Training Center Director Clark Larson as the Director of the integrated CBP Canine Program, headquartered in El Paso, Texas.
- In January 2010, Director Larson approved and implemented a unified training curriculum, developed as a pilot program in 2005 that included the teaching of choke-off techniques to be used at the CCFR and CCEP.
- A majority of CCFR training and support staff, to include the veterinarian and staff, claim that the teaching of the choke-off techniques are abusive to the dogs and causes injuries. Director Larson said the choke-off techniques were not abusive and the techniques have been taught at the CCEP since the inception of the OBP canine program in 1986.
- Two veterinarians and an animal health technician stated they have not treated any CBP dog injuries at the CCEP that they felt were caused by abuse or by an abusive training technique.
- The limited benchmarking of seven other law enforcement agencies' use of choking techniques revealed that four agencies do not use choking techniques, one of which discontinued their use four years prior, and three agencies use choking techniques as a last resort, with one transitioning from compulsion to reward based training techniques.
- WFO agents identified that the teaching of the choke-off techniques is not aligned with current OFO policy which prohibits the use of choke-off techniques; identified that the CBP Canine Program training curriculum was not subjected to review and certification under established CBP standards and policy, and OTD lacks a unified set of mechanisms to collect, analyze and assess CBP-wide canine-related data.

4. INVESTIGATIVE FINDINGS (A Description of any violation or apparent violation of law, rule or regulation)

WFO agents' review of the unified CBP Canine Program training curriculum and lesson plans revealed that all OBP and OFO student handlers are instructed on several methods of release, to include the "Transfer" method (two toy); the "Physical Removal" (also referred to as the "Choke-Off") method; and the "Out Command" (enticement or compulsion/physical correction if the canine does not respond to the command by releasing the reward object).

Dr. Keyes told WFO agents that she treated canines named Yuron and Rocky on May 3, 2010, and June 21, 2010, respectively, for hemorrhages of the eyes and concluded that the injuries to Yuron and Rocky were the result of the choke-off technique being employed.

On May 11, 2010, the WFO received similar information about Yuron from another source and a subsequent investigation produced statements from both the handler and instructor denying that

Yuron's injuries were the result of them using the choke-off technique. They further stated that they did not know the cause of Yuron's injuries. No other witnesses were identified during the investigation. Prosecutorial consideration was sought from Virginia's Commonwealth's Attorney's Office and the U.S. Attorney's Office for the Eastern District of Virginia, with both offices declining prosecution. The investigation was recently completed with the results submitted to CBP's Labor and Employee Relations section in the Office of Human Resources Management for action as deemed appropriate by management. No prior complaint information was received by WFO regarding the injuries to Rocky.

WFO agents' review of the CCFR's canine injury report for the period from September 23, 2008, through September 20, 2010, revealed 81 canine injuries diagnosed by Dr. Keyes and her staff. In 2009, 25 injuries were diagnosed as compared to 49 that were diagnosed from January 1 through September 20, 2010 (the new unified training curriculum began on January 1, 2010). The report reflects that of all the injuries diagnosed and treated, three canines (Ornella, Yuron and Rocky) suffered from sclera hemorrhage (redness of the eyes) in 2010.

WFO agents conducted interviews of the training and support staff at the CCFR and obtained their opinions as to whether they felt the choke-off training techniques were abusive. Of the 18 CDIs assigned to the CCFR, 17 were interviewed (including two who were in training in El Paso) and 12 of the 17 claimed that the choke-off techniques were abusive, while five claimed the opposite. Of the 10 Animal Caretakers assigned to the CCFR and one assigned to the CCEP, all of which were interviewed, five claimed the choke-off techniques were abusive, two described them as harsh, but not abusive, and three claimed they were not abusive. Of the four Animal Health Technicians assigned to the CCFR and interviewed, all claimed that the choke-off techniques were abusive to the dogs.

WFO agents obtained the professional medical opinions from Dr. Keyes at the CCFR who has been treating CBP canines for approximately five years (two years as a CBP employee and approximately two to three years as a CBP contract employee), and Dr. Garza and Dr. Nenni who have been treating CCEP CBP canines for 22 years and 12 years respectively as CBP contract employees. Dr. Keyes stated she has treated dogs who have suffered trauma as a result of the choke-off techniques that she opined was abusive to the dogs. Dr. Garza and Dr. Nenni stated they have not treated any CBP dog injuries at the CCEP that they felt were caused by abuse or by abusive training techniques.

WFO agents contacted the Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Secret Service, the Transportation Security Administration, and Montgomery County, Maryland, New York, Los Angeles and Chicago Police Departments to ascertain if they use choke-off training techniques as standard training methods and as part of their training curriculum with the following responses:

- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE) does not employ the use of choke-off training techniques under any circumstances when training explosive ordinance detection (EOD) canines and accelerant detection canines. ATFE advised when a canine alerts the canine renders a passive response by sitting and the canine handler rewards the canine with treats.
- U.S. Secret Service only employs the use of the Tactical Release Method (TRM), similar to the "5-7" choke-off, as a last resort in order in order to release a reward toy when verbal commands fail. That method is applied during the training of both EOD and Tactical

canines. The TRM might also be applied after a tactical canine has subdued an assailant to prevent the canine from biting others during the control of the assailant.

- Transportation Security Administration (TSA) employs the use of pressure techniques only as a last resort. TSA may employ these techniques during the initial training of the canine. They also use a verbal command and a “pop” on the chain for the canine to release the reward toy. TSA does not use choke-off techniques because of the possibility of damaging the canine’s trachea rendering the canine ineffective.
- Montgomery County Police Department (Maryland) changed from compulsion or punishment training to reward based training four years ago. They do not currently use or teach any choke-off techniques as a part of their standard training curriculum.
- The New York Police Department does not use choke-off techniques as a standard training method.
- The Los Angeles Police Department uses similar choke-off techniques as a standard training method.
- The Chicago Police Department uses the choke-off techniques as a standard training method, but will be transitioning to reward based training techniques.

(NOTE: The benchmarking was limited due to the short amount of time allotted to conduct this investigation.)

WFO agents’ learned of the following deficiencies regarding the CBP Canine Program:

The Training Techniques Were Not Aligned with Operational Policy

The CBP Canine Program curriculum teaches the choke-off technique to mold canine behavior and to teach the canine to release the reward. This technique is prohibited by OFO policy. This conflict between what is trained and what is authorized at an OFO operational level results in an inherent discrepancy between OFO and OBP canines. According to the CBP Canine Program fundamental concept of a fungible canine team, the OFO and OBP canines should be trained in the same manner.

The Unified Training Curriculum Has Not Received Full OTD Review and Validation

The CBP Canine Program curriculum was not developed or reviewed as is required by OTD policy established in October 2008 to ensure that the curriculum meets Federal Law Enforcement Training Accreditation (FLETA) Standards. As indicated in the OTD *Training Development Standards*, the objective of the training standards is to ensure that training is developed, conducted and evaluated using a systematic approach that provides continuous self-evaluation and improvement based on analysis, design, development, implementation, evaluation and revision processes. These standards apply to all CBP national training programs.

The Mechanisms and Procedures Necessary for the Collection, Assessment and Analysis of Program Relevant Data and Statistics are Lacking

CBP has no uniform mechanisms, systems or procedures for the collection, assessment or analysis of canine program and performance statistics and data, including a standard reporting and evaluation of all dog bite incidents of CBP staff and the public. OFO is still

relying on the Detector Dog System (DDS) as a basis for its assessment of effectiveness of its canine assets. Meanwhile, OBP utilizes Enforcement Case Tracking System (ENFORCE) which captures a wider breadth of statistics and data, but it is not available to OFO. OTD has developed a plan for collecting and assessing the canine related statistics in a coordinated and uniform manner, but the plan has not yet been fully realized.

WFO agents interviewed AC Winkowski, AC Duffy and CBP Canine Program Director Larson regarding the choke-off techniques and the CBP Canine Program.

AC Winkowski said he issued his February 8, 2008, memorandum to all OFO personnel prohibiting the use of choking as a means to have a canine release a reward object because he had heard that this technique was being taught to OFO officers as a matter of first choice rather than using other techniques that did not employ choking. AC Winkowski said he wanted to make it clear that a choking technique should only be used in dire situations. AC Winkowski said the intent of his memorandum was not to have the choking training method removed from the curriculum. AC Winkowski said he supports the choking technique as a progression method of training which can be used as a last resort. AC Winkowski said he was not aware of the idea that the choking technique was being used to increase the "prey drive" of the dog.

AC Duffy said that when CBP was formed, a group came together to create an integrated core canine training curriculum; however, the curriculum was never implemented until after the October 2009 management unification of the CCFR and CCEP. AC Duffy said she recommended unifying the CBP Canine Program management with the concurrence of former OBP Chief David Aguilar, AC Winkowski and CBP Deputy Commissioner Jayson Ahern, now retired. AC Duffy said Director Clark Larson made the decision to approve the integrated core canine training curriculum to be utilized following the consolidated management of the CBP Canine Program. AC Duffy said although she had previously seen a demonstration of the choke-off technique, she was not aware that the choke-off was being taught to instructors and students as a standard method of training until she received a copy of the OSC referral letter in July 2010.

Director Larson said AC Duffy selected him as the Director of the CBP Canine Program in October 1, 2009. Director Larson said four CBP canine trainers, two from OFO and two from OBP, had previously developed a "pilot" unified training curriculum which merged the best practices from the OFO and OBP curriculums. Director Larson said he approved the final version of the unified training curriculum and implemented its use in January 2010, following the October 2009 unification of the CBP Canine Program.

Director Larson said OBP has always approved of the choke-off training technique and continues using it at the CCEP as they have done since the inception of the OBP canine program in 1986. Director Larson added that OBP handlers utilize, almost exclusively, the choke-off methods in training and when deployed to the field as a means to increase the dog's "prey drive."

Director Larson denied that the choke-off technique is abusive to the dogs and causes physical and behavioral problems. Director Larson said based on the hundreds of dogs and teams (handler and dog) he has trained, he is confident that the choke-off technique does not

produce canines that can be dangerous to the handler and/or the traveling public. Director Larson added that he has never seen a dog injured using the choke-off technique. Director Larson said he is aware of AC Winkowski's memorandum prohibiting OFO's limited operational use of choke-off techniques, however, the OBP approves of the choking technique and continues using it in the field as they have done since the inception of the OBP canine program.

5. DESCRIPTION OF ACTION TAKEN OR PLANNED

AC Duffy told WFO agents that she was in the process of issuing a Cease and Desist letter to Director Larson to stop teaching all choke-off techniques other than the "5 & 7" that was previously demonstrated to her. AC Duffy said OTD's Training Production and Standards Division will conduct a review of the CBP Canine Program training curriculum, including all lesson plans to identify the information that is used to teach the choke-off, where, what and how; where it is in the lesson plan, how they are teaching it and what they are teaching. AC Duffy also said OTD's Operation Division will conduct a review of canine medical records.

AC Duffy further advised that an Executive Steering Committee has been established and has been tasked to analyze current OFO and OBP canine program processes to ensure the successful fusion of the programs into a single enterprise.

AC Duffy also said OTD will take action to:

- Issue a joint OFO/OBP memorandum delineating the roles and responsibilities within CBP's Canine Program addressing the unification of the training activities - its goals, foundation, formulation and intended implementation.
- Establish a Working Group within the Executive Steering Committee to review all discrepancies between the unified training curriculum and OFO and OBP operational policies; and to recommend revisions of the curriculum and/or operational policies to eliminate any discrepancies that might undermine CBP's ability to leverage its canine assets in all operational environments.
- Establish formal relations between the Executive Steering Committee and similarly interested parties within OFO and OBP to ensure that these offices have an opportunity to review the unified training curriculum to ensure that it meets and continues to meet their respective operational needs.
- Subject the unified canine training curriculum to review, under established CBP standards, and certify the unified training curriculum as required by established CBP policy and federal law.
- Establish and fund the formation and distribution of a unified set of mechanisms for the collection, analysis and assessment of CBP-wide canine-related data.