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**Department of the Treasury**

**PRESS RELEASES**

DEPARTMENT OF THE TREASURY

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR IMMEDIATE RELEASE  
April 1, 1996

CONTACT: Office of Financing  
202/219-3350

TREASURY TO AUCTION CASH MANAGEMENT BILLS

The Treasury will auction approximately \$14,000 million of 15-day and \$11,000 million of 22-day Treasury cash management bills to be issued April 3, 1996. The 15-day and 22-day bill auctions will be held on Tuesday, April 2, 1996, with noncompetitive and competitive closing times of 11:00 a.m. and 11:30 a.m. Eastern Standard time, respectively.

Competitive and noncompetitive tenders will be received at all Federal Reserve Banks and Branches. Tenders will not be accepted for bills to be maintained on the book-entry records of the Department of the Treasury (TREASURY DIRECT). Tenders will not be received at the Bureau of the Public Debt, Washington, D.C.

Additional amounts of the bills may be issued to Federal Reserve Banks as agents for foreign and international monetary authorities at the average price of accepted competitive tenders.

This offering of Treasury securities is governed by the terms and conditions set forth in the Uniform Offering Circular (31 CFR Part 356) for the sale and issue by the Treasury to the public of marketable Treasury bills, notes, and bonds.

Details about the new securities are given in the attached offering highlights.

oOo

Attachment

RR-977

*For press releases, speeches, public schedules and official biographies, call our 24-hour fax line at (202) 622-2040*



**HIGHLIGHTS OF TREASURY OFFERINGS OF CASH MANAGEMENT BILLS  
TO BE ISSUED APRIL 3, 1996**

April 1, 1996

<u>Offering Amount</u> . . . . .	\$14,000 million	\$11,000 million
<u>Description of Offering:</u>		
Term and type of security . . . . .	15-day bill	22-day bill
CUSIP number . . . . .	912794 Y3 2	912794 Y4 0
Auction date . . . . .	April 2, 1996	April 2, 1996
Issue date . . . . .	April 3, 1996	April 3, 1996
Maturity date . . . . .	April 18, 1996	April 25, 1996
Original issue date . . . . .	October 19, 1995	October 26, 1995
Currently outstanding . . . . .	\$54,821 million	\$33,677 million
Minimum bid amount . . . . .	\$10,000	\$10,000
Multiples . . . . .	\$1,000	\$1,000
Minimum to hold amount . . . . .	\$10,000	\$10,000
Multiples to hold . . . . .	\$1,000	\$1,000

The following rules apply to all securities mentioned above:

Submission of Bids:

- Noncompetitive bids . . . Accepted in full up to \$1,000,000 at the average discount rate of accepted competitive bids
- Competitive bids . . . . (1) Must be expressed as a discount rate with two decimals, e.g., 7.10%.  
 (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all discount rates, and the net long position is \$2 billion or greater.  
 (3) Net long position must be determined as of one half-hour prior to the closing time for receipt of competitive tenders.

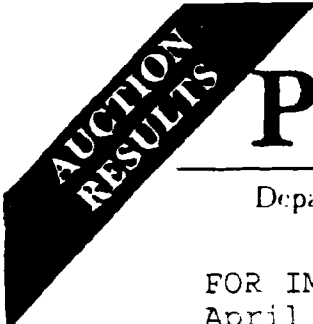
Maximum Recognized Bid at a Single Yield . . . 35% of public offering

Maximum Award . . . . . 35% of public offering

Receipt of Tenders:

- Noncompetitive tenders . . . Prior to 11:00 a.m. Eastern Standard time on auction day  
 Competitive tenders . . . . Prior to 11:30 a.m. Eastern Standard time on auction day

Payment Terms . . . . . Full payment with tender or by charge to a funds account at a Federal Reserve Bank on issue date



# PUBLIC DEBT NEWS



Department of the Treasury • Bureau of the Public Debt • Washington, DC 20239

FOR IMMEDIATE RELEASE  
April 1, 1996

CONTACT: Office of Financing  
202-219-3350

## RESULTS OF TREASURY'S AUCTION OF 9-DAY BILLS

Tenders for \$30,013 million of 9-day bills to be issued April 1, 1996 and to mature April 10, 1996 were accepted today (CUSIP: 9127946U3).

### RANGE OF ACCEPTED COMPETITIVE BIDS:

	<u>Discount Rate</u>	<u>Investment Rate</u>	<u>Price</u>
Low	5.27%	5.36%	99.868
High	5.34%	5.40%	99.867
Average	5.31%	5.40%	99.867

Tenders at the high discount rate were allotted 77%.  
The investment rate is the equivalent coupon-issue yield.

### TENDERS RECEIVED AND ACCEPTED (in thousands)

	<u>Received</u>	<u>Accepted</u>
TOTALS	\$58,637,000	\$30,013,000
Type		
Competitive	\$58,637,000	\$30,013,000
Noncompetitive	<u>0</u>	<u>0</u>
TOTALS	\$58,637,000	\$30,013,000

In addition to the above, the following amounts were received and accepted.

Federal Reserve	3,098,220	3,098,220
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5.28--99.868 5.30--99.868 5.32--99.867 5.33--99.867



**Russian Reform and U.S. Engagement**

Remarks by

**David A. Lipton**

Assistant Secretary of the Treasury

for International Affairs

U.S.-Russia Business Council

April 1, 1996

It is a pleasure to speak today before the U.S.-Russia Business Council, which has played a key role in forging a strong link between American business and Russia's emerging private sector.

Following current events in Russia is never boring. That is surely true in 1996. Russia is now approaching a major decision about the course of its transition. On the economic side, Russia is poised to make a critical breakthrough. To do so, Russia must go forward with the ambitious new phase of economic reform that it has prepared. Those reforms will be supported by a three-year, \$10 billion IMF loan.

On the political side, all eyes are on the upcoming Presidential elections. That Russia's destiny will be decided by popular election is important in its own right. But, with much talk of populism and retreat, Russia's decision about the course of reform is far from clear.

The point I want to make today is simple. It would be a mistake to let Russia's politics obscure the very real economic progress in hand and the very real economic possibilities within reach. Nor should the present political climate lead the United States to pull back from those policies which helped make Russian progress possible, and which could help keep Russia on track through a next, decisive phase of reform. That next phase could see Russia turn a corner to a growing, market based economy with rising living standards.

Reform and progress to date

To make that point, let me start by reviewing something that many of you in this room experienced first hand -- the tremendous changes that have overtaken Russia in just a few

RR-979



years. All of you who do business in Russia have witnessed a revolutionary turn away from communism to the market: the end of queues, a return of goods to the shelves, the sprouting up of new private businesses almost anywhere one looks.

Just about everyone has a tale to tell that exemplifies that change. Mine is from a visit to Russia in 1990 for a series of discussions at Gosplan, the central planning agency, about the prospects for reform. As our visit was ending, we were exploring the logistics of further communications with Gosplan officials. What we found was that this mother of all bureaucracies, with its 1000 sector input output model, with responsibility to plan resource flows across 11 time zones, did not even have a fax machine.

Now, Gosplan is long gone, and all across Russia the fax machines are humming. In Gosplan's place, there is a budding private sector that by some estimates accounts for 70 percent of GDP. What is obscured by Russia's hardball politics is that the building blocks of a market economy are being set in place.

- o First, despite strong political crosscurrents, economic stabilization advanced last year.
  - Russia stopped the inflation rollercoaster, bringing monthly inflation down from 18% in January to 3% in December. Inflation is headed still lower today.
  - The ruble, which had been deeply undervalued, strengthened and steadied, while Russia added \$10 billion to reserves.
  - Russia created a vibrant government securities market from scratch -- last year, Russia covered two-thirds of its deficit through Treasury bill sales.
- o And second, all of that has prepared the way for a strengthening of the real economy.
  - Russian exports grew by 14 percent last year and reached a level 50 percent higher than in 1992, showing that Russia can export to western markets.
  - And, the decline in real output, which has been underway for at least 4 years if not longer, appears to have bottomed out.

#### Why reform is unpopular

Why then, are the Russian people unhappy with their situation?

On the face of it the statistics show that reform has already produced an early, if modest, harvest.

- o Average monthly wages rose from \$80 last January to \$140 this February. That is a meaningful statistic in a society that is increasingly open to the world economy.
- o Certain sectors of the economy are turning around and booming on the back of high export growth. Real consumption in Russia is up over 20% since 1992. And the qualitative gains are higher because people can now buy what they want.
- o And reform has created a new entrepreneurial elite. Since 1992, 900 thousand new small businesses have come into existence, employing 14 million people, or about 20 percent of the labor force. With 8 million new jobs in America during the Clinton administration, we can recognize that as an admirable accomplishment.

But many are not impressed by these early results. I believe that is because the Russian economy now lies somewhere between Marx and the market, heading in the right direction, but not quite there. That fact has strong consequences.

Businessmen in Russia can no longer rely on connections with powerful government officials to get them the resources or concessions to make their enterprises successful. At the same time, they do not yet have a market they can rely on, with a sound legal base, a sensible tax system, well-functioning banks and reliable capital markets, and a fully satisfactory macroeconomic environment.

That situation is also disheartening for Russian workers, consumers, and pensioners. The process of reform has involved tremendous change and dislocation. So far the dislocations have been so dramatic, while the benefits do not seem to stack up.

- A large number of people face real financial distress. Wage earners see their wages paid late or not at all, and elderly pensioners are trying to live on fixed incomes that haven't kept pace while they've seen their savings wiped out.
- Workers fear for their jobs as companies are privatized and restructured and unemployment has risen to about 8% by some measures.
- Crime and corruption have mushroomed in the new space created by an incomplete transition. Tax evasion and bribery flourish in a tax system that has as many as 34 different taxes with marginal rates approaching 100 percent. Businesses are driven underground and protection rackets thrive in an economy where contract rights are not enforceable. Rent seeking behavior proliferates in sectors where tariffs are high and exemptions widespread. And of course, Russia's leadership must commit itself to root out corruption in government and establish a standard for behavior that will engender the public's trust rather than resentment.

I fear that until Russia achieves dynamic growth, the true benefits of reform will remain just around the corner. And until that time, the anxiety of dislocation and transition will dominate the public debate.

#### The future course of reform

At present, the public debate finds Russians questioning whether there might be another way. That is clearly one focus of the present election campaign. One temptation -- I believe an illusion -- is to wish for a strong leader who can pull the levers of the state machinery and make the economy work, make life better. And Russian businessmen, even some western businessmen, yearn for the days when a visit to the Kremlin or their enterprise's Branch Ministry closed the deal. That may work for Russia's hugest companies, or a handful of multinationals. But that kind of system cannot work for most businesses. Most businesses can only flourish in a functioning market -- obtaining finance from banks and capital markets, hiring workers, securing a chain of supply, manufacturing goods, and marketing across all of Russia.



For Russians, a retreat from reform would be misguided. At best, an attempt to stand still would lead to the ossification of the present unsatisfactory system. Worse yet would be to turn back. A leading communist parliamentarian, a contender as his party's economic czar, was asked last week by the Wall Street Journal about the role the private sector and the state. Picking up a bottle of Georgian mineral water, he said that to produce such goods, someone must "calculate the number of bottles [and] the number of labels needed. This is the kind of work that must be carried out exclusively by the state. No entrepreneur can do that!"

If Russia reinjects the state into the economy, with state orders or price controls, the market will suffer cardiac arrest. If Russia pumps up government spending, financial disorder will return.

Adjustment fatigue and the search for an easier and quicker way are not unique to Russia. When I look at Russia today, I am reminded of Poland in 1992. I had been working as an economic advisor to that government since before Poland's shock therapy economic reforms began in 1990. Those reforms had dismantled the old system and opened up Poland's economy to world markets. But shock therapy had also led to falling industrial output and to unemployment. Many Poles had experienced dislocation, and most worried about their futures.

At the beginning of 1992, a new government came to power, promising to abandon the course, to find a better way. Fortunately, Poland's yearning to become a "normal" European country and to satisfy IMF conditionality that would unlock loans and debt reduction restrained the government from changing course.

That turned out to be the right choice. Because what that government did not know was that Poland was poised for an explosion of growth. By the end of 1992, growth resumed at a pace of about 3 percent. By 1994, growth hit 6 percent. It has stayed high. Now, half of Poles surveyed say that have gained from reform and most see that their country is going in the right direction. An orthodoxy about economic reform has set in.

The factors guiding political life in Russia -- its heritage, self image, and aspirations -- are so very different than in Poland. Still, it would be a tragedy if Russia were to make the mistake Poland avoided and retreat from reform, just as the reform dividend was about to materialize.

#### United States Engagement in Support of Reform

It would also be tragic if the political turbulence in Russia were to lead the United States to step back from the role of leading international support for Russian reform just at the moment when that policy lever is most needed.

From day one of the Clinton Administration, we engaged Russia in support of reform. We emphasized the economic dimension because now the balance of payments is every bit as important to Russia's future as the balance of power.

Our policy over the past three years has been based on a simple premise. We support concrete Russian actions and results, not personalities. From the start, we offered large-scale support from the IMF, the World Bank and bilateral donors conditioned step-by-step on the reforms Russia needs to build a market economy. We knew we couldn't re-build Russia with aid, so we conditioned our money to leverage reform, and to protect our taxpayers.

The results have been good. In 1993 and 1994, Russia received \$3 billion from an IMF facility created at U.S. urging and designed to help support Russia at each step of the reform ladder. While progress on stabilization was highly uneven during this period, much was still achieved. Last year, Russia and the IMF reached an unprecedented agreement on a \$6.5 billion standby arrangement, requiring monthly monitoring. Russia met every single performance test. That is unprecedented.

Last Tuesday, the IMF Board approved a \$10.2 billion, three year extended arrangement for Russia. The \$10 billion supports a bold Russian program. It calls for fiscal policies that will bring lasting stability of prices and the ruble exchange rate. It includes the virtual completion of comprehensive tax reform and an overhaul of tax administration. It provides for bank supervision to cope with the inevitable problems in Russia's overbuilt banking system. It includes further capital market development. And it breaks into the field of land and agricultural reform, needed to bring Russia's farm potential into the private market economy.

Russia has already met the financial targets of this program in the first quarter. Russia adopted 15 important prior actions for the Board to consider the loan. And again, the Russian program will be monitored monthly.

Where will Russia be in three years if it sticks to this program? If Russia sticks to this program, then three years from now it could have a real market economy, one capable of strong and sustained economic growth; one that is propelled by a dynamic private sector; one that is receiving large flows of foreign investment; one that is seeing its greatly undervalued assets going through a share market boom; and one with steadily rising living standards for Russia's people.

The Russian economy will remain Russian, that is for sure: the close links between business and government, large enterprises slow to restructure, and an uneasy relationship with foreign investors. But, by carrying out this economic program, Russia could reach a point where its people begin to see the promise of reform. If that is achieved, this package could prove to be a watershed in Russia's transformation.

Our support for Russia's \$10.2 billion IMF extended arrangement is a good deal for Russia and it is a good deal for America. If Russia stays the course of reform, it will follow the path that Poland has travelled. And if it doesn't stay the course of reform, the IMF's support will be pulled back because conditional support is the best lever we have to encourage whoever is in power to stick with reform. It would be a grave mistake for our security and for your businesses were we to do otherwise.

### Foreign direct investment

Let me turn briefly to the subject of foreign direct investment, which Russia needs to acquire the equipment, technology and skills of a modern economy. It is unfortunate that Russia has attracted less foreign direct investment than Hungary, Poland, or the Czech Republic, even though it is vastly larger and richer in oil and other natural resources. It is remarkable to note that between 1989 and 1994, Hungary attracted foreign direct investment equal to \$671 per capita compared to just \$11 per capita in Russia.

One specific foreign investment problem deserves special mention. U.S. joint ventures in Russia's oil sector know more than they want about the instability of Russia's tax system. To attract investment in high-cost fields, Russia guaranteed ventures the right to export all their oil at world market prices. But they have since been buffeted with new taxes by federal, regional, and local authorities.

I am pleased Russia recently agreed to dismantle the export tax system that had segregated its market from the world market. But present plans, while designed to be revenue-neutral, would have the unintended consequence of hiking taxes on joint ventures. That could nullify their guarantees with grave financial consequences.

Russia must treat its early investors fairly, if it wishes to attract more investors. Therefore, the Treasury Department has urged Russia to respect its guarantees. We have also urged the IMF to support fair treatment for the ventures. Otherwise they will close shop and other foreign investors will become even more cautious. We want to see this problem resolved.

### Conclusion

To conclude, in the past four years, Russia set in motion a remarkable transformation. The old system is dismantled; the market is spreading. Russia now faces a decision: it can follow the logic of free markets; or it can grope about for another untested experiment. The former is the way to prosperity, the latter the way to disorder.

Supporting Russian reform has been and remains one of our highest foreign economic policy priorities. Anyone who doubts that a real revolution is underway and thinks the accomplishments have been small is wrong. Our engagement in support of reform has helped bring this about. It is a good policy and one we will stick with. Thank you.

AUCTION  
RESULTS

# PUBLIC DEBT NEWS



Department of the Treasury • Bureau of the Public Debt • Washington, DC 20239

FOR IMMEDIATE RELEASE  
April 1, 1996

CONTACT: Office of Financing  
202-219-3350

## RESULTS OF TREASURY'S AUCTION OF 13-WEEK BILLS

Tenders for \$13,645 million of 13-week bills to be issued April 4, 1996 and to mature July 5, 1996 were accepted today (CUSIP: 9127942Y9).

### RANGE OF ACCEPTED COMPETITIVE BIDS:

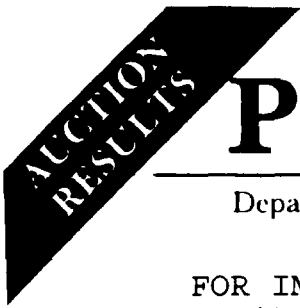
	<u>Discount Rate</u>	<u>Investment Rate</u>	<u>Price</u>
Low	5.05%	5.19%	98.709
High	5.07%	5.21%	98.704
Average	5.07%	5.21%	98.704

Tenders at the high discount rate were allotted 38%.  
The investment rate is the equivalent coupon-issue yield.

### TENDERS RECEIVED AND ACCEPTED (in thousands)

	<u>Received</u>	<u>Accepted</u>
TOTALS	\$56,357,220	\$13,644,590
Type		
Competitive	\$51,294,238	\$8,581,608
Noncompetitive	<u>1,445,152</u>	<u>1,445,152</u>
Subtotal, Public	\$52,739,390	\$10,026,760
Federal Reserve	3,356,430	3,356,430
Foreign Official Institutions	<u>261,400</u>	<u>261,400</u>
TOTALS	\$56,357,220	\$13,644,590

5.06 -- 98.707



# PUBLIC DEBT NEWS



Department of the Treasury • Bureau of the Public Debt • Washington, DC 20239

FOR IMMEDIATE RELEASE  
April 1, 1996

CONTACT: Office of Financing  
202-219-3350

## RESULTS OF TREASURY'S AUCTION OF 26-WEEK BILLS

Tenders for \$13,573 million of 26-week bills to be issued April 4, 1996 and to mature October 3, 1996 were accepted today (CUSIP: 9127943J1).

### RANGE OF ACCEPTED COMPETITIVE BIDS:

	<u>Discount</u> Rate	<u>Investment</u> Rate	<u>Price</u>
Low	5.03%	5.23%	97.457
High	5.06%	5.26%	97.442
Average	5.06%	5.26%	97.442

\$30,000 was accepted at lower yields.  
Tenders at the high discount rate were allotted 57%.  
The investment rate is the equivalent coupon-issue yield.

### TENDERS RECEIVED AND ACCEPTED (in thousands)

	<u>Received</u>	<u>Accepted</u>
TOTALS	\$42,057,253	\$13,573,229
Type		
Competitive	\$35,866,070	\$7,382,046
Noncompetitive	<u>1,219,583</u>	<u>1,219,583</u>
Subtotal, Public	\$37,085,653	\$8,601,629
Federal Reserve	3,400,000	3,400,000
Foreign Official		
Institutions	<u>1,571,600</u>	<u>1,571,600</u>
TOTALS	\$42,057,253	\$13,573,229

4.97 - 97.487    5.04 - 97.452    5.05 - 97.447

TREASURY



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FOR IMMEDIATE RELEASE  
APRIL 2, 1996

STATEMENT OF TREASURY SECRETARY ROBERT E. RUBIN

On July 17, 1995, we as a Department took several steps to address the allegations that Treasury Department personnel participated in the so-called "Good O' Boy Roundups" held annually from 1980 to 1995.

We condemned racist or bigoted behavior by law enforcement personnel as wrong and inconsistent with their duties. We asked our Department's Office of Inspector General to conduct an independent fact-finding investigation to determine the evidence and extent of Treasury employee participation in the "Roundups." We impaneled a distinguished group of citizen advisors to evaluate the investigation. We ordered our Office of Enforcement, with the support of the Office of General Counsel, to initiate a policy review process to clarify our strong opposition to bigoted behavior and prevent future law enforcement participation in incidents such as the "Roundups."

Finally, we promised to make our work public, to Congress and the American people, so they could be the final judges of our performance in this investigation.

*Today, I am referring for further inquiry thirty-one Treasury agents whose conduct may merit discipline or counseling, and I am also releasing strong anti-bias policies designed to help prevent an incident similar to the "Roundups" from ever occurring again.*

In total, I am announcing seven actions, all products of the investigative, evaluative, and policy processes we started. These actions seek to balance the individual and civil rights of law enforcement agents with the truly American commitment to the administration of justice in a manner free of bias, and I firmly believe that our actions strike this balance appropriately.

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(more)



## Summary

With the Inspector General's report and Policy Review complete, I can now announce the following seven actions:

First, while the Inspector General's Report found no credible evidence that any Treasury employee engaged in any overtly racist acts at the "Roundups," it suggests to me that the actions of some agents require further review. I will refer the names of 31 current law enforcement officers to the Bureaus for further disciplinary and other relevant inquiry, and I have directed the Bureaus to focus particularly on the conduct of managers.

Second, we have set forth fifteen new policy recommendations that reach the issues of racism and bias in hiring, training, evaluation, and discipline. Simply put, new rules will make clear that we won't tolerate abjectly racist or biased conduct on- or off-duty and that we wish not to hire people who have engaged in racist or biased conduct before seeking a job with Treasury. We can already discipline our employees under existing rules for the kind of off-duty racist conduct that transpired at the "Roundup". There should not have been any ambiguity about the applicability of these rules; there will be no ambiguity about off- or on-duty conduct going forward.

Third, we are releasing to Congress and the public the Report of the Inspector General, the Treasury Department Policy Review, and all letters from the five-member, independent Citizen's Review Panel. This disclosure underscores our belief in transparency, which is central to safeguarding the public's trust in our agents.

Fourth, because the Citizens' Review Panel did voice reservations about aspects of the Inspector General's Report, I have written the Inspector General asking for her response to questions the panel has raised. My letter to the I.G. is released today.

Fifth, of the 100 Treasury agents currently working to solve the eighteen arson cases in African-American churches, we have identified two ATF agents who may be subject to disciplinary inquiry for their conduct at the "Good O' Boy Roundups," and ten other agents who attended the Roundups but who are not subject to referral either for discipline or counseling. ATF will review the record promptly and consult with the Department of Justice in order to carefully determine whether investigators should discontinue work on the church arson investigations. We will consult with the appropriate Department of Justice Officials to make sure that these investigations are staffed appropriately. The successful prosecution of the people who set fire to these churches is our paramount concern.

Sixth, to make sure the church arson cases are effectively handled, Director Magaw is reviewing the adequacy of the resources assigned to these cases. Four investigations have resulted in arrests; one arrest in Mississippi occurred just yesterday, an earlier arrest in Alabama resulted in the apprehension of acknowledged KKK members. There are few crimes as sensitive or important as the torching of a house of worship, especially in ethnically identifiable communities, and we are striving to earn the trust of those most deeply affected by these tragedies. We will not be satisfied until all eighteen cases are solved.

Seventh, and finally, all Treasury employees are on notice that they should not attend anything like a "Good O' Boy Roundups" in 1996 or at any time in the future, should anyone have the egregiously poor judgment to organize such an event.

This is our response to the "Good O'Boy Roundups" -- the largest Inspector General investigation in our Department's history; the referral of thirty-one agents for potential disciplinary action; a comprehensive reform of our hiring and employment standards to fight bias and prevent a reoccurrence of the "Roundups" openness and disclosure. These actions are comprehensive and they are the right things for us to do.

We have acted in this manner for one central reason: We cannot enforce the law, fairly and with repute, unless law enforcement officials demonstrate, in perception and reality, that their behavior is as free from bias as the fair administration of justice requires them to be.

The people we entrust with a badge, gun and arrest power are and must continue to be individuals with the highest integrity, professionalism and impartiality. Treasury agents do dangerous and difficult work, and they have our complete support. They are best equipped to do their jobs, however, with strengthened anti-bias policies standing behind them, along with a strong Departmental commitment to implementing those policies and making them work. I affirm that commitment today.

In conclusion, I wish to express my appreciation to the following individuals inside and outside of Treasury who assisted with the Department's response to the "Good O' Boy Roundups."

My thanks to Customs Commissioner George Weise; John Magaw, Director of the Bureau of Alcohol, Tobacco, and Firearms; Eljay Bowron, Director of the United States Secret Service; Charles Rinkevich, Director of the Federal Law Enforcement Training Center; Margaret Richardson, Commissioner of the Internal Revenue Service, and Stanley Morris, Director of the Financial Crimes Enforcement Network, for their support and the support of their bureaus. I also appreciate the tremendous contributions of the Citizens Review Panel (Chairman Norman Dorsen, Julius L. Chambers, Patrick V. Murphy, Helene L. Kaplan, and Chief Fred Thomas). I regret that one outstanding panel member, former Solicitor General Rex Lee, passed away less than one month ago.



We mourn his loss and appreciate his contribution.

I also want to compliment Inspector General Valerie Lau and her staff for their exhaustive efforts; Edward S. Knight, General Counsel of the Treasury, Neil S. Wolin, Deputy Counsel, Stephan J. McHale, Lee Patton, and Maurice A. Jones, for the singular contributions of the General Counsel's Office; members of the Policy Review Team, including Lee Michaelson and Marc Greenwald; and the Office of Enforcement, Under Secretary Ronald Noble (retired), Assistant Secretary for Enforcement James E. Johnson, and Deputy Assistant Secretary for Enforcement Elisabeth Bresee for their work on the policy review and their deeply effective stewardship of this process.

These individuals are true friends of law enforcement and real exemplars of public service. I thank them.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

April 2, 1996

Valerie Lau  
Inspector General  
Office of Inspector General  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Valerie:

I have received your Report of Investigation of the "Good O' Boy Roundups." I understand from your report that you found no credible evidence that any Treasury employee engaged in any overt act of racism. I believe, however, that the matter cannot rest there. As I stated last July, it is totally abhorrent that any law enforcement officers knowingly would participate in an event that includes abjectly racist behavior. That is why the Department has engaged in a thorough and forward-reaching policy review. In addition, as set forth below, I have asked the Bureaus to refer certain individuals for further disciplinary and other relevant inquiry. I have also requested that the Bureau heads inform me in writing when all their law enforcement officers have certified that they have read and understand our new policies regarding the importance of the propriety of their off-duty conduct. Finally, I am asking you to respond to me regarding the letter from Professor Norman Dorsen, Chair of the Citizens Review Panel, regarding the Panel's review of your investigation.

I understand that you have forwarded your report, as well as the relevant memoranda of interviews, to Treasury's Bureaus. Having discussed this matter with the General Counsel and the Office of Enforcement, I believe that the following current employees should be referred to the Bureaus for further inquiry. First, all current employees who witnessed racist conduct and may not have taken appropriate action should be referred for disciplinary inquiry. Second, any current employee who may have misused government property and/or abused annual leave should be referred to his Bureau for disciplinary inquiry. Third and finally, because you and the Department of Justice Inspector General both found that egregious racist acts occurred at the Roundups only after 1988, all employees who attended more than one Roundup after 1988, even those who assert that they did not see racist conduct, should be referred to their Bureau for counseling and for review of their personnel files. Based on your report and your transmittal letter, I understand that a total of thirty-one current employees fall into these categories and will be referred to the Bureaus for disciplinary inquiry or counseling. I have informed the Bureaus that if they find that there are additional individuals who, in their judgment, should be subject to disciplinary inquiry and/or counseling, they should take whatever action they deem appropriate. I want you to work closely with the Office of Enforcement and the General Counsel to ensure that the proper individuals are referred.

Page 2

I am also directing the Bureaus to focus particularly on the conduct of managers. If any of the employees described above are managers or supervisors, I believe the Bureaus ought to take a more exacting look at their conduct. Further, I am asking the Bureaus to review closely the conduct of all managers who knew of the Roundups prior to last summer's press reports to see whether they took appropriate action based on their knowledge. As the Citizens Review Panel observed, managers and supervisors must be held to a higher standard.

Finally, as you know, your report has been reviewed in detail by both the Department and the Citizens Review Panel. I have received Professor Dorsen's letter dated March 29, 1996, as well as letters from the other members of the Panel. I would appreciate your responding to me regarding Professor Dorsen's criticisms set forth in his letter. In particular, please respond to his comment that your report "does not make findings of fact or draw conclusions concerning possible individual culpability." It is my understanding that Inspectors General have on occasion reached such conclusions in their reports in the past, and, therefore, I wish to understand why you have chosen not to do so in this report.

I also concur with the Citizens Review Panel in recognizing the enormous amount of work that you and your staff exerted on what I understand to be the largest investigation by an Inspector General in Departmental history, and for your graciousness toward the Citizens Review Panel throughout the project. Your independent review is important to the Department, the Congress, the public and me.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Rubin". The signature is written in a cursive, slightly slanted style.

Robert E. Rubin



FOR IMMEDIATE RELEASE  
April 2, 1996

Background Information on Seven Actions  
Treasury Department Office of Public Affairs Summary

Background

Following reports that federal law enforcement officials planned and attended the so-called "Good O' Boy Roundups," both the Department of Justice and the Department of Treasury asked for inquiries by their independent Inspectors General. The Justice Department IG released its report last month. The Treasury Department IG report is released today.

Treasury was especially determined to find the truth about the extent to which its law enforcement agents participated in offensive or proscribed off-duty conduct. The events were organized by an agent of the Bureau of Alcohol, Tobacco, and Firearms, now retired.

Secretary Rubin ordered the formation of an independent Citizen's Review Panel to evaluate the IG's inquiry. This group of prominent Americans included a nationally known legal scholar and civil libertarian, who served as its Chairman, as well as two former Chiefs of Police, a veteran of the civil rights community, and an esteemed legal practitioner.

Secretary Rubin also assigned the Treasury Office of Enforcement, with support from the Office of the General Counsel, to review the adequacy of existing personnel policies respecting biased behavior and to report on whether new policies were required in view of what transpired at the "Roundups."

Over the last eight months, the Treasury Inspector General queried 33,000 Treasury law enforcement employees, including 1,135 managers and lawyers at the Law Enforcement Bureaus. This investigation was conducted in parallel to the Justice Department's Inspector General's investigation and reached similar conclusions.

RR-983 (more)  
<http://www.ustreas.com>

Early in the 1980s the "Roundups" became an arena for repulsive and repugnant behavior ill-befitting the attendance of law enforcement officials. Beginning in 1989, overtly racist conduct began to occur. No Federal law enforcement officials are known to have engaged in such conduct. Indeed, they comprised a small percentage of the attendees. Nonetheless, upon becoming aware that racist behavior did occur at the "Roundups" in all too many instances, agents did nothing to stop it, and many returned in subsequent years knowing that egregiously racist conduct did occur.

As described in his statement, Secretary Rubin outlined seven actions he is taking in response to the Treasury Department's inquiry into the "Roundups."

Action #1 Review of Cases for Discipline or Counseling

Secretary Rubin is referring thirty-one Treasury employees to the law enforcement bureaus for disciplinary inquiry or counseling. These individuals comprise three categories of employees:

First, employees who witnessed racist conduct at the "Good O' Boy Roundups" and may not have taken appropriate action are referred for disciplinary inquiry.

Second, any current employee who may have misused government property and/or abused annual leave are referred for disciplinary inquiry.

Third, employees who attended more than one "Roundup" after 1988, even those who assert they did not see racist conduct, are referred for counseling and for review of their personnel files. **[Both the Treasury and Justice Department Inspectors General found that patterns of egregiously racist behavior occurred after 1988.]**

Secretary Rubin has met with the Treasury Law Enforcement Bureau Heads or their designees representing the Internal Revenue Service, the United States Customs Service, the United States Secret Service, the Bureau of Alcohol, Tobacco and Firearms, the Financial Crimes Enforcement Network, and the Federal Law Enforcement Training Center.

The Bureau Heads support the policy recommendations and have accepted the referrals for appropriate action. They share Secretary Rubin's concern, and similar concerns expressed by Professor Norman Dorsen on behalf of the Citizen's Review Panel, that the inquiry process pay special attention to the role and reactions of managers to the racist incidents and behavior which occurred at the "Roundups." Additionally, they have agreed to inform Secretary Rubin when law enforcement employees have certified that they have read and understand the new policies.

Action #2 New Policies in Hiring and Employment to Fight Bias

The behavior alleged to have occurred at the "Roundups" is already covered by policies that reach off-duty conduct; indeed, referrals of 31 Treasury agents for further inquiry and disciplinary action under the existing policy occurred today.

At the request of Secretary Rubin, the Office of Enforcement, with support from the Office of General Counsel, used the review process to determine whether existing policies should be strengthened. They concluded that hiring and employment standards to guard against bias should be toughened. Fifteen recommendations are provided in the 200-plus pages of the Department of Treasury Report of the Good O' Boy Roundups Policy Review.

Important recommendations include a new rule on bias motivated conduct which makes explicit that law enforcement officers will be disciplined if they engage in racist or sexist conduct. This new rule prohibits all "statements, conduct, or gestures evidencing hatred or prejudice" on account of "race, color, religion, national origin, sex, sexual orientation, age or disability." In total, the rules reach the issues of racism and bias in hiring, training, evaluation, and discipline. The revisions are comprehensive. They are based on the view that racist or biased conduct by a law enforcement officer is wrong, that it lowers the respect for that officer and law enforcement generally by the public, that it renders that officer less persuasive as a witness and harms the moral standing of our law enforcement ranks.

The recommendations were received with praise by the independent Citizens' Review Panel. Typical among the reactions was that of former New York City Chief of Police Patrick V. Murphy, Director of the Police Policy Board of the U.S. Conference of Mayors:

"The policy report is professional and comprehensive. The implementation of its recommendations will significantly reduce the risk of a repetition of embarrassing behavior by Treasury law enforcement personnel in the future as well as strengthen management and leadership through strict but reasonable accountability from first line supervision to top administration." [Letter to Secretary Rubin, March 29, 1996]

The Office of Enforcement's review of policy approaches by other Departments and local law enforcement organizations was wide ranging. They found particularly valuable comments by ATF regarding its suggested improvements in our proposed policies on participation in hate groups, prescreening techniques for hiring, and enhanced background checks.

The ATF today is clearly a different, more diverse and modern organization than it was when the "Good O' Boy Roundups" was started by a now-retired ATF employee. Indeed, ATF currently has the highest percentage of African-American agents of any Treasury Bureau.

The Offices of General Counsel and Enforcement made 15 policy recommendations that are being adopted by Treasury law enforcement bureaus. These recommendations apply to standards reaching off-duty conduct, prohibition of bias-motivated conduct, participation in hate groups, toughened hiring standards, stronger background checks, policies that promote diversity in hiring, and streamlining ethics and rules of conduct.

### Action #3 Public Disclosure of Documents

Additional data can be drawn from the documents Secretary Rubin released today: The Report of the Inspector General, the Department of Treasury Report of the Good O' Boy Roundup Policy Review, the comments of the Citizens' Review Panel, and Secretary Rubin's letter to Inspector General Valerie Lau. As Secretary Rubin said in his statement, "This disclosure underscores our belief in transparency, which is central to safeguarding the public's trust in our agents."

### Action #4 Follow up by the Treasury Department's Inspector General

The independent Citizens' Review Panel voiced reservations about the Inspector General's report because it "does not make findings of fact or draw conclusions concerning possible individual culpability." Secretary Rubin, on his reading of the report, did conclude that sufficient evidence existed to refer to the law enforcement bureaus the cases of 31 current Treasury agents whose cases fit in the categories described above (Action #1). He has also written the Treasury Inspector General, however, and directed her to respond to the Panel's comments, particularly as to why the I.G. declined to reach these conclusions in this report.

### Action #5 Re: ATF Agents assigned to Church Arson Investigation

There are eighteen southern church arson cases dating back to January 1995. Four investigations have resulted in arrests. ATF is working closely with State and local authorities, the Federal Bureau of Investigation, and the various United States Attorneys to bring the arsonists to trial.

Approximately one hundred (100) ATF agents have been assigned to these investigations; of whom, twenty (20) are African-American. ATF's role in these investigations is to conduct expert arson analyses. ATF's most well-trained and experienced agents and technicians are working to determine the cause and origin of the church fires.

When the Inspector General's Report was complete, ATF was able to determine that two (2) agents working on the investigation might be subject to further inquiry and disciplinary action relating to the "Good O' Boy Roundups" while ten (10) others attended during the period before a pattern of abjectly racist conduct emerged at the annual event. Regarding these ten individuals, no further disciplinary action is contemplated. ATF will review the record promptly and consult with the Department of Justice in order to carefully determine whether investigators should discontinue work on the church arson investigations. We will consult with the appropriate Department of Justice Officials to make sure that these investigations are staffed appropriately. The successful prosecution of the people who set fire to these churches is our paramount concern.

Today's report makes clear that no one from ATF participated in any racist activities at the Roundups. ATF now has the most diverse special agent workforce among law enforcement bureaus in the Department. ATF has peerless experience in investigating and solving arson fires. The Departments of Treasury and Justice are committed to bringing the investigation of these eighteen fires to a prompt and successful conclusion.

Action #6 Resource Assessment and Consultation for Church Arson Investigation

Secretary Rubin met yesterday with ATF Director John Magaw and the agent-in-charge of the church arson investigation, the Deputy Associate Director for Criminal Enforcement, Donnie Carter. Director Magaw pledged to review the adequacy of the resources deployed at the Bureau for solving these crimes.

Action #7 Caution to Treasury Law Enforcement Agents

The Secretary made clear that all Treasury employees are on notice that they should not attend anything like a 'Good O' Boy Roundup' in 1996 or at any time in the future, should anyone have the egregiously poor judgment to organize such an event.



**REPORT OF INVESTIGATION  
GOOD O' BOY ROUNDUP**

**95-1-028-I**

**Office of Inspector General**

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**United States Department of the Treasury**

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# **EXECUTIVE SUMMARY**

## **EXECUTIVE SUMMARY**

On July 17, 1995, Secretary Robert E. Rubin requested that Inspector General Valerie Lau and Under Secretary for Enforcement Ronald K. Noble conduct a joint inquiry into the alleged participation by Department of the Treasury employees at an annual event in southeastern Tennessee known as the "Good O' Boy Roundup" (Roundup). The Office of Inspector General (OIG) was responsible for the fact-finding portion of this investigation and this report concludes its investigation. The Office of the Under Secretary for Enforcement was responsible for determining the applicability of current laws, policies, rules and regulations to the facts discovered by the OIG. In addition, the Office of the Under Secretary for Enforcement was responsible for recommending changes to current laws, policies, rules or regulations, if deemed appropriate.

Our purpose was to conduct a comprehensive inquiry into the Roundup. Specifically, we addressed three concerns: (1) to ascertain what transpired at the Roundups, and in particular, what evidence existed to support allegations of racism, sexual misconduct, misuse of government property and other inappropriate conduct; (2) to determine the extent of participation by Treasury; and (3) to ascertain if Treasury managers were aware of the Roundup and what that awareness was and what actions, if any, they had taken in light of their awareness.

The Roundups received national attention on July 11, 1995, when newspaper and television reports raised concerns that law enforcement officers, in particular Bureau of Alcohol, Tobacco and Firearms (ATF) agents, had participated in racist acts. Initial allegations included racist acts, misuse of government time, resources and equipment and excessive drinking. Subsequently, additional allegations of other inappropriate and illegal acts arose in hearings before the Committee on the Judiciary of the United States Senate on July 21, 1995. These allegations included rape, various types of sexual misconduct and drug use.

To investigate these allegations, we queried 33,000 law enforcement employees of the Department to determine if they were invited to or attended any Roundup. To learn what management officials knew about the Roundups, we conducted a second query of 1,135 managers in all law enforcement bureaus, as well as the lawyers who provide legal counsel to those bureaus. To confirm information from our queries and to obtain information about Roundup events, we interviewed 399 individuals from within and outside the Department, including all 125 current Treasury employees who attended one or more Roundup events.

To verify and confirm the information from these queries and interviews, we compared responses of different interviewees and verified their responses, where possible, to documentary evidence. We were able to retrieve previously deleted

computer files of Roundup mailing lists, as well as lists of those who have had various roles at the Roundups. We were able to use these lists as a separate source to ascertain whether or not an individual had been invited to or participated in a Roundup.

### **Summary of the Results of Investigation**

There have been a total of 16 Roundups; the first one in 1980, and the most recent one in 1995. Raymond Eugene Rightmyer, a career agent with ATF until his retirement in January 1994, founded the Roundup while assigned to ATF's Knoxville, Tennessee office. The stated purpose of the event "was and is to promote fellowship within and outside of law enforcement."

Acts of racism did occur at the Roundups. However, our investigation did not reveal any evidence that Federal agents performed these acts. The most notable incidents occurred in 1990, 1992 and 1995, although there were incidents in other years. In 1990, a racist sign was seen at the Roundup consistent with the videotape which aired in the national media on July 11, 1995. Also in 1990, a racist Ku Klux Klan (KKK) parody skit was performed. Our investigation indicated that police officers from Kentucky perpetrated these acts. In 1992, another racist sign was posted and there was another racist skit. In 1995, a racial confrontation occurred over the attendance at the Roundup of two black officers, one an ATF agent and the other a local police officer. Police officers from Fort Lauderdale, Florida, were responsible for both the 1992 skit and the 1995 confrontation. We were not able to determine who posted the racist sign in 1992.

We have no credible evidence to support other allegations of illegal acts such as rape, prostitution or drug use at the Roundups.

We found that 125 current Treasury employees attended one or more Roundups. The majority of these Treasury attendees went once, twice, or three times. Most also went before 1990. The number of Treasury employees at a given Roundup fluctuated through the years. In 1980, 36 percent of attendees were current Treasury agents, while in 1995 this had declined to about 7 percent. According to Rightmyer and others who attended Roundups, this was a regional event and most who attended were stationed in the southeastern part of the United States.

Of the 125 current Treasury employees who attended at least one Roundup, about half (64) worked for ATF. Personnel from other bureaus also attended: 30 U.S. Secret Service (USSS), 15 Internal Revenue Service (IRS), 13 U.S. Customs Service (USCS) and three Federal Law Enforcement Training Center (FLETC) employees.

A key question has been the extent of Treasury involvement in the event. Rightmyer acknowledged using some copier paper in his ATF Knoxville, Tennessee, office and later using his ATF Greenville, South Carolina post office box and telephone for the Roundups of 1991, 1992 and 1993. Also, a written account of the first Roundup was reported in the July 1980 ATF Director's Notes, a newsletter circulated at ATF.

To determine whether any other Treasury attendees utilized government resources, all interviewees were asked whether they had taken leave and what their mode of transportation was to the Roundup. All advised that they took annual leave if they traveled during duty hours. To verify this information, the OIG conducted leave and travel voucher reconciliations for the last three years of the Roundup; 1993, 1994 and 1995. Of the agents who attended the Roundup during duty hours, all took annual leave with the exception of the following three incidents. One USCS agent submitted a leave slip for 16 hours of sick leave for the 1994 Roundup. This particular incident will be referred to USCS for appropriate action. Two ATF agents attended the Roundup in 1995 without fully charging their time to annual leave. Both agents corrected this discrepancy prior to the initiation of the OIG investigation. Administrative action was taken by management relative to the two ATF agents.

All 125 current Treasury employees who attended took leave and no travel vouchers were filed for those years by any of the 125 attendees. We found no evidence that Rightmyer used ATF letterhead or stationery to promote the Roundup, as alleged during this investigation.

A poll of management found that 107 current Treasury managers were aware of the event prior to the media coverage in 1995. In addition, we identified 11 lower level or retired managers who were aware of the event. We interviewed all 118 individuals and found that few had first-hand knowledge of the event. In all, 12 managers had attended one or more Roundups. All stated that they had not witnessed any racist events.

Almost all attendees were white males. Over the years, a limited number of women and other minorities attended. Interviews were conducted of 26 minorities who attended one or more Roundups. This number includes sixteen women (3 IRS, 1 ATF, 1 Drug Enforcement Administration (DEA), 1 U.S. Postal Service (USPS), 10 civilian or local law enforcement), three African Americans, three Native Americans, two Hispanics and two Filipinos. Many attendees stated that they saw various other minorities through their years of attendance. However, we

did not include these persons in our count of minority attendees unless they could be identified by name and their attendance could be corroborated by other evidence. One additional African American was identified by name as attending for five minutes, but this was not corroborated.

The results of this investigation are further detailed in the body of this report.



# **INTRODUCTION/ BACKGROUND**

## **INTRODUCTION**

On July 11, 1995, a Washington Times newspaper article (Exhibit 1) reported that "racist activities" occurred at an annual ATF-sponsored Roundup held in Ocoee, Tennessee every spring. These Roundups were reportedly attended by "hundreds of federal, state and local law enforcement officers" with the most recent one occurring May 18-20, 1995. No other Federal officers were identified as attending other than those of ATF. The article raised specific allegations regarding a skit in which "an officer in fake KKK garb pulled a dildo from his robe and pretended to sodomize another officer, who was in blackface." Additional allegations were raised of "nigger checkpoint" signs, "nigger hunting licenses," racist t-shirts and the exclusion of black ATF agents from the gathering.

## **BACKGROUND**

### **Preliminary Investigation by Treasury Enforcement Bureaus**

Following receipt of the Washington Times allegations, preliminary investigations were conducted between July 11 and July 17, 1995, by the following bureaus within Treasury: ATF, the United States Secret Service (USSS), the United States Customs Service (USCS), the Internal Revenue Service (IRS), the Federal Law Enforcement Training Center (FLETC) and Financial Crimes Enforcement Network (FinCEN). Their preliminary findings indicated that the Roundups began as a local ATF family outing<sup>1</sup> in 1980 and then grew to include attendees from other Federal, state and local agencies.

The Bureaus' preliminary investigations found that the Roundup was organized by Raymond Eugene Rightmyer, an ATF agent who retired in January 1994. The stated purpose "was and is to promote fellowship within and outside of law enforcement." According to an early interview of Rightmyer by ATF as well as affidavits provided by the Bureaus, it appeared that by 1990 attendance by Federal participants began to decline and, by 1995, the majority of attendees were not Federal law enforcement agents.

The Bureaus also confirmed, in their preliminary investigations, that several racially offensive incidents did occur at the Roundups, including the KKK skit and the "nigger checkpoint" sign. However, it was not determined who participated in these events. In addition, other allegations of an administrative nature surfaced, including misuse of government time, resources and equipment, during their initial

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<sup>1</sup> This characterization was later contradicted by the OIG investigation, which found that the Roundups were not a family event, although occasionally wives and teenage sons attended a Roundup.

interviews. Further, the Roundup was portrayed in media accounts as an exclusionary, racist event. Numerous memoranda of interviews, statements, affidavits, and other documents were generated by the Bureaus as a result of their preliminary inquiries, in addition to a report prepared by the USSS. That material was provided to the OIG the week of July 17, 1995, and was utilized during the initial phase of this investigation.

At the request of ATF, the OIG served a subpoena on Rightmyer on July 15, 1995, for all mailing lists and records pertaining to the Roundup. Pursuant to that subpoena, Rightmyer provided to the OIG four official Roundup t-shirts, one plastic mug and one ballcap issued to Roundup participants throughout the years. He also provided a seven-page computer printout (Exhibit 2) containing the 1995 Roundup invitation and registration forms, the daily event schedule for May 15-20, 1995, the golf schedule, and pre-registration data as of May 15, 1995. Rightmyer said that all other information relating to the Roundup had been maintained in his personal computer; however, he had erased all his other files, including the membership, attendee and Board Member lists, the previous day (July 14, 1995). He stated that he deleted these files because "I didn't want anyone else to go through what I've gone through the past week."

#### **Initiation of Treasury OIG Investigation**

On July 17, 1995, the Secretary of the Treasury requested that the OIG conduct a fact-finding investigation into the activities of, and involvement by, Department of the Treasury personnel who attended any Roundup (Exhibit 3). The Inspector General then issued a second subpoena to Rightmyer for all his computer records relating to the Roundup, and it was served on July 17, 1995. Using a technical expert in computer data recovery, Rightmyer's computer files were successfully recovered from his computer's hard drive. During an interview on July 20, 1995, Rightmyer said he had attempted to delete this material because he wanted to protect other agents and friends from media scrutiny and because he had been "unfairly branded a racist by Members of Congress and high level Treasury and Justice Department officials."

Analysis of the recovered computer information yielded several Roundup mailing lists dating back to 1993, identifying close to 1000 individuals; 1995 attendee information; expense information for 1995 for such items as food, t-shirts, beer truck and campsite rental costs; and other miscellaneous documents relating to sports activities at the Roundup, such as golf and white water rafting schedules and locations for each day of the 1995 Roundup.

Also successfully retrieved from Rightmyer's computer were committee lists identifying the names and membership of various Roundup committees; such as, the Pairings and Points Standings Committee, Truck Pushing, Horseshoe Pitching,

Volleyball, Motorcycle contests, Chug-A-Lug, Tug of War, Cooking, Check-in (Security/Registration), and the Rafting and Golf committees. There was also a list of "Members of the Board" (MOB), of whom there were 34 individuals identified for 1995, as well as a list of 26 individuals identified as "Roundup Executive Committee" (REX) members. This second list appeared to comprise mostly those who were named as former "Rednecks of the Year," "Presidents of the Year," or original members of the Roundup.

Computer spreadsheets maintained by Rightmyer contained information on recent attendees to include name, home and/or work addresses, t-shirt size, emergency point of contact and blood type, among other numerous pieces of information captured by Rightmyer's database. The material and documents obtained, either pursuant to the issuance of a subpoena or provided voluntarily by Rightmyer, did not identify any participant by race, gender, religion, or ethnic origin. A further review of the documents disclosed no racist or exclusionary language. A document later received, the 1984 Roundup invitation, stated that "men and teenage males only" could attend. However, women were reported to be in attendance every year by other Roundup attendees.

#### **Allegations Raised of Criminal Activities at the Good O' Boy Roundup**

As a result of media accounts of racist activities, the Senate Judiciary Committee called for a public hearing. On July 21, 1995, a one-day hearing was held during which officials of the Treasury and Justice Departments were asked to explain the involvement by their respective departments in the Roundups. During this hearing, criminal allegations surfaced for the first time. These allegations, detailed in redacted affidavits, were provided to Treasury and Justice by Senator Orrin G. Hatch, Chairman of the Judiciary Committee.

Specifically, three redacted affidavits were provided under cover of a letter from Harold Stockburger, self-identified as the founder of the American Patriot Federation, Chattanooga, Tennessee. He stated in his letter to the Senate Judiciary Committee that the allegations made by his three affiants were the "tip of the iceberg" into wrongdoing by unnamed Federal law enforcement participants at the Roundup. Senator Hatch's transmittal letter to the Treasury Inspector General, the three affidavits and Stockburger's cover letter are provided (Exhibits 4 - 8).

During the hearing, the Committee requested that the investigation address both the extent of Federal law enforcement participation in the Roundups, and the criminal allegations made by Stockburger and his affiants; which included rape, sexual harassment, sexual misconduct, bestiality and drug use.

One of these three affidavits stated that "25 officers got a very attractive young woman drunk. She passed out and they placed her on a picnic table in the

# **SCOPE/METHODOLOGY**

campground and took turns having sex with her." It was further alleged that a "drug enforcement officer" offered one of the affiants drugs; that there were female strippers performing for money; and that bestiality was committed with a goat purchased for that purpose. According to one of the affidavits, "if the ones involved didn't want to do the goat, they had to drink a quart of motor oil." All of these allegations were investigated during the course of this investigation.

## **SCOPE/METHODOLOGY**

The OIG conducted a comprehensive inquiry into the Roundups from July 17, 1995 through February 15, 1996. Specifically, we addressed three concerns: (1) to ascertain what transpired at the Roundups, including any allegations of racism, sexual misconduct, misuse of government property, gambling, narcotics and other inappropriate or illegal conduct; (2) to determine the extent of participation by Department of the Treasury personnel; and (3) to ascertain if management was aware of the Roundup, what that awareness was, and what actions, if any, were taken in light of that awareness.

On July 17, 1995, the Secretary requested that the OIG conduct a fact-finding investigation. The Department's Under Secretary for Enforcement instructed the Bureaus to turn over to the Inspector General all documents obtained during their respective preliminary investigations. Consequently, we received 70 memoranda of interviews or affidavits obtained from the Bureaus, as well as copies of newspaper articles and other documents collected during their initial investigations.

Inspector General subpoenas were issued on July 15 and July 17, 1995, to Rightmyer, the organizer of the Roundups, for any records relating to the Roundups. As a result, we obtained evidentiary material previously discussed in the Background section of this report.

In order to determine which Treasury employees attended the Roundups, a query was conducted of all Law Enforcement Bureau employees, Internal Revenue Service law enforcement personnel and OIG law enforcement employees. A total of 33,000 employees were queried, disclosing that 125 current Treasury employees had attended a Roundup event. The specific questions asked of the respondents were:

1. Have you ever been invited, orally or in writing, to attend any "Good O' Boy Roundup" event?
2. Have you ever attended any "Good O' Boy Roundup" event?
3. If so, in what year(s) did you attend?

Three hundred ninety-nine interviews were conducted during this investigation. That number includes the interviews of all 125 current Treasury employees who were self-identified on the mandatory poll as having attended one or more Roundups. An additional 146 individuals identified by previous interviewees indicated some knowledge of the event, or had been invited to the Roundup but did not attend. One hundred and eighty seven of the 271 individuals who had knowledge of a Roundup were Treasury employees. Interviews of these individuals were conducted to ascertain how they were invited and why they did not attend. Information was also provided by 25 retired Treasury agents; 17 of whom were confirmed as past attendees of a Roundup. Interviews were conducted by the Treasury OIG of individuals from all the departments identified below with the full cooperation of each entity.

Throughout the remainder of this report, the only names which will appear will be those of Treasury employees and those already in the public domain through Roundup media articles. If an individual is identified as "civilian" or "local police officer", or "other Federal agent", it is because their names have never been publicly connected to the Roundup and their privacy will continue to be protected by Treasury.

The breakdown of the 399 interviews conducted by the Treasury OIG is provided below:

Individuals interviewed with knowledge of the Roundup:

187	Treasury employees (90 ATF, 43 IRS, 40 USSS, 13 USCS, 1 FLETC)
7	U.S. Army Criminal Investigation Division (Army CID)
7	Department of Justice
1	Department of the Interior
1	Nuclear Regulatory Commission
3	U.S. Postal Service
1	Benton, Tennessee, Police Department
4	Boone County, Kentucky, Police Department
1	Chattanooga, Tennessee, Police Department
10	Cleveland, Tennessee, Police Department
4	Florence, Kentucky, Police Department
8	Fort Lauderdale, Florida, Police Department
1	Loudon, Tennessee, Police Department
1	Morganton, North Carolina, Police Department
1	Ocoee, Tennessee, Police Department
34	Civilians unaffiliated with law enforcement

Other categories of interviews conducted:

- 92 Treasury managers relative to "management knowledge" (conducted as result of the OIG survey of Treasury managers)
- 35 ATF minority, including women, interviewed to ascertain minority perception of the Roundups
- 1 State Department female (former AUSA involved with ATF class action)

Parallel investigations were conducted by the Department of Justice OIG (DOJ OIG) as well as other state and local agencies. Pertinent information was shared among the agencies.

Access was not denied to any employees of state, local or federal agencies whom we wished to interview, with the exception of five deputies from the Shelby County, Tennessee, Sheriff's Department. Those officers submitted to compulsory interviews by their department, but on advice of counsel refused to speak with the OIG and could not be compelled to do so. Their statements were, however, reviewed by Treasury OIG and that information is provided, where applicable, within the Chronology section of this report.

Additional interviews or statements were reviewed that were conducted by other agencies and that information was also incorporated into this report. Attendees from the following additional agencies were interviewed by their respective agencies: Maryland State Police; Washington, DC Metropolitan Police Department; Tennessee Bureau of Investigation; the Royal Canadian Mounted Police (RCMP); Hamilton Provincial Police (Canada); York Provincial Police (Canada) and Bradley County, Tennessee, Sheriff's Department. Reports of investigation were obtained from these entities with the exception of the Maryland State Police, which declined to provide the results of their investigation to Treasury. They did, however, provide audiotapes of two pertinent interviews to DOJ OIG. Those tapes were summarized in Memoranda of Interview and provided to Treasury OIG. Material from all the reports we received is incorporated in the Chronology section of this report, where applicable. Actions taken by the various departments against their officers are identified within the final section of this report, which describes administrative results.

### **Retirees**

As mentioned, twenty-five retired Treasury employees were interviewed by Treasury OIG and other agencies during this investigation. Where possible, retirees were contacted and interviewed after being identified by current Treasury employees or other attendees who had attended one or more Roundup events.



# **INVESTIGATIVE RESULTS**

We tried to locate those retirees who were said to have attended in years for which little information could be accumulated, or who attended in years when racist or other negative activity occurred. It was believed that retired individuals would be more candid. The primary value in interviewing the retired agents was to gain information about the early years of the Roundups and to learn how the Roundups evolved over the years.

Some of these retired agents continued to attend Roundups after they retired and were able to provide information about the organizational structure, the identities of early attendees, racist incidents and the gambling and drinking activities. Specific information learned by the retirees is detailed in the Chronology section of this report, where applicable. Identification of the retirees interviewed is provided in the Extent of Treasury Participation section of this report.

### **Management Knowledge**

To determine the extent of management's knowledge of the Roundup, a separate survey was conducted of all Treasury law enforcement managers who were GS-15s with supervisory authority and above. A total of 1,135 managers were queried from ATF, USSS, USCS, FLETC, FinCEN, IRS, OIG's Office of Investigations and the Office of General Counsel.

The results of this query are fully addressed in the Extent of Treasury Participation section of this report.

### **Leave Usage**

To verify whether leave was taken by Treasury employees during the Roundups, leave verification was conducted for the last three years (1993, 1994 and 1995) for each of the 125 employees who responded positively to the survey. The leave data was then compared to the memoranda of interview of each attendee as a final confirmation.

## **INVESTIGATIVE RESULTS**

### **History of the Good O' Boy Roundup**

In 1980, Rightmyer organized a weekend of camping in the Cherokee National Forest, Tennessee, in a public park now known as Pump Station #3 or "Thunder Rock" (Exhibit 9). Rightmyer stated that the creation of the Roundup grew out of a 1979 ATF task force in Tennessee which included agents from across the country. Several agents from this task force went whitewater rafting on their day off. When they returned, they told Rightmyer and others what a great time they had rafting on the Ocoee River.

As a result of that outing in 1979, Rightmyer developed the idea of inviting other agents and friends from the southeastern region to the Ocoee river area for a weekend of liaison, rafting and camping. Rightmyer stated that, although wives and children under 18 years of age may have attended the Roundup(s) in previous years, it was never intended to be a family event.

The public park was next to the Ocoee River near Ducktown, Tennessee. Rightmyer was at that time the Resident Agent in Charge of the ATF Knoxville, Tennessee field office. Several agents and Rightmyer had discussed getting together, away from the office, to socialize and Rightmyer decided to organize such an event. He believed that although local police officers tended to socialize among themselves, Federal law enforcement officers did not. It was not initially intended to be an annual event, but due to its success and interest by 58 attendees, Rightmyer decided to continue organizing it in subsequent years. He named attendees "Good O' Boys," whom Rightmyer defined as "honest, straightforward with you, he is not going to steal from you; what you see is what you get." He said there were no racist connotations to the name, in his opinion, and a Good O' Boy could be "a woman, it could be a black, it could be a hispanic." Rightmyer denied that the purpose of the Roundup was racist.

The term "Good O' Boy" may mean different things to different people. The difference in meaning one draws from "good o' boy" is reflected in the way in which dictionaries define the term. Webster's Dictionary defines "good old boy" as "a man of the southern U.S., variously characterized as easygoing, companionable, assertively masculine, and strongly identifying with his regional lifestyle." Whistlin' Dixie: A Dictionary of Southern Expressions defines "good old boy" as follows:

"A white Southern male exemplifying the masculine ideals of the region; any amiable Southerner, provided he likes guns, hunting, fishing, drinking, football and women, in roughly that order; a loyal Southerner, rich or poor, devoted to all things Southern. The term had popular use in the mid-1960s. Said the late Billy Carter, President Jimmy Carter's brother, of the good ole boy: 'A good ole boy. . .is somebody that rides around in a pickup truck. . . and drinks beer and throws 'em out the window.'"

The American Heritage Dictionary defines "good o' boy" as:

"A man who follows the stereotypical behavior of his peers, especially one who embodies the revelry, camaraderie, or bigotry regarded as typical of some white men of the rural southern United States."

The activities during this first year event consisted of volleyball, rafting, golfing, beer drinking and card playing. According to Rightmyer, as well as early attendees such as former ATF and now USSS agent [REDACTED] who attended 14 Roundups, the attendees the first couple of years were primarily ATF special agents from eastern Tennessee (Chattanooga and Knoxville). Subsequent Roundups included attendees from the entire Southeastern Region of the United States. There were eight women in attendance during the first year, according to ATF agent [REDACTED]. She stated that, after the date was announced for the next Roundup, she spoke with Rightmyer who told her that women were not welcome back as the wives of Roundup attendees might "get the wrong idea."

### Structure

Rightmyer described himself as the Roundup's "Benevolent Dictator." In the mid-1980s, one of the original members, retired ATF agent [REDACTED] and several other regular attendees began to encourage Rightmyer to incorporate as the Roundup was getting too big. Rightmyer was urged to incorporate to avoid potential liability issues. Rightmyer confirmed that he considered incorporating the Roundup, but that he never got around to doing so. An OIG review of the State of Tennessee incorporation records confirmed that the Roundup is not incorporated.

Although Rightmyer never incorporated the Roundup, in preparation for incorporating, a President and Vice President were elected during a Roundup business meeting. Neither position had any real authority and the honorary title lasted for the duration of one Roundup.

At about this same time, Rightmyer also formed what he called the "REX" and the "MOB" to assist him with the responsibilities of the Roundup. The "REX" was the Roundup Executive Committee, made up of long-time attendees. Thirteen of the 26 REX members in 1995 were Federal agents; 12 of these are current or retired Treasury employees. The names of the following ten ATF agents appear on the REX list: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], Gene Rightmyer and [REDACTED]. The remaining two Treasury agents on the REX list are USSS agents [REDACTED] and [REDACTED]. The 13th Federal agent who was a REX member is an Army CID agent.

One of the functions of the REX was to judge the "Redneck of the Year" contest. Winners of the "Redneck" contest then became REX members the following year and judged future entrants. This was otherwise a ceremonial title and nominees were voted on after competitions in the Liars Contest, Ugliest Good O' Boy Competition, and Redneck of the Year skit.

The Redneck of the Year competitions were described to the Treasury OIG by the attendees who either participated in or witnessed them, and their descriptions and identifications of the participants form the basis for the source documentation provided in this report. Rightmyer also provided information relative to the history of the contests and identified many of the skits as well as some of those who performed them. Further elaboration of these skits is provided in the Chronology section during the year in which they occurred, together with the identification of the three Treasury agents identified as having won a Redneck of the Year competition.

The MOB was made up of Members of the Board or "Mean Ol' Bastards" and they were [REDACTED]. Rightmyer identified the following Treasury agents who were in charge of various activities: ATF agent [REDACTED], retired ATF agent [REDACTED] and ATF agent [REDACTED]. He additionally identified an Army CID agent [REDACTED]. All of these individuals confirmed their roles during subsequent interviews and were part of the "MOB." Four other Treasury agents were also identified as 1995 MOB members. These agents are: [REDACTED] (IRS), [REDACTED] (USSS), [REDACTED] (ATF retired) and [REDACTED] (ATF). There were typically 20 to 30 MOBs per year, who served as camp cops, facilitators and ombudsmen. MOB and REX members wore hats labelled "MOB" or "REX", depending on their respective functions.

Prior to the MOB system, Rightmyer indicated he was solely responsible for the above mentioned duties. He added that in 1990, he began to sleep in a motel, away from the Roundup campground. Rightmyer advised that he slept in a motel to get some rest and as a consequence, he needed to have individuals on-site who could be responsible for these duties.

Rightmyer said that he used local vendors to provide food, beer, and other camping needs for which he charged participants in advance. By 1995, attendees paid \$75.00 for just camping, food, and beer; \$100.00 if they also wanted to go white water rafting.

In 1984, Rightmyer moved the site of the Roundup to private property approximately eight miles away from the original site (Exhibit 10). It remained at that site, Ocoee Outdoors, for all the subsequent Roundups. According to Rightmyer, Ocoee Outdoors was a private camping area [REDACTED] who in turn leased the property to [REDACTED] who then rented it to Rightmyer. Rightmyer said [REDACTED] was paid \$300.00 for the use of [REDACTED] land for one week.

As part of his official duties from 1984 until his retirement in 1994, Rightmyer organized and ran an official ATF "Outlaw Motorcycle Gang Criminal Investigator's Intelligence Conference" in Knoxville in January of each year. An officially sponsored event by ATF would normally include the authorized expenditure of ATF funds, time, materials and the use of some form of administrative leave by the attending ATF personnel. Additionally, prior to the conduct of the event, it must have the approval by the sponsoring ATF office, the procurement office, and must adhere to Federal procurement regulations.

This conference was widely attended by Federal, state, local and foreign law enforcement officers, particularly Canadians. Rightmyer said he would typically extend open invitations to the Roundups to all who attended these conferences. Attendance at the Roundups grew as a result of these contacts. The Canadians began attending in 1984 and became a large contingent for the subsequent Roundups. On one of the mailing lists retrieved from Rightmyer's computer, there are a total of 112 Canadian names and addresses. Exactly how many of those attended each year could not be ascertained. As with attendees from other locations, Rightmyer could not be certain how many actually attended.

### Rules

Roundup rules were generated by Rightmyer when he felt one was necessary. According to Rightmyer, there was only one fight at the Roundup and that resulted when a member punched the teenage son of another member, ATF agent [REDACTED] who was treating his father disrespectfully. The father left the Roundup because he was embarrassed by the incident, according to [REDACTED] a retired ATF agent. Because of the drinking at the Roundup, Rightmyer felt that fights could break out. The fight that did occur was also a reason why Rightmyer said he enacted the rule that stated "you are responsible for whom you bring."

The 1984 invitation (Exhibit 11) invites "men and teenage males only," but this rule was suspended the following year when a local law enforcement female challenged her exclusion and she was admitted.

Eventually, six basic rules were established by Rightmyer and they were printed on the invitations:

- "RULES:**
1. You are responsible for who you invite. (New attendees must have a law enforcement sponsor.)
  2. No fighting. Right or wrong this will not be tolerated.
  3. No fireworks of any kind.
  4. No one under 18 years of age. Ages 18 - 21 must be accompanied by their parent.
  5. What goes on at the Roundup stays there. (No press,

- press releases period. No stories that would embarrass any attendee, unless among Good Ol' Boys.)
6. Wristbands must be worn for beer and food." (Exhibit 12).

There was a statement in the body of the invitation, where the rules appeared, that said "we are not political and we will not be" (Exhibit 13). Rightmyer said this rule was enacted in 1993 and resulted from Richard Hayward's attempts in 1992 to distribute literature promoting David Duke.

One person who attended the Roundup, a DEA female agent, recalled seeing a sign at the registration table in 1993 which said "no racism." One Army CID agent, [REDACTED] said he posted a notice to be read by all who signed in which said racism would not be tolerated. However, no other interviewees said they saw such a sign or notice. Neither of these individuals indicated there was any warning notice or sign at either of the following two Roundups.

Beginning in 1991, attendees were divided by Rightmyer into three categories: Good O' Boy, Guest and Local Law Enforcement. Locals included state and local law enforcement officers from Polk and Bradley Counties, Tennessee, who stopped by to visit and who, at least in the early years, did not have to pay to attend. Attendees were issued hospital bracelets in three different colors to denote one of the three categories described above. The 1993 invitation (Exhibit 13) describes the different types of attendees.

Rightmyer was transferred to the Greenville, South Carolina field office in September 1990. He acknowledged using ATF's post office box in Greenville as the return address for the 1991, 1992 and 1993 Roundups. However, he denied the use of any other Government equipment or resources for the Roundups with the exception of some copier paper for early invitations. Rightmyer's account is corroborated by ATF agent [REDACTED]

[REDACTED] Interviews of seven other employees in the Greenville office [REDACTED] and [REDACTED] failed to corroborate allegations that Rightmyer utilized any government equipment in support of the Roundup.

According to Rightmyer, the Roundup attendees began contributing to charities in 1988. Rightmyer described the following charitable contributions made by the Roundup participants. He stated that money was raised during four Roundups for the American Cancer Society. Additionally, one year \$4,800 was raised for ATF agent [REDACTED] in 1993 \$1,700 was donated to the families of the ATF agents killed at Waco, Texas (confirmed in a letter at Exhibit 14), one of whom had reportedly attended a prior Roundup [REDACTED]; and in 1995 \$2,500 was raised for

the families of the Oklahoma City bombing victims. According to [REDACTED] Rightmyer called [REDACTED] to determine how he could submit \$2500 in funds raised from the 1995 Roundup for Oklahoma City.

### **Allegations**

A number of allegations were raised during this inquiry concerning events at the Roundups. These allegations included: racism; misuse of government time, resources and equipment; and drinking of moonshine. Additionally, criminal allegations of rape, bestiality, gambling, sexual harassment and drug use, also surfaced. All of these allegations were investigated during this inquiry and the results are detailed in the remainder of this report.

### **Racism**

In a sworn affidavit provided to the Justice OIG, Richard Hayward, a former Fort Lauderdale, Florida, police officer, advised that he was the source of the July 11, 1995, Washington Times article concerning the Good O' Boy Roundup. In addition to being previously employed in law enforcement, Hayward reportedly founded the Michigan Chapter of the National Association for the Advancement of White People (NAAWP) and he has claimed to be a supporter of the David Duke political campaign. Rightmyer identified Hayward as the President and founder of the NAAWP.

Hayward stated that he attended his first Roundup in 1989 and attended several thereafter. He claimed to have seen and taken a videotape of a racist sign. Hayward reported that he edited the videotape he took at the Roundup(s) prior to showing it to the National Rifle Association (NRA) officials. Hayward explained that he edited the videotape so that several of his friends shown on the original tape would not be hurt.

Hayward stated that he then provided his information to a Washington Times reporter named Jerry Seper. Seper's article also alleged that "nigger hunting licenses" were available throughout the campground (Exhibit 1), but no one interviewed during this investigation confirmed seeing any such licenses at any Roundup. Hayward further stated that he provided Seper with [REDACTED] name in order to corroborate the supplied information. [REDACTED] is self-described as a member of the Gadsden Minutemen, a militia group located in Gadsden, Alabama.

Approximately 15 of the initial participants were non-Federal law enforcement in 1980, according to Rightmyer, and the event was open to all law enforcement officers and their guests. He stated that "although black people did not commonly attend the Roundup, {he} and others made efforts to invite black police officers so



that the Roundup would not be viewed as a whites only event." Rightmyer did not attribute the lack of African Americans to racism. No African American attendance could be confirmed until 1995 by the OIG. Interviews conducted of attendees at the early Roundups disclosed that no African American agents were assigned to their respective offices.

State and local law enforcement officers self-identified themselves or fellow officers to the Treasury OIG as the perpetrators of the racist incidents, and they are the sources of the information provided in this report. For example, a Fort Lauderdale, Florida police officer admitted perpetrating the skit in 1992, in which he broke open a watermelon and removed a plastic doll which had been purchased and painted black by the officer for the purpose of the skit. The same officer also admitted selling the "OJ" t-shirts, which depicted a stick figure hanging from a gallows with the letters "O.J." underneath the figure.

Local Kentucky officers admitted planning and participating in the KKK skit in 1990. These same officers pointed to a fellow officer on the Florence, Kentucky police department as putting up the "checkpoint" sign the same year (1990). That officer denied his involvement, but the information developed by the Treasury OIG would lead a reasonable person to conclude that the same group of officers was responsible for both incidents.

Acts of racism did, in fact, occur at the Roundups, but our investigation did not reveal that any Federal agents performed these acts. Those agents who witnessed any of these acts are identified in the Extent of Treasury Participation section of this report. Summaries of these occurrences are detailed in the Chronology section.

### Racist T-Shirts

The Treasury OIG interviewed 47 individuals who saw one or more racist t-shirts. Every witness interviewed by the Treasury OIG was asked if he or she had any of the t-shirts depicting racist activity. All denied having any such shirts and consequently Treasury OIG is not in possession of any of these racist shirts. A number of people described these shirts and confirmed their existence, including 8 current or retired Treasury employees.

The t-shirts seen at the camp are described as the following: Boyz on the Hood t-shirt; the Buckwheat "pocket" or "running nigger" t-shirt; the OJ t-shirt; the Martin Luther King in cross-hairs t-shirt; the Martin Luther King face superimposed on a target t-shirt; the Malcolm X t-shirt with a slash mark through the name; the Confederate flag with the slogan "You have your X and we have ours" t-shirt; and

the "ghetto-blaster t-shirt of a male character holding a shotgun. All of the aforementioned t-shirts were confirmed as being seen at a Roundup and photographs of four of them are provided (Exhibit 15).

### Misuse of Government Time, Resources and Equipment

Rightmyer acknowledged using some copier paper in his ATF Knoxville office and later using his ATF Greenville, South Carolina, post office box and telephone for the 1991, 1992 and 1993 Roundups. We found no evidence that government letterhead or stationery was used to promote the event. Our investigation disclosed that, with one exception, no government cars were used to attend the Roundups. The one exception occurred in 1991, when three USSS agents, [REDACTED] and [REDACTED], drove a government vehicle to the Roundup. These agents were assigned to [REDACTED] and stated that when USSS agents go on protection details only government vehicles are permitted because the agents are on call 24 hours a day.

Leave was taken as necessary to attend the Roundups, which was verified during our leave and travel voucher reconciliations. Of the agents who attended the Roundup during duty hours, all took annual leave with the exception of the following three incidents. One USCS agent, [REDACTED] submitted a leave slip for 16 hours of sick leave for the 1994 Roundup. This particular incident will be referred to USCS for appropriate action. Two ATF agents, [REDACTED] and [REDACTED] attended the Roundup in 1995 without fully charging their time to annual leave. Both agents corrected this discrepancy prior to the initiation of the OIG investigation. Administrative action was taken by management relative to the two ATF agents.

### Moonshine at the Roundup

There were no confirmations of moonshine at a Roundup, with the exception of a civilian who claimed that he brought moonshine in 1991 or 1992. The moonshine was not further described. Several individuals, including the Army CID agent [REDACTED] recalled seeing people drinking vodka or a clear liquid from mason jars with handles.

### Strippers at the Roundup

Sixteen people interviewed by the OIG confirmed the presence of strippers beginning in 1991 and every year thereafter. A MOB, who was a Florida police officer, stated that a stripper was thrown out one year. Specific incidents include one related by [REDACTED] a retired ATF agent, who recalled strippers in 1994 dancing nude on a picnic table; another by a Florida police officer of a stripper dancing on the back of a truck and one by one of Stockburger's affiants, who

witnessed a female stripping on a table in the presence of both men and women. Whenever Rightmyer became aware of the presence of strippers in the camp, he ordered them out, as confirmed by [REDACTED], who actually escorted the strippers out on several occasions. We found no evidence to substantiate allegations of prostitution.

### Criminal Allegations

The investigation disclosed the following information:

Upon interviewing Stockburger, the OIG determined that he developed the information presented to the Senate Judiciary Committee from two private citizens [REDACTED] and from one individual residing in Michigan. This third affiant (Exhibit 8) was later determined to be Richard Hayward. Hayward publicly identified himself as a former Fort Lauderdale police officer and acknowledged videotaping the 1990 Roundup, in which the "nigger checkpoint" sign was revealed. Hayward offered these allegations to the NRA, according to information he provided in an interview with DOJ OIG and to the New York Times, in an article dated August 27, 1995 (Exhibit 16). Hayward additionally said in this article that the NRA turned the videotape over to the Washington Times. 70

Stockburger confirmed that these three affiants were his only sources of information for these claims. [REDACTED] 70

[REDACTED] This information was developed through a confidential source and confirmed through an OIG review of campaign financial disclosure statements maintained by the Secretary of State, Tennessee.

### Gang Rape

The two affiants who initially reported the gang rape allegation (Exhibits 6 and 7) have recanted their original claims of rape, bestiality and public sex occurring at the Roundup. They told OIG investigators that at the time of their allegations they believed rumors they heard about a rape having occurred to be true, so they related their allegations as fact. When pressed for details, however, they acknowledged that they never saw any rapes nor could they identify those who had. The alleged victim of the rape was subsequently identified by one of the affiants and she was interviewed by Treasury OIG. The victim denied ever being raped and successfully passed a DOJ-administered polygraph examination. An allegation that a "drug enforcement officer" offered drugs was not further supported.

Another witness who claimed to have seen the rape admitted that he did not see a sex act take place and said he had consumed a great deal of alcohol just prior to witnessing several men and one woman on top of a picnic table. A polygraph examination of this witness was terminated after he acknowledged he saw no rape nor any drug use, sale, or distribution by anyone whom he could identify as a Federal agent.

██████████ a retired ATF agent, claimed to have knowledge of racist or illegal conduct at the Roundup. ██████████ stated that ██████████ ██████████ Special Agent, ATF, retired, attended a Roundup in "1985, 86 or 87." ██████████ told ██████████ that he ██████████ left one of the Roundups in disgust. According to ██████████ ██████████ told him that naked men were jumping out of trees onto women and identified a retired ATF agent who got a woman intoxicated and raped her. ██████████ advised that he discussed this information with ██████████ in 1986 or 1987.

██████████ Special Agent, ATF, retired, was interviewed by the OIG and stated that he attended several Roundups, the last one being in 1987. ██████████ denied telling ██████████ about the above mentioned activities. ██████████ stated that he never saw anything illegal at any Roundup in which he attended. He denied knowledge of any drug use, rapes, non-consensual sexual activity, or seeing men jumping out of trees onto women. ██████████ reported that he discontinued going to the Roundups because he knew so few people in attendance and because he doesn't need to spend money on beer and food when he can do those things at home.

The OIG interviewed the retired ATF agent and he denied being involved in a rape at the Roundup. The OIG developed no other evidence of any attendee at the Roundup being involved in a rape. Our attempts to verify whether or not a rape ever occurred at a Roundup included asking every interviewee if he or she was aware of any rapes or unwanted sexual contacts.

### Bestiality

The affiant identified in Exhibit 6 had further alleged that bestiality was committed with a goat purchased for that purpose. Although this witness recanted most of her original claims of illegal conduct occurring at the Roundup, she initially stated in her affidavit "if the ones involved didn't want to do the goat, they had to drink a quart of motor oil." Our investigation uncovered that the drinking of the "motor oil" was done in a skit performed by a USSS agent in 1987. This agent, ██████████ stated that prior to going to the Roundup he had obtained a clean motor oil can from a friend who owns a service station. The can was filled with honey and beer, not motor oil, and he drank the contents of the can during the Redneck of the Year skit.

The separate use of a goat during a skit was confirmed by a witness who attended the 1995 Roundup. This individual, who designed and sold the annual official Roundup shirts to Rightmyer, stated that the 1995 Redneck of the Year won a goat as his date for the night. According to Rightmyer, a sheep was used another year, in approximately 1991, by an attendee who dressed in a white tuxedo and walked around with a sheep who had a ribbon around her neck. He introduced the sheep as his girlfriend, possibly as part of a skit that year. Rightmyer also talked about the "Emperor for Life," a retired Alabama police officer, who was always "teasing about having sex with a goat, but he has never had a goat there."

### **Gambling**

Fifty-three people interviewed by the OIG confirmed that the only gambling throughout the Roundup years was "chicken-shit bingo." Rightmyer confirmed that "chicken-shit bingo" occurred at the Roundup and was an annual event. Rightmyer described chicken-shit bingo as a board divided into 100 squares. Rightmyer explained that the cost of the game was five dollars a square and live chickens were placed on the board and "whatever square the chicken defecates on, they win." The winner with the right number would collect the purse. Rightmyer reported that the winner would very often give \$100 back to the Roundup. This money received would be added to an existing charity. It is unknown when this event was initiated at the Roundup. Although some attendees said "card playing" was one of the activities at the Roundup, gambling with cards was not confirmed.

### **Sexual Harassment**

The OIG confirmed one incident of sexual harassment of a local female police officer allegedly perpetrated by a Canadian. A local police officer recalled an incident in which a man she believed to be a Canadian walked up to her and said "So, who's the cunt?". She stated that this man's brother later apologized to her.

### **Drug Use**

Drugs were reportedly offered to one of Stockburger's affiants, although this affiant never saw any drugs nor could the affiant describe the alleged drug offeror. Only two interviewees alleged drug activity at the Roundup. One was the witness identified in Exhibit 6, the second witness was the same individual who alleged and later recanted his story of a rape at the Roundup. Three witnesses reported smelling marijuana between 1984 and 1987, but they were unable to verify the presence of marijuana or other drugs at the Roundup. No other credible information surfaced relative to the presence of drugs at the Roundup.

## **Chronology**

In addition to the information identified in the Scope/Methodology section of this report, information was also obtained through three interviews with Rightmyer; one on July 13, 1995, the second on July 20, 1995, and the third on November 14, 1995, plus additional information that he provided in two telephone interviews. For each Roundup, we have provided figures as to the number of attendees at that particular Roundup. These figures are estimates provided by Rightmyer and are based on his recollections, with the exception of 1995 for which the actual records were retained by Rightmyer. Material obtained from Rightmyer's computer database included the actual pre-registration list for 1995 only, so that is the only year for which an actual figure is known for pre-registered guests. It should be noted that the number of attendees indicated by Rightmyer for previous years are consistent with the recollections of those we interviewed.

As can be seen within the Chronology there were, particularly in the later years, non-law enforcement visitors to the campsite who did not register in advance or stay overnight. Because an actual count was not taken by Rightmyer or those in charge of registration for other than 1995, the figures cited herein reflect Rightmyer's figures for those who stayed for substantially the entire duration of the Roundup plus those specific individuals who could be confirmed through interviews to have been at the Roundup. Counting all those who may have stopped by briefly or for one evening would be misleading to the reader and could appear to artificially inflate the total number of registered "Good O' Boys" while reducing the percentage of federal participation.

**1980:**           Number of Roundup attendees: 58  
                  Number of Treasury attendees: 21  
                  Number of Interviews conducted: 31

The July 1980 edition of the ATF Director's Notes (Exhibit 18) stated that if anyone in ATF was interested in attending the 1981 Roundup, they should "contact the Knoxville, TN Post of Duty." Rightmyer stated that he did not submit this open invitation nor does he know who wrote it. Our investigation was unable to determine who authored this article.

Rightmyer reported that the 1980 Roundup was not an ATF sponsored event. He stated that there was no formal registration in 1980. He did not believe that any competitions or games were played in the first year. The first year was not very well organized. They were there primarily to camp and to go whitewater rafting.

**1981:** Number of attendees: 158  
Number of Treasury attendees: 16  
Number of Interviews conducted: 24

One of the first contests began. Rightmyer advised that the "beer enduro" contest was established in the early years of the Roundup but it was discontinued due to his concern that someone could die from excessive alcohol consumption. The beer enduro contest determined who could drink two ounces of beer every 30 seconds for two hours without urinating or throwing up. Rightmyer explained that if you urinated or threw up, you were out of the game. [REDACTED] a retired ATF agent, won every year.

Rightmyer began selling unofficial Good O' Boy t-shirts this year to attendees. As the years passed, the designs for the t-shirts would sometimes reflect an incident or story from the previous year's Roundup.

In 1981, Rightmyer for the first time began mailing out registration forms to the Roundup invitees. He indicated that an invitation was not always required to attend the Roundup. One could attend if you had a police officer or law enforcement agency vouch for you. Rightmyer related that there was no place on the invitation to identify a person by "sex, race."

Rightmyer would also circulate the invitations to various Federal and state law enforcement offices in Tennessee and the surrounding areas. He related that it was up to the particular agency to distribute or post information on the Roundup. In addition, Rightmyer would make a point to invite anyone attending an ATF sponsored school or training conference in which he (Rightmyer) participated.

**1982:** Number of attendees : 250  
Number of Treasury attendees: 12  
Number of Interviews conducted: 26

The "Redneck of the Year" contest began. This contest was established to "entertain us and make fun of ourselves" according to Rightmyer. Rightmyer selected the judges based upon those who had been to the Roundups on a regular basis and from new attendees who had never seen a Redneck of the Year contest.

Prior to the Redneck of the Year contest, there were team competitions in tug-of-war, truck push, volleyball, horseshoes, golf,

a liar's contest and an "Ugliest Good O' Boy" contest. Rightmyer stated that he discontinued the liar's contest and the Ugliest Good O' Boy contest because, over time, they weren't funny anymore.

The first winner of the Redneck of the Year contest was [REDACTED] Special Agent, ATF. According to Rightmyer, [REDACTED] won this title because his "nomination speech (for someone else) was so good that the committee decided to make him Redneck of the Year."

An African American ATF agent [REDACTED], stated that he believed it was prior to the event being held in 1982 that he advised Rightmyer that he was to ensure that no ATF funds or equipment were utilized to support what was clearly an off-duty and unofficial activity. [REDACTED] also advised Rightmyer not to use government mail and that he should use either his home or a post office box as the mailing address. [REDACTED] did not have any information that Rightmyer was using government funds or equipment. [REDACTED] was invited but did not attend because he stated that he "does not like camping."

**1983:** Number of attendees: approximately 300  
Number of Treasury attendees: 19  
Number of Interviews conducted: 34

This year's fee included the first official Roundup t-shirt which was designed and issued by Rightmyer (Exhibit 19). There were two rules: no fighting and no women. The attendees continued to come from the Southern states only. Seventeen kegs of beer were consumed, according to Rightmyer's 1984 invitation in which he recapped the previous year (Exhibit 11).

Several early participants, including retired ATF agent [REDACTED] recalled that 1983 was the year in which the attendees began playing games and giving out trophies to the winners. USSS agent [REDACTED] recalled varnished raft paddles with the inscription "Redneck of the Year (with the year of the event inserted)" awarded to the winners. The paddle also had a painted logo of a "pot-bellied guy holding a paddle."

This was the last year the Roundup was held at Pump Station #3. The decision was made by Rightmyer to move to private property approximately eight miles further down the river. Rightmyer and others stated that the move occurred because a Forest Ranger came into the camp and told Rightmyer that they had to move the beer



truck off the property because it was illegal to have one on Federal property. This scene was depicted on the following year's official Roundup t-shirt (Exhibit 20).

**1984:** Number of attendees: approximately 300  
Number of Treasury attendees: 14  
Number of Interviews conducted: 42

This was the first year at Ocoee Outdoors, which was a private camping area leased [REDACTED] sub-leased this area to Rightmyer for the Roundup beginning this year. The Roundup was just two nights and two days and there were only two rules: 1) you are responsible for whom you invite; and 2) no fighting. The cost was \$20.00 or \$40.00, depending on whether the attendee planned to go white water rafting or not. Although only men and teenage males were invited in 1984, Rightmyer and others stated that some women attended anyway.

As part of his official duties from 1984 until his retirement in 1994, Rightmyer organized and ran an "Outlaw Motorcycle Gang Criminal Investigator's Intelligence Conference" in Knoxville, Tennessee, in January of each year. This conference was widely attended by Federal, state, local and foreign law enforcement officers, particularly Canadians, who began attending in 1984. Rightmyer stated that he would typically extend open invitations to all who attended these conferences and attendance in the Roundup grew as a result of these contacts.

Rightmyer identified [REDACTED], Special Agent, ATF, retired, as winning the Redneck of the Year contest for telling a humorous story. According to Rightmyer, [REDACTED] also won the Liar's contest when he said "I'm here with the Federal government and I'm here to help you."

ATF employee [REDACTED] recalled that the Canadians parked their motor home and put a statue of a "black kid holding up a ring for a hitching post" in front of their motor home. [REDACTED] stated that he personally saw Rightmyer ask the Canadians to put the statue back in their home because he (Rightmyer) thought it was inappropriate. The Canadians took the statue back into their motor home.

According to Rightmyer, the Roundup invitation excluded women due to limited bathroom facilities at the campground. Although the 1984 Roundup invitation invited only "men and teenage males," women did attend in 1984, despite this policy.

**1985:**           **Number of attendees: 258**  
                  **Number of Treasury attendees: 21**  
                  **Number of Interviews conducted: 44**

Women began attending in more numbers and Rightmyer stated he invited an African American ATF agent, [REDACTED] to go to the Roundup. This agent stated that he did not attend because he did not want to go alone into the countryside of east Tennessee with a group of good ol' boys. [REDACTED] recalled that Rightmyer said he would protect [REDACTED] but [REDACTED] said he would not attend an event where "protection was necessary."

[REDACTED] ATF agent, stated that the only racist thing that he recalled was a local deputy sheriff who used a black lawn jockey, with a ring in its nose, to tie up his pet bull dog. He heard that someone told Rightmyer about this and Rightmyer had it removed. No other witnesses reported seeing a lawn jockey.

[REDACTED] retired ATF agent, was elected as the first President of the Roundup.

Exhibit 21 depicts the 6th Annual Good O'Boy Roundup t-shirt.

**1986:**           **Number of attendees: approximately 300**  
                  **Number of Treasury attendees: 29**  
                  **Number of Interviews conducted: 62**

ATF agent [REDACTED] reported gunshots in the middle of the night which were attributed by some, including Rightmyer, to a now-retired ATF agent, [REDACTED]. [REDACTED] acknowledged bringing his weapon to the Roundup, but denied ever shooting his weapon. He did admit that Rightmyer confiscated his weapon every year, returning it upon his departure Sunday morning.

A Filipino civilian, a MOB who attended eight Roundups, stated that he had "never been harassed or mistreated" at the Roundup. He also stated that he considered himself a friend of Rightmyer's and did not consider him a racist.

An ATF employee, [REDACTED], said that as he walked by a car he heard a song on a tape player called "My Wife Ran Off with a Nigger." [REDACTED] said he believed the car belonged to a police

officer from Mississippi. A civilian also heard this song, but could not be specific as to the year. He identified the artist as David Allen Coe.

According to the 1986 invitation (Exhibit 22), the campsite for the following year would be increased to accommodate 300 people. "We will have a cutoff of 300; so get your registration form in early."

Exhibit 23 depicts the 7th Annual Good O' Boy Roundup t-shirt.

**1987:**  
Number of attendees: approximately 300  
Number of Treasury attendees: 29  
Number of Interviews conducted: 55

Exhibit 24 depicts the 8th Annual Good O' Boy Roundup t-shirt.

This year a USSS agent [REDACTED] witnessed the Redneck of the Year skit in which someone ate a whole fish. The dead fish had been soaked in beer but was apparently uncooked. This incident was depicted in the following year's official Roundup t-shirt (Exhibit 25). One of those attendees was USSS agent [REDACTED] who won a trophy for horseshoe throwing.

In 1987, [REDACTED], Special Agent, USSS, won the Redneck of the Year contest. Rightmyer indicated that [REDACTED] won the contest by drinking motor oil, which [REDACTED] recalled was really honey and beer.

Rightmyer claimed that an unidentified woman asked him, "If you will show your, talking about my penis, I will show my tits." As the woman exposed her breasts, numerous attendees chanted, "show your dick." Rightmyer stated that he dropped his "drawers and eased up to the table, but my, I never exposed myself, left my T-shirt over myself." As a result of this incident, the words "Don't Touch my Duck" were placed on the t-shirt for the ninth annual Roundup (Exhibit 25).

**1988:**  
Number of attendees: approximately 300  
Number of Treasury attendees: 21  
Number of Interviews conducted: 52

A sheriff of a local department stated that two Roundup attendees were arrested by one of his deputies for Driving Under the Influence and disorderly conduct. This same sheriff saw six to eight local female law enforcement officers; [REDACTED]  
[REDACTED]

A competitor of [REDACTED] stated that [REDACTED] attempted to bring strippers to the Roundup campsite. Rightmyer and some of those who were responsible for security objected to the strippers' presence by throwing them out. Then [REDACTED] approached this competitor with the intention of renting a separate parcel of land to use for strippers, so that Roundup attendees could visit them in an area a short distance from Ocoee Outdoors. Whether this occurred or not is not known.

This year auctions began for worthy causes. The first auction was held to benefit an ATF agent, [REDACTED]

[REDACTED] Rightmyer stated that a Miller Beer Distributor donated items and other attendees brought articles to be auctioned. These items included lawn tillers, a gun and new tires. Rightmyer stated that an unidentified female offered to auction off a "blow job" as part of this fund raiser. This was depicted in the 10th Annual Good O' Boy Roundup t-shirt (Exhibit 26). Rightmyer recalled raising \$4,800 for this benefit.

During this year's Redneck of the Year contest there was a father/son act where USSS agent [REDACTED] smoked a cigarette in his belly button. This act was awarded second place. The winner, according to [REDACTED] was a guy who bit the head off a live fish.

According to Rightmyer, in approximately 1988, as a result of police officers shooting bottle rockets at each other and setting off a tear gas grenade, he prohibited the use of fireworks at the Roundup. Rightmyer indicated that the employees from the Tennessee Bureau of Investigation and the Johnson City, Tennessee, Police Department were responsible for the misuse of fireworks at the Roundup.

**1989:**  
Number of attendees: approximately 300  
Number of Treasury attendees: 18  
Number of Interviews conducted: 60

A "nigger checkpoint" sign and a KKK sodomy skit were both alleged by Richard Hayward to have been seen at the 1989 Roundup. However, no witnesses interviewed during this investigation saw a racist sign or a racist skit prior to 1990.

USSS agent [REDACTED] was the Roundup Vice President of the Year and President the next year. According to Rightmyer, the Vice President became President of the Year the following year.

The auction of the year was for the purpose of raising money for the American Cancer Society, according to Rightmyer.

**1990:**  
Number of attendees: approximately 300  
Number of Treasury attendees: 19  
Number of Interviews conducted: 70

Two racial incidents occurred this year, one was a racist sign and the other was a racist skit.

### Racist Sign

The sign was first viewed by the public during a Washington, DC, channel 7 newscast, the evening of July 11, 1995. The video which incorporated the sign was subsequently provided by Hayward to DOJ OIG, who subsequently provided a copy to OIG. Analysis of this video revealed the following:

No attribution is provided on the videotape as to its origin, nor is the camera operator identified by sight or sound during the 39-minute duration of the tape. The tape primarily records white water rafting by Roundup attendees on an unidentified river, followed by scenes of white males wearing pink "Good O' Boy Roundup" caps eating at picnic tables and mingling and drinking near a Lite beer truck with self-operated taps. All activities were filmed during one or more sunny days and the campsite was identified by a sign as the "Sugarloaf Campground."

Only four seconds of the tape reveal the racist "Nigger Checkpoint" sign and no persons are seen or heard during those four seconds. Immediately before and after those four seconds, attendees are seen and heard walking around a portion of the campground. Taped music is heard in the scene preceding the closeup view of the sign, but the camera does not pan from the campsite to the tree bearing the sign; rather, it appears the camera was possibly turned off before focusing on the sign, then the camera was turned back on. No campsite sounds are heard during this portion of the video, as were heard before and after the four seconds. The only sound is possibly that of an airplane flying overhead, which is also not heard before or after this segment.

Following the closeup view of the sign, which pans above and below the large "checkpoint" sign, the camera reveals four more signs. Two signs above and two signs below, for a total of five signs posted to a

tree, appear to be approximately one foot above the hood of a blue Ford pickup truck, the license plate of which is not visible. A white camper and a blue tent roof are visible behind the signs and the tree. The two signs above the "checkpoint" sign are crudely drawn pictures of a black face and a black silhouette, respectively. Both appear in a red circle with a diagonal line through each circle. A silver bar-type object appears to be vertically stuck in the signs. This is consistent with the hatchet or axe some witnesses recalled seeing. The two signs below the "checkpoint" sign appear to be unfolded flaps of the same cardboard box on which all words and drawings appear. They state, respectively, "Any Niggers In That Car??" and "-Field Dressed & Sliced-17¢ LB." All words and drawings are handwritten in black, possibly with a magic marker, with the exception of the word "nigger" which is written in red.

The signs appear to be written on an unfolded cardboard box and essentially corroborate witness descriptions of the sign and its posting on a tree. Different witnesses recalled different portions of the sign, but its existence was confirmed at the Roundup in 1990 by those who saw it. There is no indication in the tape, however, of the date or time when this sign was posted or where the tree is relative to the check-in/registration area of the campsite. Below the racist signs is a yellow flyer affixed to the tree which appears to be an ad for a local riding stable, possibly Ocoee Riding Stable. An enhanced photograph of the sign (Exhibit 27) was taken by the OIG from the video. Interviews conducted during this investigation yielded descriptions of the signs consistent with those seen in the video.

Interviews disclosed that a sign was posted on probably Thursday of the 1990 Roundup, which was crudely handwritten on cardboard and said "Nigger Checkpoint" and "17¢ LB." This was described variously as being adjacent to or up to 100 yards behind the registration table set up at the entrance to the campground. Some witnesses also reported seeing a profile of a black man with a line drawn through it in red, as well as "Nigger check-in station-weigh in here."

Although it could not be proven who put up the sign, a local police officer from Kentucky was identified as a suspect by others from his department. This officer denied putting up the sign, although many individuals believed the originators of the sign were officers from two departments in Kentucky who were camped close to the tree on which the sign was posted. Several people confirmed observing the sign and stated that when Rightmyer was told about the sign, Rightmyer ordered it taken down and it immediately was taken down.

A Treasury agent, USSS special agent [REDACTED] was President of the Year in 1990 and in that capacity told people who put up the sign to take it down. Thirty people interviewed by the OIG acknowledged seeing this sign. Of these 30 individuals, seven were Treasury employees. Many people claimed to have told Rightmyer that they were offended by the sign and wanted it removed. All agreed that it wasn't until Rightmyer ordered it taken down that it was removed. Witnesses, including [REDACTED] confirmed that Rightmyer did not see the sign until he returned from golfing late that afternoon, probably on Thursday. He recalled seeing the sign between 3pm and 5pm upon his return from a day of golfing.

Discrepancies remain relative to the length of time the sign was up before being removed. Estimates range from 30 minutes to several hours. No attempts were apparently made by the Roundup attendees to identify and remove the perpetrators of the sign incident. Rightmyer did not order the identification or the removal of the perpetrators, believing it was sufficient that the sign was removed. A civilian arson investigator interviewed by DOJ OIG claimed to also have seen the sign, but not until after his arrival in the camp sometime between 9pm and midnight. Another arson investigator recalled that sometime before midnight he saw the sign, which both investigators described as an unfolded cardboard box on a tree near the campfire. Both watched someone, whom neither could identify, tear the sign down and throw it in the fire.

Rightmyer reported that he saw the "nigger checkpoint" sign at the 1990 Roundup. He recalled the sign being about three feet wide. Rightmyer stated that he ordered the sign be taken down as soon as he became aware of it. He believes that the Army CID agent [REDACTED] retired ATF agent [REDACTED] and/or USSS agent [REDACTED] may have taken the sign down.

Rightmyer claimed that he did not attempt to investigate who put up the sign and he still does not know who put up the sign. At the time, Rightmyer stated that he "was not happy about it, and I really didn't want to know who put up that thing at the time because I do have a temper, and there wasn't any need for that sign to be up there, there was no call for it being there." However, he recalled making a speech after this incident advising the attendees that racist activities would not be tolerated at the Roundup.

### Racist Skit

One of the skit entries in the Redneck of the Year contest was prepared and performed by members of two Kentucky police departments and one civilian. The skit involved an individual who walked onto the back of a flatbed truck, used this year by the Roundup as a stage, in a makeshift klan robe and hood with an individual in blackface who had a chain around his neck. There was also a dog led on stage and a master of ceremonies who acted as the slave dealer.

The klansman wanted to trade the slave for the dog but the dealer said words to the effect of "why don't you see if he (the slave) can suck dick first?" Whereupon the individual in blackface pretended to perform oral sodomy on the klansman after the klansman reached under his robe and pulled out a dildo. The dildo, which was a piece of wood hollowed out to look like a penis, contained a can of whipped or shaving cream inside it. When the klansman pretended to have an orgasm, he turned toward the audience and sprayed the can of cream on those closest to the stage. The klansman then walked off the stage with the dog.

This skit lost to an individual renowned for being able to urinate over his shoulder into a cup. He used a "dildo" which was pressurized to urinate over his shoulder. This officer is retired from the Washington, DC Metropolitan Police Department.

Interviews of those responsible for the skit confirmed the identities of those participants in the skit and also those who assisted the "klansman" officer in making his "dildo" and painting a civilian friend of theirs with black shoe polish on his face and hands. The civilian said he was recruited into the skit because the captain of the officer who was supposed to be the slave told him just before the skit that he didn't want any of his officers in the skit. The civilian stated that he was very drunk when he agreed to participate and he has felt very bad about it ever since.

Following the skit, various individuals, including USSS agents [REDACTED] and [REDACTED]; and ATF agents [REDACTED] and [REDACTED] stated that Rightmyer spoke to the participants when they came off the stage and told them that type of activity was unacceptable. Rightmyer stated during interview that he believed this



group meant to be funny and that perhaps they were trying to "out-southern southerners" by doing a parody of the klan. Others stated variously that the skit was offensive or meant to be funny but wasn't.

Rightmyer believed that several unidentified police officers from an unknown police department in northern Kentucky performed the KKK skit at the 1990 Roundup. Rightmyer indicated that he had no prior knowledge of the theme or content of this skit. Once the skit began, Rightmyer did not attempt to stop the skit from proceeding.

After the skit was completed, Rightmyer stated that he was upset and he told the officers that, "I did not like it, did not appreciate it, and they basically apologized for it." Although Rightmyer could have forced these police officers to leave the Roundup, he said he did not because they apologized for their action and it was their first attendance at a Roundup. Rightmyer stated that he possessed no knowledge that Federal law enforcement personnel participated in this skit.

A "no racism" rule was not enacted after the 1990 KKK incident because, according to Rightmyer, he believed it to be an isolated incident which would not recur. He told the participants of the skit that they had demonstrated unacceptable behavior and he did not feel a rule was necessary to enforce that fact.

A local law enforcement officer attended the Roundup with a fellow officer, who was African American. This officer stated he felt uncomfortable because they received "stares" from the other attendees. They only remained for five minutes. During this time, a white male approached and asked "Is this the black section?" He then apologized to the officers after he noticed that the second officer was African American.

Another skit this year was performed by an individual who always entered the Redneck of the Year contest and always lost, so he was facetiously dubbed the "Emperor for Life" by Roundup attendees. He typically did things such as defecating on stage, which he did this year.

According to Rightmyer, Grumpy's, a local bar owned by the owner of Ocoee Outdoors, became a private club for the Roundup attendees this year when it was rented after hours by Rightmyer for a private

party. The Roundup attendees would bring beer to Grumpy's where they could legally consume it on the premises after midnight if it became a private party and not an establishment open to the public.

Rightmyer observed Richard Hayward and another unidentified individual (not with Hayward) using video cameras at the Roundup. He confirmed Hayward's attendance also in 1991 and 1992. Rightmyer commented that,

"when you are out like that and it is all men acting like boys, sometimes you are going to do something that is embarrassing to you if it was ever seen by anybody else or relived by anyone else. One of the rules was what went on there stayed there, and that was so you could relax and do what you wanted to do as long as you didn't interfere with anyone else."

As a result of complaints received, Rightmyer prohibited the use of video cameras.

Exhibit 28 depicts the 11th Annual Good O' Boy Roundup t-shirt.

1991: Number of attendees: 291  
Number of Treasury attendees: 28  
Number of Interviews conducted: 73

Check-in became more formal, at the desire in particular of an Army CID agent and [REDACTED]

[REDACTED] These two were concerned over the increased numbers of non-invitees showing up and drinking free beer and eating free food, which resulted the previous year in a beer and food shortage for those who had paid in advance.

Wristbands in three colors were instituted to prevent the uninvited from drawing their own beer from the tap on the beer truck and getting free food. Although the truck was unmanned, someone from the security committee was posted by the truck to check bands. Bands were issued at check-in using the same categories of attendees as previously identified by Rightmyer: Good O' Boy, Guest and local law enforcement.

ATF agent [REDACTED] stated that a drunk individual came up to his car at registration and said "This is a nigger checkpoint; any

niggers in that car?" This was also reported by two Maryland State Police officers and two civilians; one from Atlanta, Georgia, and one from Oak Ridge, Tennessee. This latter individual recalled the same statement being made by "three or four males running the check point." No witnesses were able to identify these individuals.

Richard Hayward was seen by 13 interviewees, including retired ATF agents [REDACTED] and Rightmyer, at the 1991 Roundup. He was observed displaying David Duke literature and attempting to distribute Duke material. A Fort Lauderdale police officer observed Hayward with a Duke banner and another Fort Lauderdale police officer saw Hayward wearing a Duke t-shirt.

A Fort Lauderdale police officer participated in the Ugliest "Good O' Boy" contest, by wearing a pair of underwear on stage and chewing tobacco. At one point during the skit, he gave the appearance of defecating. He then reached into the seat of his underwear, withdrew a small wad of chewing tobacco and placed it in his mouth, giving the impression that he was eating feces.

According to the following year's invitation (Exhibit 29), the 1991 Roundup attendees raised \$5500.00 for the American Cancer Society.

Exhibit 30 depicts the 12th Annual Good O' Boy Roundup t-shirt.

**1992:**  
Number of attendees: 341  
Number of current Treasury attendees: 17  
Number of interviews conducted: 68

The registration form for the 1992 Roundup (Exhibit 31) was changed to include a liability release signature block on the bottom holding Rightmyer harmless from any claims of injury or liability.

### Racist Events

The same Fort Lauderdale, Florida police officer who participated in the "Ugliest Good O' Boy Contest" in 1991 entered the Redneck of the Year contest this year. The police officer dressed as a farmer and carried a watermelon on stage. He hit the melon with a baseball bat until it broke. He then reached inside the watermelon and pulled out a black doll. He held the doll in the air and said "I'm not guilty, I'm not guilty." The officer admitted he had purchased a white doll at the store and then painted it black. A number of sources believed this skit related to the recent trial involving Rodney King, who was beaten

by Los Angeles police officers. Rightmyer stated that he saw this skit. Rightmyer disputes the "not guilty" comment and he said that the perpetrator said "it's a seed and you gotta kill them while they're young." Rightmyer stated that he was livid because this skit followed a speech he had just made ten minutes before, stating that he "was tired of hearing nigger, I was tired of being grossed out, and that I expected a lot more than that and I wasn't going to -- I would pull you off the stage if you do something wrong like that."

After the police officer performed the watermelon skit, Rightmyer said that he "was mad enough and they took him away from me, and I didn't even want to talk to him, I was so damn mad, they knew, he came and apologized to me the next day about it." Rightmyer did not request this individual to leave the Roundup indicating that this "was the first problem I had ever had out of him."

Of the eleven individuals interviewed by the OIG who witnessed this skit, only one Treasury agent, Rightmyer, said that he witnessed it.

Rightmyer believed, but did not see, that Richard Hayward was seen distributing "David Duke handouts." Separately, a David Duke poster was seen on a motor home by one local police officer and one civilian. Hayward was told by security to leave on instructions from Rightmyer. A retired ATF agent, [REDACTED] recalled seeing Duke literature, including bumper stickers and a Duke sign at the cooking area. [REDACTED] recalled that he and an Army CID agent saw two David Duke stickers on the beer truck.

According to a Fort Lauderdale, Florida police officer, he saw David Duke literature brought in to the campsite. Additionally, according to a Kentucky police officer, a David Duke poster or banner was auctioned off. However, all others who were interviewed who saw the poster or banner said the poster was given or thrown away and not auctioned off.

A July 1992 article in the publication NAAWP NEWS (Exhibit 32) appeared regarding the Roundup. Rightmyer called Richard Hayward and he (Hayward) admitted that he wrote the article for the National Association for the Advancement of White People (NAAWP). Rightmyer asked Hayward to make a "retraction, it was a lie, and I didn't need that." Hayward then told Rightmyer that he wanted David Duke to speak at a Roundup. Rightmyer replied, "not only no, hell no."

According to the above described article written by Hayward, this banner was auctioned off at the Roundup. Rightmyer claimed that the David Duke banner was given to an unidentified Canadian by Hayward and subsequently thrown into a dumpster at Grumpy's. In addition, Rightmyer believed that Hayward showed up with David Duke "handouts" and he was told to stop handing out this material.

Rightmyer believes that Hayward is a racist due to his association with the David Duke material, his association with the NAAWP, and his use of "white power" stickers. In addition, Rightmyer recalled seeing Hayward in possession of a knife with a "KKK" insignia on the handle.

There were several reports, including those by two DOJ agents, of a small "no niggers" sign on a stick in the ground on the road leading up to the campsite, but outside the actual campground. It was described as the size of legal paper on white cardboard with black letters. It was reportedly removed a short time after it was seen, although no time frames could be ascertained.

Rightmyer did not recall seeing or being told of a sign being positioned at the registration area which said "nigger checkpoint" at the 1992 Roundup.

Exhibit 33 depicts the 13th Annual Good O' Boy Roundup t-shirt.

**1993:**  
Number of attendees: 349  
Number of Treasury attendees: 24  
Number of interviews conducted: 66

A Florida police officer saw Hayward come to the Roundup with a Martin Luther King mask with a bullet hole in it and David Duke posters taped to the windows of his car.

One person from DOJ claims to have seen a waiver form at check in on the registration table which stated that no racism would be tolerated. When she asked why it was there, she was told that the previous year a David Duke type person had come and stirred up trouble before being ejected. She said this waiver form had to be signed, but others do not recall seeing the waiver or signing one. A second DOJ agent said he recalled that the notice was a letter or statement of purpose which every registrant had to read. He recalled language to the effect of "the Roundup is a non-political event and open to everyone."

Rightmyer stated that he denied Hayward his request to campaign for David Duke during any Roundups. Other witnesses corroborated Rightmyer's statement that Hayward was not allowed to advocate any political views.

Rightmyer instituted a rule indicating that the Roundup would not be used to promote one's political affiliation; i.e., the Roundup is a nonpolitical event. Rightmyer stated that this rule emerged as a result of Richard Hayward bringing a David Duke banner to the 1992 Roundup.

Rightmyer stated that the Roundup sponsored a raffle for the families of the Waco victims. Rightmyer recalled that \$1,700 was raised for this benefit and that he wrote a letter to the recipient, the ATF Retirees Association (Exhibit 14), detailing his fund-raising efforts.

Exhibit 34 depicts the 14th Annual Good O' Boy Roundup t-shirt and the commemorative t-shirt, reflecting the previous 14 years.

**1994:**  
Number of attendees: 350  
Number of Treasury attendees: 24  
Number of interviews conducted: 75

██████████, an ATF agent, was asked by an unidentified male "Any niggers in that car?" at check-in. He also saw an unidentified individual with a white hood with eye holes walking around. According to ██████████ the hood appeared to be a pillowcase with eye holes cut out made to look like a KKK hood.

USCS agent ██████████ stated that Rightmyer made a public announcement that he had invited several blacks who might be attending. Two persons in the crowd said: "fuck them niggers." Rightmyer said that racist comments would not be tolerated and he wanted them identified so he could give their money back. According to ██████████ the persons making this racist statement were never identified.

A retired police officer from Alabama urinated in his pants as part of the Redneck of the Year skit, according to ██████████. A DOJ special agent also recalled seeing him defecate on stage during this skit. This same officer used the word "nigger" as the master of ceremonies for one of the Roundup events. Rightmyer stated that he admonished him for the use of this racial epithet.

██████████ recalled a stripper dancing nude on a picnic table while another woman collected money for her.

Exhibit 35 depicts the 1994 invitation. Exhibit 36 depicts the 15th Annual Good O' Boy Roundup t-shirt.

**1995:** Number of attendees: approximately 325  
Number of Treasury attendees: 24  
Number of interviews conducted: 93

(Note: This year is the only one where actual sign-in sheets were retained by Rightmyer and they reflect a total attendance of 437. The 325 reflected above indicates only those who were pre-registered.)

The cost for 1995, according to interviewees and the invitation, was \$75.00 for non-rafters and \$100.00 for rafters. The cost included four evening meals, lunch on Saturday, a Roundup t-shirt, mug and ballcap and all the beer you can drink (Exhibit 12).

#### Racist Events

The OIG identified three African Americans who attended this Roundup. One local civilian went for a few hours and said that "he didn't feel uncomfortable and everyone he met was very friendly to him." The other two African Americans who attended were subjected to racial harassment as described below.

██████████ an ATF agent, invited ██████████ an African American ATF agent, to this year's Roundup. ██████████ also invited an African American police officer to attend this Roundup. When this officer walked through the campground, several individuals yelled "nigger" at him, which he then related to ██████████. Around midnight, ██████████ went to the beer truck and several individuals said to him:

"Hope you're happy. ATF always manages to screw something up. They screwed up this year's Roundup by bringing 'niggers'."

██████████ exchanged several more words with this group. ██████████ was later informed that the group consisted of four police officers, three from Fort Lauderdale and one from South Alabama. After the altercation, ██████████ and the African American police officer left the Roundup. ██████████ left the next day.

Rightmyer recalled telling ██████ that, while he attended the Roundup, if he ██████ had any trouble, ██████ should let him (Rightmyer) know about it. Rightmyer explained that he told ██████ this "because he ██████ had every right to be there and he was a welcome guest and he had more right to be there than some of the others did." According to Rightmyer, he told ██████ "that if anybody did anything rather than him making it, aggravating it worse or making a scene or letting a scene occur, find me."

According to Rightmyer, a retired police officer from Alabama, addressed two African American law enforcement officers at the 1995 Roundup as "██████ Bob" and "Whatever Bob." Rightmyer stated that he approached ██████ after this incident and ██████ told Rightmyer that "he didn't pay attention to that old man."

After the above incident, at approximately 2:00 am, a North Carolina officer was involved in an incident with the Fort Lauderdale officers. Four of the officers came down with sticks and threatened to beat up a group known as "the Young Guns." According to the North Carolina officer, the Fort Lauderdale officers threatened to bust up the stereo due to the loud music being played by the Young Guns. This officer quoted one of the Fort Lauderdale officers as saying: "First they let the goddamn niggers in, then they won't let us have strippers; this place is going to shit." Rightmyer stated that he did not become aware of the incident between ██████ and the Fort Lauderdale, Florida, police officers until the morning after the incident (Friday). The next morning there was an Executive board meeting and Rightmyer told the Fort Lauderdale officers that the black officers had as much right to be in the camp as they did and if they didn't like it, they could leave and get a refund.

Rightmyer advised that these police officers told him "we come all this way, we drive 900 miles, we don't need to be around any niggers." According to Rightmyer, he told them they had two choices, "either you be quiet about it, and if you don't like it -- you leave." Rightmyer identified these officers as three retired members of the Fort Lauderdale police department plus a fourth unidentified person. Later that day, Rightmyer learned that these officers had left the campground. Witnesses stated that the four officers left by mid morning Friday and did not return.

A civilian Roundup attendee said "Who let the niggers in?" ██████ and a local police officer heard the civilian make this comment. On Thursday evening, two local police officers heard an unidentified



retired Fort Lauderdale police officer shout "Hey nigger get away from that girl" to [REDACTED] while he was talking to an exotic dancer.

A local police officer saw a bearded white male call a local African American police officer a "nigger." This local police officer identified the bearded white male as a civilian camping with the Fort Lauderdale police officers. This was the same person that this local police officer later saw on television supplying the videotape about the Roundup to the NRA, although he did not know the name of the person so could not confirm that it was Richard Hayward.

A DOJ agent saw "no niggers" spray painted on the front of a portable toilet. This agent stated that Rightmyer had gotten someone to clean it up. The civilian stated that when he picked up the toilets, he saw a toilet with "no niggers" on it but that someone had put masking tape over the words "no niggers." This same civilian also saw another portable toilet with "whites only" spray painted on it. Another civilian, who let 10 portable toilets to the Roundup, recalled that one of the portable toilets had "whites only" spray painted on it. This civilian stated that another toilet had masking tape over some writing, but that he could not remember what was written under the tape.

Rightmyer stated that racial epithets were written on the portable toilets within the campground. He confirmed that the words "whites only" were written on a portable toilet. Rightmyer had this inscription painted over to prevent it from being seen. Rightmyer possessed no knowledge as to who wrote these words on the toilet. Rightmyer did not attempt to investigate who may have committed this act.

#### Other Events

As his award, the Redneck of the Year won a goat as his date for the evening. According to Rightmyer, the Redneck of the Year was "Pigman," who was called that because he roasted a pig the year before.

Contacts made by the OIG with local police indicated only one report of police activity at the Roundup. This incident concerned the theft of a motorcycle from a Roundup attendee by a civilian. The civilian thief, who later returned the motorcycle, is the same individual who alleged and later recanted the rape story.

A Florida police officer, a MOB, saw Hayward and a white male, believed to be a militia member, attempting to come into camp without invitation. This police officer stated that Hayward attempted to get wrist bands so that they could enter the campground. Hayward did not get a wristband.

A local police officer recalled an incident in which a man she believed to be a Canadian walked up to her and said "So, who's the cunt?". She stated that this man's brother later apologized to her.

Rightmyer and all others interviewed by the OIG denied distributing or seeing any "nigger hunting licenses" at the 1995 Roundup.

Rightmyer received a letter from [REDACTED] Special Agent, USCS, retired, in which he discussed his displeasure with the activities he observed at the Roundup (Exhibit 37). In reply to one of [REDACTED] claims concerning a "woman screaming and fighting to get away from some Good O' Boys," Rightmyer stated he investigated this allegation and was unable to confirm this report. Rightmyer received no other complaints, nor was this allegation made by any other OIG interviewee.

Exhibit 38 depicts the 16th Annual Good O' Boy Roundup t-shirt.

**1990-95:** A Kentucky police officer stated he recalled a simulated act of bestiality. This police officer did not recall when it occurred, but stated an unidentified male from Kentucky and an unidentified male from Tennessee had a sheep. These two individuals stood behind the sheep like they were having sex with it.

### **Skits and Other Activities**

The Redneck of the Year contest was always held on Saturday night after the traditional steak dinner and was the culmination of the Roundup. Rightmyer stated that persons were nominated for Redneck of the Year and were expected to put on skits. The purpose of the Redneck of the Year contest was to do something silly or outrageous or the most gross. The Redneck of the Year was described by many as the person who could "gross the most people out." Examples of some of the acts or skits performed over the years: singing an original song, telling an original story, tobacco swapping mouth to mouth, and individuals pretending to be Sumo wrestlers who defecated on stage.

# **TREASURY PARTICIPATION**

Although he did not have specific dates for these skits or activities, Rightmyer described the following skits or activities as being performed at various Roundups:

An unidentified woman participated in a skit and took off her shirt. This woman was not a Federal employee.

Two unidentified brothers from Canada performed a sumo wrestling skit. Rightmyer indicated that part of the skit was for one of the wrestlers to defecate on stage. According to Rightmyer, "whenever they were walking off the stage, someone in the group had set aside a time where he would holler at him to shit, and he shit on command on my stage, which I didn't like."

A retired Alabama police officer and another Alabama police officer, swapped chewing tobacco during a skit.

A civilian performed a skit where he pretended to take excrement from the back of his pants and placed it in his mouth. Rightmyer stated that the person actually ate a "Baby Ruth" candy bar.

Several attendees would form a circle and urinate as Rightmyer explained "they would cross streams, just their pees crossed."

## **EXTENT OF TREASURY PARTICIPATION**

As part of this review, we queried all law enforcement personnel in the Treasury Law Enforcement Bureaus (33,000) to identify those who attended or were invited to the Roundups (Exhibit 39). Our analysis identified that 125 current Treasury personnel have attended throughout the years (Exhibit 40). It should be noted that these statistics do not include retired Treasury employees who may have attended a Roundup.

Throughout the years of the Roundup, the majority of Treasury Law Enforcement personnel in attendance worked in the southeastern region of the United States. Relatively few came from other parts of the United States. As the number of Roundup attendees increased significantly each year, the proportion of attendees who were Treasury employees decreased. In 1980, the first year of the Roundup, current Treasury employees were one-third of the 58 people in attendance. By 1995, twenty-four of the 325 attendees were current Treasury employees (Exhibits 41 and 42).

More than half of the current Treasury employees who attended a Roundup attended only once. Of the 125 current Treasury employees who attended at least one Roundup, about half (64) worked for ATF. Personnel from other bureaus also

attended: 30 USSS, 15 IRS, 13 USCS and three FLETC employees. While initially the Roundups were primarily attended by ATF employees, the number of USSS attendees equalled or exceeded the ATF personnel in 1983, 1988, 1993 and 1995 (Exhibits 43, 44 and 45).

We conducted a leave analysis of the 32 current Treasury employees who attended a Roundup in 1993, 1994 and 1995. We did not find a pattern of leave abuse. Of the agents who attended the Roundup during duty hours, all except three took annual leave. USCS agent [REDACTED] submitted a leave slip for 16 hours sick leave for the 1994 Roundup. This particular incident will be referred to USCS for appropriate action. [REDACTED] ATF agent, initially failed to take 8 hours of annual leave for May 17, 1995, which was later corrected prior to the initiation of the investigation. The third agent, [REDACTED] ATF, took 8 hours of sick leave instead of 8 hours of annual on May 17, 1995. Both agents corrected this discrepancy prior to the initiation of the OIG investigation. Administrative action was taken by management relative to the two ATF agents. Leave was verified from the approved leave slips and compared to the Memoranda of Interview. Three agents did not submit leave slips because they only attended on the weekend or at night, after duty hours.

Our investigation disclosed that, with one exception, no government cars were used to attend the Roundups. The one exception occurred in 1991, when three USSS agents, [REDACTED] and [REDACTED] drove a government vehicle to the Roundup. These agents were assigned to [REDACTED] and stated that when USSS agents go on protection details only government vehicles are permitted because the agents are on call 24 hours a day.

Of the 125 Treasury employees who attended a Roundup, 15 witnessed one or more racial incidents (Exhibit 46). This exhibit lists these 15 employees alphabetically by bureau, together with a description of what they witnessed, when they witnessed such incidents and their responses to those incidents. The incidents witnessed by Treasury employees were the checkpoint sign and the KKK skit in 1990, the watermelon skit in 1992, the racial t-shirts seen during various years, the vehicle checkpoints in 1991 and 1994 when someone asked "Any niggers in that car?" and the confrontation of ATF agent [REDACTED] and Fort Lauderdale police officers over the attendance by ATF agent [REDACTED] and a second African American police officer. Other incidents not captured in this table were witnessed by non-Treasury employees.

In summary, all but two of these employees returned the following year, with the exception of ATF agent [REDACTED] who only attended in 1995.

### **Treasury Retiree Attendance at the Roundups**

Twenty five Treasury retirees, including Rightmyer, were interviewed to obtain their knowledge of the Roundup. Of those, 17 attended one or more Roundups and none of those reported witnessing anything of significance prior to 1990. Seven of the seventeen retirees who attended a Roundup witnessed the 1990 "checkpoint" sign. Five of the retirees were MOB or REX members. A table (Exhibit 47) lists these retirees, identified alphabetically by bureau, their last duty station, years of attendance and their experiences.

### **Minority Attendance at the Roundups**

Almost all Roundup attendees were white males. Interviews were conducted of 26 minorities who attended one or more Roundups. This number includes sixteen women (3 IRS, 1 ATF, 1 DEA, 1 USPS, 10 civilian or local law enforcement), three African Americans, three Native Americans, two Hispanics and two Filipinos. Many attendees stated that they saw various other minorities through their years of attendance. However, as described earlier in our methodology, if we could not specifically identify them by name nor confirm their actual attendance, we did not include these unnamed individuals as attendees. One additional African American was identified by name as attending for five minutes, but this was not corroborated.

ATF could not provide records relative to African American agents hired prior to 1982, nor their duty stations between 1982 and 1985. But in 1982, to provide a historical perspective relative to the presence of minorities by ATF, there were 30 African American agents out of a universe of 1,283 total ATF agents. The first African American agent was hired by ATF in 1978, [REDACTED] [REDACTED] In 1995, ATF had 186 African American agents out of a total of 1,932 agents. USSS agent [REDACTED] stated that he was an ATF agent between 1971 and 1976 in the Southeast Region, which he recalled comprised approximately 500 agents; all white males.

Rightmyer stated that he personally invited several blacks and minorities to the Roundups through the years. Rightmyer believed that ATF "didn't start hiring blacks in Tennessee till maybe '84, as I remember, or '83, '84, '85. And the ones that were hired, blacks were hired in Memphis, and Nashville." [REDACTED]

[REDACTED] while Rightmyer was in Knoxville. Rightmyer indicated that the first time an African American agent was assigned to an office where he (Rightmyer) worked was in Greenville, South Carolina, where he transferred to in 1990. Rightmyer identified [REDACTED] as this African American ATF agent.

Rightmyer related that he invited several African Americans to the Roundups over the years as follows: [REDACTED] Special Agent, ATF; [REDACTED] Special Agent, ATF; [REDACTED] Special Agent, ATF (deceased); [REDACTED], Special Agent, IRS-CID; [REDACTED], Special Agent, ATF, retired; and [REDACTED] Special Agent, ATF. [REDACTED] denied being invited. In addition, two African Americans from state or local law enforcement were invited by Rightmyer. Rightmyer advised in 1985 he invited [REDACTED] after [REDACTED] told Rightmyer that the Roundup was the "Klan of the ATF." According to Rightmyer, this comment by [REDACTED] made him (Rightmyer) begin to think, "well, if that is what they are thinking, then I need to make some changes." According to Rightmyer, as a result of his conversation with [REDACTED] he invited [REDACTED] and the 1985 ATF new agent class, which included "six to eight blacks."

However, he qualified this invitation to mean that the new agents could attend only after they completed their probation year. Rightmyer reiterated that no one in the class was excluded and there was no need to receive a personal written invitation to attend the Roundup. Rightmyer stated that [REDACTED] an African American Special Agent, ATF, was a member of the 1985 ATF new agents class and was verbally invited to attend the Roundup. [REDACTED] recently denied having been invited by Rightmyer.

The OIG identified five African American ATF agents who were invited to attend a Roundup: [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. All five of these agents confirmed that they were invited but did not attend.

These agents gave the following reasons for not attending the Roundup:

[REDACTED] stated that he did not attend because he did not want to go alone into the countryside of east Tennessee with a group of good ol' boys. [REDACTED] recalled that Rightmyer said he would protect him, but [REDACTED] said he would not attend an event where "protection was necessary." [REDACTED] stated that he did not go because he was a new agent at the time and was "financially strapped." [REDACTED] stated that he did not go because he did not have the time nor the interest. [REDACTED] did not attend because she "did not want to go to Tennessee just for a pig roast." [REDACTED] did not attend because he "had family commitments which took priority." [REDACTED] did not attend because "of the innuendos that I heard from black as well as white agents." He also formed an impression that the Roundup was a "Red Neck" atmosphere.

# **MANAGEMENT KNOWLEDGE**



## MANAGEMENT KNOWLEDGE OF THE ROUNDUP

As part of this investigation, OIG sought to ascertain if Treasury managers were aware of the Roundup and what that awareness was and what actions, if any, they had taken in light of their awareness.

The ATF management had the most widespread awareness of the Roundup. Before the appearance of the Washington Times article, dated July 11, 1995, ATF's Office of Chief Counsel had received one allegation concerning the Roundup. In addition, information was received by [REDACTED] in Birmingham, Alabama, which led to the initiation of a preliminary inquiry by ATF.

### Results of the Query

In order to determine management's awareness of the Roundup, a query was conducted of current Treasury Department managers (GS-15 and above). The OIG queried 1,135 managers from the law enforcement areas within the Department. These managers were asked the following questions:

1. Prior to July 11, 1995, when the media coverage first began, were you aware of the "Good O' Boy Roundup," whether or not you knew of it by that exact name?
2. If so, when did you first become aware of it?
3. What was your position then and what had you heard or learned of the event?

The following chart summarizes the responses from 1,135 managers:

<u>Bureau or Office</u>	<u>Managers Queried</u>	<u>Positive Responses</u>
Customs	281	3
IRS (Criminal Investigations)	106	4
IRS (Inspections)	27	1
IRS (Office of Chief Counsel)	306	0
USSS	175	16
ATF	137	71

FLETC	27	5
OIG	7	0
FinCEN	14	0
OGC (Counsel to Law Enforcement)	<u>55</u>	<u>7</u>
Total:	1,135	107

The OIG interviewed all 107 managers who responded positively to the query. In addition, the OIG interviewed 11 other lower level or retired managers identified during the investigation. As a result of these interviews, a total of 118 managers indicated that they had knowledge of the Roundup prior to the media reports which began on July 11, 1995.

Of the 118 managers who had knowledge of the Roundup prior to July 11, 1995, 12 had first-hand knowledge of the event, since they had actually attended one or more Roundups. Half of the managers who attended went once; most also went before 1990. These 12 managers stated that they did not witness any racial events (Exhibit 48). Further, they stated that they did not witness any other inappropriate or illegal actions at any of the Roundups they attended.

The remaining 106 managers stated that they had heard of the Roundup prior to July 11, 1995, but did not attend a Roundup and, therefore, did not have any direct knowledge (Exhibit 49). These managers largely believed that the Roundup was a law enforcement gathering with white water rafting and camping.

Sixteen of the 106 managers who stated that they had not attended a Roundup were minority managers (Exhibit 50).

#### **Management Knowledge of Roundup Prior to July 11, 1995**

Prior to July 11, 1995, ATF's Office of Chief Counsel received an allegation regarding the Roundup. [REDACTED] ATF, had mentioned the Roundup in a January 24, 1995, deposition that he provided to Assistant United States Attorney [REDACTED] in connection with the African American agents class action suit against ATF. In addition, information was received by [REDACTED] which led to the initiation of a preliminary inquiry by ATF.

Concerning [REDACTED] mention of the Roundup in his January 1995 deposition, although he never attended a Roundup, [REDACTED] described it as a white's only

event to which no African Americans were invited. In his deposition, [REDACTED] also alleged that Rightmyer used ATF stationery to send out invitations to the Roundup.

[REDACTED], ATF, the attorney who reviewed the class action suit and was present during [REDACTED] deposition, did not take action on the Roundup information supplied by [REDACTED]. According to [REDACTED] during [REDACTED] deposition, he mentioned the Roundup by saying that "it was a whites only event to which no blacks were invited." [REDACTED] also alleged that Rightmyer had used ATF stationery to send out Roundup invitations. [REDACTED] further recalled that the term "Good O' Boy" had a negative connotation to [REDACTED]

[REDACTED] stated that she did not report [REDACTED] allegations regarding the Roundup to anyone in the Treasury Department for three reasons. First, she believed [REDACTED] was mistaken relative to Rightmyer's use of ATF stationery for the Roundup because she had prior knowledge of an Equal Employment Opportunity (EEO) complaint by [REDACTED] in which [REDACTED] alleged disparate treatment by ATF. Specifically, after [REDACTED] was disciplined for the use of government stationery, he alleged that Rightmyer received a lighter punishment for committing the same infraction. [REDACTED] attached to his EEO complaint a copy of the letterhead Rightmyer used to promote a condominium development, which did not mention the Roundup.

The second reason provided by [REDACTED] for not reporting [REDACTED] allegations was the general nature of his allegation, quoted above. Thirdly, [REDACTED] said the deposition was not the first time she had heard of the Roundup. In 1985, she first heard of the Roundup from [REDACTED], an ATF counsel in Atlanta. She heard nothing negative from [REDACTED] and because she considered him a good family man she did not have any reason to think acts of racism occurred at the Roundup.

As the result of [REDACTED] statement to the OIG that [REDACTED] would have the letterhead Roundup invitation to which [REDACTED] referred in his deposition, [REDACTED] was contacted by the OIG during this investigation. [REDACTED] confirmed that Rightmyer was promoting a real estate development in Tennessee, not the Roundup, through the use of government letterhead. [REDACTED] and [REDACTED] provided copies of letters sent by Rightmyer which invited the participants of an ATF-sponsored conference to visit vacation property in the area. [REDACTED] was also interviewed by the OIG and confirmed his attendance at four Roundups in the mid-1980s. [REDACTED] stated he was unaware of any racial incidents.

[REDACTED] confirmed that [REDACTED] mentioned the Roundup, asserting that no African Americans were invited, but he alleged no specific acts of racism. She did not report his allegation further because [REDACTED] allegation was so limited and

he had no idea of what actually happened at any Roundup. [REDACTED] said further that [REDACTED] gave her no reason to think that there was a discriminatory purpose to the event.

Concerning ATF's preliminary inquiry, [REDACTED] ATF, [REDACTED] [REDACTED] advised that on or about May 26, 1995, [REDACTED] ATF, Washington, DC, advised him [REDACTED] of an Internet message regarding the "Good O' Boy Roundup" (Exhibit 51). According to [REDACTED] [REDACTED] told him that this Internet message on the Roundup contained allegations of racial misconduct by ATF and other law enforcement officials attending the function. [REDACTED] advised [REDACTED] faxed him a copy of this Internet message.

During this telephone conversation, [REDACTED] advised [REDACTED] that he [REDACTED] was not aware of any agents from the Nashville, Tennessee, Field Division who had attended the event. Subsequently, on June 2, 1995, he learned from [REDACTED] ATF, [REDACTED] that ATF Special Agents [REDACTED] and [REDACTED] had attended the 1995 Roundup.

Also, on June 2, 1995, the Nashville Field Office received a fax from the ATF Birmingham, Alabama, Field Division, which contained a copy of the Gadsden Minutemen Newsletter with additional articles regarding the Roundup (Exhibit 52). [REDACTED] stated that this fax was sent by [REDACTED], ATF, Birmingham, Alabama. According to [REDACTED], the fax cover sheet and attachments were also sent from the Birmingham Field Division to [REDACTED] Internal Affairs, Intelligence Division, and the local FBI SAC office. [REDACTED] stated that he reviewed this material on June 5, 1995.

On June 12, 1995, [REDACTED] met with ATF agents [REDACTED] and [REDACTED]. Both [REDACTED] and [REDACTED] confirmed that they attended the 1995 Roundup and that unidentified individual(s) made racial slurs about [REDACTED] bringing [REDACTED], an African American, to the Roundup. Upon questioning, [REDACTED] and [REDACTED] denied seeing any signs of a racist nature at the 1995 Roundup. However, [REDACTED] told [REDACTED] that he had heard of signs of a racist nature being exhibited at past Roundups, but that he [REDACTED] had never personally observed such a sign(s).

Subsequently, [REDACTED] reported to Headquarters this information regarding [REDACTED] and [REDACTED] attendance at the 1995 Roundup. However, [REDACTED] said that he did not make a note of this call, but believed that [REDACTED] was on travel status or on annual leave, so he reported the information to [REDACTED] Criminal Enforcement Division, ATF, Washington, DC. [REDACTED] related that [REDACTED] [REDACTED] advised that neither [REDACTED] nor [REDACTED] requested that he initiate any inquiry or investigation regarding this matter.

[REDACTED] could not recall when or if [REDACTED] told him that Agents [REDACTED] or [REDACTED] were involved in a racial incident at the 1995 Roundup.

[REDACTED] recalled faxing the above described Internet message to [REDACTED] on or about May 26, 1995. [REDACTED] also stated that he and [REDACTED] talked about the message and the Good O' Boy Roundup. [REDACTED] advised that he did not direct [REDACTED] or anyone to initiate any type of action in response to this document. [REDACTED] related that he also provided this information to [REDACTED] Office of Inspection, ATF, on or about June 2, 1995.

[REDACTED] ATF, Washington, DC, stated that he became aware of the Internet message and Gadsden Minutemen Newsletter on or about June 2, 1995, when he received a fax from the ATF office in Birmingham, Alabama. [REDACTED] corroborated that [REDACTED] had provided a copy of the Internet message to the Office of Inspection, ATF, Washington, DC.

[REDACTED] believed that he provided a copy of the Gadsden Minutemen Newsletter to the Office of Inspection, ATF. [REDACTED]

[REDACTED] advised that he received a copy of the Gadsden Minutemen Newsletter from [REDACTED] Southeast Office of Inspection, in June 1995 (Exhibit 53). [REDACTED] decided not to open an investigation based upon the lack of credibility of the source information. Also, according to [REDACTED] only Rightmyer, a retired ATF agent, was identified in the newsletter and there was no preliminary evidence that ATF agents organized or publicized the Roundup within ATF. [REDACTED] memorialized this information in a Memorandum to the File dated June 8, 1995 (Exhibit 54). [REDACTED] also stated that he was unaware of any investigatory efforts made by [REDACTED] in Nashville, Tennessee.

[REDACTED] reported that during a SAIC conference beginning the week of July 10, 1995, John Magaw, Director, ATF, requested additional information on the Roundup as a result of the Washington Times article, dated July 11, 1995. At this time, [REDACTED] and [REDACTED], stood up and advised Magaw that they were aware of the existence of the Roundup. Immediately after the appearance of this article, ATF initiated an investigation to determine ATF participation and conduct at the Roundup.

Magaw advised that he had no personal knowledge of the Roundup until the appearance of the above mentioned Washington Times article on July 11, 1995. However, as the Director of ATF, he took responsibility for whatever ATF management knew of the Roundup prior to July 11, 1995. In addition, Magaw

attributed any early public statements he may have made on the Roundup to facts presented to him as a result of preliminary information which may not have been completely verified.

### Allegations Against Rightmyer

The OIG interviewed [REDACTED] one of the minority managers, at length because [REDACTED] stated that the Roundups were racist events and he believed that Rightmyer was a racist. [REDACTED] stated that he had not been invited to a Roundup, had not seen a flyer announcing this event, nor did he attend a Roundup.

[REDACTED] stated that [REDACTED] was invited to attend a Roundup(s) when [REDACTED] was [REDACTED]. From 1989 to 1991, [REDACTED] was assigned to [REDACTED], ATF, [REDACTED]. During this time period, [REDACTED] was [REDACTED].

[REDACTED] reported that he first learned of the Roundup from [REDACTED] sometime between 1989 and 1991. In addition to [REDACTED] information, Rightmyer indicated that he (Rightmyer) invited [REDACTED] to the Roundup.

[REDACTED] alleged that in 1988, Rightmyer referred to [REDACTED] as [REDACTED]. [REDACTED] stated that he counselled Rightmyer on this issue and advised [REDACTED] not to accept such treatment from Rightmyer.

The OIG interviewed [REDACTED] on this matter and determined that [REDACTED] has used the nickname [REDACTED] to describe himself and, at one point in time, used the word [REDACTED] on his vanity license plates for his personal vehicle.

[REDACTED] advised that some of his co-workers at ATF learned of his nickname and began to call him [REDACTED]. [REDACTED] confirmed that Rightmyer used the word [REDACTED] to refer to him. Therefore, [REDACTED] did not consider the use of the word [REDACTED] to be a racial slur by Rightmyer.

In 1985, [REDACTED] The Nashville office supervised the RAC office in Knoxville, Tennessee. Rightmyer was the RAC in Knoxville, Tennessee, until 1990. [REDACTED] stated that he first met Rightmyer at an ATF training session in 1983 to 1984. According to [REDACTED] during this training session he became aware of Rightmyer's racist attitude toward African Americans. [REDACTED] indicated that Rightmyer was telling ethnic jokes to belittle African Americans and [REDACTED] informed Rightmyer that he [REDACTED] would not tolerate it.

In addition, [REDACTED] reported that either [REDACTED], ATF, retired, or [REDACTED], ATF, retired, told him that Rightmyer had made the comment, "it

will be a cold day in hell before he would work for a nigger." [REDACTED] stated that [REDACTED] told him, "you know the way he (Rightmyer) is." [REDACTED] interpreted this as an indication of Rightmyer's racist attitude.

As part of this investigation, [REDACTED] was interviewed regarding the above mentioned conversation. [REDACTED] denied ever hearing about an incident in which Rightmyer used the word "nigger" to address [REDACTED]. [REDACTED] advised that he [REDACTED] and never had any indication that [REDACTED] had any problems related to race with any staff members in the Nashville, Tennessee, district.

In addition, [REDACTED] was interviewed and recalled the "cold day in hell" claim made by Rightmyer [REDACTED].

As [REDACTED] Rightmyer showed up in a fur coat and ear muffs. [REDACTED] believed that this was a joke between Rightmyer and [REDACTED]. Specifically, [REDACTED] denied knowledge of hearing about Rightmyer using the word "nigger" as he (Rightmyer) addressed the possibility of [REDACTED].

Further, [REDACTED] alleged that he heard that [REDACTED] and [REDACTED] ATF, attended the Roundup. In fact, [REDACTED] stated that it was rumored that [REDACTED] received an award at the Roundup for being selected "Good O' Boy of the Year." No Roundup attendees reported the presence of [REDACTED] or [REDACTED] at the Roundup. Further, in a July 20, 1995, letter to Senator Orrin Hatch regarding his alleged attendance, [REDACTED] stated that the employee that reported this was "either mistaken or lying" (Exhibit 55).

According to Rightmyer, in 1985, both he and [REDACTED] [REDACTED]. During this time frame, Rightmyer stated that "a bunch of staff were over at the student center after hours teasing each other, I am teasing [REDACTED] hard. [REDACTED] made the statement to me, you had better watch it, [REDACTED] and in front of six people I said, [REDACTED] it will be a cold day in hell when I work for you, and that is a quote, unquote. [REDACTED], and as he said, I brought him a cartoon, a joke, and I will show you the cartoon. It was out of Playboy magazine, I believe, I put the date on it, July 7. He laughed about it, I laughed about it." Rightmyer provided the cartoon (Exhibit 56).

Rightmyer denied telling [REDACTED] in the FLETC student center in 1985 "It will be a cold day in hell before I work for a nigger." Rightmyer continued to say that [REDACTED] is "one of the two racists I ever met in my entire career I have wore (sic) a badge. He is one of the biggest racists I have ever met, and I think anybody who ever worked around him will tell you the truth."

# **STATE AND LOCAL INVESTIGATIVE RESULTS**



[REDACTED] stated that he received a telephone call from [REDACTED], Office of Inspection, ATF, [REDACTED] [REDACTED] told [REDACTED] that he received a complaint concerning Rightmyer using ATF stationery and government franked envelopes for personal use. An OIG review of this complaint determined that the allegation against Rightmyer did not concern Rightmyer's use of ATF stationery and government franked envelopes to promote the Roundup.

[REDACTED] further advised that he never reported these incidents to ATF management because "everyone" in ATF management was aware of the activities that took place at the Roundup. He believed that he would be ostracized and his career would have ended if he had reported these incidents to ATF management. He added that ATF management consisted of all white males who were aware of the event.

## **RESULTS OF INVESTIGATIONS CONDUCTED BY STATE AND LOCAL AGENCIES**

Investigative reports were reviewed from those state and local law enforcement agencies whose officers had been identified as attendees at a Roundup. The following law enforcement agencies provided information developed during their investigations: Maryland State Police; Washington, DC, Metropolitan Police Department; Tennessee Bureau of Investigation; Royal Canadian Mounted Police; Hamilton Provincial Police (Canada); York Provincial Police (Canada); Bradley County, Tennessee, Sheriff's Department; and Shelby County, Tennessee, Sheriff's Department.

A summary of the investigative findings for the above mentioned agencies follows:

1) Maryland State Police:

Five officers with the Maryland State Police attended the Roundup in 1989 or 1990. Two of those officers recalled seeing the "No niggers allowed" sign when they arrived. They also recalled, upon arriving at the Roundup, that an unidentified male approached their vehicle and asked them "any niggers in that car?"

Administrative action against those officers who attended, if any, is not known by the OIG as Maryland State Police declined to release that information.

2) Washington, DC, Metropolitan Police Department:

An Office of Internal Affairs investigation by the Washington, DC, Metropolitan Police Department identified four active police officers from their department as having attended the Roundups in the 1990s. These officers, as well as several retired police officers, recalled seeing the "nigger checkpoint" sign in 1990. One of these officers was confirmed to have urinated in front of a crowd during the 1991 Roundup.

The Office of Internal Affairs cited a current officer who recalled seeing this activity performed but failed to take any action to prevent it. No action was taken against the urinating officer because he retired in 1992. No action was recommended against the other three current officers. Two officers received verbal counseling and all officers in attendance received a letter of admonishment.

3) Tennessee Bureau of Investigation:

The Tennessee Bureau of Investigation (TBI) identified 12 employees (police officers as well as administrative personnel) who attended one or more Roundups from 1980 to 1995. Of these 12 employees, two saw O.J. Simpson t-shirts being sold at the Roundup. The TBI investigation revealed no further knowledge of racial incidents or illegal behavior.

No action is planned against those employees in attendance.

4) Royal Canadian Mounted Police:

The Royal Canadian Mounted Police (RCMP) identified five police officers who attended the Roundup(s) during the 1990s. The RCMP officers interviewed indicated that they did not observe any racist acts while attending the Roundup.

The RCMP has closed its case on this matter.

5) Hamilton Provincial Police (Canada):

The Hamilton Provincial Police identified and interviewed eight police officers who attended the Roundup(s) during the late 1980s and the 1990s. A review of the redacted interviews disclosed that in 1990 two police officers witnessed the KKK skit at the Roundup. Also in 1990, one police officer saw a "lawn ornament - the type with a black boy. Near this lawn ornament was a red circle with a line through it."

In 1995, another police officer overheard "one officer from Birmingham, Alabama make a derogatory remark against a black officer." This same officer also saw the O.J. Simpson t-shirt, which was described as a "stickman figure of a hangman."

No action is planned against those officers in attendance.

6) York Provincial Police (Canada):

The York Provincial Police identified and interviewed seven police officers who attended Roundup(s) in the past. The statements they received from their officers indicated that "no racial incidents were observed" nor were they aware of any that took place."

No action is planned against those officers in attendance.

7) Bradley County, Tennessee, Sheriff's Department:

The Bradley County Sheriff's Department identified ten police officers who attended the Roundup(s) during the 1990s. In 1995, one officer reported hearing an unidentified person call a local African American police officer a "nigger." That same year, another officer saw the O.J. Simpson t-shirt. He also heard an unidentified male, whom he believed to be from Fort Lauderdale, Florida, yelling at [REDACTED] "hey nigger, get away from that white girl."

In 1995, a third officer saw the O.J. Simpson t-shirt and a t-shirt "with black males on the hood of a car bent over the hood in handcuffs." This officer, a female, also related that strippers at the Roundup would go into the restrooms and invite several unidentified men to go with them. Officers from this department believed that the strippers performed sexual acts in the restrooms, but they did not know whether the strippers received compensation for performing these alleged sexual acts.

This same female officer stated that on several occasions during her stay at the Roundup she was addressed in degrading sexual tones. She reported that while going to the restroom, unidentified men would try to go into the restroom with her. This was confirmed by another officer, who also recalled that this female officer was approached by an unidentified Canadian who asked "who's the cunt?".

In 1995, another officer saw a t-shirt with the letters N-A-A-W-P written on it. He was told that the letters meant "National Association for the Advancement of White Policemen."

All of the officers in attendance were given verbal counseling. Five officers in supervisory positions were given "stricter" warnings for failure to take action.

8) **Shelby County, Tennessee, Sheriff's Department:**

Shelby County, Tennessee, Sheriff's Department advised that five of their deputies attended the Roundup(s) during the 1980s and 1990s. According to the records made available to the OIG, only one deputy observed anything of a racial nature at the Roundup, and he stated that at the 1995 Roundup he observed O.J. Simpson t-shirts being sold.

No action is currently planned against those officers in attendance.


Although investigative reports were not received from the following police departments, the OIG received information relative to administrative action taken against their employees:

- 9) Boone County Police Department, Florence, Kentucky, advised that two police officers in attendance in 1990 retired, two officers resigned and one was suspended for five days without pay. Two other officers were exonerated for their part in the racial incidents of 1990. A disciplinary hearing into the activities of the 1990 KKK "klansman" resulted in the following actions: he was demoted to the rank of Police Officer 1, he was suspended for six months without pay, he received a letter of reprimand; and, he was barred from applying for a promotion for two years.
- 10) Fort Lauderdale, Florida, Police Department advised that they did not initiate any investigation into the activities of their officers at the Roundup(s). They further advised the OIG that no action is warranted against their employees since their attendance occurred while in an off-duty status.

# **LIST OF EXHIBITS**

## EXHIBITS

<u>Number</u>	<u>Description</u>
1.	<u>Washington Times</u> article reporting racist activity at the Roundup, July 11, 1995
2.	Copy of computer printout of 1995 Roundup invitation and registration forms, daily event schedule for May 15-20, 1995, the golf schedule and pre-registration data
3.	Press release by Secretary of the Treasury, July 17, 1995
4.	Letter by Senator Orrin Hatch, providing several affidavits to the Inspector General, July 21, 1995
5.	Letter by Harold Stockburger, founder of the American Patriot Federation, July 20, 1995
6.	Redacted Affidavit, prepared by Stockburger's confidential source, describing an event at Grumpy's, July 20, 1995
7.	Redacted Affidavit, prepared by Stockburger's confidential source, describing events surrounding the Roundup, July 20, 1995
8.	Redacted Affidavit, prepared by Stockburger's confidential source (later identified as Richard Hayward), describing events surrounding the Roundup, July 20, 1995
9.	Photographs depicting Pump Station #3 and picnic grounds at original Roundup site

10. Photographs depicting the entrance and surrounding campground area at the 1984 through 1995 Roundup site
11. Photocopy of 1984 Good O'Boy Roundup invitation inviting "men and teenage males only"
12. Photocopy of 1995 Good O'Boy Roundup invitation reflecting Rules
13. Photocopy of 1993 Good O'Boy Roundup invitation reflecting "we are not political and we will not be"
14. Photocopy of Rightmyer's letter to  detailing fund raising for WACO Memorial Fund, May 11, 1993
15. Photographs of t-shirts depicting "Boyz on Hood"
16. New York Times article detailing the interview of Hayward, August 27, 1995
17. Photocopy of an NRA "Election Alert"
18. ATF Director's Notes, July 1980 edition, announcing the 1981 Roundup event
19. Photocopy of the first official Roundup t-shirt (1983)
20. Photocopy of 5<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1984)
21. Photocopy of 6<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1985)
22. Photocopy of 1986 Good O'Boy Roundup invitation

23. Photocopy of 7<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1986)
24. Photocopy of 8<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1987)
25. Photocopy of 9<sup>th</sup> Annual Good O'Boy Roundup t-shirt with "Don't Touch My Duck" logo (1988)
26. Photocopy of 10<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1989)
27. Photograph depicting a cardboard sign with the words "Nigger Check Point"
28. Photocopy of 11<sup>th</sup> Annual Good O'Boy Roundup t-shirt with "Where The Hell is Ocoee, Tennessee?" logo (1990)
29. Photocopy of 1992 Good O'Boy Roundup invitation
30. Photocopy of 12<sup>th</sup> Annual Good O'Boy Roundup t-shirt with "Kick Butt" logo (1991)
31. Photocopy of 1992 Good O'Boy Roundup registration form with liability clause
32. Photocopy of article in NAAWP NEWS, July 1992
33. Photocopy of 13<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1992)
34. Photocopy of 14<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1993) and photocopy of 1993 commemorative t-shirt depicting logos from all previous years
35. Photocopy of 1994 Good O'Boy Roundup invitation



36. Photocopy of 15<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1994)
37. Photocopy of letter from [REDACTED] to Gene Rightmyer, requesting his name be removed from the membership list, May 22, 1995
38. Photocopy of 16<sup>th</sup> Annual Good O'Boy Roundup t-shirt (1995)
39. Chart depicting Treasury Law Enforcement Personnel Surveyed
40. Table depicting Treasury Employees who attended the Good O'Boy Roundup
41. Chart depicting Treasury Roundup Attendees by Year
42. Chart depicting Treasury Attendees by Bureau
43. Table depicting Treasury Attendance by Bureau
44. Chart depicting Roundup Attendance by Current Treasury Personnel
45. Chart depicting Frequency of Roundup Attendance by Current Treasury Personnel
46. Chart depicting Racial Incidents Witnessed by Treasury employees at Roundup events
47. Table depicting interviews of retired Treasury employees
48. Table depicting GS-15 Managers who attended Roundup events
49. Table depicting Treasury management interviews

50. Table depicting Treasury minority management interviews
51. Internet message regarding the Good O'Boy Roundup, May 19, 1995
52. Photocopy of Gadsden Minutemen Newsletter, June 1995, with additional articles regarding the Roundup
53. Photocopy of Gadsden Minutemen Newsletter received by [REDACTED] in June 1995
54. Photocopy of Memo to File from [REDACTED] on June 8, 1995
55. Photocopy of letter from [REDACTED] to Senator Hatch, July 20, 1995
56. Photocopy of "Cold day in Hell" cartoon, July 7, 1985

# **EXHIBITS 1 THRU 5**

# Racist ways die hard at lawmen's retreat

## Annual 'Good O' Boys Roundup' cited as evidence of 'Klan attitude' at ATF

By Jerry Seper  
THE WASHINGTON TIMES

OCUEE, Tenn. — They're trying to tone down the racist trappings of the "Good O' Boys Roundup" here in the Tennessee hills east of Chattanooga, where hundreds of federal, state and local law-enforcement officers gather every spring to let off steam.

There was a lot to tone down. Gone, for example, are many of the crude signs that once greeted arriving officers, like this one: "Nigger check point."

The "Good O' Boys Roundup" is organized by agents of the Bureau

of Alcohol, Tobacco and Firearms, and it was held this year on May 18-20.

Also gone this year was the traditional Saturday-night skit highlighting the "Good O' Boys steak dinner." In one skit, an officer in fake Ku Klux Klan garb pulled a dildo from his robe and pretended to sodomize another officer, who

was in blackface.

But according to law enforcement officers who attended this year's and other events, a whites-only policy remains in effect.

Still on sale were T-shirts with Martin Luther King's face behind a target, O.J. Simpson in a hangman's noose and white D.C. police officers with a black man

sprawled across the hood of their car under the words "Boyz on the Hood."

"Nigger hunting licenses" also were available throughout the compound, consisting of motor homes, trailers, tents and pickups gathered around a large beer truck.

At this year's event, some black

officers — including ATF agents — attempted to crash the party and were turned away after having "bitter words" with some of the white officers in attendance, the sources said.

An attempt by roundup organizers to tone down the event's racist activities comes at a time when black agents have charged ATF

with discrimination. In a lawsuit pending in U.S. District Court in Washington, they claim ATF supervisors have done little to address complaints of racial slurs, harassment and other job discrimination.

Brought by 15 plaintiffs, the suit alleges that such incidents as "nigger hunting licenses" seen in ATF offices, a Ku Klux Klan card posted in ATF's Oklahoma City office and use of the word "nigger" by white ATF officials have gone unpunished. There are about 200 blacks among the 2,000 agents

within ATF, a law enforcement arm of the Treasury Department.

Representing the black agents is lawyer David J. Shaffer of Washington. He said that his clients were aware of the Good O' Boys Roundup and that discovery in the case found that announcements concerning it had been circulated exclusively by and to white agents.

"This is what this lawsuit is about: a Ku Klux Klan attitude among some of the white agents that seriously affects black agents on a day-to-day basis," Mr. Shaffer said.

Trial in the case has been tentatively set for next year before U.S. District Judge Royce C. Lamberth.

The roundup, according to invitations sent out last year, has been coordinated unofficially for the past several years through the ATF office in Greenville, S.C., and is open to "any good o' boy invited to attend." Non-law-enforcement attendees must be sponsored and accompanied by law enforcement officers, and participants wear wristbands to verify that they were invited.

The event coordinator is Gene Rightmyer, a retired ATF agent who previously was assigned to field offices in Tennessee and South Carolina. Mr. Rightmyer did not return telephone messages left for him with ATF for comment.

Roundup invitations show that participants were asked to send their registration fees — ranging from \$70 to \$90 — to the Greenville ATF office, and the office's telephone was listed as the number for any questions concerning the event.

Todd Lockhart, acting agent in charge of the Greenville office, declined comment, referring inquiries to the ATF regional office in Charlotte, N.C.

Several ATF agents in Greenville, however, were aware of the roundup, and during interviews they expressed concern and dismay over the annual event.

"I have never attended, nor would I," said one agent, adding that he and others knew about the racist activities and felt the event reflected poorly on the agency.

"I am not surprised about the signs or the other activities, and

whether the racism is overt or subtle, it is wrong," said another ATF official. "I cringe on behalf of the agency."

None of the several Greenville agents interviewed volunteered that they had ever attended the event.

Earl Woodham, ATF spokesman in Charlotte, said he was aware of the annual roundup and had been invited on one occasion to attend but declined. He noted that the event was not sanctioned or authorized by ATF.

"The ATF does not and will not tolerate any kind of discrimination," he said. "But what people do on their own time is their business; we cannot control internal moral-

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ATF

ity."

Mr. Woodham said, however, that Mr. Rightmyer used "poor judgment" in using the ATF address and telephone number in his invitation. He said if Mr. Rightmyer were still employed by the agency, he would be subject to "a full review and possible sanctions."

He also suggested that ATF officials who attend the annual event were "a lot of the older agents, spinoffs from the days of the revenuers and moonshine chasers."

"The younger agents just don't have time for this kind of activity," he said.

ATF spokesman Jack Killorin in Washington did not return calls for comment.

The roundup was organized in 1980 by ATF agents in Chattanooga and Knoxville. It began with 58 persons, mostly ATF agents, from Alabama, Georgia, Tennessee, Kentucky and North Carolina. Roundup attendance jumped to 341 last year.

According to Mr. Rightmyer's invitation, there are few rules.

Among those listed were no fighting, no fireworks and "what goes on at the roundup stays there."

Jeff Randall, a former Attalla, Ala., policeman who attended this year's event, said that while he would not "condemn" the entire group, there was "an obvious racist overtone" by many of those in attendance.

"People can gather and have fun, and there was a lot of good, clean fun available," he said. "But the obviously racist stuff was just not acceptable."

Mr. Randall also confirmed seeing black agents at this year's event being turned away, saying that some of the program participants were "real mad" that they had tried to get into the compound.

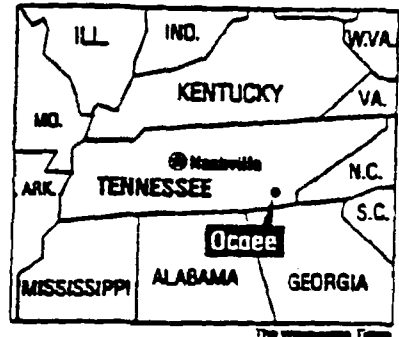
A former Alabama police official who asked not to be identified said entrance to the roundup has in the past been tightly controlled along a one-lane dirt road. He said he personally saw and photographed racially inflammatory signs along that road.



Law enforcement officials attend a recent "Good O' Boys Roundup."



D.C. police are depicted in one racially insensitive souvenir.



The Washington Times

The former police official, who said he attended three of the roundups, said the majority of participants identified themselves as ATF agents. "The roundup has been a place for law enforcement personnel to go and let their hair down," he said. "But some of this overt racism is just inappropriate, plain and simple."

J.T. Lemons, owner of Grumpy's Whitewater Rafting here, whose company sponsored rafting trips at the roundup, said that organizers have "done what they can over the past few years to clean up the racism" and that some overt signs were ordered taken down.

Mr. Lemons confirmed, however, that racially sensitive T-shirts "and other stuff" remained on sale.

Other business owners in this Polk County, Tenn., community — east of Chattanooga, adjacent to the Cherokee National Forest — also confirmed they had seen the signs, T-shirts and other racist trappings but declined to be quoted on the record.

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ATF

## **ROUNDUP INVITATION**

The invitation for the "Good O' Boys Roundup" explains the purpose of the gathering of law enforcement officers and the rules of conduct:

### **PURPOSE:**

The original idea for the Good O' Boys Roundup was for the Chattanooga and Knoxville ATF agents to get together with their friends, both law enforcement and personal friends, to raft and a little fellowship. The first year, 1980, there were 58 people from Alabama, Georgia, Tennessee, Kentucky and North Carolina. Georgia ATF agents had been having an event for a couple of years prior to this. The purpose of the roundup was and is to promote fellowship within and outside of law enforcement. This purpose is still the main reason we meet. The competition came about from the nature of the attendees. The Canadians joined in 1984 and have been an event in themselves. We are not political and we will not be. Over the years we have had to establish a few rules.

### **RULES:**

1. You are responsible for whom you invite. (New attendees must have a law enforcement sponsor.)
2. No fighting. Right or wrong this will not be tolerated.
3. No fireworks of any kind.
4. No one under 18 years of age. Ages 18-21 must be accompanied by their parent.
5. What goes on at roundup stays there. (No press, press releases, period. No stories that would embarrass any attendees, unless among Good O'Boys.)
6. Wristbands must be worn for beer and food.

The Washington Times

*"I cringe on behalf of the agency," one ATF official said of the roundup.*

Dear Good Ol' Boy,

This will be the 16th Annual Good Ol' Boy Roundup. Last year we had an attendance of approximately 250 people. We identified the attendees into different categories. Good Ol' Boy, Guest, Local law enforcement officers, Local law enforcement officers (State & local officers from Polk and Bradley Counties who stop by for fellowship.): No fee. Guests: Their host will pay for their meal and estimated beer consumption. This includes the employees of Oocee Outdoors and Grumpy's. (Normally the rafters purchase the Saturday evening meal for their Guide.) Two years ago we voted to eliminate reduced prices for some who have dropped by for a day and night of fellowship. everyone will pay the full fee.

The purpose of the Roundup was and is to promote fellowship within and outside of law enforcement. The competition came about from the nature of the attendees. The Canadians joined in 1984 and have become an event in themselves.

We are not political and we will not be. Over the years we have had to establish a few rules.

- RULES:
1. You are responsible for who you invite. (New attendees must have a law enforcement sponsor.)
  2. No fighting. Right or wrong this will not be tolerated.
  3. No Fireworks of any kind.
  4. No one under 18 years of age. Ages 18 - 21 must be accompanied by their parent.
  5. What goes on at the Roundup stays there. (No press, press releases period. No stories that would embarrass any attendee, unless among Good Ol' Boys.)
  6. Wristbands must be worn for beer and food.

No team will be allowed to enter into competition unless they are planning to enter a candidate for Redneck of the Year. For those of you who have never attended the Roundup this takes a lot of preparation and rehearsing.

Musicians are encouraged to bring their instruments for jam sessions each day, evening and night.

There will be competitive events for motorcyclists on Friday. These events will be announced later.

We expect everyone to treat [REDACTED] with all the respect he deserves.

GOOD OL' BOYS DO NOT ENCOURAGE EXCESSIVE DRINKING. REMEMBER GOOD OL' BOYS KNOW WHEN TO SAY WHEN. YOU'LL HAVE MORE FUN THAT YOU'LL REMEMBER IF YOU DRINK IN MODERATION. Neither Gene Rightmyer or the Good Ol' Boys assumes any liability for injuries sustained or actions of any attendee.

1995 GOOD OL' BOY ROUNDUP

WHEN: May 17 - 20, 1995.      WHERE: Ocoee, Tennessee

LODGING: Camping, motor homes, trailers, tents, sleeping bags, etc. Motels available in the Cleveland, TN area.

WHO: Judges, prosecutors, Feds, state & local officers, friends, neighbors, and any Good Ol' Boy invited to attend. New non-law enforcement attendees must be sponsored by a law enforcement officer who attends the Roundup.

COSTS: Rafters \$100 Non-rafters \$75  
(Make checks payable to Gene Rightmyer, consolidate as many as possible, however a registration form must be correct and complete for each applicant.)

INCLUDES: Campsite, 4 evening meals, lunch Saturday, Good Ol' Boy cap, T-shirt and beer mug, plus all of the beer you need to drink. Non-alcoholic beverages provided.

RULES: See attached.

MAIL REGISTRATION TO: Gene Rightmyer, [REDACTED]

TELEPHONE: [REDACTED]

DEADLINE: April 15, 1995 - Cancellations until May 1, 1995 money will be refunded. A late charge of \$10.00 will be added to all late entries.

EMERGENCY PHONE NUMBER: While attending, in case of an EMERGENCY ONLY we can be reached through the Polk County Sheriff's Dept. in Benton, TN - 615-470-0915.

DEERS: Everyone must wear sneakers during the raft ride. Suggest that you bring at least five changes of clothing and a jacket.

REDNECK CHILI COOK-OFF: There will be three categories:  
MOST UNUSUAL: Different ingredients, meats, sauces, beans, etc. that taste good to Judges.  
BEST PRESENTATION: How chili is presented and served to the Judges. Use your imagination.  
BEST ALL AROUND: The chili the Judges like the best.  
Rules: One gallon minimum. Made by participants. Basic ingredients available to Judges. Remaining chili will be served for evening meal. Any additional rules will be made available to participants upon signing up.  
JUDGES: "Emperor For Life" and Former Rednecks of the Year.

KITTENWINE CONTEST: Rules and time of contests will be posted



GOOD OL' BOY ROUNDUP

1995  
MONDAY & TUESDAY

[REDACTED] [REDACTED] WILL BE ONSITE.

TRAVEL. EARLYBIRDS ARRIVE - WHITEWATER. GOLFING & CARD PLAYING ETC.

WEDNESDAY

7:30AM.....GOLFERS GO PLAY GOLF.

12 NOON - 6 PM...CHECK-IN STATION OPENS.

RAFTERS SIGN-UP FOR YOUR FLIGHT AT CHECK-IN STATION. ON FIRST  
COME FIRST SERVE BASIS.

10 NOON....."ROUNDUP" OFFICIALLY BEGINS - BEER TRUCK ARRIVES

4 PM.....DEADLINE FOR SIGNING UP FOR CHILI COOK-OFF.

6:30 PM (ABOUT)...CHILI COOK-OFF (MOST UNUSUAL, BEST PRESENTATION,  
BEST ALL AROUND).

7:30 PM.....DINNER. CHILI

AFTER DINNER...R.E.X. MEETING FOLLOWED BY A M.O.B. MEETING  
WITH [REDACTED] AT CABINS.

JAM SESSION: Any musicians bringing their equipment are encouraged  
to get together on porch of cabins to play what they  
feel like at anytime each night.

THURSDAY

7:30AM.....GOLFERS GO PLAY GOLF

10AM - 6PM...CHECK-IN STATION OPEN.

5PM. TEAM BUSINESS MEETINGS AND ELECTION OF 1994 M.O.B.  
REPRESENTATIVES. TEAM CAPTAINS AND JUDGES.

ABOUT 6:30 PM. DINNER (PIG PULLING).

AFTER DINNER TEAM CAPTAINS AND JUDGES MEETING AT CABINS. TEAMS  
MUST BE REPRESENTED AND REGISTERED WITH [REDACTED]  
THIS MEANS COMPLETE ROSTERS AND JUDGES. DRAWINGS  
FOR COMPETITION WILL BE CONDUCTED AND JUDGES  
ASSIGNED EVENTS. IF YOUR TEAM JUDGE DOESN'T APPEAR  
AND CONDUCT HIS EVENT YOUR TEAM WILL BE PENALIZED  
10 POINTS.

FRIDAY

9AM. TEAM COMPETITION BEGINS. ALL TEAMS MUST BE PRESENT AND READY TO PLAY.

.....CHECK-IN STATION HOURS TO ANNOUNCED

.....MOTORCYCLE CONTESTS TIMES TO ANNOUNCED

NO GOLF THIS DAY

6:30PM. DINNER

SATURDAY

7:30AM. GOLFERS LEAVE TO PLAY IN TOURNAMENT

8:15AM. RAFTERS 1ST FLIGHT BE READY AT BEER TRUCK

9:15AM. RAFTERS 2ND FLIGHT BE READY AT BEER TRUCK

10AM-3PM. CHECK-IN STATION OPEN.

10:15AM. RAFTERS 3RD FLIGHT BE READY AT BEER TRUCK

11:15AM. RAFTERS 4TH FLIGHT BE READY AT BEER TRUCK

12 NOON. LUNCH IS READY

3PM-5PM. CHECK-IN STATION SALE OF EXTRA SHIRTS & CAPS

5PM. AWARDS PRESENTATIONS. BUSINESS MEETING. ELECTION OF PRESIDENT AND VICE-PRESIDENT.

ABOUT 7PM. DINNER. THE INTERNATIONALLY ACCLAIMED "GOOD OL BOY" STEAKS WITH ALL THE TRIMMINGS.

SUNDAY

WAKE-UP. CLEAN-UP SELF, CAMPSITE AND SURROUNDING AREA. THEN GO HOME.

DRIVE SAFELY HOME

COMPLETE AND/OR CORRECT EACH & EVERY ENTRY

LAST NAME: \_\_\_\_\_ FIRST NAME: \_\_\_\_\_ MI: \_\_\_\_\_  
(CHECK PREFERRED MAILING ADDRESS) (\*\* MAKE CORRECTIONS HERE \*\*)  
HOME ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
HOME TELEPHONE: \_\_\_\_\_  
BUSINESS ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
BUSINESS TELEPHONE: \_\_\_\_\_  
LAW ENFORCEMENT SPONSOR & DEPT. \_\_\_\_\_  
\_\_\_\_\_

EMERGENCY CONTACT: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_  
ALLERGIES: \_\_\_\_\_  
MY TITLE/OCCUPATION: \_\_\_\_\_  
\_\_\_\_\_

SHIRT SIZE: (circle) S M L XL XXL

EXTRA CAPS ARE \$7; EXTRA T-SHIRTS ARE \$7; GOLF SHIRTS ARE \$20  
EXTRA CAPS: # \_\_\_\_\_ EXTRA T-SHIRTS: # \_\_\_\_\_ SIZES: \_\_\_\_\_  
GOLF SHIRTS: # \_\_\_\_\_ SIZE: (circle) S M L XL XXL

WHAT TEAM ARE YOU ON? \_\_\_\_\_  
I WISH TO COMPETE IN THESE EVENTS: (check events)  
\_\_\_ REDNECK OF THE YEAR \_\_\_ VOLLEYBALL  
\_\_\_ THUG-A-LUG \_\_\_ TRUCK PUSHING \_\_\_ TUG-OF-WAR  
(NON-TEAM EVENTS) \_\_\_ CHILI COOK-OFF \_\_\_ MOTORCYCLE CONTESTS  
(CHECK YES OR NO)

DO YOU WANT TO COMPETE IN TEAM COMPETITION? YES \_\_\_ NO \_\_\_  
IF NOT ON A TEAM CAN WE ASSIGN YOU TO A TEAM? YES \_\_\_ NO \_\_\_  
I AM RAFTING YES \_\_\_ NO \_\_\_  
I AM PLAYING GOLF YES \_\_\_ NO \_\_\_ (Avg score \_\_\_\_\_) Days \_\_\_\_\_  
I WOULD LIKE TO HELP WITH: OFFICIATING THE EVENTS YES \_\_\_ NO \_\_\_  
CHECK-IN SECURITY YES \_\_\_ NO \_\_\_  
RAFTERS CHECK-OFF YES \_\_\_ NO \_\_\_

REGISTRATION FEES: RAFTING - \$100. NON-RAFTING - \$75.  
PLUS EXTRAS - \$ \_\_\_\_\_

TOTAL AMOUNT ENCLOSED: \$ \_\_\_\_\_

ANTICIPATED DAY OF ARRIVAL \_\_\_\_\_

I, the undersigned, realize and understand that I and not Gene Rightmyer nor the Good Ol' Boy Roundup, are responsible for my actions. I therefore release both from any claims of injury or liability.

1995 GOLF SCHEDULE

TUESDAY - MAY 16, 1995

9 AM

WESLYN - CHATSWORTH, GA (FORMERLY MAGNOLIA RIDGE)

DRIVING TIME FROM CAMP 45 MIN TO 1 HOUR

CONVOY LEAVES CAMP AT 7:30 A.M.

WEDNESDAY, MAY 17, 1995

9 AM

RNCE NORTH - DALTON, GA

DRIVING TIME FROM CAMP 45 MIN TO 1 HOUR

CONVOY LEAVES CAMP AT 7:30 A.M.

THURSDAY, MAY, 18, 1995

9AM SHOTGUN

FLAGSTONE - BENTON, TN (615-339-3784)

DRIVING TIME FROM CAMP 15 - 30 MIN

CONVOY LEAVES CAMP AT 8 A.M.

SATURDAY, MAY 20, 1995

9:30 AM SHOTGUN

WHITE OAK - ATHENS, TN

DRIVING TIME FROM CAMP 45 MIN TO 1 HOUR

CONVOY LEAVES CAMP AT 7 A.M.

1995

GOOD OL' BOY ROUNDUP

AS OF MAY 15, 1995

PEOPLE REGISTERED: 250  
NOT ATTENDING: 1  
RAFTERS: 54  
SOLFPERS: 45

	ORDERED	NEEDED
CAPS:	450	519
MOB	48	37
REX	24	13

T-SHIRTS:		
SM	3	3
M	13	10
L	97	89
XL	107	179
XXL	95	77

GOLF SHIRTS	ORDERED	NEEDED
L		3
XL		3
XXL		3

CHUG-A-LUG SHAMPS:	
L	1
XL	10
XXL	4

DEPARTMENT OF THE TREASURY

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR IMMEDIATE RELEASE  
July 17, 1995

STATEMENT OF TREASURY SECRETARY ROBERT E. RUBIN

Today, I am announcing a comprehensive and independent investigation of the so called "Good O' Boys Roundup." This inquiry will be conducted jointly by the Inspector General of the Treasury Department and by our Under Secretary for Enforcement. It will be overseen by an outside group of eminent Americans who will be asked to assess the inquiry's thoroughness, accuracy and independence. Our purpose is to get to the truth, period; and then to take all necessary steps so that we can tell the American people: This will not happen again.

Before discussing the inquiry, I would like to comment for a moment or two on why this matter is of such critical importance.

In our society, we cherish the rule of law. The rule of law can only have meaning when law enforcement and law enforcement officers act as instruments of justice and fairness.

An enduring legacy of American racism is the belief -- justified in many instances -- among African-Americans and other minorities that justice at times is enforced against them in a discriminatory fashion.

For these reasons, law enforcement officials -- in perception and reality -- must demonstrate on and off the job that they are as free from bias as their jobs require them to be. And it is the responsibility of their supervisors, right up to the Office of the Secretary, to be vigilant -- so justice is administered with integrity, fairness and freedom from bias.

We condemn as totally abhorrent the participation of law enforcement officials in the "Good O' Boys Roundup," because it included abjectly racist and anti-semitic behavior totally inappropriate for law enforcement officers, and because no one who

(More)

RR-435

participated in it had the good sense or decency to do anything about it. That is unacceptable and we will make sure it does not happen again.

When the Director of the Bureau of Alcohol, Tobacco and Firearms, John Magaw, previously the head of the Secret Service, first learned of the so-called "Roundup," he ordered an investigation by ATF's Office of Inspections.

That was nearly one month ago.

Before this investigation was fully completed, reports of the "Roundup" appeared in the press. Director Magaw, quickly and without reservation, spoke out against the racism apparent from descriptions of the "Roundup." Ronald K. Noble, Under Secretary for Enforcement, did the same thing before a national assembly of African-American criminal justice officials in Denver. I fully identified with their condemnation in response to a question from Senator Moseley-Braun at a hearing on Mexico held this past Friday.

But words are not enough; deeds are what matter.

That is why we are taking the additional actions we announce today. At Treasury, Valerie Lau, the independent Inspector General, and Ron Noble, Under Secretary of the Treasury for Enforcement, will jointly conduct an inquiry into the alleged participation of active Treasury Department enforcement employees in the "Good O' Boys Roundup." The heads of all enforcement bureaus -- Director Magaw, Secret Service Director Eljay Bowron, Customs Commissioner George Weise, and IRS Commissioner Margaret Richardson -- fully support this independent inquiry.

The purpose is to ascertain the facts; determine whether participation by Treasury employees constituted violations of law, regulations or procedure; and judge whether existing policies are adequate and sufficient to prevent participation by Treasury personnel in similar events in the future.

The inquiry is expected to be completed within 120 days, and a report with recommendations shall be made public. The members of the independent board will be announced shortly.

Once the inquiry is complete, we will take whatever appropriate actions are called for by the facts we unearth. This process will be comprehensive and candid. I personally have the utmost confidence that the Inspector General, the Under Secretary for Enforcement, and the board of inquiry will get to the bottom of this issue.

I am proud, I will say it even more strongly, deeply proud, of the men and women of the Treasury Department's enforcement bureaus.

They do dangerous and difficult work; they place their lives on the line every day so that the rest of us can live in greater safety and greater security. I was in New York this morning with agents of the Customs bureau, and we talked about the undercover work they were doing with extraordinarily dangerous criminals and the arrests that have been made in response in the areas of narcotics, in the sale of nuclear material, fraud, smuggling of various kinds and other dangerous activity inimicable to public safety.

Similarly at the ATF, roughly 30 percent of their arrests are of armed drug traffickers. This is dangerous and difficult work, and it absolutely requires our support for them to be effective. And that support in turn depends on law enforcement officials conducting themselves with scrupulous fairness, without any hint of racism or bias. And that support also requires that if problems develop, and inevitably there will be problems from time to time as there are in any organization, that those problems be dealt with fully, candidly, openly and as expeditiously as possible. It is for all these reasons that this investigation is so important.



ORRIN G. HATCH, UTAH, CHAIRMAN

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FRED THOMPSON, TENNESSEE	HERBERT KOHL, WISCONSIN
JON KYL, ARIZONA	DANNE FEINSTEIN, CALIFORNIA
MIKE DEWINE, OHIO	RUSSELL D. FEINGOLD, WISCONSIN
SPENCER ABRAHAM, MICHIGAN	

MARK R. DISLER, *Chief Counsel*  
MANUS COONEY, *Staff Director and Senior Counsel*  
CYNTHIA C. HOGAN, *Minority Chief Counsel*  
KAREN A. ROBB, *Minority Staff Director*

## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

July 21, 1995

BY HAND-DELIVERY

Valerie Lau  
Inspector General  
U.S. Department of Treasury  
1500 Pennsylvania Ave., N.W.  
Washington, D.C. 20220

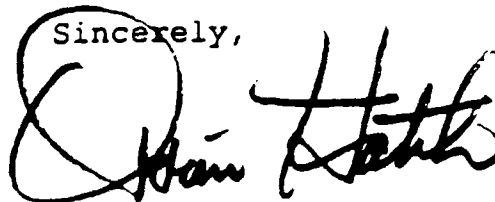
Dear Ms. Lau:

In preparation for today's hearing, "Federal Law Enforcement and the Good Ol' Boy Round-Up," the Committee received the enclosed affidavits and statement. Pursuant to the request of the makers of these statements, we are providing this information to you in order to assist you with your investigation of these events. We have assured these individuals that you will handle this matter in a confidential and professional manner.

I have not been able to assess fully their credibility or verify these serious allegations. Nor have I been able to give individuals an opportunity to respond to the allegations. Nonetheless, I believe these allegations warrant your investigation.

Again, I thank you for appearing before the Committee today and I look forward to hearing the results of your investigation.

Sincerely,



Orrin G. Hatch  
Chairman

OGH:lk

07-24-95 04:10PM

FROM JUD. COMM MAJORITY TO [REDACTED]

PG02.002



## American Patriot Federation

P.O. Box 24253  
Chattanooga, TN 37422-4263

July 20, 1995

[REDACTED]  
U.S. Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear [REDACTED]

In reference to the Congressional Investigation of the involvement of Federal Law Enforcement in the "Good Ol' Boy Round-Up," enclosed are the affidavits of the witnesses we talked with. One of these witnesses you have already personally interviewed by telephone.

As you are already aware, this is only the "tip of the iceberg." It is apparent, from our investigations, the levels of corruption run deep and rise to the highest levels of federal law enforcement agencies. The agency which is most repeatedly mentioned is the Bureau of Alcohol, Tobacco, and Firearms.

As I stated, we have many other sources which need to be developed, and we are willing to coordinate with your office in these endeavors. We are willing to do whatever is necessary to help you get to the truth in this matter.

To reiterate the facts in this case, in addition to the racism, there are: charges, or allegations, of blatant drug use; sexual harassment; sexual misconduct; rape; violations of local liquor ordinances; and many other issues which raise questions of credibility within these agencies.

With the number of sources we have, it is our sincere belief, given additional time, all of these charges should be substantiated by affidavits or possibly sworn testimonies. There are many others with much more to tell in this case.

Please stress to the members of the Committee the importance of moving as quickly as possible to get to the bottom of this.

Thank you again for allowing us to help you in this important matter. Also, in the interest of security, let me again stress the importance of confidentiality regarding the identities of these witnesses.

Sincerely,

A handwritten signature in cursive script that reads "Harold E. Stockburger". The signature is written in black ink and is positioned above the typed name.

Harold E. Stockburger  
Founder

# **EXHIBITS 6 THRU 10**

In Re Congressional Investigation  
into the Involvement of Federal  
Law Enforcement in the "Good Ol'  
Boy Round-Up"

AFFIDAVIT OF

I, \_\_\_\_\_ being duly sworn states the following:

1. I have personal knowledge of the facts set forth below.
2. On May, 1990: I attended a party at Ocoee Outdoors at their bar, Grumpy's that the 'Good Ol' Boys' were throwing.

Understand that after midnite the bar is closed to the public and those left are by invitation only. Anyway, I was curious to how law enforcement behaved at this roundup, so I went to see. At the dance I was approached by a man who identified himself as being a Drug Enforcement officer. He asked me to step outside. I asked why. He says he "has the best drugs available" and we'd do some. I informed him I didn't do drugs and asked him how he could do that since he had said he was with Drug Enforcement. He laughed and said that's why he had the best.

I left him standing on the dance floor and angry. Here was a person that was paid to uphold the law - sworn to do so and he is making fun of that fact.

After this, I decided I wanted nothing to do with this party and I left. I did not like anything that I saw at this party which was the obvious intent of the officers there to break any law they wanted. Their attitude was 'We are the law. Who is going to arrest us or call us to account?'

There was no respect for any woman there. We were 'open game.' I was told it was unsafe to go into the campground because if I did I was subject to rape or anything else that the "Good Ol' Boys" wanted to do to me. Needless to say, I did not go into the campground. I have been troubled about this, time and everytime the round-up is held since.

I had no idea that this type of thing and things could happen and be going on involving the very people that are sworn to uphold the law.

Some things I mean are: At one round-up, 25 officers got a very attractive young woman drunk. She passed out and they placed her on a picnic table in the campground and took turns having sex with her. She didn't have sex. She was passed out. They gathered around her and urinated on her. Now I ask you, what kind of statement was that making? Think about it. Really think about it.

At another round-up, the 'Good Ol' Boys' purchased a goat to commit bestiality on. If the ones involved didn't want to do the goat, they had to drink a quart of motor oil. How sick are these people?

They gather around and expose themselves to see who is biggest. At this year's round-up (May, 1995) they performed public sex on the makeshift stage that the band played on and some had oral sex performed on them on the dance floor.

Are these truly our best and finest? I sincerely hope and pray not.

I believe they are about as sick and inclined to commit crime as any criminal they arrest. You've got a lot of cleaning up to do.

These things I've related sounds like fiction. I wish they were. The nightmare is they are all too true.

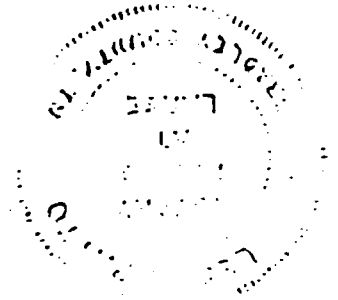
Affiant further sayeth not.

\_\_\_\_\_  
Name of Affiant

Subscribed and sworn to before  
me this 20th day of July, 1995.

\_\_\_\_\_  
Notary Public

My commission expires: *Sept. 15, 19*



In Re Congressional Investigation  
into the Involvement of Federal  
Law Enforcement in the "Good Ol'  
Boy Round-Up"

I, \_\_\_\_\_, being duly sworn states the following:

1. I have personal knowledge of the facts set forth below.
2. On 1995-May: Party in campground had gotten so bad over the years I stayed away - heard about the drugs and men at the bar dropping pants and flashing.

1994-May: I saw a female stripped on a table in the campground. This was in the presence of both men and women. The men in attendance were tipping her by inserting paper currency into her vagina. During this show, a friend of mine and myself were offered \$1,000.00 each if we would do the same. I was offended by the conduct of the men present and was extremely disturbed that I was approached and asked to perform.

1993-May: I saw men running around flashing themselves (their penis). I was told by friends of drugs.

I can't remember the year but I do know I [REDACTED]  
[REDACTED] I went to the campground for dinner. My breasts were grabbed at and someone tried to flip up my skirt. One of the men (from Canada) came to my aid and watched over me so no one else would try anything. I was in the campground when a girl was 'gang-banged' by many officers. She was drunk [enough] to pass out. After they were finished, they all stood around her and 'pissed' on her.



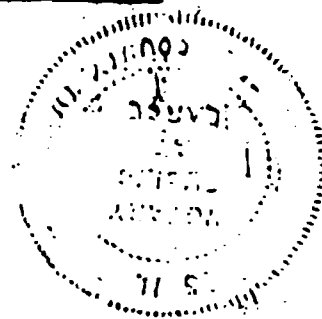
Many made the statement that this was one week out of the year they could do as they pleased. I also heard of one very upset because he got pulled over and put in jail for drinking and driving.

A friend told me of four rapes. He [the friend] knew nothing was ever done.

Affiant further sayeth not.

\_\_\_\_\_  
Name of Affiant

Subscribed and sworn to before  
me this 20th day of July, 1995.



\_\_\_\_\_  
Notary Public

My commission expires: *Sept. 17, 19*

## AFFIDAVIT

I am now retired as a law enforcement officer but have been in law enforcement since 1973.

I first learned about the "Good O' Boy Roundup" from a friend at a law enforcement agency where I had previously been employed. I first attended the Roundup in 1989. The Roundup is always held the weekend before Mother's Day in Ocoee, Tennessee, and ran from Wednesday to Saturday. The Roundup was organized by Gene Rightmeyer, a Special Agent in Charge with the Bureau of Alcohol, Tobacco, and Firearms (BATF), and attended mostly by personnel from various federal, state, and local law enforcement agencies. I attended the Roundup each year from 1989 until 1992. At the Roundup, in various years, I observed personnel from the Drug Enforcement Agency (DEA), U.S. Secret Service, Immigration and Naturalization Service, as well as personnel from various state police agencies, including Maryland, Georgia, North and South Carolina, Mississippi, as well as major metropolitan police departments, including Atlanta, Georgia, and Birmingham, Alabama. Among the attendees were agents from the Canadian Morals Unit (Vice).

When I first arrived at the Roundup in 1989, I went to the check-in point which was manned primarily by BATF agents. This checkpoint had several signs posted such as "No Niggers Allowed" and "Nigger Deposit Point." These signs remained posted during the entire event. The check-in point also had an effigy or dummy of a black person hanging from a tree. This effigy remained at the check-in point throughout the event. Moreover, BATF agents and other law enforcement officers would surround each vehicle as it approached, stop it, and rock the vehicle while shouting "got any niggers in that car?!" and other such remarks. When I signed in at the check-in point, I received a shirt, hat, mug, meal ticket, and an identification bracelet. The entrance fee was \$50.00 in 1989, but I now believe it is gone up to \$90.00.

During the 1989 Roundup, agents from BATF put on a skit or short play which was performed for the entire assemblage up on a stage. One BATF agent wore a Ku Klux Klan robe and had another agent, in black face, with a chain around his neck. The agents exchanged racial slurs and the Klan BATF agent produced a dildo from under his robe and forced the black face agent to simulate sodomy. The Klan agent acted as if he was aroused and, when he turned toward the crowd, a liquid substance poured from the end of the dildo. A racist amateur "comedy club" then ensued with racial epithets and slurs, mostly aimed at blacks. BATF SAC Gene Rightmeyer observed all of this activity and took no action to stop it.

I next attended the Roundup in 1990 and took a video camera with me. This year, the racist signs were again at the check-in point and I took some video footage of them; one of the signs said "Niggers, .17/pound," "Nigger Check In Point," and another was a poster of a black person with an

see through there head. Again, these signs were up for the entire event. The 1990 Roundup was similar to the one in 1989, complete with racial skits as before.

In 1991, there were no racist signs at the entrance checkpoint, but the law enforcement agencies were engaged in racist t-shirt swapping. For example, the District of Columbia Metropolitan Police had a shirt with black suspects spread-eagle on the hood of a patrol car with the slogan: "Boyz-on-the-Hood." Another agency had a "Pocket Nigger" shirt which featured the image of Buckwheat coming out of the pocket. Another featured the silhouette of an African-American with cross hairs, commonly known as a "running nigger" target. BATF shirts featured the grim reaper, "kick-ass," and death heads. One law enforcement agent bit the head off of a live snake.

When I attended the 1992 Roundup, I observed a BATF agent distributing homemade "moonshine" which was consumed from mason jars. Some had peaches and some cherries in the jars with the moonshine. I have a still photograph of the agent drinking the moonshine. Several agents from various agencies were selling cassette tapes with racist songs, such as *Flight of NAACP 109* and others by David Alan Coe which featured lyrics like "my wife ran off with a nigger."

Also during the 1992 Roundup, the last I attended, a skit was performed by various law enforcement personnel entitled "Birth of the Black Race." The skit was a take-off on the opening of the movie *2001* and when the music reached a crescendo, one of the actors broke open a watermelon and pulled out a black doll, holding it up for the crowd to see. Later, several female professional dancers stripped off their clothes and performed in the nude.

At each of these events, I observed armed law enforcement officers in states of severe intoxication although I did not observe anyone brandishing a weapon.

Again, I would reiterate that BATF SAC Gene Rightmeyer, one of the organizers, was always in attendance at these events and did nothing to curb the racist rhetoric and displays. Rules for attendance were stated in the literature advertising the event. Among them were that you are responsible for who you invite (New attendees must have a law enforcement sponsor); what goes on at the Roundup stays there (no press, press releases period. No stories that would embarrass any attendees, unless among Good O' Boys); new non-law enforcement attendees must be sponsored by a law enforcement officer who attends the Roundup. These rules were made to be known to us in the literature and were constructed along the lines of the so-called "code of silence" that no law enforcement officer ever informs on another law enforcement officer.

I am prepared to take a polygraph examination, administered by an independent examiner, to prove the veracity of the statements contained herein.

FURTHER AFFIANT SAYETH NOT.

On the 20th day of July, 1995, I. \_\_\_\_\_, do depose and say that, under the penalty of perjury, the foregoing is true and correct within my personal knowledge, except where such is based upon information and belief, then I believe it to be true.









# **EXHIBITS 11 THRU 15**



DEAR "GOOD O'BOY"

I AM HAPPY TO INFORM YOU THAT WE ARE GOING TO HAVE THE FIFTH ANNUAL "GOOD O'BOY ROUNDUP". LET'S ALL PRAY FOR BETTER WEATHER THIS YEAR, IT CAN'T BE ANY WORSE THAN LAST YEAR.

ANOTHER BIT OF GOOD NEWS IS WE DEPOSITED \$1057.00 IN A SAVINGS ACCOUNT AFTER LAST YEAR. AFTER I PAY THE INCOME TAXES ON THE INTEREST I'LL TELL YOU THE EXACT AMOUNT WE NOW HAVE. THIS MONEY WILL BE USED TO SUPPLEMENT THE INCREASES OVER THE NEXT FOUR OR FIVE YEARS FOR THE RAFTERS.

NOW FOR SOME BAD NEWS AND THE CHANGES. IN ORDER TO AVOID ANY FURTHER PROBLEMS WITH THE FOREST MANAGERS WE ARE MOVING TO PRIVATE PROPERTY. THIS WILL COST MORE BUT, I THINK THAT EVERYONE WILL BE HAPPIER AND WE CAN HAVE THE BEER TRUCK ON SITE. DURING THIS PAST YEAR T.V.A. CUT THE NUMBER OF DAYS IN WHICH YOU CAN RAFT THE OCOEE RIVER TO 116 DAYS. THIS WILL CAUSE US TO CHANGE TO FRIDAY AND SATURDAY INSTEAD OF THURSDAY AND FRIDAY. T.V.A. ALSO PLACED A SURCHARGE OF \$2.00 PER RAFTER, POLK COUNTY PLACED A TAX OF \$1.50 PER RAFTER AND OCOEE OUTDOORS HAS INCREASED THEIR CHARGE .50 FOR A TOTAL INCREASE OF \$4.00 PER RAFTER. OVER THE NEXT FEW YEARS T.V.A. SURCHARGES ARE SUPPOSED TO GO UP TO \$5.00.

WE RECEIVED NUMEROUS SUGGESTIONS THAT WE PLACE THE PATCHES ON BASEBALL TYPE CAPS, WHICH WE INTEND TO DO.

THE PRIVATE CAMP GROUND WILL HAVE SHOWERS, TOILET FACILITIES AND BE CONVENIENT TO A GROCERY STORE, 200 YARDS. THE GROCERY STORE WILL HAVE SAUSAGE AND BISCUITS EACH MORNING FOR THOSE OF YOU WHO DON'T WANT TO COOK.

THE OCOEE INN MARINA IS WITHIN A MILE OF THE CAMPGROUND FOR THOSE DESIRING TO STAY IN A MOTEL. THE RATES ARE \$30 PER NIGHT, \$2 FOR EACH ADDITIONAL PERSON, MOST ROOMS WILL SLEEP FOUR, HOWEVER, SOME WILL SLEEP SIX. THERE ARE ONLY 10 ROOMS SO IF YOU WANT TO RESERVE A ROOM CALL 615-338-2064. THE OCOEE INN ALSO HAS A RESTAURANT AND WILL BE SERVING BREAKFAST AT 7:00 A.M.

DOWN TO THE BOTTOM LINE:

RAFTERS .....\$40.00

NON-RAFTERS.....\$20.00

INCLUDES: "GOOD O'BOY" T-SHIRT, BASEBALL CAP WITH "GOOD O'BOY" PATCH APPLIED, BAR-B-QUE PORK RIB DINNER, STEAK DINNER, ALL THE BEER OR COLA YOU CAN DRINK.

EXTRA T-SHIRT.....\$5.00

EXTRA CAP.....\$5.00



LAST YEAR WE HAD OVER 200 "GOOD O'BOYS" AT THE ROUNDUP, LET'S TRY TO BETTER THIS YEAR.

*Gene*

# GOOD O'BOY ROUNDUP



WHEN: MAY 18 - 19, 1984

WHERE: OOOEE, TENNESSEE

LODGING: CAMPING, MOTOR HOMES,  
TENTS, SLEEPING BAGS,  
CAMPER, TRAILERS, ETC.

MOTEL: OOOEE INN MARINA  
615-330-2064.  
CLEVELAND, TN IS  
NEXT NEAREST MOTEL.  
ABOUT 20 MIL. AWAY.

WHO: ATF AGENTS, JUDGES, OTHER  
FEDERAL AGENTS, PROSECUTORS,  
STATE & LOCAL OFFICERS, FRIENDS,  
NEIGHBORS AND ANY OTHER "GOOD  
O'BOY" WHO WANTS TO ATTEND.  
(MEN AND TEENAGE MALES ONLY)

DRESS: EVERYONE MUST WEAR SNEAKERS  
DURING THE RAFT RIDE. BRING  
AT LEAST ONE CHANGE OF CLOTHING.

DEADLINE FOR REGISTRATION: MAY 1, 1984

COSTS: RAFTERS - \$40.00\*

NON-RAFTERS - \$20.00\*

\*INCLUDES: BAR-B-QUE PORK RIBS, FRIDAY EVENING  
MEAL; "GOOD O'BOY" T-SHIRT; "GOOD  
O'BOY" BASEBALL CAP; STEAK DINNER  
SATURDAY EVENING MEAL; ALL THE BEER  
OR COLA YOU NEED TO DRINK. (LAST  
YEAR 17 KEGS)

RULES: 1. YOU ARE RESPONSIBLE FOR WHOM YOU INVITE.

2. NO FIGHTING. WE HAVE NEVER HAD A FIGHT. SHOULD ONE OCCUR ALL PARTIES  
INVOLVED RIGHT OR WRONG WILL NOT BE ALLOWED BACK.

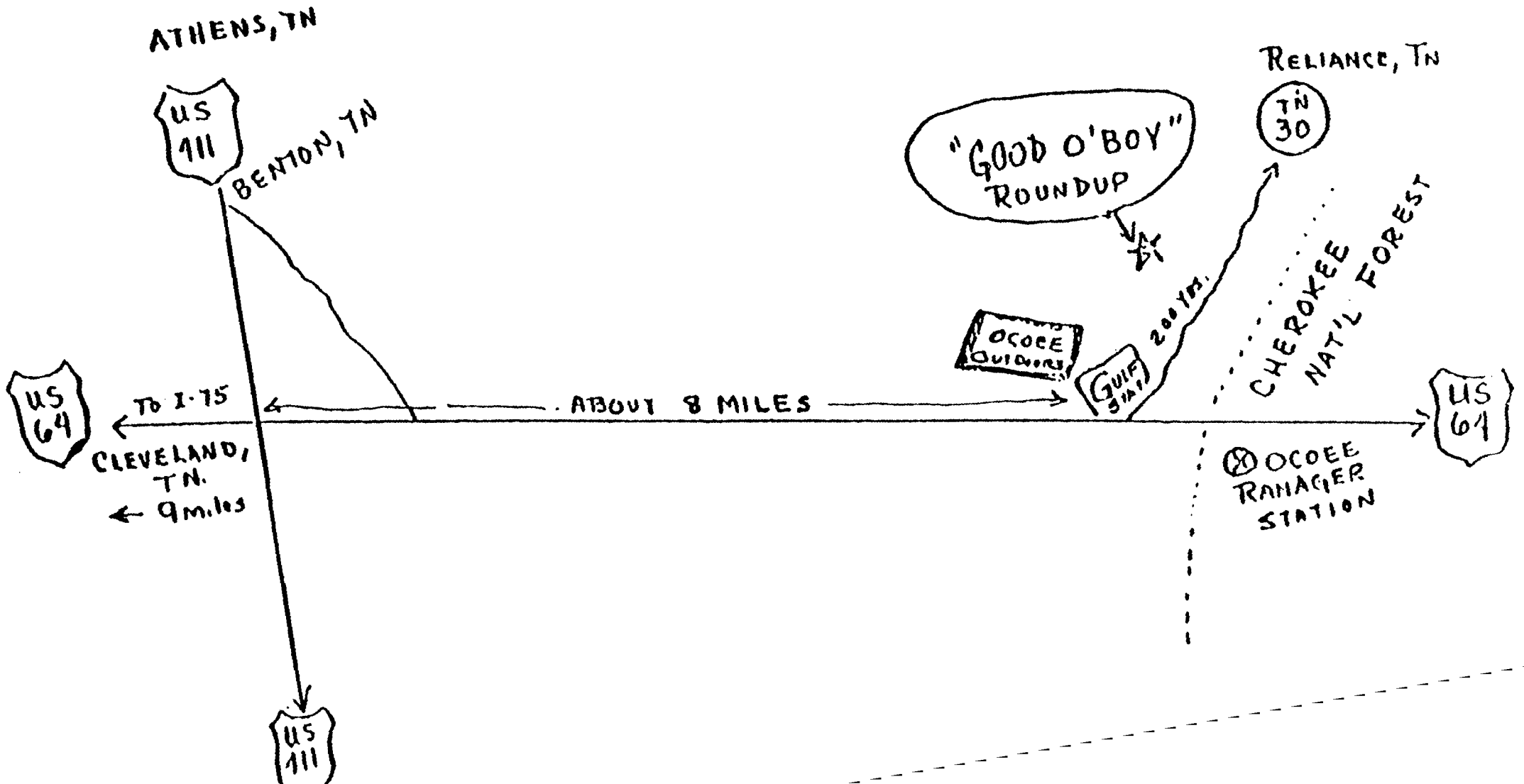
TEENAGE MALES - SAME RULES APPLY PLUS CAMP AND RAFT TOGETHER. THESE  
CONDITIONS ARE MADE TO INSURE THAT PARENTS AND NON-PARENTS  
CAN FEEL AT-EASE AND THAT THE BOYS GET TO KNOW EACH OTHER.  
THIS DOES NOT APPLY TO 18 & 19 YEAR OLDS.

---

DETACH AND SUBMIT

---

NEW CAMPGROUND  
(ABOUT 8 MILES WEST OF THE OLD ONE.)



Dear Good Ol' Boy.

This will be the 16th Annual Good Ol' Boy Roundup. Last year we had an attendance of approximately 350 people. We identified the attendees into different categories. Good Ol' Boy, Guest, Local law enforcement officers. Local law enforcement officers (State & local officers from Polk and Bradley Counties who stop by for fellowship.): No fee. Guests: Their host will pay for their meal and estimated beer consumption. This includes the employees of Ocoee Outdoors and Grumpy's. (Normally the rafters purchase the Saturday evening meal for their Guide.) Two years ago we voted to eliminate reduced prices for some who have dropped by for a day and night of fellowship. everyone will pay the full fee.

The purpose of the Roundup was and is to promote fellowship within and outside of law enforcement. The competition came about from the nature of the attendees. The Canadians joined in 1984 and have become an event in themselves.

We are not political and we will not be. Over the years we have had to establish a few rules.

- RULES:
1. You are responsible for who you invite. (New attendees must have a law enforcement sponsor.)
  2. No fighting. Right or wrong this will not be tolerated.
  3. No Fireworks of any kind.
  4. No one under 18 years of age. Ages 18 - 21 must be accompanied by their parent.
  5. What goes on at the Roundup stays there. (No press, press releases period. No stories that would embarrass any attendee, unless among Good Ol' Boys.)
  6. Wristbands must be worn for beer and food.

No team will be allowed to enter into competition unless they are planning to enter a candidate for Redneck of the Year. For those of you who have never attended the Roundup this takes a lot of preparation and rehearsing.

Musicians are encouraged to bring their instruments for jam sessions each day, evening and night.

There will be competitive events for motorcyclists on Friday. These events will be announced later.

We expect everyone to treat [REDACTED] with all the respect he deserves.

GOOD OL' BOYS DO NOT ENCOURAGE EXCESSIVE DRINKING. REMEMBER GOOD OL' BOYS KNOW WHEN TO SAY WHEN. YOU'LL HAVE MORE FUN THAT YOU'LL REMEMBER IF YOU DRINK IN MODERATION. Neither Gene Rightmyer or the Good Ol' Boys assumes any liability for injuries sustained or actions of any attendee.

1995 GOOD OL' BOY ROUNDUP

WHEN: May 17 - 20, 1995.      WHERE: Ocoee, Tennessee

LODGING: Camping, motor homes, trailers, tents, sleeping bags, etc. Motels available in the Cleveland, TN area.

WHO: Judges, prosecutors, Feds, state & local officers, friends, neighbors, and any Good Ol' Boy invited to attend. New non-law enforcement attendees must be sponsored by a law enforcement officer who attends the Roundup.

COSTS: Rafters \$100 Non-rafters \$75  
(Make checks payable to Gene Rightmyer, consolidate as many as possible, however a registration form must be correct and complete for each applicant.)

INCLUDES: Campsite, 4 evening meals, lunch Saturday, Good Ol' Boy cap, T-shirt and beer mug, plus all of the beer you need to drink. Non-alcoholic beverages provided.

RULES: See attached.

MAIL REGISTRATION TO: Gene Rightmyer, [REDACTED]

TELEPHONE: [REDACTED]

DEADLINE: April 15, 1995 - Cancellations until May 1, 1995 money will be refunded. A late charge of \$10.00 will be added to all late entries.

EMERGENCY PHONE NUMBER: While attending, in case of an EMERGENCY ONLY we can be reached through the Polk County Sheriff's Dpt. in Benton, TN 615-479-9915.

DRESS: Everyone must wear sneakers during the raft ride. Suggest that you bring at least five changes of clothing and a jacket.

REDNECK CHILI COOK-OFF: There will be three categories:  
MOST UNUSUAL: Different ingredients, meats, sauces, beans, etc. that taste good to Judges.  
BEST PRESENTATION: How chili is presented and served to the Judges. Use your imagination.  
BEST ALL AROUND: The chili the Judges like the best.  
Rules: One gallon minimum. Made by participants. Basic ingredients available to Judges. Remaining chili will be served for evening meal. Any additional rules will be made available to participants upon signing up.  
JUDGES: "Emperor For Life" and Former Rednecks of the Year.

BIKE CONTESTS: Rules and time of contests will be posted

GOOSE LAKE BOY ROUNDUP

1995  
MONDAY & TUESDAY

[REDACTED] WILL BE ONSITE.

TRAVEL. EARLYBIRDS ARRIVE - WHITEWATER, GOLFING & CARD PLAYING ETC.

WEDNESDAY

7:30AM..... GOLFERS GO PLAY GOLF.

12 NOON - 6 PM ... CHECK-IN STATION OPENS.

RAFTERS SIGN-UP FOR YOUR FLIGHT AT CHECK-IN STATION. ON FIRST  
COME FIRST SERVE BASIS.

12 NOON..... "ROUNDUP" OFFICIALLY BEGINS - BEER TRUCK ARRIVES

4 PM..... DEADLINE FOR SIGNING UP FOR CHILI COOK-OFF.

6:30 PM (ABOUT)... CHILI COOK-OFF (MOST UNUSUAL, BEST PRESENTATION,  
BEST ALL AROUND).

7:30 PM..... DINNER. CHILI

AFTER DINNER ..... R.E.X. MEETING FOLLOWED BY A M.O.B. MEETING  
WITH [REDACTED] AT CABINS.

JAM SESSION: Any musicians bringing their equipment are encouraged  
to get together on porch of cabins to play what they  
feel like at anytime each night.

THURSDAY

7:30AM..... GOLFERS GO PLAY GOLF

10AM - 6PM...CHECK-IN STATION OPEN.

5PM. TEAM BUSINESS MEETINGS AND ELECTION OF 1994 M.O.B.  
REPRESENTATIVES. TEAM CAPTAINS AND JUDGES.

ABOUT 6:30 PM..DINNER (PIG PULLIN).

AFTER DINNER TEAM CAPTAINS AND JUDGES MEETING AT CABINS. TEAMS  
MUST BE REPRESENTED AND REGISTERED WITH [REDACTED]  
THIS MEANS COMPLETE ROSTERS AND JUDGES. DRAWINGS  
FOR COMPETITION WILL BE CONDUCTED AND JUDGES  
ASSIGNED EVENTS. IF YOUR TEAM JUDGE DOESN'T APPEAR  
AND CONDUCT HIS EVENT YOUR TEAM WILL BE PENALIZED  
15 POINTS

FRIDAY

9AM...TEAM COMPETITION BEGINS. (ALL TEAMS MUST BE PRESENT AND READY TO PLAY.)

.....CHECK-IN STATION HOURS TO ANNOUNCED

.....MOTORCYCLE CONTESTS TIMES TO ANNOUNCED

NO GOLF THIS DAY

6:30PM...DINNER

SATURDAY

7:30AM...GOLFERS LEAVE TO PLAY IN TOURNAMENT

8:15AM...RAFTERS 1ST FLIGHT BE READY AT BEER TRUCK

9:15AM...RAFTERS 2ND FLIGHT BE READY AT BEER TRUCK

10AM-3PM...CHECK-IN STATION OPEN.

10:15AM...RAFTERS 3RD FLIGHT BE READY AT BEER TRUCK

11:15AM...RAFTERS 4TH FLIGHT BE READY AT BEER TRUCK

12 NOON...LUNCH IS READY

3PM-5PM...CHECK-IN STATION SALE OF EXTRA SHIRTS & CAPS

5PM.....AWARDS PRESENTATIONS. BUSINESS MEETING. ELECTION OF PRESIDENT AND VICE-PRESIDENT.

ABOUT 7PM...DINNER. THE INTERNATIONALLY ACCLAIMED "GOOD OL' BOY" STEAKS WITH ALL THE TRIMMINGS.

SUNDAY

WAKE-UP. CLEAN-UP SELF, CAMPSITE AND SURROUNDING AREA. THEN GO HOME.

DRIVE SAFELY HOME.



COMPLETE AND/OR CORRECT EACH & EVERY ENTRY

LAST NAME: FIRST NAME: MI.

(CHECK PREFERRED MAILING ADDRESS) (\*\* MAKE CORRECTIONS HERE \*\*)

( ) HOME ADDRESS: \_\_\_\_\_

HOME TELEPHONE: \_\_\_\_\_

( ) BUSINESS ADDRESS: \_\_\_\_\_

BUSINESS TELEPHONE: \_\_\_\_\_

LAW ENFORCEMENT SPONSOR & DEPT. \_\_\_\_\_

EMERGENCY CONTACT: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

ALLERGIES: \_\_\_\_\_

MY TITLE/OCCUPATION: \_\_\_\_\_

SHIRT SIZE: (circle) S M L XL XXL

EXTRA CAPS ARE \$7; EXTRA T-SHIRTS ARE \$7; GOLF SHIRTS ARE \$20

EXTRA CAPS: # \_\_\_\_\_ EXTRA T-SHIRTS: # \_\_\_\_\_ SIZES: \_\_\_\_\_

GOLF SHIRTS: # \_\_\_\_\_ SIZE: (circle) S M L XL XXL

WHAT TEAM ARE YOU ON? \_\_\_\_\_

I WISH TO COMPETE IN THESE EVENTS: (check events)

\_\_\_ REDNECK OF THE YEAR \_\_\_ VOLLEYBALL

\_\_\_ CHUG-A-LUG \_\_\_ TRUCK PUSHING \_\_\_ TUG-OF-WAR

(NON-TEAM EVENTS) \_\_\_ CHILI COOK-OFF \_\_\_ MOTORCYCLE CONTESTS

(CHECK YES OR NO)

DO YOU WANT TO COMPETE IN TEAM COMPETITION? YES \_\_\_ NO \_\_\_

IF NOT ON A TEAM CAN WE ASSIGN YOU TO A TEAM? YES \_\_\_ NO \_\_\_

I AM RAFTING YES \_\_\_ NO \_\_\_

I AM PLAYING GOLF YES \_\_\_ NO \_\_\_ (Avg score \_\_\_\_\_) Days \_\_\_\_\_

I WOULD LIKE TO HELP WITH: OFFICIATING THE EVENTS YES \_\_\_ NO \_\_\_

CHECK-IN / SECURITY YES \_\_\_ NO \_\_\_

RAFTERS CHECK-OFF YES \_\_\_ NO \_\_\_

REGISTRATION FEES: RAFTING - \$100. NON-RAFTING - \$75

PLUS EXTRAS - \$ \_\_\_\_\_

TOTAL AMOUNT ENCLOSED: \$ \_\_\_\_\_

ANTICIPATED DAY OF ARRIVAL \_\_\_\_\_

I, the undersigned, realize and understand that I and not Gene Rightmyer nor the Good Ol' Boy Roundup, are responsible for my actions. I therefore release both from any claims of injury or liability.



## 1993 GOOD O'BOY ROUNDUP

**WHEN:** April 28 - May 1, 1993

**WHERE:** Ocoee, Tennessee

**LODGING:** Camping, motor homes, trailers, tents, sleeping bags, etc.  
Hotels available in the Cleveland, TN area.

**MIQ:** Judges, prosecutors, Feds, state & local officers, friends, neighbors, and any Good O'Boy invited to attend. Non-law enforcement attendees must be sponsored by a law enforcement officer who attends the Roundup.

**COSES:** Rafter \$90 Non-rafter \$70

(Make checks payable to Gene Rightmyer, consolidated as many as possible, however a registration form must be correct and completed for each applicant.)

**INCLUDES:** Campsite, 4 evening meals, lunch Saturday, Good O'Boy cam, T-shirt and bear mug, plus all of the beer you need to drink. Non-alcoholic beverages provided.

**RULES:** See attached.

**MAIL REGISTRATION TO:** Gene Rightmyer, P.O. Box 18102,  
Greenville, SC 29602

**TELEPHONE:** 803-232-3221

**DEADLINE:** April 10, 1993 - Cancellations until April 31, 1993 money will be refunded.

**EMERGENCY PHONE NUMBER:** While attending, in case of an **EMERGENCY ONLY** we can be reached through the Polk County Sheriff's Dept. in Benton, TN (615) 479-9915.

**DRESS:** Everyone must wear sneakers during the raft ride. Suggest that you bring at least five changes of clothing and a jacket.

**BEDNICK CHILI COOK-OFF:** There will be three categories:  
**BEST INDIVIDUAL:** Different ingredients, meats, sauces, beans, etc. that taste good to Judges.  
**BEST PRESENTATION:** How chili is presented and served to the Judges. Use your imagination.  
**BEST ALL AROUND:** The chili the Judges like the best.  
**Rules:** One gallon minimum. Made by participants. Basic ingredients available to Judges. Remaining chili will be served for evening meal. Any additional rules will be made available to participants upon signing up.  
**JUDGES:** Former Bednicks of the Year.

**MOTORCYCLE CONTESTS:** Rules and time of contests will be posted and announced on Thursday.

Dear Good O'Boy,

This will be the 14th year, 18th year for the Canadians, of the Good O'Boy Roundup. Last year we had a record attendance of 341 people, and for the first time we identified the attendees, into different categories, Good O'Boy, Guest, Local law enforcement officers. We voted to up the fees due to the loss of money last year and added an additional day. As a result we have identified some problems and made some changes. Local law enforcement officers (State & local officers from Polk, Bradley and McMinn Counties who stop by for fellowship.); No fee. Guests: Their host will pay for their meal and estimated beer consumption. This includes the employees of Ocoee Outdoor and Grumpy's. (Normally the rafters purchase the Saturday evening meal for their Guide.) We voted to eliminate reduced prices for some who have dropped by for a day and night of fellowship, everyone will pay the full fee.

The original idea for the Good O'Boy Roundup was for the Chattanooga and Knoxville ATF Agents to get together with their friends, both law enforcement and personal friends, to raft ride and a little fellowship. The first year, 1980, there were 80 people from, Alabama, Georgia, Tennessee, Kentucky and North Carolina. Georgia ATF Agents had been having an event for a couple of years prior to this. The purpose of the Roundup was and is to promote fellowship within and outside of law enforcement. This purpose is still the main reason we meet. The competition came about from the nature of the attendees. The Canadians joined in 1984 and have been an event in themselves. We are not political and we will not be. Over the years we have had to establish a few rules.

- RULES:**
1. You are responsible for who you invite. (Non-attendees must have a law enforcement sponsor.)
  2. No fighting. Right or wrong this will not be tolerated.
  3. No fireworks of any kind.
  4. No one under 18 years of age. Ages 18 - 21 must be accompanied by their parent.
  5. What goes on at Roundup stays there. (No press, press releases period. No stories that would embarrass any attendees, unless among Good O'Boys.)
  6. Wristbands must be worn for beer and food.

Musicians are encouraged to bring their instruments for jam sessions each day, evening and night.

Ocoee Stables has horse back riding available for Good O'Boys, 2 hours of mountain trail riding for \$15, telephone (615) 338-8873.

**GOOD O'BOYS DO NOT ENCOURAGE EXCESSIVE DRINKING. REMEMBER GOOD O'BOYS KNOW WHEN TO SAY WHEN. YOU'LL HAVE MORE FUN THAT YOU'LL REMEMBER IF YOU DRINK IN MODERATION.** Neither Gene Rightmyer or the Good O'Boys assumes any liability for injuries sustained or actions of any attendees.

May 11, 1993

[REDACTED]

A.T.F.A.R.  
405 Bonaventure Road  
St. Simons Island, GA 31522

Dear [REDACTED]

The 14th Annual Good O'Boy Roundup raised \$1,700.00 for the ATF Waco Memorial Fund. This was accomplished by passing the hat and two raffles, one truck and a revolver. Annually the Roundup consists of sixty percent law enforcement officers and forty percent are friends of law enforcement officers. We have an annual golf tournament for the American Cancer Society.

There were four individuals who went above and beyond the norm to help us accomplish this amount of money. They are:

[REDACTED] the driving force behind the drive.

[REDACTED] donated \$400.00.

[REDACTED] donated \$200.00.

[REDACTED] donated \$100.00.

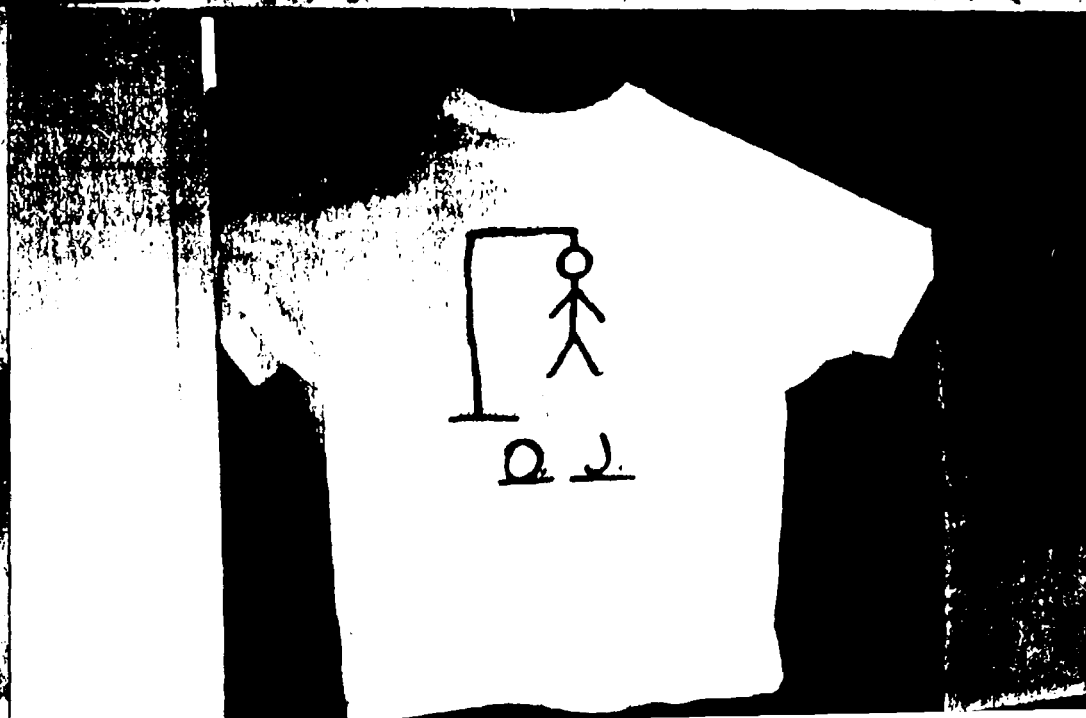
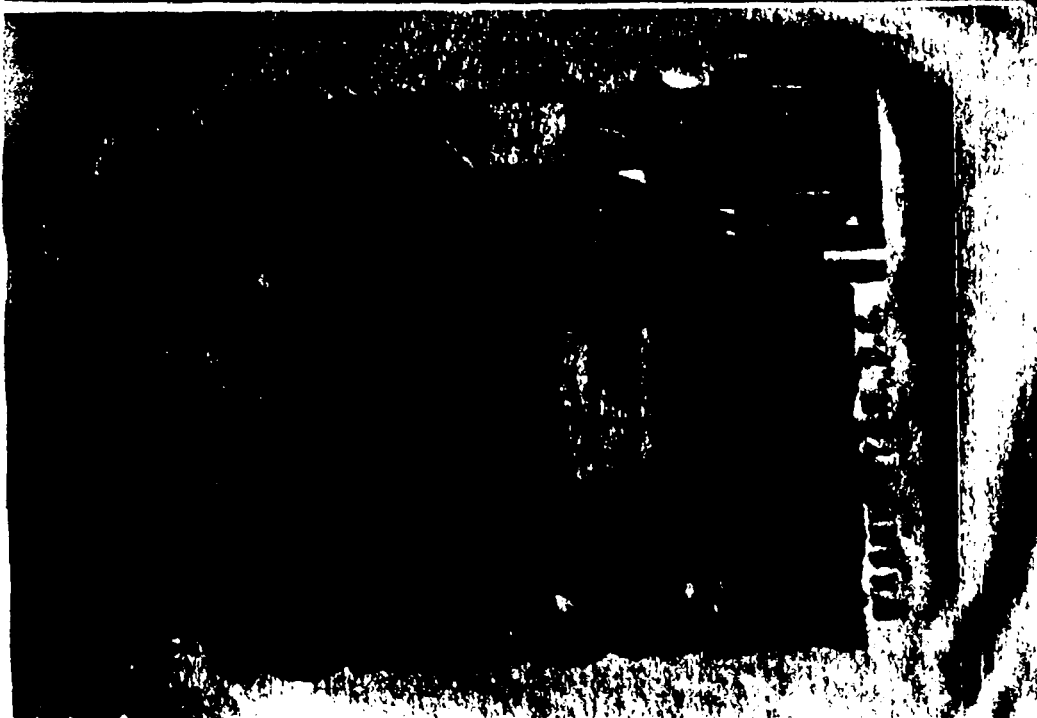
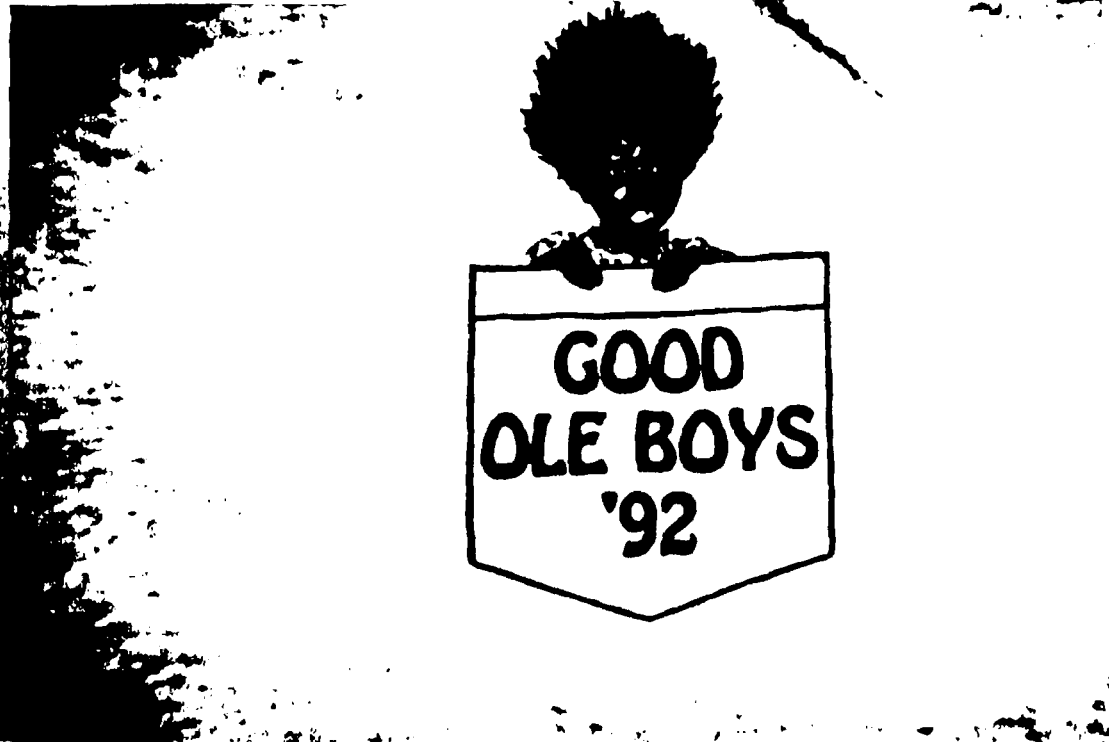
I am sure that they would appreciate a letter from ATFRA and if you could let the S.A.I.C.'s in their respective areas aware that they donated these amounts.

The Greenville Elks Lodge 858 should be mailing a contribution of \$100.00 within the next few days.

If I can be of any assistance to you please feel free to call.

Sincerely yours,

*[Signature]*  
Gene Rightmyer



# **EXHIBITS 16 THRU 20**

# Removal Notice



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Federal Reserve Bank of St. Louis

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outing



Southern Poverty Law Center

The Justice Department has identified Richard Hayward, right, as the source of material about a racist event where Federal agents got drunk. Mr. Hayward had been prevented by the events' organizers from distributing campaign material of David Duke,

center, the former Ku Klux Klan leader who campaigned for the 1992 Republican Presidential nomination. Mr. Crawford's wife, Mary, is also in the photograph from a publication by the National Association for the Advancement of White People.

**NRA ENDORSES HAROLD STOCKBURGER  
FOR STATE SENATE**

Dear Tennessee NRA Member:

July 27, 1994

Your vote to elect fellow NRA member Harold Stockburger in the Republican Primary for Senate district 9 on Thursday, August 4, is vital to preserving your gun rights and hunting heritage in Tennessee.

As a State Representative, Harold Stockburger has demonstrated his commitment to your rights by continually opposing "gun-control" legislation and by staunchly supporting pro-gun reform. It is very important that you, and all other NRA members, vote to elect Harold Stockburger to the State Senate.

Voter turnout in Primary elections is typically very low, your vote can make the difference! Take this card with you to the polls on Thursday, August 4, and vote for Harold Stockburger for State Senator for district 9.

Sincerely, Nancy K. Melton, Executive Director, NRA-ILA

---



**Retires**



at his retirement dinner, with his wife.

*Post in a Day*

Special Agent [redacted] maneuvered his car into a "unique" parking space at the J.F. there.

On the morning of June 18, [redacted] noticed four men scuffling at the garage. [redacted] of the Capitol Police was attempting to handcuff a man as two others assisted him.

The suspect, [redacted], had just held up the state cafeteria cashier [redacted] the cashier, and the cafeteria manager had chased the fleeing suspect when [redacted] spied the throng.

[redacted] blocked the suspect's avenue of escape by driving his government auto onto the sidewalk, boxing him between the car and the garage wall. The strategy worked.

With [redacted] help, [redacted] apprehended the suspect and took him to a city police station, where he was charged with armed robbery.

*Good O'Boy Roundup*

On May 16, 57 agents, state and local officers, federal and state prosecutors, and friends from six states converged on Ducktown, Tenn., for the First Annual Good O'Boy Roundup.

Forty-two brave souls went whitewater rafting on the Ocoee River, the faster river in the South. Others played golf, backpacked, fished, went four-wheeling or just told lies.

A larger crowd is planned for next year with the scheduling of the "Redneck Olympics." If you or your office is interested in attending next year's "Roundup," contact Knoxville Tenn., Post of Duty.

*ATF Recruitment*



Three ATFers [redacted] at the May job fair, Franklin College, Franklin, Indiana. From left: [redacted]

**Women's Equality Week  
August 25-29**

**Fore!**

[redacted] from the [redacted] won the annual ATF Golf Tournament by shooting a two over par round of 72. The tournament was held June 27 at the west course of Andrews Air Force Base, outside of Washington, D.C. Ninety ATF and IRS employees, retirees and guests participated and cheered Barnett as he won the longest drive competition.

Other ATF winners included [redacted] in the handicap flights, [redacted] and [redacted] in the Callaway flights, [redacted] and [redacted] and [redacted] in the closest to the pin competition.



Dear "Good O'Boy",

We went international last year. Canadians and Texans each had full delegations in attendance. Both delegations, to say the least, had an impact.

For the past 2 years, we have had the best Roundups ever. The weather, campsite, and river were great. Interest in this year's Roundup seems to be at a peak, as I received inquiries in December.

I signed the incorporation papers last year, and they have been sent to the Tennessee Secretary of State.

We have money in the bank, and there is no price increase for attending the convention (Roundup) this year.

We plan on having a golf "SWAT" at 10:00 a.m. on Friday, May 16, 1986. If you want to play, be there prior to that time.

We are going to do the preliminary matches for the team competition starting Friday at 3:00 p.m. These include volleyball, horseshoe pitching, dart throwing, washer pitching, and tug-of-war. Have your teams ready.

Friday night's meal will be Bar-B-Que chicken prepared by the Georgia delegation with their own secret recipe.

In order to comply with Tennessee drinking laws, no one under 21 years, unless over 19 years of age and accompanied by their parent, will be permitted to attend.

We are going to expand the campsite to accommodate 300 people; however, we ask that only one vehicle per campsite be parked in the campgrounds. Additional parking is available at the river outfitters. Last year we had a total count of 258 people in attendance. We will have a cutoff count of 300; so get your registration forms in early. As always, if you notify us prior to May 2, 1986, that you must cancel, we will refund your money. Anytime thereafter we will refund what we have not obligated.

INTERNATIONAL  
**GOOD O'BOY INC. ROUNDUP**



WHEN: May 16-17, 1986

WHERE: OCOEE, TENNESSEE

LODGING: CAMPING, MOTOR HOMES, TENTS,  
SLEEPING BAGS, CAMPERS,  
TRAILERS, ETC.

MOTEL: OCOEE INN MARINA  
(615)338-2064  
CLEVELAND, TN, IS NEXT  
NEAREST MOTEL - ABOUT  
20 MINUTES AWAY.

WHO: ATF AGENTS, JUDGES, OTHER FEDERAL  
AGENTS, PROSECUTORS, STATE AND  
LOCAL OFFICERS, FRIENDS, NEIGHBORS,  
AND ANY OTHER "GOOD O'BOY" OVER 21  
YEARS OF AGE WHO WANTS TO ATTEND.

DRESS: EVERYONE MUST WEAR SNEAKERS  
DURING THE RAFT RIDE. BRING AT  
LEAST ONE CHANGE OF CLOTHING.

DEADLINE FOR REGISTRATION: MAY 2, 1986

COSTS: RAFTERS - \$50.00\*

NONRAFTERS - \$28.00\*

\*INCLUDES: BBQ CHICKEN - FRIDAY EVENING  
MEAL, "GOOD O'BOY" T-SHIRT,  
"GOOD O'BOY" BASEBALL CAP,  
STEAK DINNER - SATURDAY EVENING  
MEAL, ALL THE BEER YOU NEED TO  
DRINK (LAST YEAR 26 KEGS, AND  
20 CASES).

- RULES: 1. YOU ARE RESPONSIBLE FOR WHOM YOU INVITE.  
2. NO FIGHTING. WE HAVE NEVER HAD A FIGHT. SHOULD ONE OCCUR, ALL  
PARTIES INVOLVED, RIGHT OR WRONG, WILL NOT BE ALLOWED BACK.

NEW RULE - NO ONE UNDER 19 YEARS OF AGE. AGES 19 AND 20 MUST BE ACCOMPANIED  
BY PARENT. WE HAVE DONE THIS TO COMPLY WITH STATE OF TENNESSEE  
DRINKING LAWS.

-----DETACH & SUBMIT-----

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY/STATE \_\_\_\_\_

OCCUPATION \_\_\_\_\_

ENCLOSED IS \$50.00 - I'M GOING RAFTING.

ENCLOSED IS \$28.00 - I'M JUST GOING TO EAT AND DRINK AND HAVE A GOOD TIME.

T-SHIRT SIZE (CIRCLE YOUR SIZE)    XXL    ( XL )    L    M    X

I ALSO WANT AN EXTRA T-SHIRT (CIRCLE SIZE)    XXL    XL    L    M    S

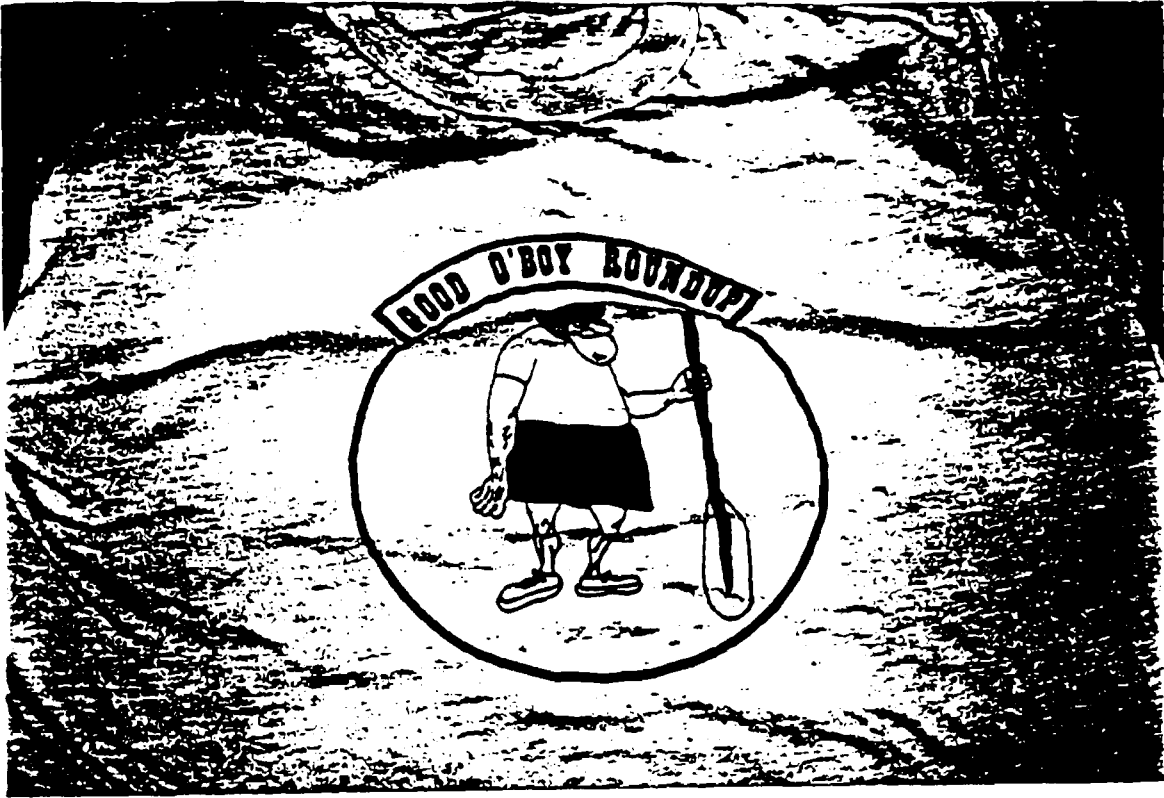
BASEBALL CAP - ADD \$5.00 FOR EACH ADDITIONAL ITEM

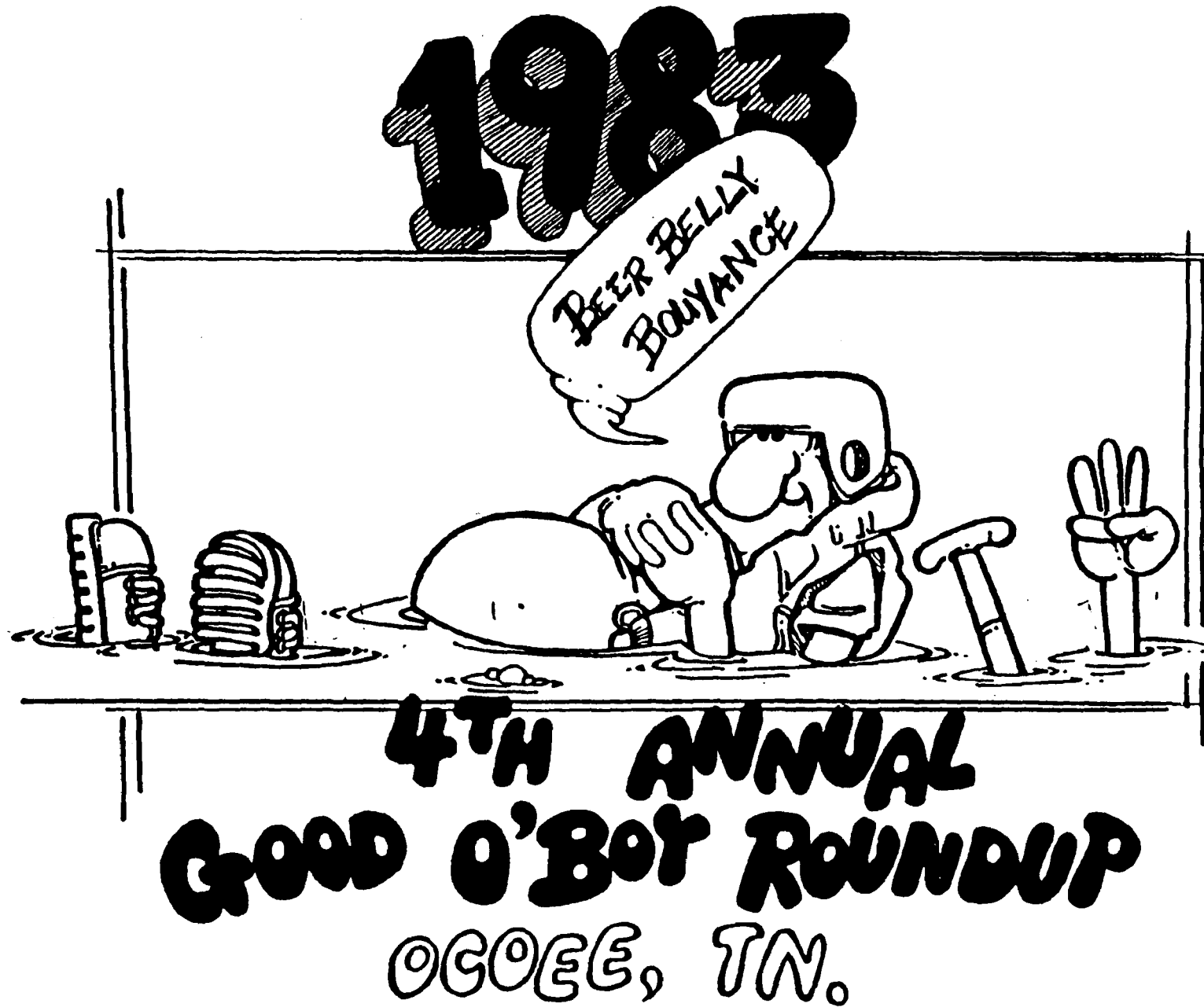
I WANT TO PLAY GOLF FRIDAY AT 10:00 A.M. (CIRCLE ONE)    YES    ( NO )

If you have to cancel prior to May 2, 1986, your money will be refunded. After  
that date, we will attempt to return your money (some, if not all), depending  
on how much we have obligated.

MAIL YOUR RESPONSES TO: GENE RICHMYER

IF YOU HAVE ANY SUGGESTIONS OR COMPLAINTS, LIST THEM ON THE BACK.





84



# **EXHIBITS 21 THRU 25**





INTERNATIONAL  
**GOOD O'BOY INC. ROUNDUP**



WHEN: May 16-17, 1986

WHERE: OCOEE, TENNESSEE

LODGING: CAMPING, MOTOR HOMES, TENTS,  
SLEEPING BAGS, CAMPERS,  
TRAILERS, ETC.

MOTEL: OCOEE INN MARINA  
(615)338-2064  
CLEVELAND, TN, IS NEXT  
NEAREST MOTEL - ABOUT  
20 MINUTES AWAY.

WHO: ATF AGENTS, JUDGES, OTHER FEDERAL  
AGENTS, PROSECUTORS, STATE AND  
LOCAL OFFICERS, FRIENDS, NEIGHBORS,  
AND ANY OTHER "GOOD O'BOY" OVER 21  
YEARS OF AGE WHO WANTS TO ATTEND.

DRESS: EVERYONE MUST WEAR SNEAKERS  
DURING THE RAFT RIDE. BRING AT  
LEAST ONE CHANGE OF CLOTHING.

DEADLINE FOR REGISTRATION: MAY 2, 1986

COSTS: RAFTERS - \$50.00\*

NONRAFTERS - \$28.00\*

\*INCLUDES: BBQ CHICKEN - FRIDAY EVENING  
MEAL, "GOOD O'BOY" T-SHIRT,  
"GOOD O'BOY" BASEBALL-CAP,  
STEAK DINNER - SATURDAY EVENING  
MEAL, ALL THE BEER YOU NEED TO  
DRINK (LAST YEAR 26 KEGS, AND  
20 CASES).

RULES: 1. YOU ARE RESPONSIBLE FOR WHOM YOU INVITE.

2. NO FIGHTING. WE HAVE NEVER HAD A FIGHT. SHOULD ONE OCCUR, ALL  
PARTIES INVOLVED, RIGHT OR WRONG, WILL NOT BE ALLOWED BACK.

NEW RULE - NO ONE UNDER 19 YEARS OF AGE. AGES 19 AND 20 MUST BE ACCOMPANIED  
BY PARENT. WE HAVE DONE THIS TO COMPLY WITH STATE OF TENNESSEE  
DRINKING LAWS.

-----DETACH & SUBMIT-----

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ CITY/STATE \_\_\_\_\_

OCCUPATION \_\_\_\_\_

ENCLOSED IS \$50.00 - I'M GOING RAFTING.

ENCLOSED IS \$28.00 - I'M JUST GOING TO EAT AND DRINK AND HAVE A GOOD TIME.

T-SHIRT SIZE (CIRCLE YOUR SIZE)    XXL    ( XL )    L    M    X

I ALSO WANT AN EXTRA T-SHIRT (CIRCLE SIZE)    XXL    XL    L    M    S

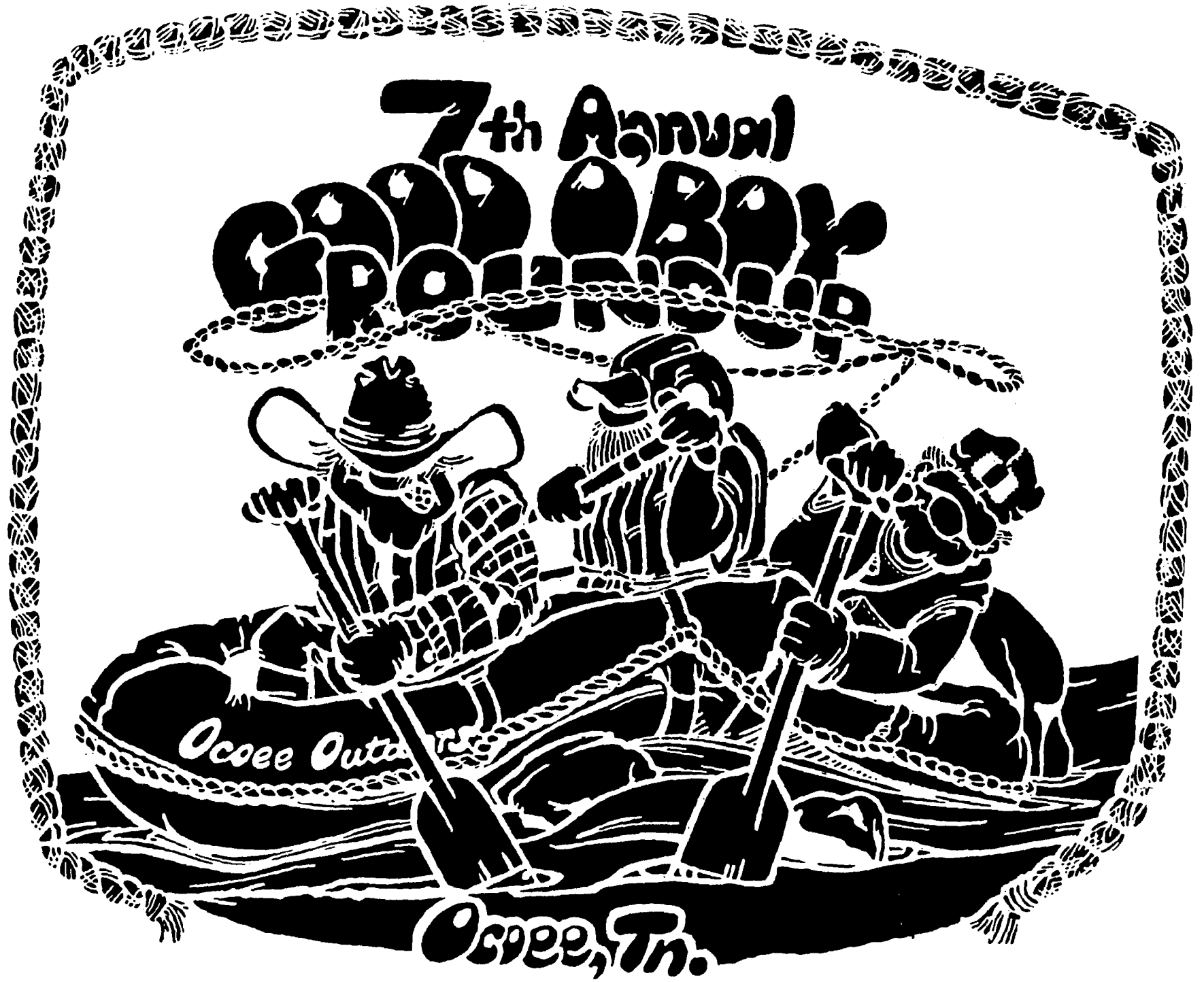
BASEBALL CAP - ADD \$5.00 FOR EACH ADDITIONAL ITEM

I WANT TO PLAY GOLF FRIDAY AT 10:00 A.M. (CIRCLE ONE)    YES    ( NO )

If you have to cancel prior to May 2, 1986, your money will be refunded. After  
that date, we will attempt to return your money (some, if not all), depending  
on how much we have obligated.

MAIL YOUR RESPONSES TO: GENE RICHMOND

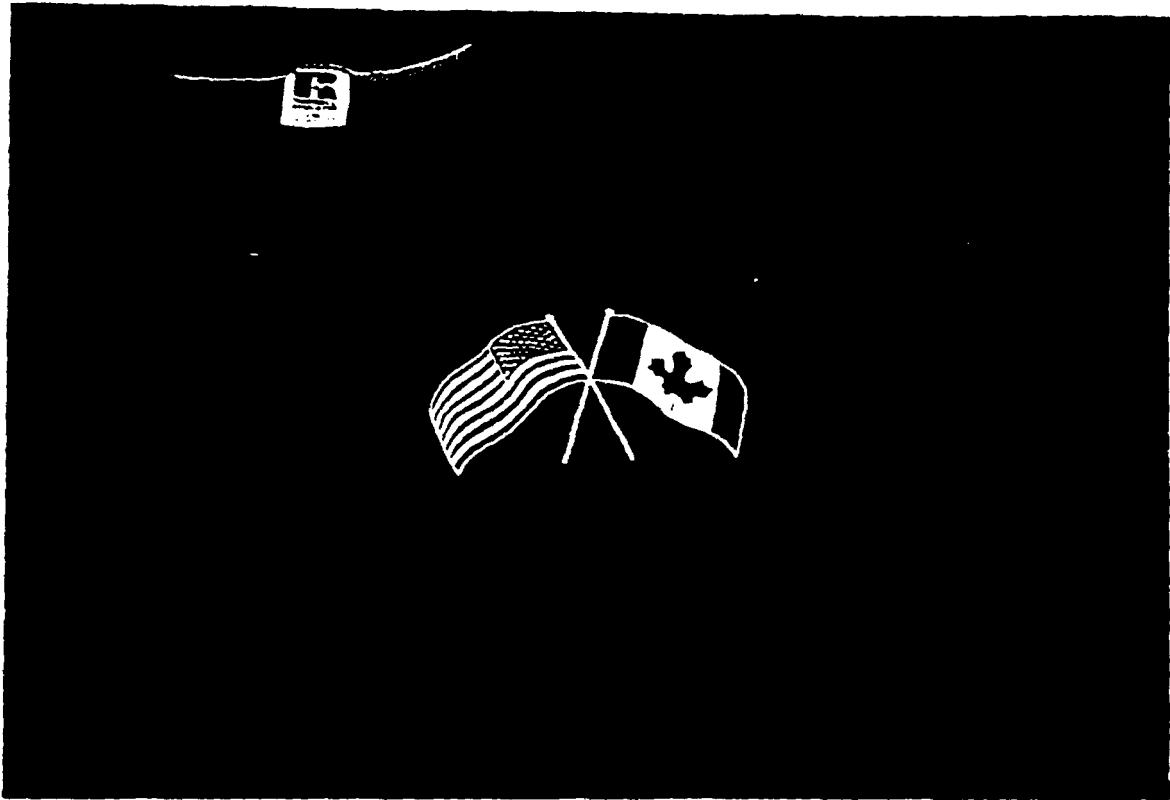
IF YOU HAVE ANY SUGGESTIONS OR COMPLAINTS, LIST THEM ON THE BACK.



7th Annual  
GOOD BOY  
SPONDULP

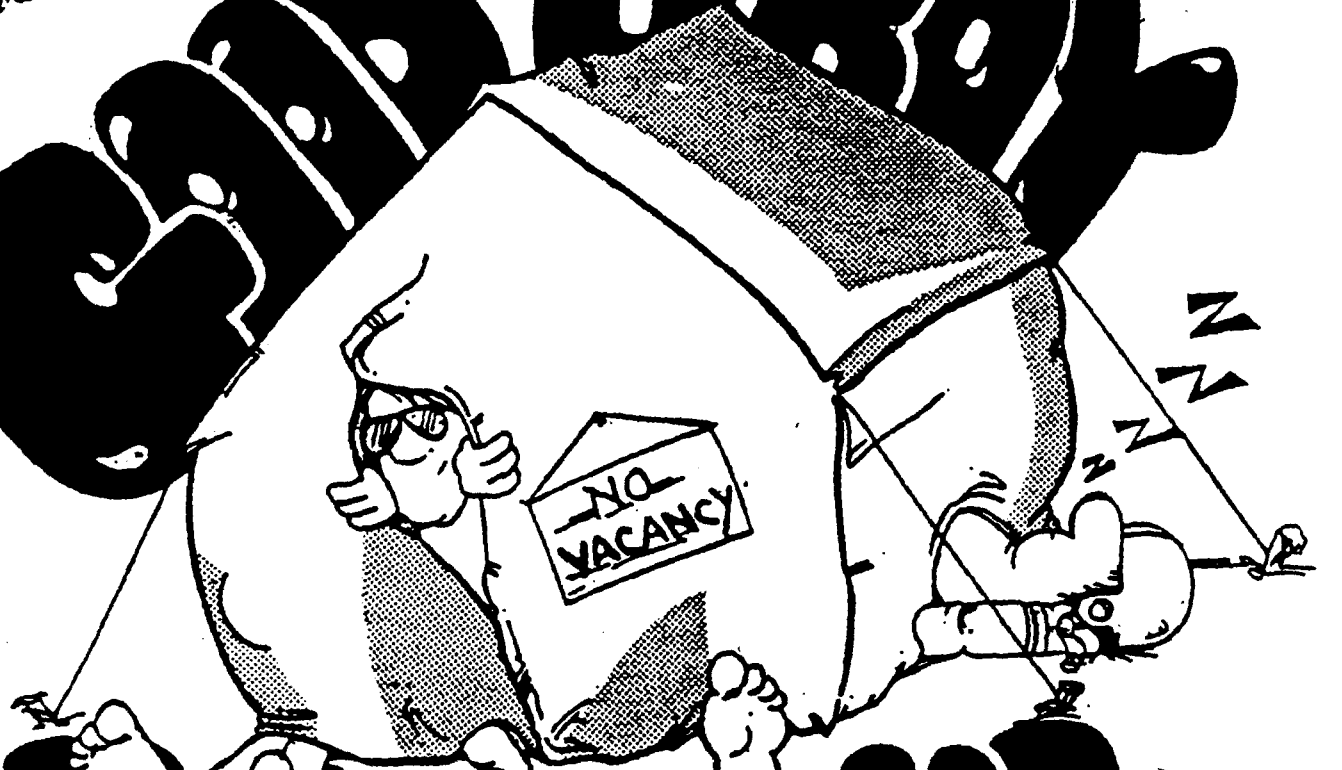


Ocoee, TN.



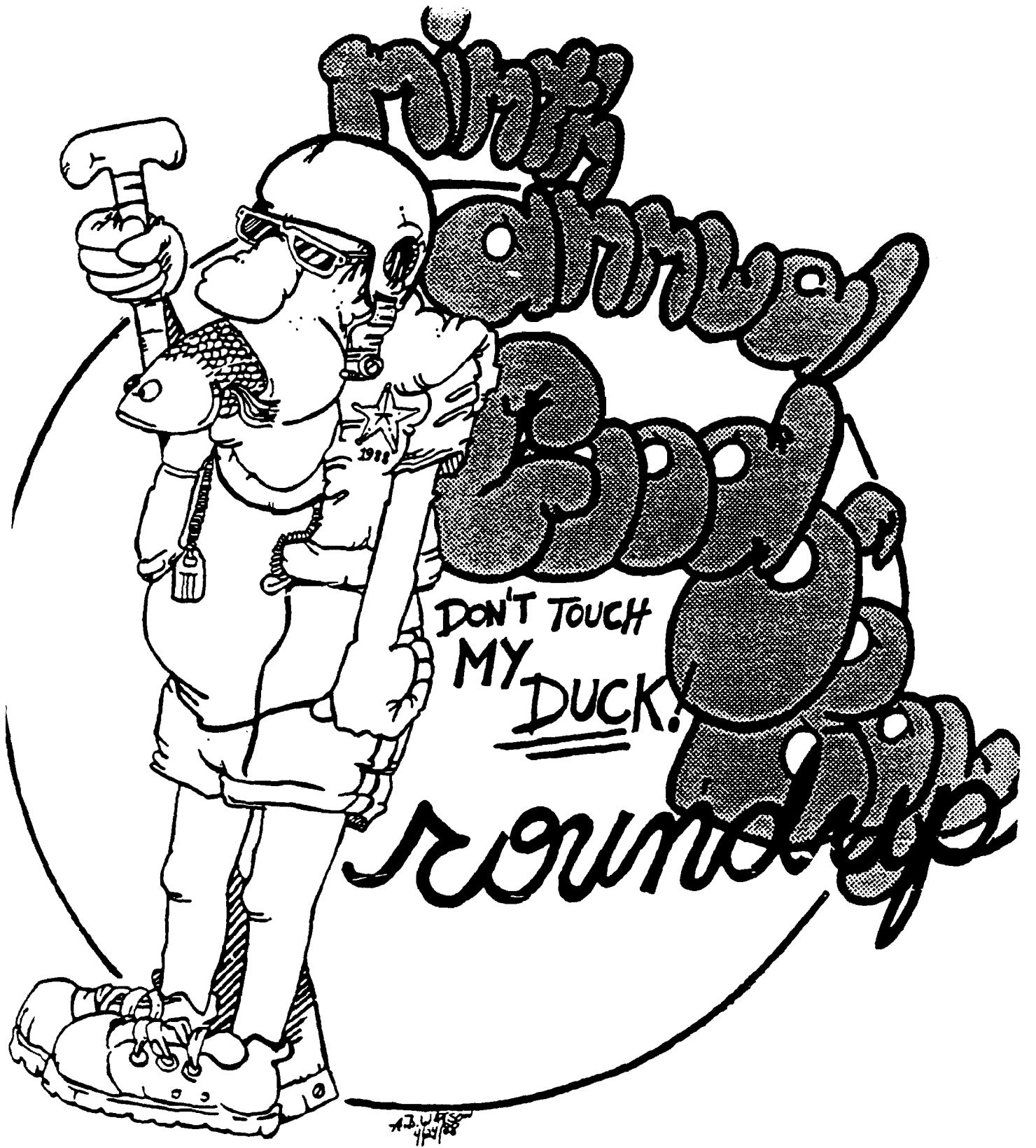
**EIGHTH ANNUAL**

**NO VACANCY**

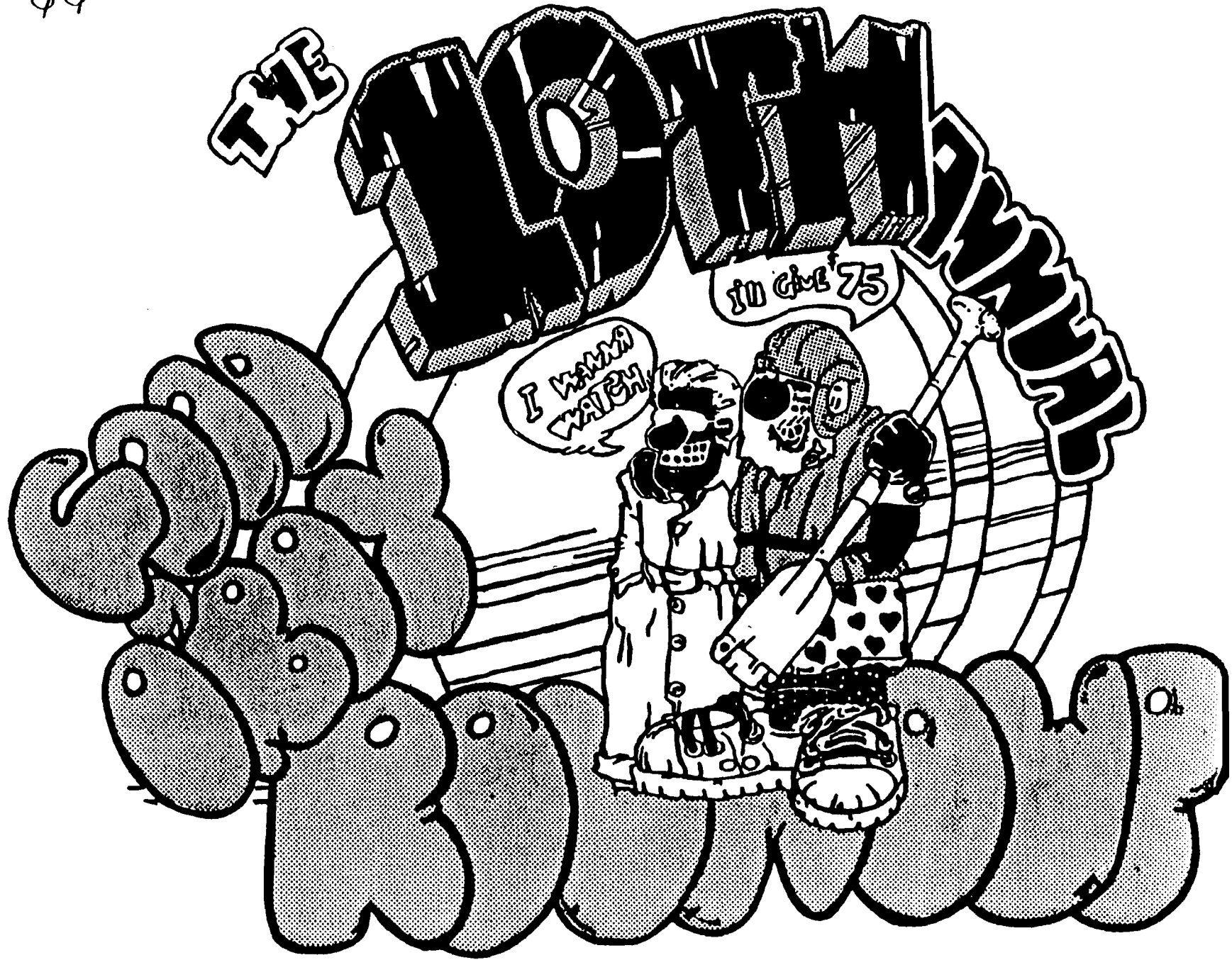


**ROUNDUP**

**1987**



# **EXHIBITS 26 THRU 30**



**FIRST ANNUAL**

**TED BUNDY**

**BAR-B-Q**

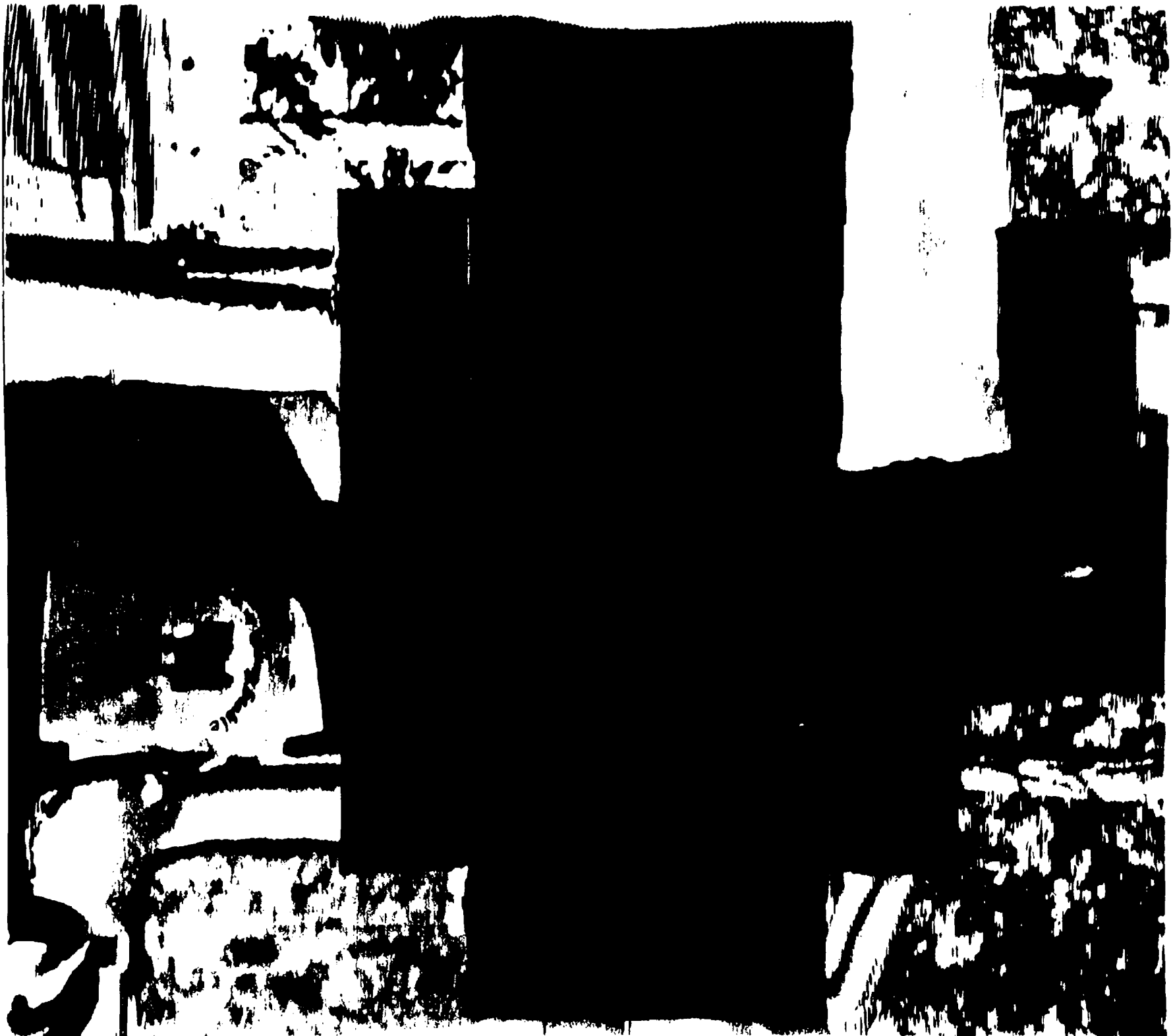
**JANUARY 24, 1989**

*Front*



**EXERCISE  
CAPITAL  
PUNISHMENT**

*BACK*



WHERE THE  
HELL IS  
OOEE, TENNESSEE?





DEAR GOOD O'BOY,

THIS "EVENT" HAS GONE ON FOR 12 YEARS WITHOUT INCIDENT, NO FIGHTS, NO ONE HURT SERIOUSLY, PRIDE DOESN'T COUNT, AND NO ONE PUT IN JAIL. CONSIDERING THE NUMBER AND WIDE RANGE OF COMPETITIVE PEOPLE FROM ALL OVER NORTH AMERICA WHO ATTEND THE "ROUNDUP" THIS IS REMARKABLE. WE HAD ABOUT 291 PEOPLE IN ATTENDENCE.

LAST YEAR OUR GOLF OUTING RAISED ABOUT \$5500 FOR THE AMERICAN CANCER SOCIETY.

WE HAVE MOVED BACK TO OUR NORMAL TIME OF YEAR, HOWEVER WE MISSED MOTHER'S DAY. THIS YEAR RAFTING AND GOLF WILL TAKE PLACE AT THE SAME TIME THUS YOU MUST MAKE A DECISION AS TO WHETHER YOU WANT TO RAFT OR GOLF. MOST OF THE TEAM EVENTS WILL BE ON SATURDAY.

EMERGENCY PHONE NUMBER: IN CASE OF AN EMERGENCY ONLY WE CAN BE LOCATED THROUGH THE POLK COUNTY SHERIFF'S OFFICE IN BENTON, TN (615) 338-8215.

WHEN: MAY 14, 15, 16, 1992

WHERE: OCOEE, TENNESSEE

LODGING: CAMPING - MOTOR HOMES, TRAILERS, TENTS, CAMPER TRAILERS, SLEEPING BAGS, ETC. THE APPLETREE MOTEL, U.S. HWY 64 BY-PASS, CLEVELAND, TN, WILL OFFER GROUP RATES TO THE FIRST 30 ROOMS. THE RATES ARE SINGLE OR DOUBLE \$28, 4 PEOPLE TO A ROOM \$38. TELL THEM YOU ARE WITH THE "GOOD O'BOYS" WHEN YOU PHONE 615-479-9915.

WHO: JUDGES, PROSECUTORS, FEDERAL AGENTS, STATE & LOCAL OFFICERS, FRIENDS, NEIGHBORS, AND ANY OTHER GOOD O'BOY OVER 21 YEARS OF AGE WHO IS INVITED TO ATTEND.

DRESS: EVERYONE MUST WEAR SNEAKERS DURING THE RAFT RIDE. SUGGEST THAT YOU BRING AT LEAST FOUR CHANGES OF CLOTHING AND A JACKET.

DEADLINE: APRIL 23, 1992 - CANCELLATIONS UNTIL APRIL 30, 1992 MONEY WILL BE RETURNED.

COSTS: RAFTERS - \$88 NON-RAFTERS - \$ 68 (MAKE CHECKS TO GENE RIGHTMYER)

INCLUDES: CAMPSITE, 3 EVENING MEALS, LUNCH SATURDAY, "GOOD O'BOY ROUNDUP" CAP, T-SHIRT AND BEER MUG, PLUS ALL OF THE BEER YOU NEED TO DRINK. NON-ALCOHOLIC BEVERAGES PROVIDED.

RULES: 1. YOU ARE RESPONSIBLE FOR WHO YOU INVITE.  
2. NO FIGHTING. RIGHT OR WRONG THIS WILL NOT BE TOLERATED.  
3. NO FIREWORKS OF ANY KIND!  
4. NO ONE UNDER 18 YEARS OF AGE. AGES 18 TO 21 MUST BE ACCOMPANIED BY THEIR PARENT.

MAIL REGISTRATIONS AND MAKE CHECKS TO: GENE RIGHTMYER, A.T.F.,  
P.O. BOX 18187  
GREENVILLE, SC 29668

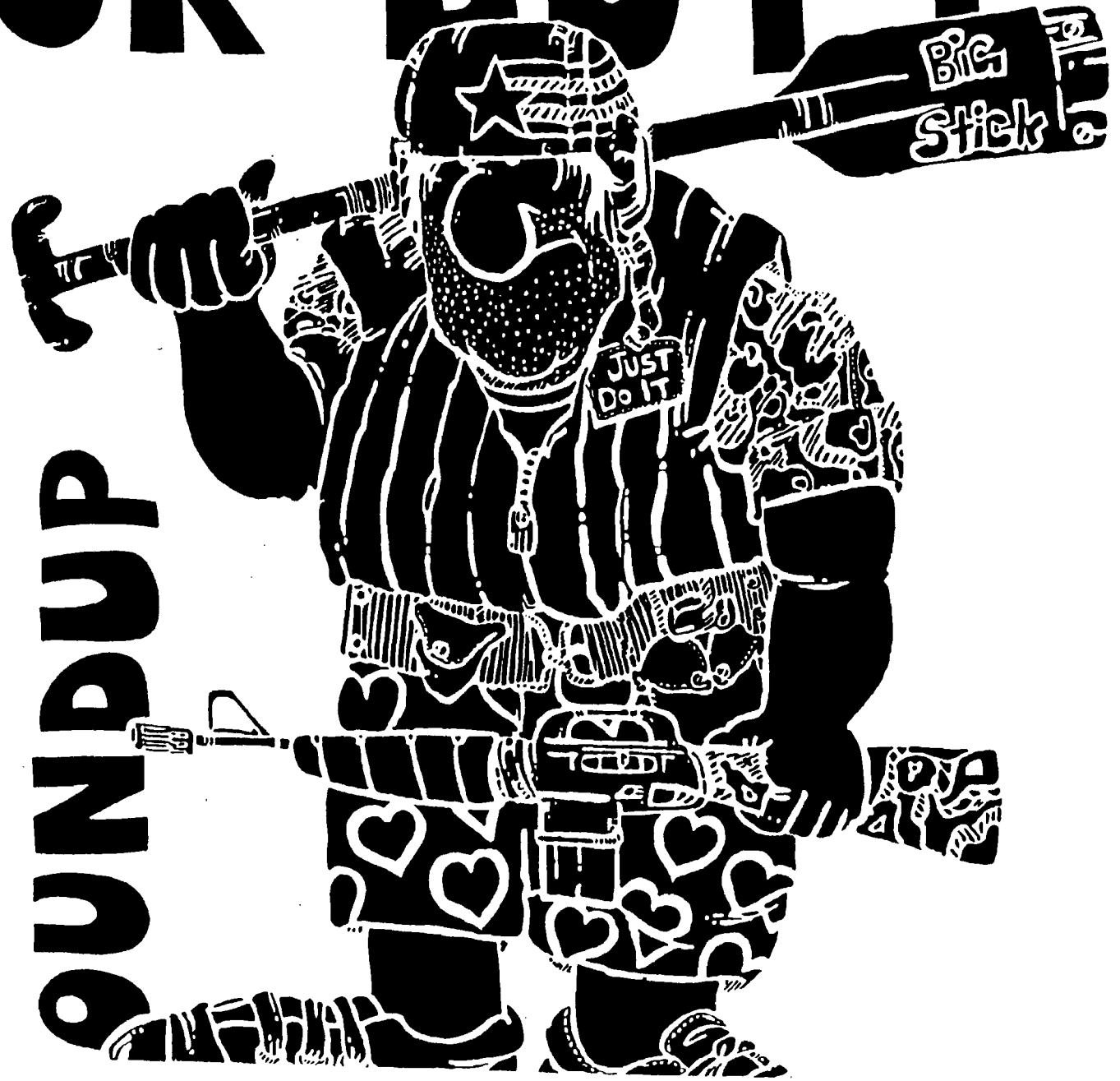
TELEPHONE: (803) 232-3221

GOOD O'BOY INC., DOES NOT ENCOURAGE EXCESSIVE DRINKING. REMEMBER GOOD O'BOYS KNOW WHEN TO SAY WHEN. YOU'LL HAVE MORE FUN IF YOU DRINK IN MODERATION.

NEITHER GENE RIGHTMYER NOR THE GOOD O'BOY INC., ASSUMES ANY LIABILITY FOR ANY INJURIES SUSTAINED OR ACTIONS OF ANY ATTENDEE.

Received 10-20-95 - Ann

# 2TH ANNUAL KICK BUTT Dood O' Boy OUNDUP



# **EXHIBITS 31 THRU 35**

LAST NAME: [REDACTED]

FIRST NAME: [REDACTED]

(CHECK PREFERRED MAILING ADDRESS)

(\*\*\* MAKE CORRECTIONS HERE \*\*\*)

( ) HOME ADDRESS:

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

HOME TELEPHONE:

[REDACTED]

( ) BUSINESS ADDRESS:

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

BUSINESS TELEPHONE:

[REDACTED]

EMERGENCY CONTACT: [REDACTED]

TELEPHONE: [REDACTED]

ALLERGIES: PENICILLAN

TITLE/OCC.: ATTORNEY

\*\*\*\*\*

SHIRT SIZE: (circle) S M L XL XXL

(EXTRA CAPS ARE \$6/T-SHIRTS ARE \$5)  
(GOLF SHIRTS ARE \$20)

EXTRA CAPS: # \_\_\_\_\_ EXTRA T-SHIRTS: # \_\_\_\_\_ SIZES: \_\_\_\_\_

GOLF SHIRTS: # \_\_\_\_\_ SIZE: (circle) S M L XL XXL

DO YOU WANT TO COMPETE IN YES ( ) NO ( )  
TEAM COMPETITION? check one -->

- \_\_\_ REDNECK OF THE YEAR
- \_\_\_ UGLIEST GOOD O' BOY
- \_\_\_ VOLLEYBALL
- \_\_\_ CHUG-A-LUG
- \_\_\_ TRUCK PUSHING
- \_\_\_ TUG-OF-WAR
- \_\_\_ TRUCK PUSHING

IF NOT ON A TEAM CAN WE  
YOU A TEAM? YES ( ) NO ( )

WHAT TEAM ARE YOU ON? \_\_\_\_\_

ARE YOU: RAFTING YES \_\_\_ NO \_\_\_ - OR - PLAYING GOLF YES \_\_\_ NO \_\_\_

REGISTRATION FEE: RAFTING - \$80, NOT RAFTING - \$60 AMOUNT ENCLOSED: \$ \_\_\_\_\_

\*\*\*\*\*  
 \* I, the undersigned, realize and understand that I and not Gene Rightmyer\*  
 \* nor the Good O' Boy Inc., are responsible for my actions. I therefore \*  
 \* release both from any claims of injury or liability. \*  
 \*\*\*\*\*

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

# NAAWP NEWS

Publication of the National Association for the Advancement of White People

July 1992

Issue

## The Politics of 1992

### LAW ENFORCEMENT GROUP HOLDS ANNUAL ROUND UP

*Duke Banner auctioned for charity*

by Rich Hayward

The Good O' Boys, a group of law enforcement officers from all over the country and Canada, held their 13th annual gathering in Ocoee, Tennessee earlier this summer.

Over 340 Good O' Boys attended this year. This event gives these officers a chance to let their hair down and get away from the hectic job of law enforcement. The camp opens on Thursday morning and begins with the guys setting up their campsites and completing registration. Some arrive on motorcycles, taking advantage of the opportunity of riding through the Smokey Mountains. Friday begins with a golf tournament and the first round of competition, which includes tug of war, volley ball, truck push, horse shoes, and many more activities.

Fort Lauderdale Police came in as the defending overall champions and had a tough time defending their title. After a great day of competition, everyone returned to camp to a barbecue chicken dinner. Saturday found the Good O' boys white-water rafting down the Ocoee River, an activity defi-

nately not for the faint-hearted. At Saturday afternoon's finals in all events, the Secret Service narrowly defeated the defending champs from Fort Lauderdale. The competition was strong this year, with teams from the ATF, DEA, Canada, Alabama gang, Tennessee, Secret Service, Fort Lauderdale, Washington DC, and Michigan.

After a steak and potatoes meal Saturday evening, the competition was held for the ugliest Good O' Boy and the very prestigious Good O' Boy of the Year awards. Charlie from Fort Lauderdale was awarded ugliest, and Bob from Washington DC took home the Good O' Boy of the year title.

After the award ceremony, Canada presented a five foot by twenty foot Duke for Governor sign to be auctioned. It went for \$165.00, with the proceeds going to charity. Lots of Duke for President hats were also being worn at this roundup.

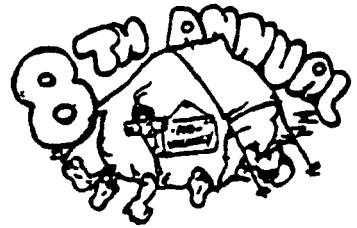
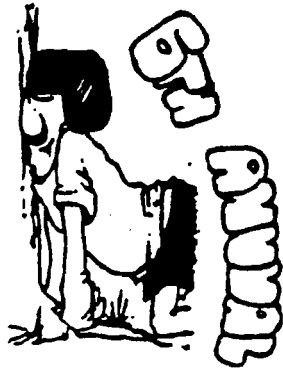
With Sunday morning came the packing up and heading home, with many good memories of another Round Up.







# 14 YRS. AND



ninth annual

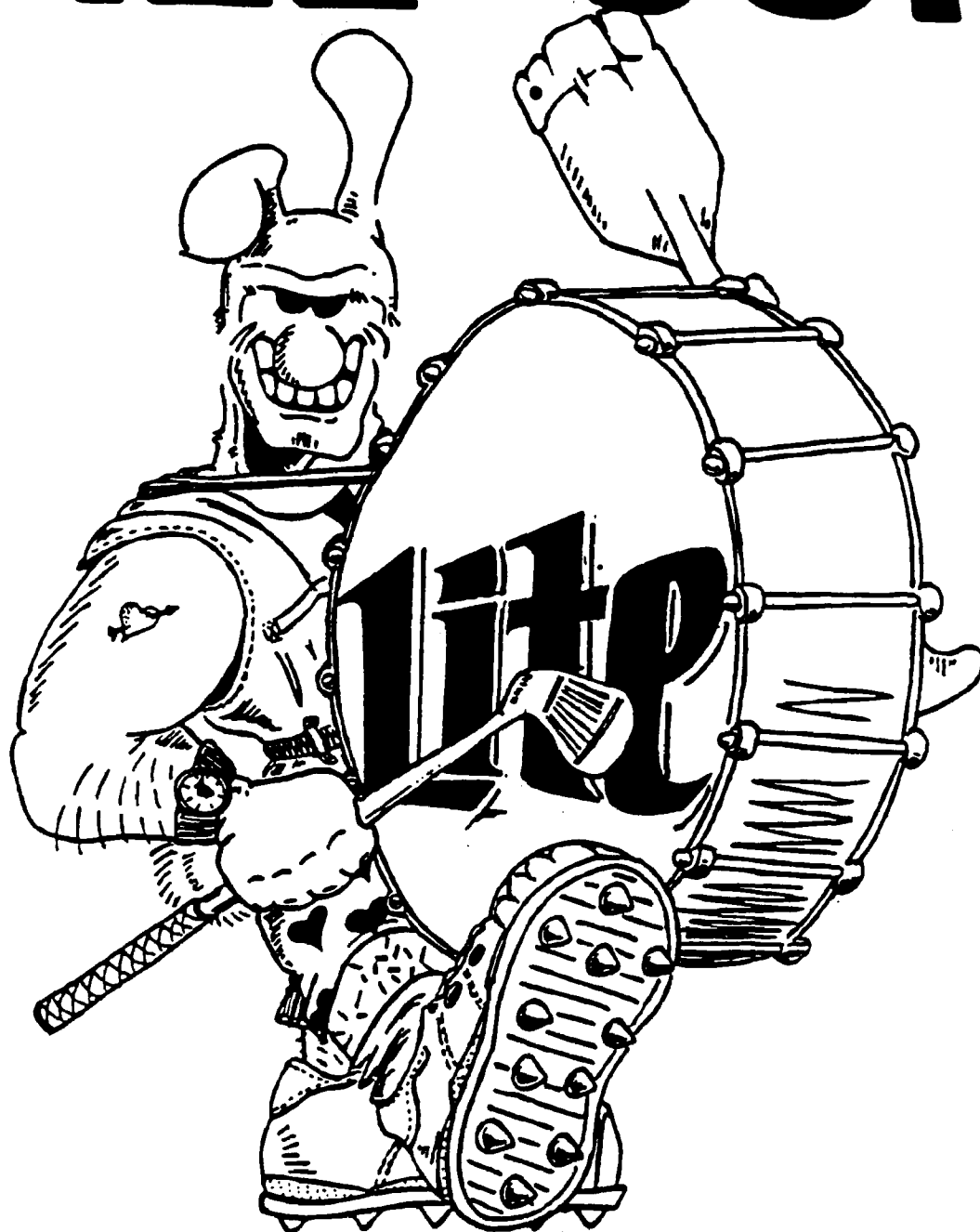


KICK BUTT



Front - 93 Commemorative

# STILL GOIN



# GOOD O'BO ROUNDUP

*Back-93 Commemorative*

Dear Good O' Boy:

This will be the 15th Annual Good O' Boy Roundup. Last year we had an attendance of 349 people. We identified the attendees by different categories: Good O' Boy, guest, and local law enforcement officers. Local law enforcement officers (state and local officers from Polk, Bradley and McMinn counties who stop by for fellowship: no fee. Guests: their hosts will pay for their meal and estimated beer consumption. This includes the employees of Ocoee Outdoors and Grumpy's. (Normally the rafters purchase the Saturday evening meal for their guide.) The year before last we voted to eliminate reduced prices for some who have dropped by for a day and night of fellowship everyone will pay the full fee.

The purpose of the Roundup was and is to promote fellowship within and outside of law enforcement. This purpose is still the main reason we meet. The competition came about from the nature of the attendees. The Canadians joined in 1984 and have become an event in themselves. We are not political and we will not be. Over the years we have had to establish a few rules.

- RULES:
1. You are responsible for who you invite. (New attendees must have a law enforcement sponsor.)
  2. No fighting. Right or wrong this will not be tolerated.
  3. No fireworks of any kind.
  4. No one under 18 years of age. Ages 18-21 must be accompanied by their parent.
  5. What goes on at Roundup stays there. (No press, press releases - period. No stories that would embarrass any attendees, unless among Good O' Boys.)
  6. Wristbands must be worn for beer and food.

No team will be allowed to enter into competition unless they are planning to enter a candidate for Redneck of the Year. For those of you who have never attended the Roundup, this takes a lot of preparation and rehearsing.

Musicians are encouraged to bring their instruments for jam sessions each day, evening and night.

There will be competitive events for motorcyclists on Friday. These events will be announced later.

Now that I am retired we are looking for some corporate sponsors and the possibility of having other Roundups during the year at different locations.

GOOD O' BOYS DO NOT ENCOURAGE EXCESSIVE DRINKING. REMEMBER GOOD O' BOYS KNOW WHEN TO SAY WHEN. YOU'LL HAVE MORE FUN THAT YOU'LL REMEMBER IF YOU DRINK IN MODERATION. Neither Gene Rightmeyer or the Good O' Boys assumes any liability for injuries sustained or actions of any attendees.

# **EXHIBITS 36 THRU 40**

# 15th ANNUAL GOOD OL' BOY ROUNDUP



May 22, 1985  
[REDACTED]

Gene Rightmyer  
[REDACTED]

Ref: Good Ol' Boy Roundup

Dear Gene;

This letter is directed to you for the purpose of requesting that my name be removed from the Good Ol' Boy Roundup membership list. My reasons for making this request are set forth below. I respectfully request that you provide copies of this letter to the Officers and members of the Board of Directors.

I first attended the Good Ol' Boy Roundup in 1984 and I saw and heard many things which disturbed me as a professional law enforcement officer. However, I realized that the Good Ol' Boy Roundup is a time for law enforcement officers to "let their hair down" in an environment which should not cause them embarrassment. Therefore, I elected not to say anything; but, I also elected not to act in the manner that I observed others acting. So that you might know what I saw and heard that disturbed me, I cite:

Grown men drunk beyond anything I had ever imagined; to the extent that they did not know anything about what was going on around them. In fact, I saw at least one taken to a hospital for treatment of what was described as "alcohol poisoning".

Females who were not in any way, shape, form or fashion involved in or associated with law enforcement. I heard at least one such female screaming and fighting to get away from some Good Ol' Boys around 3:00 AM.

Grown men, presumably law enforcement officers, drunk, naked and exposing themselves to the general public by riding up and down the highway.

The 1985 Good Ol' Boy Roundup had deteriorated even further. In fact, this year there were females in attendance for the entire time who gave every appearance of being prostitutes - judging from their dress, or lack thereof, and their actions. I personally don't think the Good Ol' Boy Roundup is the place for such actions.

Further, there were numerous young men, who one would presume were law enforcement officers, whose language was extremely loud and profane. Such does not project an image with which I desire to continue to be associated.

[REDACTED] 07-19-95 09:38AM P005 #25



Lastly, there was a large number of young females who arrived at the Roundup on Friday evening to "visit" Good Ol' Boys who were already encamped. Based on what I heard, some of these young females were only 18 years of age. This fact creates a situation which could lead to TROUBLE - Trouble with which I do not wish to be associated.

I am well aware that the Good Ol' Boy Roundup started out with good, very good, intentions. And I fully support the ideals on which the Roundup was originally based. However, for reasons of which I am not aware, the Roundup has been allowed to deteriorate - and this is not good.

Therefore, I respectfully request that my name be removed from the membership list of the Good Ol' Boy Roundup.

Sincerely,



16TH ANNUAL  
**GOOD OL' BOY  
ROUNDUP**

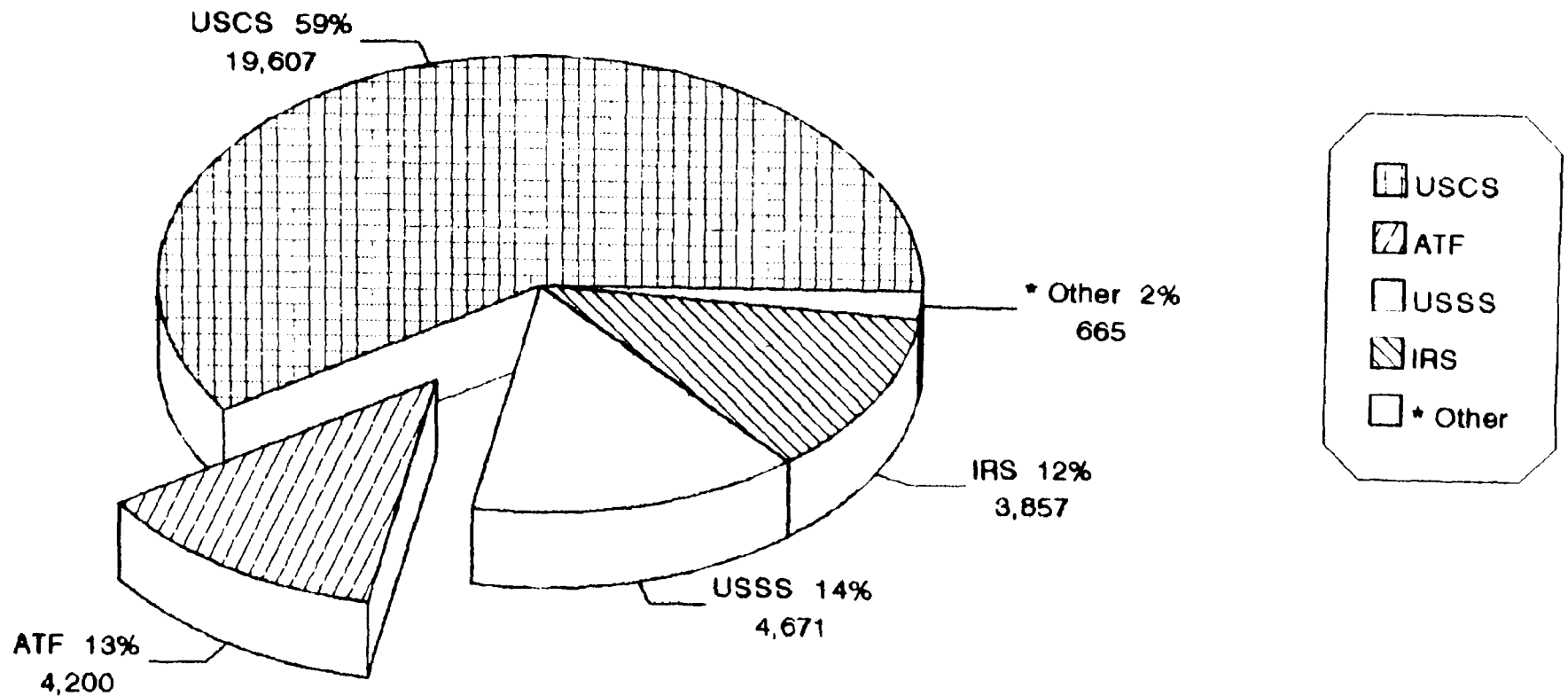


Silly Bob & Bubba's  
**Roadkill Bar & Grill**



STUMP WATER ON TAP  
OCOEE, TN.

Department of the Treasury  
**33,000 Treasury Law Enforcement Personnel Surveyed**



\* FLETC (480) FinCen (163) OIG (42)





BUREAU

1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 TOTAL

[REDACTED]										X	X					2
[REDACTED]								X	X							2
[REDACTED]						X*										1
[REDACTED]	X													X		2
[REDACTED]						X										1
[REDACTED]					X		X									2
[REDACTED]															X	1
[REDACTED]							X									1
[REDACTED]				X	X	X	X									4
[REDACTED]	X	X	X	X	X				X							6
[REDACTED]	X	X	X			X		X	X	X	X					9
[REDACTED]						X			X	X	X		X	X	X	7
[REDACTED]										X						1
[REDACTED]													X			1

BUREAU

1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 TOTAL

[REDACTED]	X	X														2
[REDACTED]					X											1
[REDACTED]												X				1
[REDACTED]											X	X	X	X	X	5
[REDACTED]	X															1
[REDACTED]		X														1
[REDACTED]						X*										1
[REDACTED]															X	1
[REDACTED]											X					1
[REDACTED]				X												1
[REDACTED]					X											1
[REDACTED]													X	X	X	3
[REDACTED]										X	X	X	X	X	X	6
[REDACTED]		X				X								X		3

BUREAU	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	TOTAL
[REDACTED]	X																1
[REDACTED]	X*																1
[REDACTED]												X	X				2
[REDACTED]	X																1
[REDACTED]								X									1
[REDACTED]												X		X	X	X	4
[REDACTED]								X	X								2
[REDACTED]						X		X									2
[REDACTED]						X											1
[REDACTED]										X	X	X					3
CS												X					1
[REDACTED]														X	X	X	3
[REDACTED]												X	X	X	X	X	5





BUREAU

1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 TOTAL

BUREAU	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	TOTAL
[REDACTED]													X				1
[REDACTED]	X																1
[REDACTED]								X									1
[REDACTED]						X	X										2
[REDACTED]								X	X								2
[REDACTED]	X																1
[REDACTED]						X											1
[REDACTED]									X	X	X	X	X	X	X	X	8
[REDACTED]										X							1
[REDACTED]												X	X				2
[REDACTED]					X	X		X									3
SS													X		X	X	3
[REDACTED]														X	X	X	3

BUREAU

1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 TOTAL

BUREAU	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	TOTAL
[REDACTED]	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	16
[REDACTED]							X	X									2
[REDACTED]				X		X		X									3
[REDACTED]			X			X			X		X	X		X		X	7
[REDACTED]								X	X			X					3
[REDACTED]	X	X		X	X		X			X	X		X	X			9
[REDACTED]				X													1
[REDACTED]									X	X	X						3
[REDACTED]												X					1
[REDACTED]				X				X	X	X							4
[REDACTED]														X			1
[REDACTED]												X					1
[REDACTED]														X			1
[REDACTED]												X					1



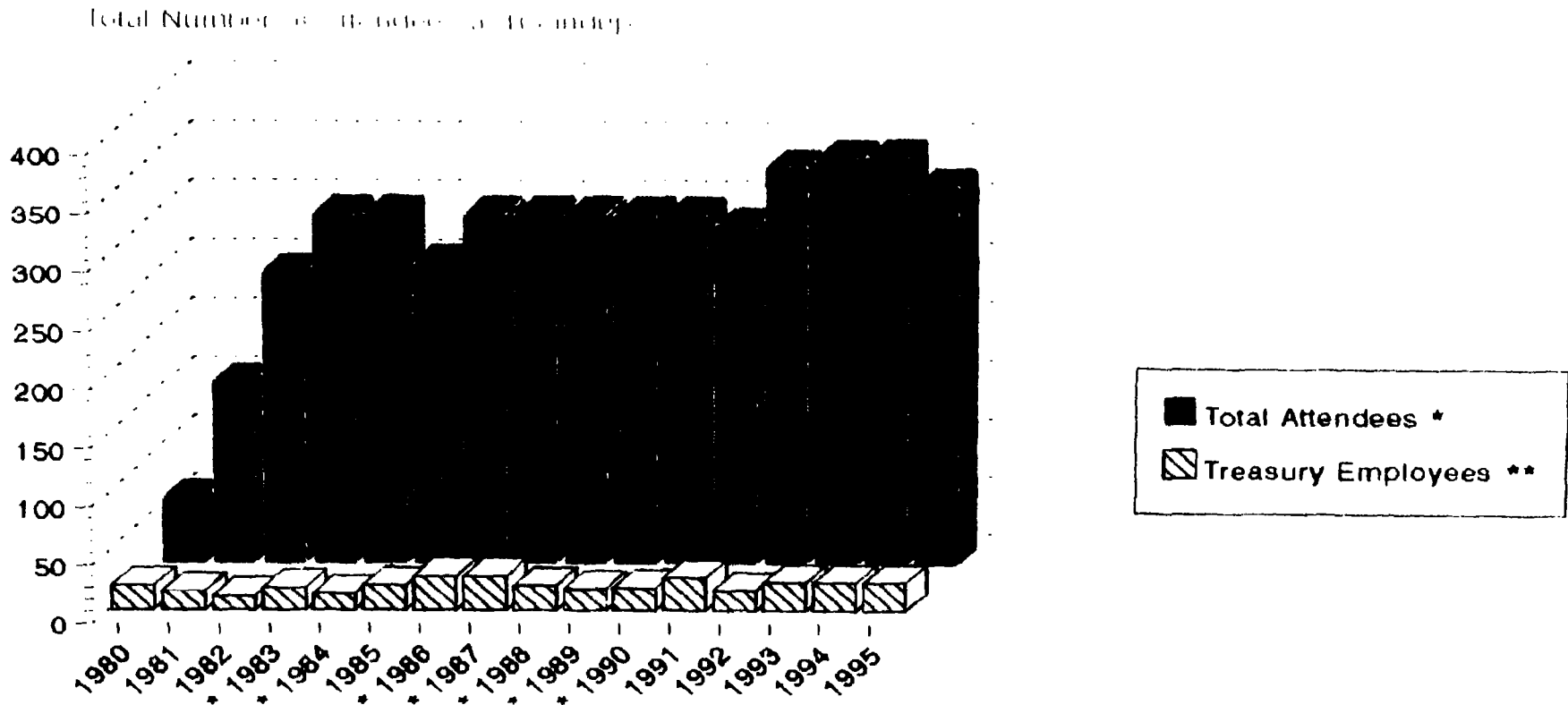
BUREAU	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	TOTAL
FLETC														X	X	X	3
[REDACTED]		X*															1
[REDACTED]														X	X	X	3
<b>TOTALS</b>	21	16	12	19	14	21	29	29	21	18	19	28	17	24	24	24	

125 Treasury Employees attended the "roundup" from 1980 - 1995. (64 ATF, 13 CS, 15 IRS, 30 SS, 3 FLETC.)

\* - approximately the year the person went to the "roundup".

# **EXHIBITS 41 THRU 45**

# Department of the Treasury Roundup Attendees by Year

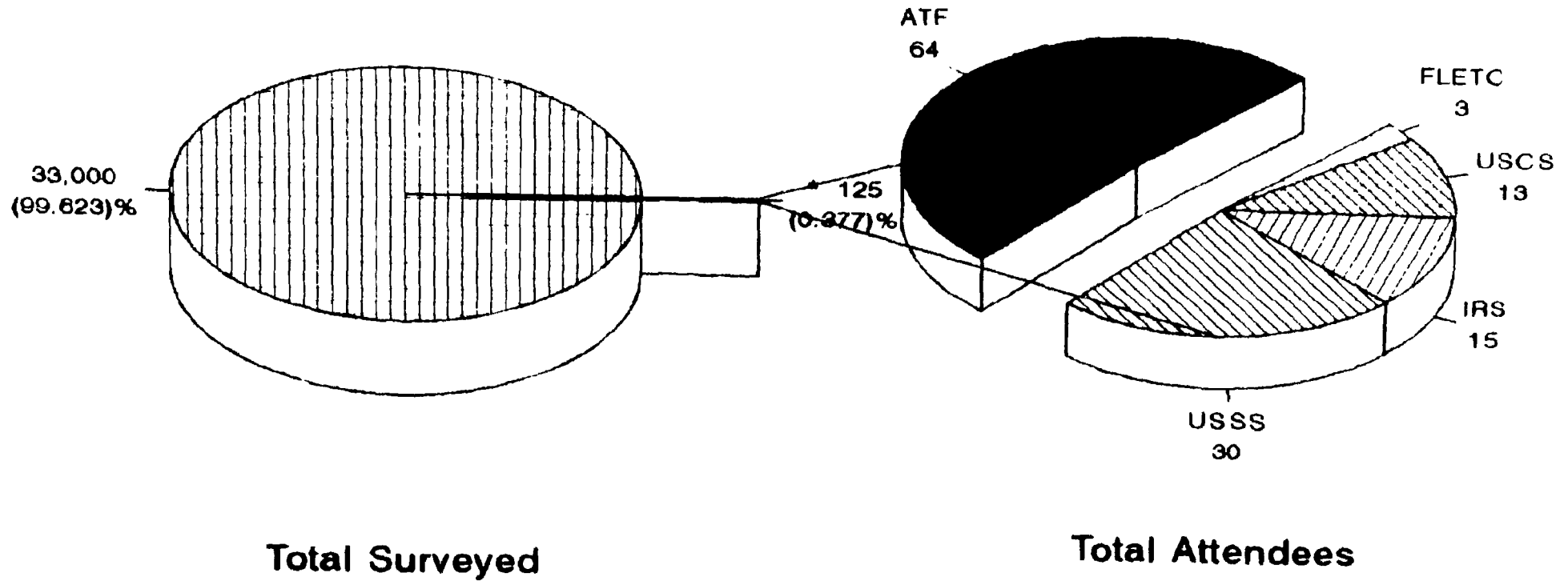


Total Attendees *	58	158	250	300	300	258	300	300	300	300	291	341	349	350	325
Treasury Employees **	21	16	12	10	14	21	29	29	21	18	19	28	17	24	24
Percentages	36	11	5	6	5	8	10	10	7	6	6	9	5	7	7

\* Approximate Attendees

\*\* Current Treasury Employees that attended Roundup over the last 16 years

# Department of the Treasury Attendees by Bureau



• Current Treasury Employees that attended Roundup over the last 16 years



# TREASURY ATTENDANCE BY BUREAU

## Subtotals per Bureau

Bureau	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
ATF	13	9	6	8	9	13	13	13	7	8	10	14	6	8	10	8
USCS	1	1	1	3	0	3	3	2	1	0	0	3	2	3	4	3
IRS	3	0	0	0	1	0	5	5	4	3	2	3	4	2	2	2
USSS	4	5	5	8	4	5	8	9	9	7	7	8	5	9	6	9
FLETC	0	1	0	0	0	0	0	0	0	0	0	0	0	2	2	2
<b>TOTAL</b>	<b>21</b>	<b>16</b>	<b>12</b>	<b>19</b>	<b>14</b>	<b>21</b>	<b>29</b>	<b>29</b>	<b>21</b>	<b>18</b>	<b>19</b>	<b>28</b>	<b>17</b>	<b>24</b>	<b>24</b>	<b>24</b>

### ATF

64 Employees

# times attended	# employees	
1	32	50%
2	15	23%
3	7	11%
4	3	5%
5	1	2%
6	2	3%
7	1	2%
9	1	2%
13	1	2%
14	1	2%

### USCS

13 Employees

# times attended	# employees	
1	7	54%
2	1	8%
3	2	15%
5	3	23%

### IRS

15 Employees

# times attended	# employees	
1	9	60%
2	3	20%
3	1	7%
8	1	7%
10	1	7%

### USSS

30 Employees

# times attended	# employees	
1	14	47%
2	2	7%
3	6	20%
4	3	10%
7	1	3%
9	1	3%
14	2	7%
16	1	3%

### FLETC

3 Employees

# times attended	# employees	
1	1	33%
3	2	67%

## Department of the Treasury

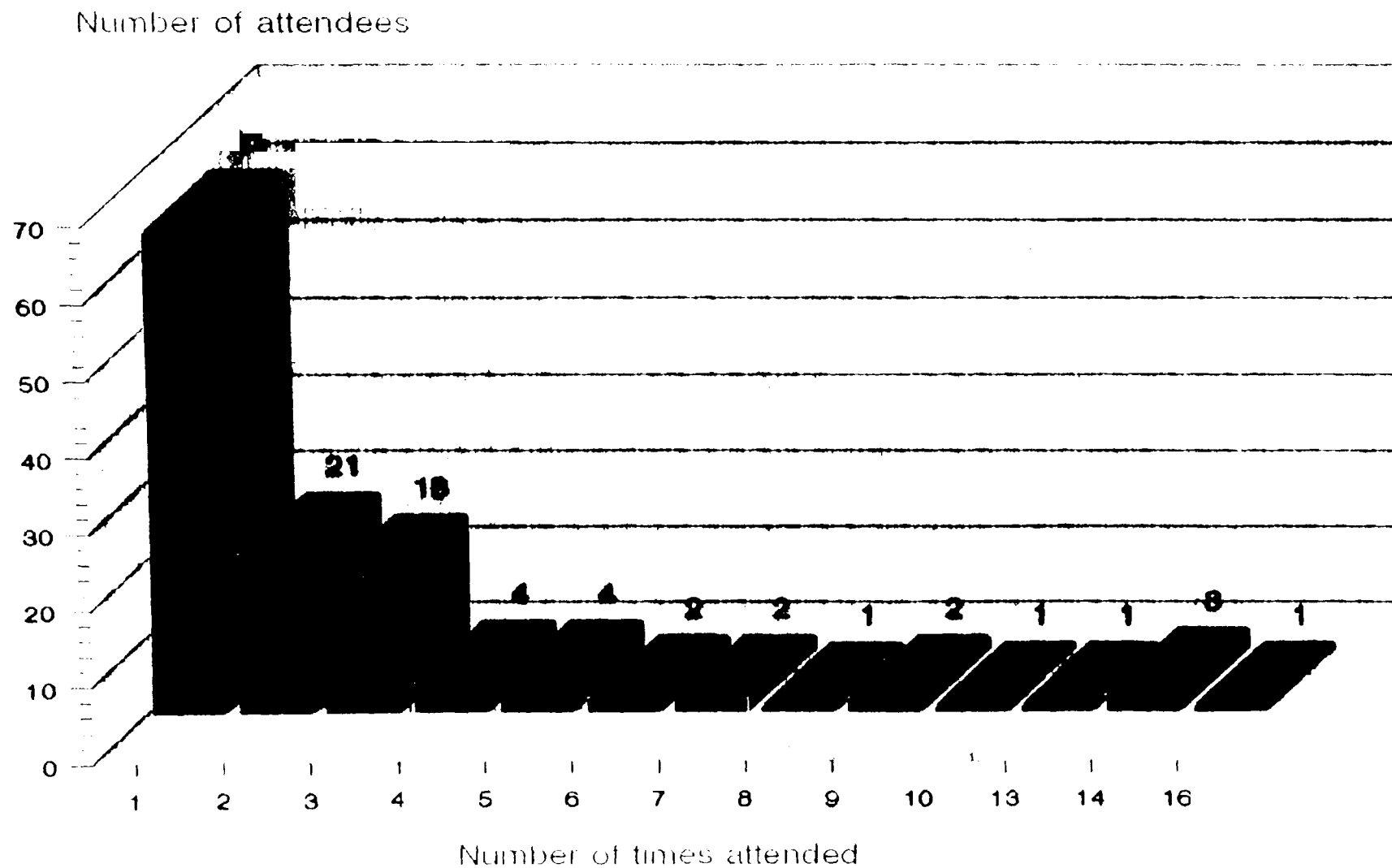
# Roundup Attendance by Current Treasury Personnel

Year	ATF	USSS	IRS	USCS	FLETC	TOTAL
1980	13	4	3	1	0	21
1981	9	5	0	1	1	16
1982	6	5	0	1	0	12
1983	8	8	0	3	0	19
1984	9	4	1	0	0	14
1985	13	5	0	3	0	21
1986	13	8	5	3	0	29
1987	13	9	5	2	0	29
1988	7	9	4	1	0	21
1989	8	7	3	0	0	18
1990	10	7	2	0	0	19
1991	14	8	3	3	0	28
1992	6	5	4	2	0	17
1993	8	9	2	3	2	24
1994	10	6	2	4	2	24
1995	8	9	2	3	2	24

NOTE: Numbers reflect individuals who attended the Roundup one time or more.

Department of the Treasury

# Frequency of Roundup Attendance by Current Treasury Personnel



NOTE: Numbers reflect individuals who attended the Roundup one time or more

# **EXHIBITS 46 THRU 50**

# Racial Incidents Witnessed by Treasury Employees

Name	Bureau	Incident	Returned	Response *
[REDACTED]	ATF	90 Sign; 90 KKK skit	Yes	None
[REDACTED]	ATF	91,94 Vehicle check; 94 Simulated KKK hood; 95 Racial T-shirt	Yes	None
[REDACTED]	ATF	Racial Jokes during the skits	Yes	None
[REDACTED]	ATF	95 Victim of racial slurs	NA	None
[REDACTED]	ATF	90 KKK skit	Yes	None
[REDACTED]	ATF	Racial T-shirt	Yes	None
[REDACTED]	ATF	Two different racial T-shirts; Witnessed racial incident with [REDACTED]	Yes	None
[REDACTED]	ATF	Racial T-shirt	Yes	None
[REDACTED]	IRS	90 Sign	Yes	None
[REDACTED]	USCS	Racial T-shirt	Yes	None
[REDACTED]	USSS	90 Sign; 90 KKK skit	Yes	None
[REDACTED]	USSS	90 Sign; 90 KKK skit	No	None
[REDACTED]	USSS	90 Sign	No	None
[REDACTED]	USSS	90 Sign; 90 KKK skit; Racial T-shirt	Yes	None
[REDACTED]	USSS	90 Sign and 90 KKK skit	Yes	Told others to take sign down

\* "Response" indicates the specific action taken by the named individual at the time of the incident

## INTERVIEWS OF TREASURY RETIREES BY BUREAU

NAME	BUREAU	YEARS ATTENDED	DUTY STATION	MOB/REX	RACIAL EVENTS WITNESSED	ADDITIONAL COMMENTS
[REDACTED]	ATF	1980, 81, 82*, 83*, 84*, 87, 88	Knoxville, TN	N/A	NONE	
[REDACTED]	ATF	1985, 86, 87, 90, 91	Glynco, GA	N/A	NONE	
[REDACTED]	ATF	1980, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 94, 95	Charlotte, NC	MOB ; REX	Saw the "Nigger Checkpoint" sign in 1990. Over the years have seen the "Boyz on the Hood" t-shirt.	He won a Redneck of the Year contest in the early 1980's. He also won the beer enduro drinking contest two years in a row.
[REDACTED]	ATF	N/A	Falls Church, VA	N/A	NONE	
[REDACTED]	ATF	N/A	Washington, D.C.	N/A	NONE	
[REDACTED]	ATF	N/A	Chicago, IL	N/A	NONE	[REDACTED] was aware of the GOBR in 1986.
[REDACTED]	ATF	1982*, 85*	Charlotte, NC	N/A	NONE	
[REDACTED]	ATF	1983, 84*	Atlanta, GA	N/A	NONE	
[REDACTED]	ATF	N/A		N/A	NONE	
[REDACTED]	ATF	N/A	Washington, D.C.	N/A	NONE	
[REDACTED]	ATF	1980, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94.	Macon, GA	MOB	Saw the "Nigger Checkpoint" sign in 1990	
[REDACTED]	ATF	1980, 81, 83, 84, 86, 87, 88, 89, 90, 92, 93, 95	Brunswick, GA	N/A	Saw a racial sign in 1990. In 1992, he saw David Duke literature and a sign at the campground.	
[REDACTED]	ATF	1980, 81, 82, 83, 94, 95	Lake Butler, FL	N/A	NONE	

NAME	BUREAU	YEARS ATTENDED	DUTY STATION	MOB/REX	RACIAL EVENTS WITNESSED	ADDITIONAL COMMENTS
[REDACTED]	ATF	1980, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95.	Macon, GA	MOB ; REX	Saw the "Nigger Checkpoint" sign in 1990. He also saw the "KKK" skit. In 1992, David Duke literature was left on the registration table.	[REDACTED]
[REDACTED]	ATF	1984, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95.	Gulfport, MS	MOB	Saw the "Nigger Checkpoint" sign in 1990.	
[REDACTED]	ATF	N/A	Washington, D.C.	N/A	NONE	He was aware of the GOBR since its begining.
[REDACTED]	ATF	1980, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95.	Greenville, SC	REX	Saw the racist sign and the 'KKK' skit in 1990. In 1992, saw the water-melon skit. In 1995, someone had written racial slurs on the portable toilets.	[REDACTED]
[REDACTED]	ATF	N/A	San Francisco, CA	N/A	NONE	
[REDACTED]	ATF	1983*, 84*, 86*, 87*, 89*, 90, 91*, 92*, 93*, 94*, 95		N/A	Saw a racist sign in 1990.	
[REDACTED]	ATF	1981*, 82*, 84*, 86*, 87	Signal Mountain, GA	N/A	NONE	
[REDACTED]	ATF	1980	Bristol, VA	N/A	NONE	
[REDACTED]	USCS	1994, 95		N/A	NONE	
[REDACTED]	IRS	1988	Rocky Mount, NC	N/A	NONE	
[REDACTED]	IRS	1988	Franklin, TN	N/A	NONE	
[REDACTED]	USSS	N/A	Atlanta, GA	N/A	NONE	He became aware of the GOBR in 1981

\* approximately the year of attendance.

**GS-15 MANAGERS WHO ATTENDED THE GOOD O' BOY ROUNDUPS**

NAME	BUREAU	YEAR ATTENDED	POSITION at TIME of ATTENDANCE	POSITION NOW	RACIAL EVENTS WITNESSED	RESPONSE	ADDITIONAL COMMENTS
[REDACTED]	ATF	1983	[REDACTED] Nashville, TN	[REDACTED]	None		He believes that he responded to an open invitation.
[REDACTED]	ATF	1984	[REDACTED] Buffalo, NY	[REDACTED]	None		[REDACTED]
[REDACTED]	ATF	1983, 1984 1986	[REDACTED] New Orleans, LA	[REDACTED]	None		Invited by and attended with [REDACTED]
[REDACTED]	ATF	1984, 1985 1986, 1987	[REDACTED] Atlanta, GA	[REDACTED]	None		[REDACTED] knew of the Roundups and also attended.
[REDACTED]	ATF	1980, 1981	[REDACTED] Birmingham, AL	[REDACTED]	None		[REDACTED] attended the Roundups with [REDACTED].
[REDACTED]	ATF	1980	[REDACTED] Louisville, KY	[REDACTED]	None		He attended the Roundup with [REDACTED]
[REDACTED]	ATF	1989, 1990 1991	[REDACTED] Cleveland, OH	[REDACTED]	None		He was a MOB. He stayed in a motel in 1990, 1991.
[REDACTED]	USCS	1983	[REDACTED] Atlanta, GA	[REDACTED]	None		
[REDACTED]	USCS	1983	[REDACTED] Atlanta, GA	[REDACTED]	None		He attended with [REDACTED]
[REDACTED]	USSS	1985*, 1995	[REDACTED] Savannah, GA Atlanta, GA	[REDACTED]	None		
[REDACTED]	IRS	1989	[REDACTED] Dallas, TX	[REDACTED]	None		
[REDACTED]	ELETC	1993, 1994 1995	[REDACTED] Glynco, GA	[REDACTED]	None		

\* approximately the year of attendance



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Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
[REDACTED]	ATF [REDACTED]	86	BATON ROUGE	LA CAMPING AND RAFTING TRIP FOR LAW ENFORCEMENT OFFICER'S	
[REDACTED]	ATF [REDACTED]	85	OKLAHOM CITY	OK SAW A FLIER OR INVITATION ADDRESSED TO A OKLAHOMA COUNTY SHERIFF DEPARTMENT EMPLOYEE THE FLIER STATED "WE ARE HAVING THE GOOD O'BOY ROUNDUP IN KNOXVILLE, TENNESSEE."	
[REDACTED]	ATF [REDACTED]	88	NEW ORLEANS	LA CAMP/OUT/COOKOUT RAFTING, FISHING AND  BEER DRINKING	NO ACTION BECAUSE NO REPORTS OF NEGATIVE INFORMATION ABOUT THE ROUNDUP
[REDACTED]	[REDACTED]	82	DETROIT	MI FOR ATF AGENTS - OUTING FOR RAFTING	
[REDACTED]	ATF [REDACTED]	95	WASHINGTON	DC THRU A NEWS LETTER ISSUED BY THE GASDEN MILITIA - GAVE NEWS LETTER TO [REDACTED]	
[REDACTED]	ATF RET [REDACTED]	[REDACTED]			
[REDACTED]	ATF [REDACTED]	80			FOR LAW ENFORCEMENT OFFICER'S - FISHING, RAFTING AND COMMUNE
[REDACTED]	ATF [REDACTED]	80	LOUISVILLE	KY COOKOUT, RAFTING WITH ATF LAW ENFORCEMENT OFFICER'S FAMILY EVENT	

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[REDACTED]	ATF [REDACTED]	85	WASHINGTON DC	LAW ENFORCEMENT OFFICER'S GATHERING FOR RAFTING	
[REDACTED]	ATF [REDACTED]	85		TO WHITE MANAGER - FAMILY GET TOGETHER	BROUGHT TO ATTENTION OF [REDACTED] [REDACTED] BUD DID NOT PROTEST THE GOBR BECAUSE HE DID NOT THINK IT WOULD DO ANY GOOD. [REDACTED] NEVER MADE A FORMAL PROTEST TO GOBR.
[REDACTED]	[REDACTED]	[REDACTED]		TO BLACK SA's - A WHITES ONLY FUNCTION	
[REDACTED]	ATF [REDACTED]	80		LAW ENFORCEMENT OFFICER'S GATHERING FOR RAFTING IN TN, GA OR N.C.	
[REDACTED]	ATF [REDACTED]	88	WASHINGTON	DC AN EVENT INVOLVING FISHING, CAMPING AND RAFTING. NOT KNOWN AS GOBR	
[REDACTED]	ATF [REDACTED]	85	WASHINGTON	DC FOLKS GETTING TOGETHER - MAY HAVE SEEN AN ARTICLE IN A RETIRED AGENT PUBLICATION	
[REDACTED]	ATF [REDACTED]	88	WASHINGTON	DC CAMP OUT - A "GUY THING" BEER DRINKING - SE REGION EVENT	

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[REDACTED]	ATF RET [REDACTED]	80	MIAMI	FL LAW ENFORCEMENT OFFICER'S SOCIAL EVENT	DOES NOT RECALL ATF MANAGEMENT ENCOURAGING OR DISCOURAGING ATTENDANCE. IF ALCOHOL BEING SERVED, ATF WOULD NOT SPONSOR SUCH AN EVENT.
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	INVOLING CAMPING, FISHING AND RAFTING ANNUAL PICNIC AND GET TOGETHER IN SE U.S., POSSIBLY TN. NEVER SAW FLIERS.	
[REDACTED]	ATF [REDACTED] [REDACTED]	80	WASHINGTON	DC HEARD ABOUT GOBR THROUGH OFFICE GOSSIP. IN 1987,  A FRIEND OF [REDACTED] ATTENDED THE ROUNDUP AND TOLD HIM ABOUT IT. ACTIVITIES DESCRIBED INCLUDED NAKED MEN JUMPING OUT OF TREES, AND AN INCIDENT OF RAPE BY AN ATF AGENT. [REDACTED] [REDACTED]	[REDACTED] DID NOT REPORT THIS ALLEGED INCIDENT.
[REDACTED]	ATF [REDACTED]	89	MIAMI	FL OUTING IN THE WOODS FOR LAW ENFORCEMENT OFFICER'S, CARD GAMES, BEER DRINKING, TOLD LIES	

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[REDACTED]	ATF [REDACTED]	84	ATLANTA	GA WEEKEND OUTING - CAMPING, RAFTING,  PICNIC, AND BEER DRINKING	UNKNOWN - DOES NOT RECALL MANAGEMENT ENCOURAGING OR DISCOURAGING ATTENDANCE
[REDACTED]	ATF [REDACTED]	85		"CHUG A LUG" CONTEST - EXCESSIVE DRINKING	
[REDACTED]	ATF [REDACTED]	81	MONTGOMERY	AL RAFTING AND DRINKING FOR LAW ENFORCEMENT OFFICER'S AND FAMILY MEMBERS	
[REDACTED]	ATF [REDACTED]	90	JACKSONVILLE	FL LAW ENFORCEMENT OFFICER'S FUNCTION - FRATERNAL GATHERING - SOCIALIZING AND SHARE EXPERIENCES	
[REDACTED]	ATF [REDACTED]	85	COLUMBIA	SC BECAME AWARE OF THE GOBR THROUGH "WORD OF MOUTH." TWO ATF AGENTS MADE IT CLEAR TO [REDACTED] THAT THE GOBR WAS ANTI BLACK THESE AGENTS STATED THAT [REDACTED] WOULD BE OFFENDED BY SOME OF THE ACTIVITIES THAT TOOK PLACE AT THE GOBR.	
[REDACTED]	ATF [REDACTED]	81	CHAROLET	NC CAMPOUT, RAFTING, BEER DRINKING BY FAMILY MEMBERS OF LAW ENFORCEMENT OFFICER'S	

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[REDACTED]	ATF RET [REDACTED]	81	BOSTON	MA NOT AS GOBR - RAFTING FOR LAW ENFORCEMENT	NO REASON TO DISCOURAGE/ENCOURAGE ATTENDANCE BECAUSE OF NO NEGATIVE INFORMATION UNTIL 95
[REDACTED]	[REDACTED]	[REDACTED]		OFFICER'S FAMILIES	
[REDACTED]	ATF [REDACTED] [REDACTED]	85	WASHINGTON	DC GET TOGETHER FOR LAW ENFORCEMENT OFFICER'S, CAMPING, RAFTING AND COOKOUT	
[REDACTED]	ATF [REDACTED] RETIRED [REDACTED]	95	WASHINGTON	DC	
[REDACTED]	ATF [REDACTED] [REDACTED]	83		HEARD ONLY WHAT WAS LISTED IN THE ATF NEWS LETTER	
[REDACTED]	ATF [REDACTED] [REDACTED]	80	WASHINGTON	DC CAMPING FOR WEEKEND, RAFTING AND BEER DRINKING	
[REDACTED]	ATF [REDACTED] [REDACTED]	84	FALLS CHURCH	VA ANNUAL EVENT OF RETIRED ATF SA'S FROM SE REGION	
[REDACTED]	ATF [REDACTED] [REDACTED]	80	FLINT	MI FOR SE REGION AGENTS, PICNIC, OUTDOOR ACTIVITIES AND DRINKING	
[REDACTED]	ATF [REDACTED] [REDACTED]	82	MIAMI	FL CAMPING, SOCIAL EVENT IN TN FOR LAW ENFORCEMENT	HE TOOK NO ACTION BECAUSE HE WAS NOT AWARE OF ANY NEGATIVE EVENTS AT GOBR
	[REDACTED]	[REDACTED]		OFFICER'S	

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[REDACTED]	ATF [REDACTED]	83	GLYNCO	GA	ATF SPONSORED EVENT RAFTING
[REDACTED]	ATF [REDACTED]	82	BATON ROUGE	LA	SOCIAL GATHERING, RAFTING AND CAMPING FOR LAW ENFORCEMENT OFFICER'S AND FAMILY MEMBERS
[REDACTED]	ATF [REDACTED]	85	WASHINGTON	DC	HEARD ABOUT THE EVENT FROM CO-WORK [REDACTED]
[REDACTED]	ATF [REDACTED]	95	CHARLOTTE	NC	
MAGAW JOHN	ATF SES DIRECTOR WASHINGTON	DC			
[REDACTED]	ATF [REDACTED]	86	CHICAGO	IL	GOLFING, BIKING, RAFTING, COOKOUT AND BEER DRINKING
[REDACTED]	ATF [REDACTED]				
[REDACTED]	ATF [REDACTED]	83	TUCSON	AZ	CAMPING AND FISHING IN TN FOR ATF SA'S
[REDACTED]	ATF [REDACTED]	89	CHICAGO	IL	FROM [REDACTED] AN EVENT IN TN INVOLVING GENE RIGHMYER DRINKING AND FULL OF "GREY PEOPLE"

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[REDACTED]	ATF [REDACTED]	[REDACTED]		GOBR FOR CAMPING, RAFTING AND COOKOUT	NOTHING NEGATIVE UNTIL 1995
[REDACTED]	ATF [REDACTED]	[REDACTED]	NEW ORLEANS	LA SOCIAL LAW ENFORCEMENT OFFICER'S GATHERING, RAFTING AND DRINKING BEER	
[REDACTED]	ATF [REDACTED]	[REDACTED]		[REDACTED] IMPRESSION OF GOBR WAS JUST A GROUP OF AGENTS WHO GOT TOGETHER FOR RAFTING, FISHING AND BEER DRINKING, ETC...	
[REDACTED]	ATF [REDACTED]	[REDACTED]	ATLANTA	GA ROUNDUP WAS AN OUTDOORS EVENT WITH WHITE WATER RAFTING AND ALOT OF BEER DRINKING.	
[REDACTED]	ATF [REDACTED]	[REDACTED]	WASHINGTON	DC OUTING FOR LAW ENFORCEMENT OFFICER'S	
[REDACTED]	ATF [REDACTED]	[REDACTED]		GET TOGETHER FOR LAW ENFORCEMENT OFFICER'S, CAMPING, BBQ	
[REDACTED]	ATF [REDACTED]	[REDACTED]	GLYNCO	GA RAFTING AND FAMILY EVENT FOR LAW ENFORCEMENT OFFICER'S	
[REDACTED]	ATF [REDACTED]	[REDACTED]	WASHINGTON	DC CAMPING IN SOUTH	
[REDACTED]	ATF [REDACTED]	[REDACTED]	WASHINGTON	DC FOR LAW ENFORCEMENT OFFICER'S - CAMPING AND FISHING PRIMARILY FOR SA'S FROM SE REGION	

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[REDACTED]	ATF [REDACTED]	81			DRINK BEER AND RAFTING
[REDACTED]	ATF [REDACTED]	85	WASHINGTON	DC	LAW ENFORCEMENT OFFICER'S GATHERING FOR RAFTING, COOKOUT AND DRINKING BEER
[REDACTED]	ATF [REDACTED]	87	ATLANTA	GA	CAMPING FOR LAW ENFORCEMENT OFFICER'S
[REDACTED]	ATF [REDACTED]	90	WASHINGTON	DC	WHITE WATER RAFTING, FAMILY EVENT, BONDING WITH OTHER LAW ENFORCEMENT OFFICER'S
[REDACTED]	ATF [REDACTED]	88	WASHINGTON	DC	FIRST BECAME AWARE OF GOBR IN DECEMBER 1988, [REDACTED] IN THE WASHINGTON FIELD OFFICE, WASHINGTON, DC.
[REDACTED]	ATF [REDACTED]	80			CAMPING AND RAFTING IN TN
[REDACTED]	ATF [REDACTED]	84	HOUSTON	TX	FROM [REDACTED] A BUNCH OF WHITE AGENTS GETTING TOGETHER AND PARTYING
[REDACTED]	ATF [REDACTED]	85	FALLS CHURCH	VA	FISHING, RAFTING AND BEER DRINKING
[REDACTED]	ATF [REDACTED]	85			



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[REDACTED]	ATF [REDACTED] [REDACTED]	80	KANSAS CITY MO	ANNUAL CAMPING AND RAFTING TRIP IN SE AREA OF COUNTRY. OPEN TO ALL ATF SA's AND FAMILY EVENT. GOBR NAME WAS NOT USED.	
[REDACTED]	ATF [REDACTED] [REDACTED]	80		FISHING, CAMPING, HUNTING, AND GOLF FOR ATF AND OTHER LAW ENFORCEMENT OFFICER's	
[REDACTED]	ATF [REDACTED] [REDACTED]	79	ATLANTA GA	WHITE AGENTS GETTING TOGETHER TO SOCIALIZE. HE LATER HEARD THAT ATTENDEES WENT THERE TO GET DRUNK AND TO PARTICIPATE IN GENERAL ACTS OF STUPIDITY.	
[REDACTED]	ATF [REDACTED] [REDACTED]	81	NASHVILLE TN	WAS TOLD THAT THE EVENT CONSISTED OF CAMPING OUT. WHITE WATER RAFTING TRIPS, PLAYING VARIOUS SPORTS AND SIMILAR ACTIVITS. THE ONLY NEGATIVE CONNOTATION TO THE EVENT HE HEARD ABOUT WAS EXCESSIVE USE OF ALCOHOL AND ROWDY BEHAVIOR	
[REDACTED]	ATF [REDACTED] [REDACTED]	80	WASHINGTON DC	HEARD THRU ATF MAGAZINE CAMPING AND RAFTING	
[REDACTED]	ATF GS-15 [REDACTED] [REDACTED]	80		DRINKING, RAFTING AND COOKOUR FOR LAW ENFORCEMENT OFFICER's	

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[REDACTED]	ATF [REDACTED] [REDACTED]	88	WILMINGTON	NC	HE HAD A SUBORDINATE, [REDACTED] WHO ATTENDED THE GOBR EACH YEAR. [REDACTED] STATED HE HAD GOOD TIME AT GOBR. [REDACTED] HEARD THERE WAS ALOT OF DRINKING.	
[REDACTED]	ATF [REDACTED] [REDACTED]	82	SAN ANTONIO	TX	CAMPING, FISHING, RAFTING IN TN - BEER DRINKING	HEARD FROM [REDACTED] ABOUT A "KKK" SKIT; TIME FRAME UNKNOWN.
[REDACTED]	ATF [REDACTED] [REDACTED]	80			ATF PICNIC AND RAFTING	
[REDACTED]	ATF [REDACTED] [REDACTED]	80			GOBR FOR FISHING, COOKOUT AND DRINKING	NO DEROGATORY INFORMATION
[REDACTED]	ATF [REDACTED] [REDACTED]	80			WEEKEND CAMPING TRIP FOR LAW ENFORCEMENT OFFICER'S DRINKING BEER	
[REDACTED]	ATF [REDACTED] [REDACTED]	80	OMAHA	NE	FISHING AND BOATING NEVER HEARD THE TERM GOBR	
[REDACTED]	ATF [REDACTED] [REDACTED]	80	PHILADELPHIA	PA	THRU ATF NEWSLETTER IN EARLY 80's SE EVENT WITH PICNIC AND BBQ FOR ATF LAW ENFORCEMENT OFFICER'S	
[REDACTED]	ATF [REDACTED] [REDACTED]	85	GLYNCO	GA	FAIL LAW ENFORCEMENT OFFICER'S - FISHING, CAMPING AND BEER DRINKING IN A REMOTE AREA	

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[REDACTED]	ATF [REDACTED]	76	CHICAGO	IL	LAW ENFORCEMENT OFFICER'S WITH ATF - FAMILY OUTING, CAMPING, COOKOUT
[REDACTED]	ATF [REDACTED]	84	NASHVILLE	TN	CANOE TRIP AND BEER DRINKING
Number of interviews by Bureau:		81			

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Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
[REDACTED]	FLETG [REDACTED]	95	GLYNCO	GA	LAW ENFORCEMENT OFFICER'S CAMPING AND MOTORCYCLING
[REDACTED]	FLETG [REDACTED]	94	GLYNCO	GA	LAW ENFORCEMENT OFFICER'S MOTORCYCLING, DRINKING AND PARTYING
[REDACTED]	FLETG [REDACTED]	87			FAMILY ORIENTED OUTING FOR LAW ENFORCEMENT OFFICER'S, CAMPING, COOKOUT AND MOTORCYCLE RACING (WIVES AND CHILDREN INVITED)
[REDACTED]	FLETG [REDACTED]	90	GLYNCO	GA	WEEKEND PICNIC AND MOTORCYCLING FOR LAW ENFORCEMENT OFFICER'S

Number of interviews by Bureau: 4

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Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
[REDACTED]	IRS [REDACTED]	87	SAVANNAH	GA LAW ENFORCEMENT OFFICER'S OUTING WITH SPORTS, RAFTING, SOFTBALL, COOKOUT, CAMPING AND BEER	
[REDACTED]	IRS [REDACTED]	88	ATLANTA	GA WEEKEND PICNIC	
[REDACTED]	IRS [REDACTED]	91		LAW ENFORCEMENT OFFICER'S CAMPING, BOATING, GOLFING, VOLLEYBALL AND BEER DRINKING EVENT	
[REDACTED]	IRS [REDACTED]	92	SPRINGFIELD	IL A DRUNKEN BRAWL	

Number of interviews by Bureau: 4

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Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
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[REDACTED]	USCS [REDACTED]	90	DETROIT	MI	NON-EVENT WITH LAW ENFORCEMENT OFFICER'S LOCAL TO TN
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Number of interviews by Bureau: 1 [REDACTED]

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[REDACTED]	USSS [REDACTED]	83	WASHINGTON	DC LAW ENFORCEMENT OFFICER'S FAMILY EVENT	
[REDACTED]	USSS [REDACTED]	80	MIAMI	FL OVERHEARD A CONVERSATION BETWEEN STATE AND LOCAL LAW ENFORCEMENT. HEARD ABOUT SPORT COMPETITIONS.	
[REDACTED]	USSS [REDACTED]	80	PLAINS	GA LAW ENFORCEMENT OFFICER'S GET TOGETHER FOR RAFTING, ROPE PULLS, GOLFING AND DRINKING CONTESTS	NO ACTION BY MANAGEMENT
[REDACTED]	USSS [REDACTED]	85	ATLANTA	GA ATF INVITED OTHER LAW ENFORCEMENT AGENCIES TO ATTEND THE SOCIAL AFFAIR.	
[REDACTED]	USSS [REDACTED]	84	WASHINGTON	DC SOCIAL GATHERING FOR LAW ENFORCEMENT OFFICER'S AND WATER SPORTS	
[REDACTED]	USSS [REDACTED]	80	NASHVILLE	TN POSTED INVITATION IN NASHVILLE, TN. LAW ENFORCEMENT OFFICER'S GET TOGETHER FOR LIAISON AND RAFTING	
[REDACTED]	USSS [REDACTED]	90	CINCINNATI	OH SOCIAL GATHERING FOR LAW ENFORCEMENT OFFICER'S  AND SPORTING EVENTS, RAFTING, GOLFING, BEER DRINKING, ALONG WITH TELLING WAR STORIES	HE TOOK NO ACTION SINCE NO INFORMATION THAT IT WAS RACIST

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[REDACTED]	USSS [REDACTED]	81	ATLANTA	GA	HIS UNDERSTANDING OF THE GOBR WAS A FISHING, HUNTING, COOKOUT AND DRINKING BEER.
[REDACTED]	USSS [REDACTED]	88			GETTING TOGETHER AND DRINKING BEER
[REDACTED]	USSS [REDACTED]	88	WASHINGTON	DC	ATF SA's CAMPING OVER THE WEEKEND, SOCIAL EVENT
[REDACTED]	USSS [REDACTED]				SOCIAL EVENT AND BEER DRINKING
[REDACTED]	USSS [REDACTED]	88	WASHINGTON	DC	GET TOGETHER FOR AN OUTING
[REDACTED]	USSS [REDACTED]	91	CINCINNATI	OH	LAW ENFORCEMENT OFFICER'S FROM SOUTH FOR RAFTING, VOLLEYBALL AND BEER DRINKING
[REDACTED]	USSS [REDACTED]	89			BECAME AWARE OF GOBR 1989. HE IS AN AFRICAN AMERICAN AND NEVER HEARD ANYTHING NEGATIVE ABOUT THE GOBR.
[REDACTED]	USSS [REDACTED]	94	ATLANTA	GA	HE HEARD PEOPLE IN THE OFFICE TALKING ABOUT GOING TO GOBR.
[REDACTED]	USSS [REDACTED]	88	SAN ANTONIO	TX	FOR LAW ENFORCEMENT OFFICER'S

Number of interviews by Bureau 16



Department of the Treasury  
Office of Inspector General  
Office of Investigations

Results of the Management Interviews  
(Sorted Alphabetically)  
Bureau: USSS

Date of Report: 02/26/96

Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
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Total number of personnel interviewed: 106

Department of the Treasury  
Office of Inspector General  
Office of Investigations

Results of the Management Query of Minority Managers  
(Sorted Alphabetically)  
Bureau: ATF

Date of Report: 02/16/96

Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
[REDACTED]	ATF [REDACTED]	85	OKLAHOM CITY	OK SAW A FLIER OR INVITATION ADDRESSED TO A OKLAHOMA COUNTY SHERIFF DEPARTMENT EMPLOYEE. THE FLIER STATED "WE ARE HAVING THE GOOD O'BOY ROUNDUP IN KNOXVILLE, TENNESSEE."	
[REDACTED]	ATF [REDACTED]	85		TO WHITE MANAGER FAMILY GET TOGETHER	BROUGHT TO ATTENTION OF [REDACTED] BUD DID NOT PROTEST THE GOBR BECAUSE HE DID NOT THINK IT WOULD DO ANY GOOD [REDACTED] NEVER MADE A FORMAL PROTEST TO GOBR.
[REDACTED]	ATF [REDACTED]	80	WASHINGTON	DC HEARD ABOUT GOBR THROUGH OFFICE GOSSIP. IN 1987,  A FRIEND OF [REDACTED] ATTENDED THE ROUNDUP AND TOLD HIM ABOUT IT. ACTIVITIES DESCRIBED INCLUDED NAKED MEN JUMPING OUT OF TREES, AND AN INCIDENT OF RAPE BY AN ATF AGENT. [REDACTED] [REDACTED] AT THE TIME.	[REDACTED] DID NOT REPORT THIS ALLEGED INCIDENT.

Department of the Treasury  
Office of Inspector General  
Office of Investigations

Results of the Management Query of Minority Managers  
(Sorted Alphabetically)  
Bureau: ATF

Date of Report: 02/16/96

Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
[REDACTED]	ATF [REDACTED]	85		"CHUG A LUG" CONTEST - EXCESSIVE DRINKING	
[REDACTED]	ATF [REDACTED]	90	JACKSONVILLE	FL	LEO FUNCTION - FRATERNAL GATHERING SOCIALIZING AND SHARE EXPERIENCES
[REDACTED]	ATF [REDACTED]	85	COLUMBIA	SC	BECAME AWARE OF THE GOBR THROUGH "WORD OF MOUTH." TWO ATF AGENTS MADE IT CLEAR TO [REDACTED] THAT THE GOBR WAS ANTI-BLACK. THESE AGENTS STATED THAT [REDACTED] SHOULD BE OFFENDED BY SOME OF THE ACTIVITIES THAT TOOK PLACE AT THE GOBR.
[REDACTED]	ATF [REDACTED]	84	HOUSTON	TX	FROM [REDACTED] A BUNCH OF WHITE AGENTS GETTING TOGETHER AND PARTYING
[REDACTED]	ATF [REDACTED]	85	FALLS CHURCH	VA	FISHING, RAFTING AND BEER DRINKING
[REDACTED]	ATF [REDACTED]	79	ATLANTA	GA	WHITE AGENTS GETTING TOGETHER TO SOCIALIZE. HE LATER HEARD THAT ATTENDEES WENT THERE TO GET DRUNK AND TO PARTICIPATE IN GENERAL ACTS OF STUPIDITY.

Department of the Treasury  
Office of Inspector General  
Office of Investigations

Results of the Management Query of Minority Managers  
(Sorted Alphabetically)  
Bureau: ATF

Date of Report: 02/16/96

Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
[REDACTED]	ATF [REDACTED]	81 [REDACTED]	NASHVILLE	TN WAS TOLD THAT THE EVENT CONSISTED OF CAMPING OUT. WHITE WATER RAFTING TRIPS, PLAYING VARIOUS SPORTS AND SIMILAR ACTIVITS. THE ONLY NEGATIVE CONNOTATION TO THE EVENT HE HEARD ABOUT WAS EXCESSIVE USE OF ALCOHOL AND ROWDY BEHAVIOR	
[REDACTED]	ATF [REDACTED]	88 [REDACTED]	WILMINGTON	NC HE HAD A SUBORDINATE, [REDACTED] WHO ATTENDED THE GOBR EACH YEAR. [REDACTED] STATED HE HAD GOOD TIME AT GOBR. [REDACTED] HEARD THERE WAS ALOT OF DRINGKING.	
[REDACTED]	ATF [REDACTED]	80 [REDACTED]			GOBR FOR FISHING, COOKOUT AND DRINKING
Number of interviews by Bureau:		12			NO DEROGATORY INFORMATION

Department of the Treasury  
Office of Inspector General  
Office of Investigations

Results of the Management Query of Minority Managers  
(Sorted Alphabetically)  
Bureau: USSS

Date of Report: 02/16/96

Last Name First Name	Agency/Grade Title/Position Current POD	Year Became Aware of Roundup	Place of Duty (POD) when they heard of Roundup	What they heard about Roundup	What did Management do about Roundup (if anything)
[REDACTED]	USSS [REDACTED]	81	ATLANTA	GA	HIS UNDERSTANDING OF THE GOBR WAS A FISHING, HUNTING, COOKOUT AND DRINKING BERR.
[REDACTED]	USSS [REDACTED]	88			GETTING TOGETHER AND DRINKING BEER
[REDACTED]	USSS [REDACTED]	88	WASHINGTON	DC	GET TOGETHER FOR AN OUTING
[REDACTED]	USSS [REDACTED]	89			BECAME AWARE OF GOBR 1989. HE IS AN AFRICAN AMERICAN AND NEVER HEARD ANYTHING NEGATIVE ABOUT THE GOBR.

Number of Interviews by Bureau: 4

Total number of personnel interviewed:

**EXHIBITS 51 THRU 55**

Exh A

"GOOD 'OL BOYS" 1995

19 May, 1995

Investigative report by [REDACTED] the Gadsden Minutemen and other concerned parties.

The "Good 'Ol Boys" outing is held annually at Ocoee, TN. Based on interviews with inside sources, this event is organized by Gene Rightmeyer (BATF-TN) and [REDACTED]. This event has a history of being an all white get-together, it also has a history, to which there is documentation/witnesses, of being very racist.

The "Good 'Ol Boys" attracts agents from various government agencies such as ATF, DEA, Secret Service, and other law enforcement agencies. I also overheard conversation that a member/members of the CIA had attended this year's event, I do not know if that is correct.

This event usually goes for several days, and includes various activities. Flyers (invitations) are sent out to selected people, for a fee you receive an arm band which allows you entrance to the campground, free beer from a beer truck within the camp, a tee-shirt, a cap and a beer mug.

I learned of this event several months ago and decide to investigate for myself. I arrived at the outer edges of the camp at approximately 11:00 EST, Friday, May 19, 1995, placed a police ball cap on, grabbed my camera, and walked in via a rear, unguarded entrance. I was not questioned as to whether or not I was suppose to be there, however towards the end of my visit, I felt that I was about to be asked to leave.

①

... results stating their agencies name and where they were from. Most of the agents were too drunk to carry on conversations with, however I did speak with two agents, who I do not know but were wearing arm bands, who were highly upset about quota "nigger" ATF agents that were brought in by a white agent the night before (Thursday night), these agents said that they would not attend the event in the future because of the "niggers" being allowed in. All around the main campground I heard racial slurs and saw racial tee-shirts and other items, such as a small yellow business card that reads "nigger hunting license". I also overheard registered guests (wearing arm bands) talking about "those niggers" that were in the camp on the previous night. The conversation was, that an altercation almost occurred between the black agents and several white agents. I also witnessed a poker game in process between several other "guests", with, what appeared to be, a large sum of money on the table. Several people had tee-shirts depicting O.J. Simpson on a hanging gallows. Throughout my approximate 2 hour stay, I did not see any black people in the crowd of approximately 100 people and heard numerous racial slurs and dissatisfaction that their annual gathering had, for the first time, allowed "niggers" to attend.

I took several pictures, several of various anonymous law enforcement personnel, one of a man wearing a Birmingham Narcotics tee shirt, one of a man with a shirt marked Metro Police, several shots of Gene Rightmeyer, who I recognized from previous pictures and video, with a beer mug and what appears to be a bottle of whiskey in a paper bag, several pictures of the campsite, including the lite beer truck, one picture of a North Carolina Fraternal Order of Police vehicle, license plate # [redacted] one of an anonymous GMC van, Va. plate [redacted] several of unnamed people wearing tee-shirts with the words "Join Gans II" and "Pigman", and one of the welcome sign to the entrance of "Good 'Ol Boys".

I did meet some people in the crowd who appeared to be very decent individuals, however, the majority of whom I spoke with seemed to be very racist, judging from my conversations with them. The only illegal actions I witnessed was the open gambling and the guests I witnessed driving from the campground after drinking (drunk?)

I have viewed, and have in my possession, video taken at past "Good 'Ol Boys" that shows a handmade cardboard sign stating "Nigger Check Point", "Any Niggers In That Car", "17 cents lb.", with sketches of black people. This video also shows an anonymous person showing off several twenty dollar bills that he had won playing "chicken-shit bingo", which is a form of gambling utilizing a game board/cage and

(2)



I also have a statement from an eye-witness of a past "Good 'Ol Boys" outing that had a contest called "redneck of the year", one skit for this event had an ATF agent dressed in a KKK uniform holding another ATF agent, with face blacked out, on a chain. The skit was portraying a master/slave relationship. The agent dressed as the Klan member pretended to force his "slave" to perform oral sex with a fake penis he had hid under his Klan robe.

Again, this event is organized by agents of the ATF and other law enforcement agencies, for law enforcement personnel. From my personal observations, most of these people are not the caliber of individuals we should trust with upholding and enforcing the law. No person, regardless of his position, is above the law. I believe laws and morals should be upheld off duty as well as on duty. Very few citizens know that this event takes place.

An add to this statement; On the evening of Friday May 19, I was informed that CNN Capital Gang showed video of law enforcement agents acting crazy and wild inside a hotel, these officers were in town to pay respects to slain officers, one of the persons, in the video, was wearing a "Good 'Ol Boys" tee-shirt. maybe this officer should be interviewed about the annual "Good 'Ol Boys" get together. I have not, as yet, viewed this video released from CNN.

The above statements are the result of an investigation into alleged racism inside the ATF by myself and other interested parties. I ask that these events be investigated and this information be released to the public. All witnesses to the events detailed in this statement are prepared to back all claims.

<signed>

[REDACTED]

[REDACTED]

3

DATE:

MSG.#

Exh B

NO. PAGES \_\_\_\_\_ (INCLUDING COVER SHEET)

**SPECIAL AGENT IN CHARGE  
BIRMINGHAM FIELD DIVISION  
BUREAU OF ALCOHOL, TOBACCO AND  
FIREARMS**



TO: [REDACTED] NASHVILLE

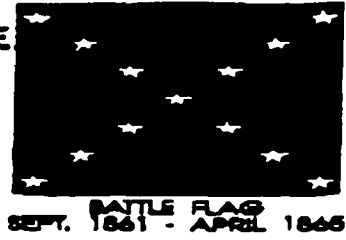
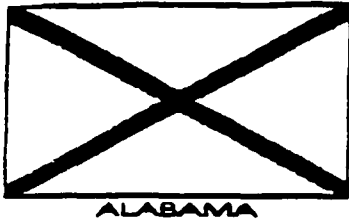
FROM: [REDACTED] BIRMINGHAM

SUBJECT: MILITIA NEWSLETTER REFERENCE "GOOD 'OL BOYS"

REMARKS: ITEMS MARKED WITH "\*" ARE REFERENCE "GOOD 'OL BOYS"  
THIS MEMO HAS ALSO BEEN SENT TO [REDACTED] INTERNAL AFFAIRS, AND  
INTELLIGENCE DIVISION, AS WELL AS LOCAL FOR SAC.

2121 EIGHTH AVENUE N, ROOM 725





FEDERAL AGENT IN CHARGE  
MONTGOMERY, ALABAMA

JUN 1 1995 3:09 PM

FEDERAL BUREAU OF INVESTIGATION  
UNITED STATES DEPARTMENT OF JUSTICE

GADSDEN

MINUTEMEN

# NEWSLETTER

8th Issue

June 95

### The American Crisis

Say not that this is revenge, call it rather the soft resentment of a suffering people, who having no object in view but the GOOD OF ALL, have staked their OWN ALL upon a seemingly doubtful event. Yet it is folly to argue against determined hardness; eloquence may strike the ear, and the language of sorrow draw forth the tear of compassion, but nothing can reach the heart that is steeled with prejudice.

There are cases which cannot be overdone by language, and this is one. There are persons, too, who see not the full extent of the evil which threatens them; they solace themselves with hope that the enemy, if he succeed, will be merciful. It is madness of folly, to expect mercy from those who refuse to do justice; and even mercy, where conquest is the object, is only a trick of war; the cunning of the fox is as murderous as the violence of the wolf, and we ought to guard equally against both.

Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph. What we obtain too cheap, we esteem to lightly----'Tis dearness only that gives everything its value. Heaven knows how to put a proper price upon its goods; and it would be strange indeed, if so celestial an article as freedom should not be highly rated.

Thomas Paine 1776

Gadsden Minutemen  
P.O. Box 2  
Attalla, Alabama 35954

24 Hour Fax

Internet Address:

Emergency Beeper #



## Face to Face

On Friday night, May 26, [REDACTED] and I were the guests of [REDACTED] of WAAX radio, on a special evening edition of [REDACTED] normally morning-time talk show. The show was to provide an opportunity for friends and enemies of the militia to address militia issues in depth and face to face with us troublemakers. We are most grateful for the invitation.

The show, in our minds at least, was a howling success. It sounds very strange, but the only disappointing aspect was that our opponents did not make much of an appearance. We were truly hoping to meet our detractors and doubters, "face to face," to answer their concerns with logic and the Constitution.

Few concerns were raised, so [REDACTED] and I took the opportunity to address unilaterally as many of the concerns as we could remember that had previously been raised.

We were asked why the militia is forming all over the country. I related the statement given by [REDACTED] of Jews for the Preservation of Firearms Ownership: the militia was the T-cells of the body politic, much like the T-cells of the human immune system which rally to an infection of the body.

Questioned further, I likened the militia to the actions of a cornered animal. When you corner and threaten any animal, it will show its teeth. We are the teeth of a citizenry of free men and women. As a free people we are threatened and cornered, and our teeth are showing. Liberty teeth.

We were asked if we would support [REDACTED]; we assured the phantom faxer, and [REDACTED] that [REDACTED] need only ask for anything that we could provide.

Otherwise, we heard from some of the UG (underground); we heard from some groups looking for a larger pack with which to ally themselves. We heard issues addressed, and good public servants praised. We addressed some of the proposed federal legislation.

We heard from individuals with serious expertise and knowledge, particularly concerning some of the more glaring discrepancies in the OK City bombing. One gentleman, near the end of the program, illustrated how the numbers and facts concerning the explosion puts the lie to the story being told us by the government and the national media.

Though not apparent to the listening public, we also heard from several peace officers. Thank you, officers, for your off-line encouragement and on-target information. We do take note. Keep your powder dry.

A lady asked if she was welcome in the militia. I wanted to, but didn't respond "Only if you bring five ladies with you."

We addressed the law of the State of Alabama concerning the militia; we noted the statute invoking the posse comitatus, "armed and equipped as the occasion may require." We noted the statute which critics claim makes the militia "illegal" strictly does not apply to the unorganized militia, which is a creature of our own Constitutions and other separate statutes. We are brothers-in-arms to the National Guard, and are required by law to stand to the call of our governor.

Perhaps the best call of the night occurred at the end of the first hour, when a young soldier posed some questions about possible conflict between the militia and military. It was pointed out to him that for a soldier to be facing an unorganized militiaman, for instance to collect guns from his home, an illegal order must have been given. His oath to support and uphold the Constitution against all enemies foreign and domestic was noted, and [REDACTED] asked if he would obey or disobey an illegal order.

He stammered and hemmed and hawed, and finally granted that he would obey whatever order was given him. Just as [REDACTED] of the Birmingham FBI, a seemingly good man, said that he would do whatever he was told, forget the Constitution and his conscience.

Does anybody out there get it yet? We are in one hell of a mess.

[REDACTED]

C

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The ACLU has entered suit against [REDACTED] for opening his court with prayer and also for having a hand carved copy of The Ten Commandments on the wall in his courtroom. This case has received national media attention. [REDACTED] faces a long, hard fight, which will prove to be very expensive. The ACLU has deep pockets and will not stop until Christianity is taken out of our society. Our nation was founded on a belief in God, we cannot allow an honest, Christian judge to be harassed by an organization such as the ACLU. We ask that you please support [REDACTED] in his fight. Today it's the courtroom, tomorrow it will be your church.

If you wish to submit a monetary donation, please send to: [REDACTED] Defense Fund, P.O. Box 8222, Gadsden, Alabama 35902.

Our thanks go out to all of you who have stood behind and supported [REDACTED] in this important battle. We, the Gadsden Minutemen are proud to stand up for a man who stands up for God and His laws.

Gadsden Minutemen

We have heard talk, by various sources, about firearms being offered for sale to militia members by other individuals. These firearms have a very attractive price. I ask anyone who purchases a used firearm, whether you are a dealer or an individual, have your sheriff's department check the serial numbers BEFORE you buy. There are alot of stolen guns that are being bought and sold on a daily basis. DO NOT get "set-up". Your local sheriff's dept. will be happy to run the numbers, if you ask. The feds are looking for anything, at this point, to dis-credit the militia movement. We must continue to operate, as we always have, COMPLETELY LEGAL. If you come across anyone who is attempting to deal in stolen merchandise, report it immediately to the proper authorities. Be extra careful of firearms that are subject to NFA rules (such as machine guns). Illegal possession of these weapons carry a 10 year sentence and \$10,000 fine. You can legally possess these weapons only after completing the proper paperwork and background checks, and paying the proper taxes on these weapons. If you come across any "under-the-table" class 3 weapons "deals", report it to the ATF, as bad as I hate to say that.

Gadsden Minutemen

Our meeting for June will be incorporated with a campout/target shoot/ social event. This is planned for the weekend of June 17-18, at a location in Websters Chapel (see enclosed map). For those who wish to arrive on Friday (June 16), please do not arrive any earlier than 5:00 pm. All members, friends and family are invited. You will be responsible for your own food and drink. A special invitation goes out to [REDACTED] and the whole staff of the SPLC (Southern Professional Liars Center). We ask [REDACTED] to come on out and get involved with our "paramilitary" training. If you have any questions regarding this event, please call [REDACTED]-home, [REDACTED]-office or [REDACTED]. All legal weapons are permitted, any class 3 Weapons must be accompanied with proper paperwork. Please do not show up with no drivers license in a rented Ryder truck.

Our thanks go out to all the local law enforcement and local government officials who have supported our right to exist as a citizens militia. We continue to offer our support and help should we be needed. The officers I have spoken with find it comforting to know that there are people, such as ourselves, who are legally armed at all times, ready to defend the safety of all citizens or lend our help to law enforcement, should the situation arise.

### How Congress Spends Your Money

\$ 375,000 to renovate the House of Representatives' beauty shop  
\$ 7 million to study air pollution in Mexico City  
\$ 6 million to search for life in outer space  
\$ 100,000 to study the sand on Waikiki Beach  
\$ 400,000 to study methane emissions from cows  
\$ 360,000 for staff at Congress's private health clubs  
\$ 28.5 million on salary increases for Members of Congress and their staff  
\$ 6 million for the National Seafood Council to teach people how to  
prepare fish  
\$ 107,000 to study the sexual preferences of the Japanese quail  
\$ 84,000 to study why people fall in love  
\$ 703,000 to study fish net entanglement  
\$ 250,000 to prevent wild pigs from attacking exotic plants in Hawaii  
\$ 240,000 to develop a weight-based technology for monitoring the  
moisture content of lumber  
\$ 37,000 to study the handling of animal manure and the development of  
resolution techniques in Michigan

Source: The Heritage Foundation

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The New York Times reported on May 22 that Wayne Lapierre (NRA) said that his organization favored congressional hearings into the scope and intent of the heavily armed "citizen militias" that are proliferating around the country. "We condemn hate groups, terrorist groups," Lapierre said. "We have never had anything to do with these paramilitary-type groups you see on television. That's not the National Rifle Association" He further went on to say that his characterization of agents as "jackbooted thugs" was a poor choice of language.

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In a live CNN interview on May 23 from the bombing site. [REDACTED], a mother who lost her kids in the blast, ask "where was the ATF" (during the explosion) "All 15 or 17 of their employees survived, and they're on the ninth floor. They had an option to go to work that day, and my kids didn't get that option. And we're just asking questions, we're not making accusations. We just want to know, and they're telling us 'Keep your mouth shut, don't talk about it.'"

[REDACTED] later retracted her statement on the G. Gordon Liddy show.

Taken from transcripts, interview by Gary Tuchman, CNN

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A recent "60 Minutes" interview, Attorney General Janet Reno said "Obviously I saw what happened and knowing what happened, I would not do it again," speaking of the fiery end to the Branch Davidian standoff. Ron Noble (Treasury Dept.) said it was a mistake to go ahead with the initial raid. Dr. Alan Stone, a Harvard professor of psychiatry and law who investigated the operation for the Justice Department, said it was mishandled from start to finish. "There was incredible stupidity, incompetence and provocation by a reckless and over-reaching federal agency," he said.

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The Gadsden Minutemen would like to welcome a new unit to the militia movement. The Appalachian Militia, which has approximately 20 members, is located in the Blount / St. Clair County area. The leader of the group is a long time friend of the movement, his men are well equipped and well trained. We truly thank you boys for the past support, keep the faith and keep your powder dry.

Code Name: Mountain Mafia  
-----

██████████ A True Political Prisoner  
Article from C.M.A.  
Civilian Military Assistance  
P.O. Box 3012, Decatur, Alabama 35602  
██████████

"The only thing necessary for the triumph of evil is for good men to do nothing."

- Edmund Burke -

Having been a member of this organization, I feel you are one who understands Mr. Burke's words. These are words I have believed and words I have lived by.

After being told in the spring of 1991 by the local FBI that they "wanted my ass", I have been the subject of intense scrutiny by federal agents. I count at least 7 and probably more undercover agents and informants who have been sent in to get information on me or to try to get me to do something illegal. I put up with being followed, having my telephone tapped, having associates and people I thought were friends coming to me wired.

In September of 1992 I bought some surplus night vision goggles at a gun show in Huntsville. I borrowed the money to buy them from ██████████ I asked a National Guard associate if he could help get manuals and let me know if they were stolen or had any problems. Working with CID and the National Guard over several months, trying to get some broken units repaired, it turns out they withheld information from me that these units were stolen. I was buying them to sell at gun shows, just like all the other equipment I've handled in the past.

The difference is that this time, I was set up. September, 1993, the feds arrested me, ██████████ and 4 other individuals who dealt in these goggles and charged us with conspiracy to steal and sell stolen equipment. All ██████████ had done was to loan me the money to buy units.

January we went to trial in federal court and after a 4 day trial, ██████████ and I were found guilty! ██████████ and I, our attorneys, even the prosecution were floored! The defense obviously didn't get the point across to the jury that the guy we bought the goggles from (who turned government witness) and ██████████ and I were doing different things. ██████████ is faced with losing his Class III firearms license, his business, his house and up to 5 years in jail because he loaned me money. I'm facing losing my house, never being able to legally own a gun again, plus 5 years.

Tom Posey

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██████████ is currently serving time at Talladega Federal Prison, he has about 3 months to go before being released to a halfway house. He is currently working on an appeal, however his time has almost been served. During the Contra war in Nicaragua, Posey, a Marine veteran of Vietnam, decided to help. A local group of veterans formed Civilian Military Assistance (CMA) to help the Contras fight the communists in 1983. They paid for food, medicine, clothing and transportation out of their own pockets. In 1984, two of ██████████ friends were shot down in a helicopter over Nicaragua. The Sandinista regime claimed the CMA members were CIA mercenaries. But the national exposure had an unexpected benefit. CMA began receiving private donations and was able to furnish \$16 million in non-military aid.  
(continued next page)

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[redacted] continued)

By 1991, CMA had stopped operating. [redacted] made a living by trading in military surplus equipment. This was an ideal situation for [redacted] considering his background and contacts. [redacted] credentials didn't go unnoticed by FBI Special Agent [redacted].

The 1991 Crime Bill contained a provision allowing payment to informants. [redacted] wanted [redacted] as an informant and told him the FBI "wanted his ass."

[redacted] was later arrested on trumped up charges as the preceding statement by [redacted] explains. One associate-turned-federal-snitch was paid \$2000 a month plus expenses for three years to stay close to him and to try to get him to do something illegal. At least eight, possibly more, federal undercover agents approached him to ask him to do something illegal, each time [redacted] reported this to the FBI. It is estimated that about \$2 million was spent in the government's efforts to "get his ass."

Why? Is it because he refused to become a federal snitch as [redacted] refused? Is it because he headed a private organization, the CMA, that helped the Contras with food, medicine, and clothing in Nicaragua during that war? Is it because he knew, as he related to a UPI reporter [redacted] (now CNN), that George Bush was involved in Iran/Contra? Is someone still looking for a fall guy here? Did someone need to discredit [redacted] for some reason? Is it illegal to be concerned about the direction of your country?

Although [redacted] has already served most of his time, we urge everyone to call and/or write your Senators and Congressmen and demand that full pardons be granted to [redacted] and [redacted]. Please write the governor of Alabama also.

Also write [redacted] and offer your support, send mail to: [redacted]

If you are interested in the complete story about [redacted] (the truth), we will be glad to provide you with copies of what we have. Also, SOF magazine, April 1995, has a story about [redacted].

[redacted] we, the Gadsden Minutemen, appreciate your past service to your country and for being a true Patriot. Hang in there and keep the faith.

A brief chronology to the above article: September 1992, [redacted] contacted [redacted] Alabama National Guard, to do a computer check to see if NVG's are stolen. Also asked for manuals to repair defective units. Late September 1992, FBI is checking out of Montgomery to see if NVG's stolen (FBI testimony at trial). Not on computer at that time. Late October 1992, NVG's finally on computer about being stolen from Ft. Hood. [redacted] not told his goggles are stolen. Late November 1992, [redacted] contacts [redacted] saying he can repair NVG's [redacted] has in his possession - as opposed to getting [redacted] manuals. [redacted] gives 5 pairs of NVG's to repair. No repair done. [redacted] not advised that these units stolen. September 1993, [redacted] arrested for conspiracy to steal NVG's. January 1994, [redacted] found guilty in federal court in Montgomery.

ATTENTION !!

Sons of Confederate Veterans, new chapter forming in St. Clair County.  
For more information contact Rich Hayward [redacted]

(X)



## Personal Messages

M.G.-- appreciate the info, keep the [redacted] fight alive  
B.J.-- our friend is doing ok, still in the struggle  
B. in N.J.-- glad to have you aboard  
Friend in Kansas-- thanks for the info on Mr.P. & Mr.W.  
L.T.-- need that report on M.D.  
T.P.-- keep the faith, only short time left  
C.G.-- need personal situation report  
D.N.-- what about our meeting  
Local friend-- appreciate the tip from the wire  
Calif. friend-- appreciate you spreading the word

-----  
The Gadsden Minutemen will respond to all inquiries, no identification is required, you can call or write, look for the answer or comment in the personals, you will know if it's intended for you.  
-----

### A Response to the Attack on Patriots By Senator Charles Duke May 1, 1995 District 9, Colorado

It is said by some that the flak is the heaviest when you are close to the target. Judging from some of the flak, we must be approaching ground zero. At a Second Amendment rally recently, I asked a question of the group attending whether anyone there thought the Oklahoma bombing might be as a result of some action of the federal government. Nearly everyone there thought so.

Perhaps it was not proper to ask the question so soon after the bombing. In normal times, almost everyone would have agreed with the question as well. There are also those who, perhaps again, correctly, said I should have had some proof before even asking the question. Certainly the perceived misdeeds, if any, are not perpetrated by the entire government.

Those who attended the rally, and many who called me after April 19, do not actually need any further proof to believe some in the government might be capable of killing innocent civilians. They believe it has already happened. The Randy Weaver incident at Ruby Ridge, Idaho, is not even in dispute by the government. On that site, in April 1992, a government-paid sniper killed Vicky weaver, Randy's wife, while holding her child in her arms. Then the Weaver's other son was shot in the back by the same sniper.

Randy Weaver was arrested and tried. Was he convicted of even a single crime? No, the charges appear to have been bogus. He returned to Ruby Ridge a free man, but he had lost a wife and a son at the hands of the government. The sniper and the manager who ordered the hit have received only minimal discipline, much less being arrested.

There are many beyond those at the rally who believe the incineration of innocent women and children at Mt. Carmel, near Waco, Texas, was a deliberate government act. As near as I can tell, the biggest crime the Branch Davidians committed was in refusing to come out of the compound and surrender to authorities who had already killed some in their midst. Whether you agree with the cult's right to practice religion as they please or not, these peaceful people had committed no crimes. Is incineration an appropriate response to those who refuse to yield to a hostile intrusion? I hardly think so. Eighty-six innocent people lost their lives at the hands of the government.

(continued, next page)

(Sen. Duke--continued)

Information published in the Los Angeles Times and the New York Times newspapers tell the story of an FBI informer, who, wearing a wireless mike, held conversations with members of the FBI. These recorded conversations indicate the FBI helped plan and build the World Trade Center bomb. The alleged stated plan was to, at the last minute, substitute harmless powder for the bomb powder and thwart the deed. For reasons that are unexplained for certain, the substitute order never happened. The testimony in the trial of the bombers clearly indicates the FBI could have stopped the Trade Center bombing, but did not.

There are many unanswered questions about the Oklahoma City bombing. Based on the current reaction, these questions will not even be asked until the answers are well in hand. If the current propaganda program to discredit the patriots is successful at permanently silencing disagreement, it's possible we will never know the truth about Oklahoma City.

Certainly I align myself with those who consider themselves "patriots", which the American Heritage Dictionary defines as "One who loves, supports, and defends his country." I place a further refinement that a true patriot is willing to take peaceful action to defend our country and Constitution.

There is no known connection whatever between patriots, Constitutionists, militia or Tenth Amendment supporters with any violent act in the country. What we do have is a woefully misguided belief that these groups are linked, along with all conservative talk show host in America, to violence. It is not surprising that those who want to silence dissension, those who would want to stop a movement aimed at de-centralizing government, those who want to consolidate federal power to make it stronger, would attempt this deception. It is surprising that even a few would allow themselves to be deceived by it. It is my hope Coloradans are smarter than that.

We still live in the United States of America. Only for the moment, we still have a Constitution and a Bill of Rights, both of which are designed to prohibit the kind of government crackdown that is about to happen. The Omnibus Terrorist Bill now before Congress did not have a snowball's chance in Hades of passing before Oklahoma City. Now its passage seems assured, having now garnered the necessary "bipartisan" support that brought us GATT, NAFTA, the Crime Bill, and HR 666, which nullifies the Fourth Amendment.

Your Bill of Rights is soon to be further destroyed. There are those who say protecting those rights is none of a State Senator's business, such as Colorado's Governor Roy Romer. But I swore an oath before God to uphold our Colorado and U.S. Constitutions when I took office. I will not apologize for defending them.

---

Senator Charles Duke can be reached at [REDACTED]  
Internet: [REDACTED] Duke writes a weekly column in Woodmen edition.

---

On April 26 edition of the "Intelligence Report", [REDACTED] (Retired FBI), stated that he didn't think we were being told the truth about what happened in Oklahoma City---about the bomb type, etc.

---

**IMPORTANT!!!, PLEASE READ AND RESPOND BY CALLING TO REPORT MILITIA ACTIVITY**

"The Southern Poverty Law Center is asking anyone with information about militia activity to call [REDACTED]. The center's Klanwatch project collects information about violent extremist groups, and sends reports to law enforcement agencies nationwide." Please do your part and call, I have. Several of our black members have called, but they would not return the calls. We ask all of you to keep calling until you get through. Offer your thanks to [REDACTED] and company for making us 3rd in the nation. SPLC placed this ad in the Montgomery Advertiser

(X)

## Interviews with witnesses from past "Good 'Ol Boys"

I have viewed and have in my possession, video taken at past "Good 'Ol Boys" that shows a handmade cardboard sign stating "Nigger Check Point" -- "Any Niggers In That car" -- "17 cents lb.", with sketches of black people. This video also shows an anonymous person showing off several twenty dollar bills that he had won playing "chicken-shit bingo", which is a form of gambling utilizing a game board/cage and live chickens.

Further, I have an eye-witness of a past "Good 'Ol boys" outing that had a contest called "redneck of the year", one skit for this event had an ATF agent dressed in a KKK uniform holding another ATF agent, with face blacked out, on a chain. The skit was portraying a master/slave relationship. The agent dressed as the "Klan" member pretended to force his "slave" to perform oral sex with a fake penis that was revealed from under his "klan" robe.

As an add to the above information; On the evening of Friday, May 19, I was informed that CNN "Capital Gang" showed video of law enforcement personnel who were involved in the Washington hotel incident, which allegedly involved officers harassing women, spraying fire extinguishers and sliding naked down a beer-slicked hotel escalator, one of the officers in the video was wearing a "Good 'Ol Boys" shirt. These officers were in town to attend a memorial ceremony for fellow officers. I have not personally witnessed this video segment. Maybe this officer should be questioned in regards to the "Good 'Ol Boys".

The above statements and eye-witness accounts are the result of an investigation on the matter of racism within the BATF. We ask that these events be fully investigated and all information released to the public. We are prepared to bring forth all witnesses, including myself, if this matter will be investigated properly, we can be contacted via the information provided on the cover page of this newsletter.

---

## Investigation of the Southern Poverty Law Center (SPLC)

We are requesting any information you may have on the Southern Poverty Law Center. We ask that all information be accurate and provide appropriate witnesses and documentation. It is our understanding that several cases may be pending against this organization due to defamation of certain individuals and groups who are involved in the militia movement. Again, we ask that all information be provided with proper documentation, we have always reported the facts and do not intend to print and/or pass along information that is not substantiated. All information will be passed to the proper people who are involved in any case. Please send any info to the addresses on the cover.

---

The above ad has been placed for the benefit of fellow patriots who are not members of the Gadsden Minutemen. The Gadsden Minutemen's position remains the same concerning SPLC. [REDACTED] has been a major asset in the growth of our organization. Membership continues to grow, many new members have expressed the idiocy of [REDACTED] has been the motivating factor to join our group. [REDACTED] WE CANNOT THANK YOU ENOUGH, please continue your public statements on the militia, and thank you for rating us in 3rd place in your report on the national militia movement. Let us also say that we, unlike [REDACTED] are in full support of our State and their position on chain gangs.

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investigative report by Jeff Randall, Gadsden Minutemen, and other parties

The "Good 'Ol Boys" outing is held annually at Ocoee, Tn. Based on my interviews with inside sources, this event is organized by Gene Rightmeyer (BATF-Tn.) and [REDACTED]. This event has a history of being an all-white get-together. It also has a history, to which there is documentation/witnesses, of being very racist.

The "Good 'Ol Boys" attracts agents from various government agencies such as ATF, DEA, Secret Service, and other law enforcement agencies. The event usually goes for several days and includes various activities. Flyers (invitations) are sent out to selected people, for a fee you receive an arm band which allows you entrance to the campground, free beer from a beer truck within the camp, a tee-shirt, a cap and a beer mug.

I learned of this event several months ago and decided to investigate for myself. I arrived at the outer edges of the camp at approximately 11:00 a.m. EST, Friday May 19, 1995. I placed a "police" cap on, grabbed my camera and walked in via a rear unguarded entrance. I was not questioned as to whether or not I was suppose to be there, however, towards the end of my visit, I felt that I was about to be asked to leave.

Inside, I blended in and met people from all agencies, some of which wore tee-shirts stating their agencies name and where they were from. Several of the people were too drunk to carry on conversations with, however I did speak with two agents, whom I did not know, but were wearing arm bands. These agents were highly upset about quote "nigger" ATF agents that were brought in by a white ATF agent the previous night (Thursday). These agents said that they would not attend the event in the future because of the "niggers" being allowed in. All around the main campground (center of camp) I heard racial slurs and saw racial tee-shirts and other items, one being a small yellow card that reads "nigger hunting license". I also overheard guests (wearing arm bands) talking about "those niggers" that were in the camp on the previous night. The conversation was, that an altercation almost occurred between various agents due to the blacks being in the camp. I also witnessed a poker game in process between several other "guests", with, what appeared to be a large sum of money on the table and exchanging hands. Several people were wearing tee-shirts depicting O.J. Simpson on a hanging gallows. Throughout my approximate 2 hour stay, I did not see any black people in the crowd of approximately 300 people. During this time I heard numerous racial slurs and dissatisfaction that their annual gathering had, for the first time, allowed "niggers" to attend.

I took several pictures, several of various anonymous law enforcement personnel, one of a man wearing a Birmingham Narcotics tee-shirt, one of a man marked Metro Police, several shots of Gene Rightmeyer, whom I recognized from previous pictures and video, with a beer mug and what appeared to be a bottle of whiskey in a paper bag, several pictures of the campsite, including the Lite Beer truck, one picture of a North Carolina fraternal order of police vehicle, license plate # [REDACTED] one of an anonymous GMC van, Tn. license plate # [REDACTED] several of unnamed people wearing tee-shirts with the words "Young Guns II" and "Pigman", and one of the welcome sign to the entrance of "Good 'Ol Boys".

I did meet some people (agents) in the crowd who appeared to be very decent individuals, however, the majority of whom I spoke with, seemed to be very racist, judging from my conversations with them. The only illegal actions I witnessed was the open gambling and the guests I witnessed driving from the campground after drinking (drunk?).

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⑪

The Requirements of Freedom  
Article by Reverend Jim Gibson

"So you shall keep the commandments of the Lord your God, by walking in his ways...and you shall bless the Lord your God for the good land he has given you"  
[Deuteronomy 8:7, 10]

Too many of us take America and her liberties for granted, even as we take our fabulous standard of living for granted. Few of us face up to the requirements of freedom, and too few of us pause at any given time to ask, "from whence came our rights and our liberties, and how can we preserve them unstained by greed or betrayal?"

Freedom is not something handed down by families or governments. It is not something born of historic documents. Freedom is like a garden that must be fed and watered, loved and protected. Freedom like good gardens, is the result of thoughtful, earnest work - work that must be done year by year, generation by generation. And the great enemy of both gardens and freedom is neglect.

History shows that it is difficult and costly to gain freedom, but it is frighteningly difficult to regain it.

The people of Israel learned that lesson long ago. Under the heavy hand of Egypt's pharaoh they learned the preciousness of liberty. To regain it, they made their bitter trek across the wilderness. A whole generation died in the process. Finally, after such suffering and many battles, they won for themselves the land promised them. They loved their new freedom - enjoyed it - made laws to protect it - and then lost it. When the pleasures and pleasant things of life became of more value than morals and ethics, justice and mercy, prayer and faithful worship, their freedom left, and they became slaves in Babylon. They neglected freedom - failed to meet its requirements - and lost it.

Will it be any different with us as we prepare to celebrate another national birthday this summer? Our ancestors braved the wrath of rulers and ruling class, angry seas and hostile wilderness, to gain freedom. We truly do not know the price they paid, cause none of us have left family and homeland to sail for months on leaky ships and to find a homeless stretch of shore and forest that had to be tamed before we could call it home. Our ancestors were determined to be free, and they asked for no quarters in their struggle.

The years in which we live are filled with dangers - not merely from without, but from within. Nations usually rot out before they are conquered by others. And so I'd like to list some of the things which I believe can keep us from rot and rust, and so help us to protect the freedoms we now so carelessly enjoy. And so I submit the following Requirements of Freedom:

(1.) Integrity. Unless honesty lives as a vital force in each of us, our nation is doomed. A republic cannot exist, and freedom will not, in the midst of a people to whom the Ten Commandments are mere words. Our way of life demands integrity - high and trustworthy character on the part of each of us, and unless we can produce it in the vast majority of our people, our days as a nation are numbered.

(2.) Unity. America is a diverse nation, made up of diverse people, from diverse areas of the world and living under diverse climates and conditions. Yet, we must be the United States. Unity is the very blood of our republic, and without it, life cannot exist. Sameness we do not need. Unity we must have.

(3.) The right of the individual. The general good must never be purchased through the abuse of the individual or the ignoring of his rights in the court of Christian justice. When governments rob individuals of rights in the name of the general good, it is only a matter of time until there are no rights.

(see freedom, next page)



(freedom, continued)

(4.) Just laws justly applied to all.

(5.) Compassion. All commandments must be accompanied by compassion. Justice must be forever tempered by mercy. Law must never be far from that which God calls Love.

(6.) Work. Our country is built on a person's right to work. No one has the right to prevent a person from working when he wants to work and has contracted with someone who will employ him. Nor is labor merely a right. Scripture attests that for those who are able, it is a responsibility: "If a man will not work, he shall not eat" [2. Thessalonians 3:10]

(7.) Vigilance. Everything that works needs attention, whether it's a tractor, an automobile, a washing machine, or a state. Everything tends to get out-of-fix- - to run down, to weaken, to lose power, to lose efficiency. Freedom is no exception. Above all things, it demands vigilance. Without constant attention to trends and ends and means, no state can remain secure.

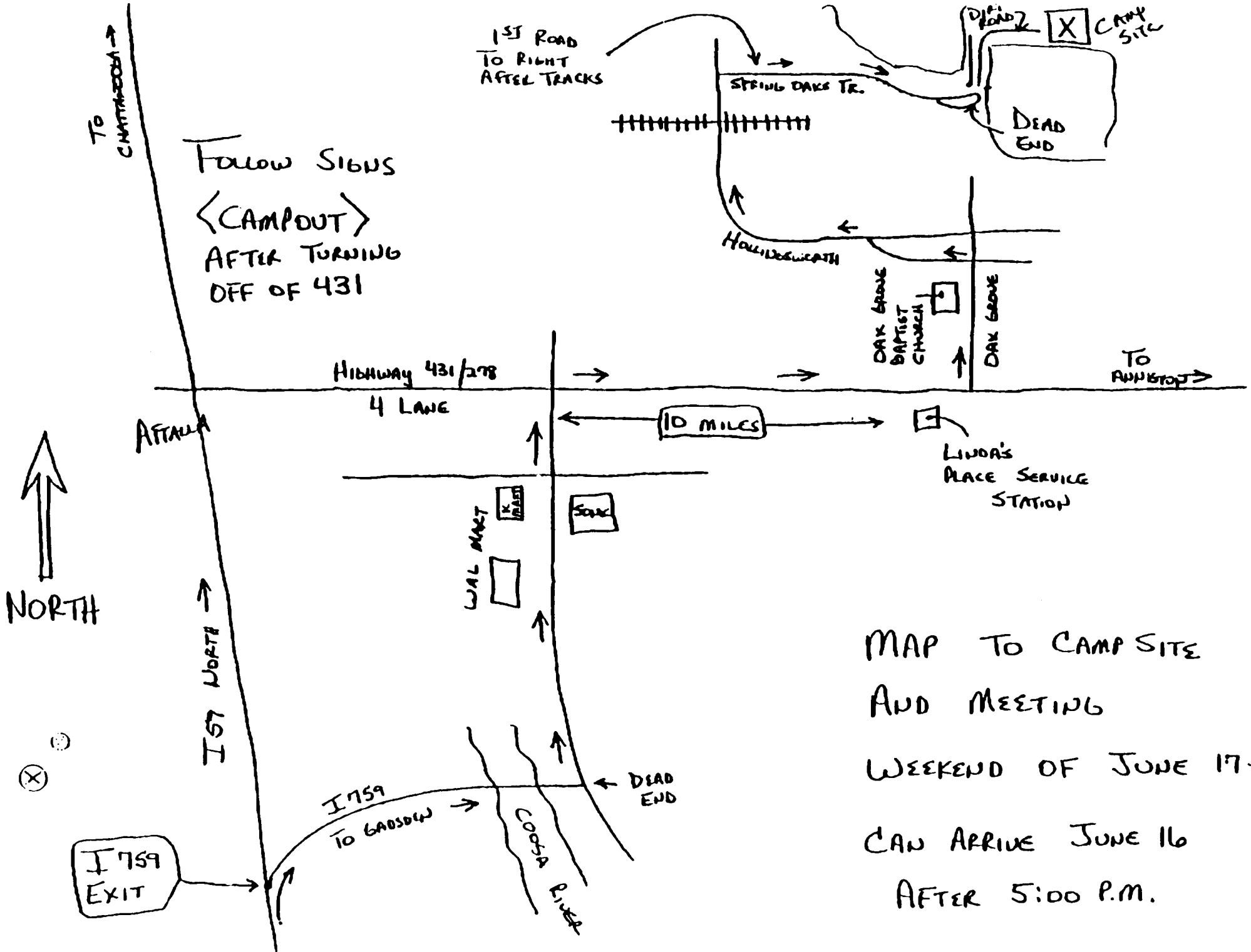
Many people fear personal responsibility, and most want to live by absolute authorities: it saves them from having to make up their own minds and live with the results of personal decisions. But a republic demands that we make up our own minds - that each citizen learn the facts, ponder them, and reach his own conclusions. A republic is meaningless if it does not mean freedom from any source that makes our minds for us.

Of course we believe that God has a right to say to us, "You must." But that is not the way God speaks to any of us. We are free to climb to Heaven if we so desire; but we are also free to sink into the depths of Hell.

As I face another July 4th, I wonder how many more will be observed in the years ahead, Perhaps not too many - unless more Americans stop taking freedom for granted and start meeting the requirements which freedom demands of all who would live under God in the fellowship of a free society.

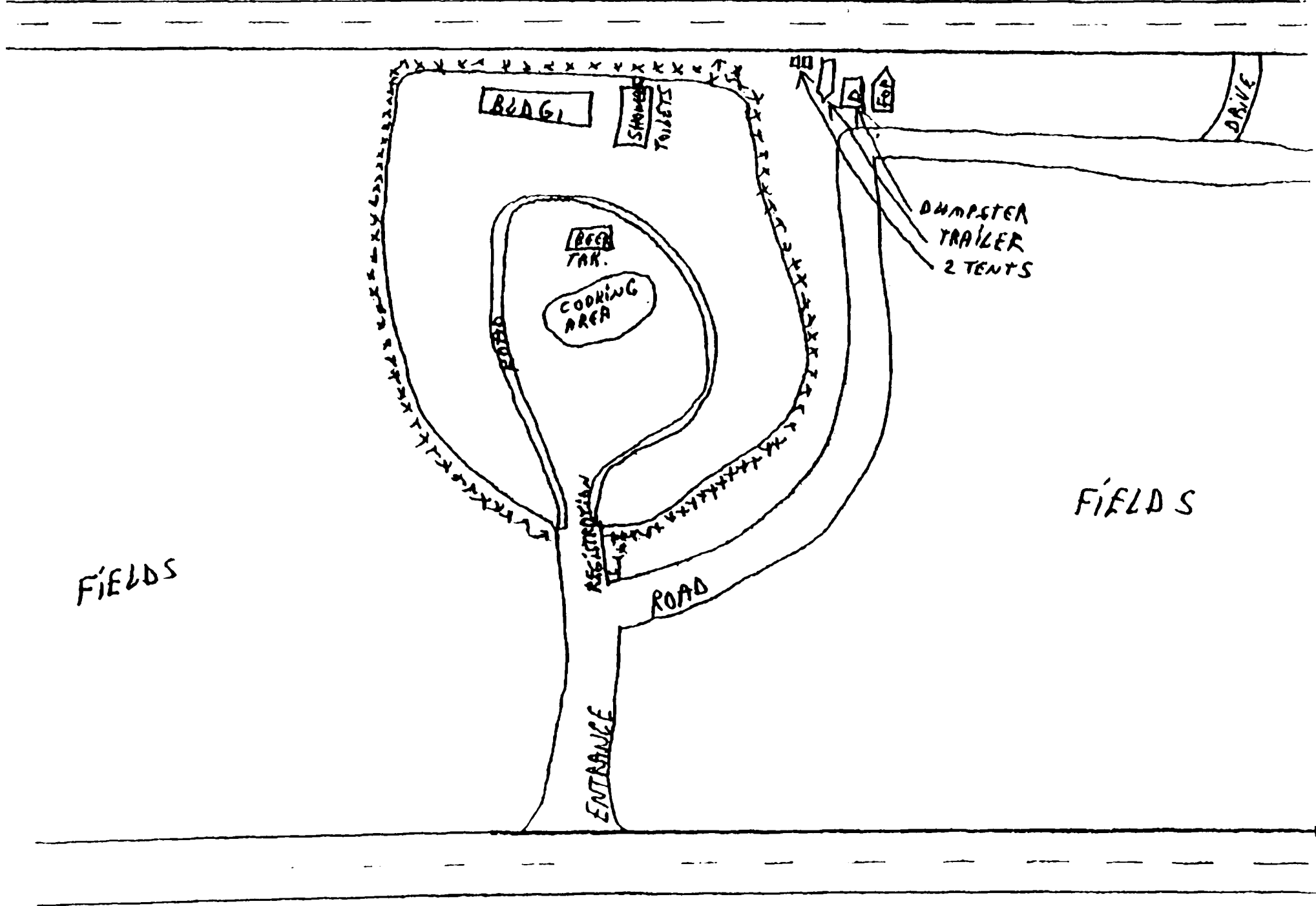
### The Last Word

As you have probably noticed, our newsletter style has changed, we are attempting to bring more real news to you than the usual froth-at-the-mouth letters and insults we have become so famous for. Don't worry, we are not following in Wayne-I-apologize-Lapierre's (NRA) footsteps and backing off of any previously made statements. The fact of the matter is, we have been on the federal jack-booted-thug agencies like white on rice for the past year trying to get them to respond, argue and attempt to prove their side of the cases that we have brought to their attention. No matter how hard we try, they seem to want to stay clear of us "crazy Alabama militia boys." The Gestapo agencies aren't the only ones who are avoiding us, the ADL refused to debate us publicly on the [REDACTED] show, after viewing their thirty minutes of fame on a later show, I could see why they would not. [REDACTED] made a pitiful response to our show. It would have been a feeding frenzy if we would have been able to have a real debate. [REDACTED] is another fine example, how many times have we asked for a heads up, public debate with him. Maybe [REDACTED] (FBI) told him, [REDACTED] you better run, boy, these people will chew your ass up with the facts", [REDACTED] should know. Well anyway, we're still here, we still support the same beliefs and statements we have made, and will always remain firm with absolutely NO backing off. Please stay safe, watch your backside, keep your powder dry and shout the truth till you're hoarse.



Follow Signs  
 <CAMPOUT>  
 AFTER TURNING  
 OFF OF 431

MAP TO CAMP SITE  
 AND MEETING  
 WEEKEND OF JUNE 17+18  
 CAN ARRIVE JUNE 16  
 AFTER 5:00 P.M.



FIELDS

FIELDS

FIELDS



JUN-02-1995 10:57

BIRMINGHAM FIELD DIV

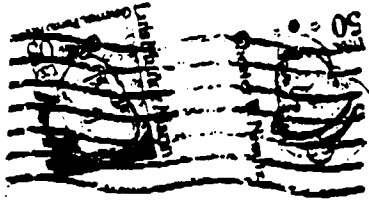


SPECIAL AGENT IN CHARGE  
BIRMINGHAM, ALABAMA

95 JUN -1 PM 3:09

BUREAU OF ATF

CRAIG VALENTICK---BATF  
2121 8th AVE N  
BHAM AL 35203



GMM  
P.O. Box 2  
Attalla, Alabama 35954



←--- Who is this man?

Robert Rodriguez, undercover ATF agent who tried to get access to call off the ill-conceived raid, was made scapegoat. He's now the first agent to ever sue the BATF. In photo he is escorted to Devillane's trial in San Antonio by case agent Davy Aguilera, left, and unidentified agent at right, who sat in press section of court with burp gun under his trench coat. Photo: Bob Owen

ST 10 101



SPECIAL AGENT IN CHARGE  
BIRMINGHAM, ALABAMA

95 JUN -1 PM 3:09

BUREAU OF ATF



DON SUNDQUIST  
GOVERNOR

TENNESSEE BUREAU OF INVESTIGATION

1148 Foster Avenue  
Nashville, Tennessee 37210-4406  
615-741-0430  
FAX 615-741-4788  
TDD 615-741-0430



LARRY WALLACE  
DIRECTOR

October 11, 1995

[REDACTED]  
Bureau of Alcohol, Tobacco and Firearms  
215 Centerview Drive, Suite 215  
Brentwood, Tennessee 37027

Dear [REDACTED]

I am enclosing a letter dated September 19, 1995, to Senator Fred Thompson. A copy of the letter was just received by TBI. [REDACTED] was talking with Agent [REDACTED] and Agent [REDACTED] requested a copy since he was mentioned specifically in the letter. A copy was faxed to [REDACTED] so he could discuss the situation with [REDACTED] and I wanted to forward you a copy since your agents were mentioned in the letter.

I hope you enjoyed your trip and, as always, if there is anything we can do for you, please do not hesitate to contact me.

Sincerely,

*Larry Wallace*

Larry Wallace  
Director

LW/[REDACTED]

XC: [REDACTED]

TBI Case File #80-193-NA

Per [REDACTED]  
this letter was  
send to IA

[REDACTED] 10/19/95

Sept 19, 1995

The Honorable Fred Thompson  
U. S. Senator - Tennessee

Dear Sir,

[REDACTED] of the Tennessee Bureau of Investigation attended the 'GOOD OLD BOYS ROUND UP' in Polk County near Benton, TN this year, with [REDACTED]. They did not register and there is no record of their attendance. The FBI investigation that followed [ordered by Governor Don Sundquist to learn the state law enforcement personnel that attended] was therefore, a full blown COVER UP!!! It was a deliberate, skimpy, investigational Governor Sundquist was DECEIVED by [REDACTED] did NOT inform the governor that he went to the ROUND UP on Friday or Saturday. [REDACTED] and, himself, attended!!! He stopped by to visit friends and to 'politic', before driving to Athens, TN. [REDACTED] has also attended the ROUND UP in past years [REDACTED] ATF agent [REDACTED] and [REDACTED] may have grilled and given a steak to [REDACTED].

The FBI investigation only reported to Governor Sundquist that it had been learned that agents [REDACTED] and [REDACTED] had attended. Should [REDACTED] need a scapegoat or sacrifice offered, one of these will be 'tossed' out. Not reported was the fact that special agent [REDACTED] agents in charge [REDACTED] and [REDACTED] had attended. [REDACTED] and [REDACTED] conducted the investigation. When [REDACTED] was summoned to FBI headquarters in Nashville for an interview, after he had truthfully reported attending the 'ROUND UP', he saw [REDACTED] in the hall near [REDACTED] office. After [REDACTED] did not speak, [REDACTED] said, "Hello [REDACTED] what do you want me to tell them about you being there and me giving you a steak?" [REDACTED] - off guard and visibly shaken, replied - "Hi [REDACTED] well I guess you will just have tell what you have to tell!" [REDACTED] did a damage-assessment of his involvement. So far, he and his managers have contained and suppressed the facts of their attendance at the 'ROUND UP'. FBI agents in charge [REDACTED] and [REDACTED] said they were not at the 'ROUND UP', that they were at a tent 300 yards away, known as Grumpy's. In furtherance of this COVER UP, ATF agents in charge may have been contacted by [REDACTED] to learn who might have known of his brief presence at the 'ROUND UP'.

In addition to the lack of candor shown that is included above, [REDACTED] was quoted July 26, 1995 by The Commercial Appeal newspaper in Memphis, denying that "no FBI supervisors attended the 'GOOD OLD BOYS ROUND UP'". This was not true. Also, another high ranking official in the FBI, [REDACTED] attended the 'ROUND UP' in the years of 1987, 1988 when at that time he was [REDACTED].

[REDACTED] in his sworn and official capacity [REDACTED]

NOV-17-1995 09:35 FROM ATF NASHVILLE

TO

[REDACTED] P.28

[REDACTED] has either lied to, or deceived Governor Sundquist about most of, or all of the facts of this. He may have, in the course of this COVER UP, violated TCA 39-16-402 and TCA 39-16-503.

cc: The Commercial Appeal  
The Knoxville News-Sentinel

Names of TBI attendees by name and title,

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]

Witnesses:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

# Removal Notice



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Federal Reserve Bank of St. Louis

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SENATOR James I. McNally





OFFICE OF INSPECTION

DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

INCIDENT REPORT

EMPLOYEE(S) INVOLVED (Last name, First, Middle Initial)	TITLE(S)	STATIONED AT
UNKNOWN SA'S	Special Agents	NA
INFORMATION FURNISHED BY (Name and title)	DATE INFORMATION FORWARDED	INFORMATION FURNISHED VIA:
[REDACTED]	6/2/95	<input type="checkbox"/> IN PERSON <input checked="" type="checkbox"/> TWX
INFORMATION RECEIVED BY (01) (Name and title)	DATE INFORMATION RECEIVED (01)	<input checked="" type="checkbox"/> TELEPHONE <input type="checkbox"/> MAIL
[REDACTED]	FD 6/2/95	

DETAILS:

Every month for the past several months, [REDACTED] and [REDACTED] Birmingham Field Division, have received newsletters and other written propaganda generated by the Gadsden Minutemen, a prominent extremist militia group in Alabama. Because this material is typically very critical of ATF and often threatening to ATF employees, it is routinely forwarded to ATF Headquarters, Inspection, and the ATF Intelligence Division.

Attached is a copy of the most recent newsletter and propaganda material received by the Birmingham Field Division. Of particular concern is an article on page 10 entitled "Interviews with Witnesses from Past "Good 'Ol Boys" (Roundups). According to [REDACTED] Good "Ol Boy Roundups, though never ATF sponsored or sanctioned, are week-long get-togethers organized by mostly retired ATF agents and possibly attended by some active ATF agents. The core group of attendees and organizers reputedly engage in unruly and drunken behavior.

The author of the attached article wrote that he was in possession of a video tape depicting racist activities, and that he knew of someone who was a witness to more racist conduct.

Page 1 of 2

ACTION BY 01 (Initial)

- NO ACTION DEEMED NECESSARY. FILE IN EMPLOYEES INVESTIGATIVE FILE.
- AWAIT ACTION BY REPORTING OFFICE. FILE IN PENDING FOLDER.
- OPEN TORT CLAIM.  OPEN INTEGRITY FILE.  OPEN FORMAL ACCIDENT INVESTIGATION.

ABOVE INFORMATION FURNISHED TO [REDACTED] ON 6/5/95  
NAME AND TITLE - ATE EXECUTIVE DATE

OTHER (Specify) [REDACTED] 6/17/95 [REDACTED] 6/17/95

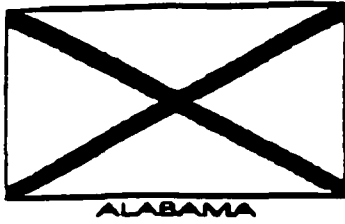
TITLE OF INVESTIGATION	INVESTIGATION NUMBER	DATE OPENED
	958236-8	6/12/95



On page 11, one of the key figures in the Minutemen, [REDACTED] wrote about his infiltration of what he said was a "whites only" Good 'Ol Boy Roundup in Ocoee, Tennessee on May 19, 1995. He wrote that he observed gambling, drunkenness, racist signs, symbols, and language among the attendees, who included Federal, State, and local law officers.

[REDACTED] said the Minutemen have routinely provided copies of their newsletters to the press, the electronic media, the NRA, and others.

ORIGIN: 20  
ACTIVITY: 923



FEDERAL AGENT IN CHARGE  
MONTGOMERY, ALABAMA  
JUN 1 1995 PM 3:09  
U S F ATF

# GADSDEN NEWS

# S LETTER

# MINUTEMEN

8th Issue

June 95

### The American Crisis

Say not that this is revenge, call it rather the soft resentment of a suffering people, who having no object in view but the GOOD OF ALL, have staked their OWN ALL upon a seemingly doubtful event. Yet it is folly to argue against determined hardness; eloquence may strike the ear, and the language of sorrow draw forth the tear of compassion, but nothing can reach the heart that is steeled with prejudice.

There are cases which cannot be overdone by language, and this is one. There are persons, too, who see not the full extent of the evil which threatens them; they solace themselves with hope that the enemy, if he succeed, will be merciful. It is madness of folly, to expect mercy from those who refuse to do justice; and even mercy, where conquest is the object, is only a trick of war; the cunning of the fox is as murderous as the violence of the wolf, and we ought to guard equally against both.

Tyranny, like hell, is not easily conquered; yet we have this consolation with us, that the harder the conflict, the more glorious the triumph. What we obtain too cheap, we esteem to lightly----'Tis dearness only that gives everything its value. Heaven knows how to put a proper price upon its goods; and it would be strange indeed, if so celestial an article as freedom should not be highly rated.

Thomas Paine 1776

Gadsden Minutemen  
P.O. Box 2  
Attalla, Alabama 35954

24 Hour Fax

Internet Address:

Emergency Beeper #



## Face to Face

On Friday night, May 26, [redacted] and I were the guests of [redacted] of WAAX radio, on a special evening edition of [redacted] normally morning-time talk show. The show was to provide an opportunity for friends and enemies of the militia to address militia issues in depth and face to face with us troublemakers. We are most grateful for the invitation.

The show, in our minds at least, was a howling success. It sounds very strange, but the only disappointing aspect was that our opponents did not make much of an appearance. We were truly hoping to meet our detractors and doubters, "face to face," to answer their concerns with logic and the Constitution.

Few concerns were raised, so [redacted] and I took the opportunity to address unilaterally as many of the concerns as we could remember that had previously been raised.

We were asked why the militia is forming all over the country. I related the statement given by [redacted] of Jews for the Preservation of Firearms Ownership: the militia was the T-cells of the body politic, much like the T-cells of the human immune system which rally to an infection of the body.

Questioned further, I likened the militia to the actions of a cornered animal. When you corner and threaten any animal, it will show its teeth. We are the teeth of a citizenry of free men and women. As a free people we are threatened and cornered, and our teeth are showing. Liberty teeth.

We were asked if we would support [redacted]; we assured the phantom faxer, and [redacted] that [redacted] need only ask for anything that we could provide.

Otherwise, we heard from some of the UG (underground); we heard from some groups looking for a larger pack with which to ally themselves. We heard issues addressed, and good public servants praised. We addressed some of the proposed federal legislation.

We heard from individuals with serious expertise and knowledge, particularly concerning some of the more glaring discrepancies in the OK City bombing. One gentleman, near the end of the program, illustrated how the numbers and facts concerning the explosion puts the lie to the story being told us by the government and the national media.

Though not apparent to the listening public, we also heard from several peace officers. Thank you, officers, for your off-line encouragement and on-target information. We do take note. Keep your powder dry.

A lady asked if she was welcome in the militia. I wanted to, but didn't respond "Only if you bring five ladies with you."

We addressed the law of the State of Alabama concerning the militia; we noted the statute invoking the posse comitatus, "armed and equipped as the occasion may require." We noted the statute which critics claim makes the militia "illegal" strictly does not apply to the unorganized militia, which is a creature of our own Constitutions and other separate statutes. We are brothers-in-arms to the National Guard, and are required by law to stand to the call of our governor.

Perhaps the best call of the night occurred at the end of the first hour, when a young soldier posed some questions about possible conflict between the militia and military. It was pointed out to him that for a soldier to be facing an unorganized militiaman, for instance to collect guns from his home, an illegal order must have been given. His oath to support and uphold the Constitution against all enemies foreign and domestic was noted, and [redacted] asked if he would obey or disobey an illegal order.

He stammered and hemmed and hawed, and finally granted that he would obey whatever order was given him. Just as [redacted] of the Birmingham FBI, a seemingly good man, said that he would do whatever he was told, forget the Constitution and his conscience.

Does anybody out there get it yet? We are in one hell of a mess.

[redacted]

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[REDACTED]

The ACLU has entered suit against [REDACTED] for opening his court with prayer and also for having a hand carved copy of The Ten Commandments on the wall in his courtroom. This case has received national media attention.

[REDACTED] faces a long, hard fight, which will prove to be very expensive. The ACLU has deep pockets and will not stop until Christianity is taken out of our society. Our nation was founded on a belief in God, we cannot allow an honest, Christian judge to be harassed by an organization such as the ACLU. We ask that you please support [REDACTED] in his fight. Today it's the courtroom, tomorrow it will be your church.

If you wish to submit a monetary donation, please send to: [REDACTED] Defense Fund, P.O. Box 8222, Gadsden, Alabama 35902.

Our thanks go out to all of you who have stood behind and supported [REDACTED] in this important battle. We, the Gadsden Minutemen are proud to stand up for a man who stands up for God and His laws.

Gadsden Minutemen

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We have heard talk, by various sources, about firearms being offered for sale to militia members by other individuals. These firearms have a very attractive price. I ask anyone who purchases a used firearm, whether you are a dealer or an individual, have your sheriff's department check the serial numbers BEFORE you buy. There are a lot of stolen guns that are being bought and sold on a daily basis. DO NOT get "set-up". Your local sheriff's dept. will be happy to run the numbers, if you ask. The feds are looking for anything, at this point, to dis-credit the militia movement. We must continue to operate, as we always have, COMPLETELY LEGAL. If you come across anyone who is attempting to deal in stolen merchandise, report it immediately to the proper authorities. Be extra careful of firearms that are subject to NFA rules (such as machine guns). Illegal possession of these weapons carry a 10 year sentence and \$10,000 fine. You can legally possess these weapons only after completing the proper paperwork and background checks, and paying the proper taxes on these weapons. If you come across any "under-the-table" class 3 weapons "deals", report it to the ATF, as bad as I hate to say that.

Gadsden Minutemen

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Our meeting for June will be incorporated with a campout/target shoot/ social event. This is planned for the weekend of June 17-18, at a location in Websters Chapel (see enclosed map). For those who wish to arrive on Friday (June 16), please do not arrive any earlier than 5:00 pm. All members, friends and family are invited. You will be responsible for your own food and drink. A special invitation goes out to [REDACTED] and the whole staff of the SPLC (Southern Professional Liars Center). We ask [REDACTED] to come on out and get involved with our "paramilitary" training. If you have any questions regarding this event, please call [REDACTED]-home, [REDACTED]-office or [REDACTED]. All legal weapons are permitted, any class 3 weapons must be accompanied with proper paperwork. Please do not show up with no drivers license in a rented Ryder truck.

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Our thanks go out to all the local law enforcement and local government officials who have supported our right to exist as a citizens militia. We continue to offer our support and help should we be needed. The officers I have spoken with find it comforting to know that there are people, such as ourselves, who are legally armed at all times, ready to defend the safety of all citizens or lend our help to law enforcement, should the situation arise.

### How Congress Spends Your Money

\$ 375,000 to renovate the House of Representatives' beauty shop  
\$ 7 million to study air pollution in Mexico City  
\$ 6 million to search for life in outer space  
\$ 100,000 to study the sand on Waikiki Beach  
\$ 400,000 to study methane emissions from cows  
\$ 360,000 for staff at Congress's private health clubs  
\$ 28.5 million on salary increases for Members of Congress and their staff  
\$ 6 million for the National Seafood Council to teach people how to  
prepare fish  
\$ 107,000 to study the sexual preferences of the Japanese quail  
\$ 84,000 to study why people fall in love  
\$ 703,000 to study fish net entanglement  
\$ 250,000 to prevent wild pigs from attacking exotic plants in Hawaii  
\$ 240,000 to develop a weight-based technology for monitoring the  
moisture content of lumber  
\$ 37,000 to study the handling of animal manure and the development of  
resolution techniques in Michigan

Source: The Heritage Foundation

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The New York Times reported on May 22 that Wayne Lapierre (NRA) said that his organization favored congressional hearings into the scope and intent of the heavily armed "citizen militias" that are proliferating around the country. "We condemn hate groups, terrorist groups," Lapierre said. "We have never had anything to do with these paramilitary-type groups you see on television. That's not the National Rifle Association" He further went on to say that his characterization of agents as "jackbooted thugs" was a poor choice of language.  
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In a live CNN interview on May 23 from the bombing site. [REDACTED], a mother who lost her kids in the blast, ask "where was the ATF" (during the explosion) "All 15 or 17 of their employees survived, and they're on the ninth floor. They had an option to go to work that day, and my kids didn't get that option. And we're just asking questions, we're not making accusations. We just want to know, and they're telling us 'Keep your mouth shut, don't talk about it.'"

[REDACTED] later retracted her statement on the G. Gordon Liddy show.

Taken from transcripts, interview by Gary Tuchman, CNN  
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A recent "60 Minutes" interview, Attorney General Janet Reno said "Obviously I saw what happened and knowing what happened, I would not do it again," speaking of the fiery end to the Branch Davidian standoff. Ron Noble (Treasury Dept.) said it was a mistake to go ahead with the initial raid. Dr. Alan Stone, a Harvard professor of psychiatry and law who investigated the operation for the Justice Department, said it was mishandled from start to finish. "There was incredible stupidity, incompetence and provocation by a reckless and over-reaching federal agency," he said.  
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The Gadsden Minutemen would like to welcome a new unit to the militia movement. The Appalachian Militia, which has approximately 20 members, is located in the Blount / St. Clair County area. The leader of the group is a long time friend of the movement, his men are well equipped and well trained. We truly thank you boys for the past support, keep the faith and keep your powder dry.

Code Name: Mountain Mafia

[REDACTED] A True Political Prisoner  
Article from C.M.A.  
Civilian Military Assistance  
P.O. Box 3012, Decatur, Alabama 35602  
[REDACTED]

"The only thing necessary for the triumph of evil is for good men to do nothing."

- Edmund Burke -

Having been a member of this organization, I feel you are one who understands Mr. Burke's words. These are words I have believed and words I have lived by.

After being told in the spring of 1991 by the local FBI that they "wanted my ass", I have been the subject of intense scrutiny by federal agents. I count at least 7 and probably more undercover agents and informants who have been sent in to get information on me or to try to get me to do something illegal. I put up with being followed, having my telephone tapped, having associates and people I thought were friends coming to me wired.

In September of 1992 I bought some surplus night vision goggles at a gun show in Huntsville. I borrowed the money to buy them from [REDACTED]. I asked a National Guard associate if he could help get manuals and let me know if they were stolen or had any problems. Working with CID and the National Guard over several months, trying to get some broken units repaired, it turns out they withheld information from me that these units were stolen. I was buying them to sell at gun shows, just like all the other equipment I've handled in the past.

The difference is that this time, I was set up. September, 1993, the feds arrested me, [REDACTED] and 4 other individuals who dealt in these goggles and charged us with conspiracy to steal and sell stolen equipment. All [REDACTED] had done was to loan me the money to buy units.

January we went to trial in federal court and after a 4 day trial, [REDACTED] and I were found guilty! [REDACTED] and I, our attorneys, even the prosecution were floored! The defense obviously didn't get the point across to the jury that the guy we bought the goggles from (who turned government witness) and [REDACTED] and I were doing different things. [REDACTED] is faced with losing his Class III firearms license, his business, his house and up to 5 years in jail because he loaned me money. I'm facing losing my house, never being able to legally own a gun again, plus 5 years.

Tom Posey

[REDACTED] is currently serving time at Talladega Federal Prison, he has about 3 months to go before being released to a halfway house. He is currently working on an appeal, however his time has almost been served. During the Contra war in Nicaragua, Posey, a Marine veteran of Vietnam, decided to help. A local group of veterans formed Civilian Military Assistance (CMA) to help the Contras fight the communists in 1983. They paid for food, medicine, clothing and transportation out of their own pockets. In 1984, two of [REDACTED] friends were shot down in a helicopter over Nicaragua. The Sandinista regime claimed the CMA members were CIA mercenaries. But the national exposure had an unexpected benefit. CMA began receiving private donations and was able to furnish \$16 million in non-military aid.

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[redacted] continued)

By 1991, CMA had stopped operating. [redacted] made a living by trading in military surplus equipment. This was an ideal situation for [redacted] considering his background and contacts. [redacted] credentials didn't go unnoticed by FBI Special Agent [redacted].

The 1991 Crime Bill contained a provision allowing payment to informants. [redacted] wanted [redacted] as an informant and told him the FBI "wanted his ass."

[redacted] was later arrested on trumped up charges as the preceding statement by [redacted] explains. One associate-turned-federal-snitch was paid \$2000 a month plus expenses for three years to stay close to him and to try to get him to do something illegal. At least eight, possibly more, federal undercover agents approached him to ask him to do something illegal, each time [redacted] reported this to the FBI. It is estimated that about \$2 million was spent in the government's efforts to "get his ass."

Why? Is it because he refused to become a federal snitch as [redacted] refused? Is it because he headed a private organization, the CMA, that helped the Contras with food, medicine, and clothing in Nicaragua during that war? Is it because he knew, as he related to a UPI reporter [redacted] (now CNN), that George Bush was involved in Iran/Contra? Is someone still looking for a fall guy here? Did someone need to discredit [redacted] for some reason? Is it illegal to be concerned about the direction of your country?

Although [redacted] has already served most of his time, we urge everyone to call and/or write your Senators and Congressmen and demand that full pardons be granted to [redacted] and [redacted]. Please write the governor of Alabama also.

Also write [redacted] and offer your support, send mail to: [redacted]

If you are interested in the complete story about [redacted] (the truth), we will be glad to provide you with copies of what we have. Also, SOF magazine, April 1995, has a story about [redacted].

[redacted] we, the Gadsden Minutemen, appreciate your past service to your country and for being a true Patriot. Hang in there and keep the faith.

A brief chronology to the above article: September 1992, [redacted] contacted [redacted] Alabama National Guard, to do a computer check to see if NVG's are stolen. Also asked for manuals to repair defective units. Late September 1992, FBI is checking out of Montgomery to see if NVG's stolen (FBI testimony at trial). Not on computer at that time. Late October 1992, NVG's finally on computer about being stolen from Ft. Hood. [redacted] not told his goggles are stolen. Late November 1992, [redacted] contacts [redacted] saying he can repair NVG's [redacted] has in his possession - as opposed to getting [redacted] manuals. [redacted] gives pairs of NVG's to repair. No repair done. [redacted] not advised that these units stolen. September 1993, [redacted] arrested for conspiracy to steal NVG's. January 1994, [redacted] found guilty in federal court in Montgomery.

ATTENTION !!

Sons of Confederate Veterans, new chapter forming in St. Clair County.  
For more information contact Rich Hayward [redacted]

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## Personal Messages

M.G.-- appreciate the info, keep the [redacted] fight alive  
B.J.-- our friend is doing ok, still in the struggle  
B. in N.J.-- glad to have you aboard  
Friend in Kansas-- thanks for the info on Mr.P. & Mr.W.  
L.T.-- need that report on M.D.  
T.P.-- keep the faith, only short time left  
C.G.-- need personal situation report  
D.N.-- what about our meeting  
Local friend-- appreciate the tip from the wire  
Calif. friend-- appreciate you spreading the word

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The Gadsden Minutemen will respond to all inquiries, no identification is required, you can call or write, look for the answer or comment in the personals, you will know if it's intended for you.  
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### A Response to the Attack on Patriots By Senator Charles Duke May 1, 1995 District 9, Colorado

It is said by some that the flak is the heaviest when you are close to the target. Judging from some of the flak, we must be approaching ground zero. At a Second Amendment rally recently, I asked a question of the group attending whether anyone there thought the Oklahoma bombing might be as a result of some action of the federal government. Nearly everyone there thought so.

Perhaps it was not proper to ask the question so soon after the bombing. In normal times, almost everyone would have agreed with the question as well. There are also those who, perhaps again, correctly, said I should have had some proof before even asking the question. Certainly the perceived misdeeds, if any, are not perpetrated by the entire government.

Those who attended the rally, and many who called me after April 19, do not actually need any further proof to believe some in the government might be capable of killing innocent civilians. they believe it has already happened. the Randy Weaver incident at Ruby Ridge, Idaho, is not even in dispute by the government. On that site, in April 1992, a government-paid sniper killed Vicky weaver, Randy's wife, while holding her child in her arms. Then the Weaver's other son was shot in the back by the same sniper.

Randy Weaver was arrested and tried. Was he convicted of even a single crime? No, the charges appear to have been bogus. He returned to Ruby Ridge a free man, but he had lost a wife and a son at the hands of the government. the sniper and the manager who ordered the hit have received only minimal discipline, much less being arrested.

There are many beyond those at the rally who believe the incineration of innocent women and children at Mt. Carmel, near Waco, Texas, was a deliberate government act. As near as I can tell, the biggest crime the Branch Davidians committed was in refusing to come out of the compound and surrender to authorities who had already killed some in their midst. Whether you agree with the cult's right to practice religion as they please or not, these peaceful people had committed no crimes. Is incineration an appropriate response to those who refuse to yield to a hostile intrusion? I hardly think so. Eighty-six innocent people lost their lives at the hands of the government.

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(Sen. Duke--continued)

Information published in the Los Angeles Times and the New York Times newspapers tell the story of an FBI informer, who, wearing a wireless mike, held conversations with members of the FBI. These recorded conversations indicate the FBI helped plan and build the World Trade Center bomb. The alleged stated plan was to, at the last minute, substitute harmless powder for the bomb powder and thwart the deed. For reasons that are unexplained for certain, the substitute order never happened. The testimony in the trial of the bombers clearly indicates the FBI could have stopped the Trade Center bombing, but did not.

There are many unanswered questions about the Oklahoma City bombing. Based on the current reaction, these questions will not even be asked until the answers are well in hand. If the current propaganda program to discredit the patriots is successful at permanently silencing disagreement, it's possible we will never know the truth about Oklahoma City.

Certainly I align myself with those who consider themselves "patriots", which the American Heritage Dictionary defines as "One who loves, supports, and defends his country." I place a further refinement that a true patriot is willing to take peaceful action to defend our country and Constitution.

There is no known connection whatever between patriots, Constitutionists, militia or Tenth Amendment supporters with any violent act in the country. What we do have is a woefully misguided belief that these groups are linked, along with all conservative talk show host in America, to violence. It is not surprising that those who want to silence dissension, those who would want to stop a movement aimed at de-centralizing government, those who want to consolidate federal power to make it stronger, would attempt this deception. It is surprising that even a few would allow themselves to be deceived by it. It is my hope Coloradans are smarter than that.

We still live in the United States of America. Only for the moment, we still have a Constitution and a Bill of Rights, both of which are designed to prohibit the kind of government crackdown that is about to happen. The Omnibus Terrorist Bill now before Congress did not have a snowball's chance in Hades of passing before Oklahoma City. Now its passage seems assured, having now garnered the necessary "bipartisan" support that brought us GATT, NAFTA, the Crime Bill, and HR 666, which nullifies the Fourth Amendment.

Your Bill of Rights is soon to be further destroyed. There are those who say protecting those rights is none of a State Senator's business, such as Colorado's Governor Roy Romer. But I swore an oath before God to uphold our Colorado and U.S. Constitutions when I took office. I will not apologize for defending them.

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Senator Charles Duke can be reached at [REDACTED]  
Internet: [REDACTED] Duke writes a weekly column in Woodmen edition

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On April 26 edition of the "Intelligence Report", [REDACTED] (Retired FBI), stated that he didn't think we were being told the truth about what happened in Oklahoma City---about the bomb type, etc.

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**IMPORTANT!!!, PLEASE READ AND RESPOND BY CALLING TO REPORT MILITIA ACTIVITY**  
"The Southern Poverty Law Center is asking anyone with information about militia activity to call [REDACTED]. The center's Klanwatch project collect information about violent extremist groups, and sends reports to law enforcement agencies nationwide." Please do your part and call, I have. Several of our black members have called, but they would not return the calls. We ask all of you to keep calling until you get through. Offer your thanks to [REDACTED] and company for making us 3rd in the nation. SPLC placed this ad in the Montgomery Advertiser

## Interviews with witnesses from past "Good 'Ol Boys"

I have viewed and have in my possession, video taken at past "Good 'Ol Boys" that shows a handmade cardboard sign stating "Nigger Check Point" -- "Any Niggers In That car" -- "17 cents lb.", with sketches of black people. This video also shows an anonymous person showing off several twenty dollar bills that he had won playing "chicken-shit bingo", which is a form of gambling utilizing a game board/cage and live chickens.

Further, I have an eye-witness of a past "Good 'Ol boys" outing that had a contest called "redneck of the year", one skit for this event had an ATF agent dressed in a KKK uniform holding another ATF agent, with face blacked out, on a chain. The skit was portraying a master/slave relationship. The agent dressed as the "Klan" member pretended to force his "slave" to perform oral sex with a fake penis that was revealed from under his "klan" robe.

As an add to the above information; On the evening of Friday, May 19, I was informed that CNN "Capital Gang" showed video of law enforcement personnel who were involved in the Washington hotel incident, which allegedly involved officers harassing women, spraying fire extinguishers and sliding naked down a beer-slicked hotel escalator, one of the officers in the video was wearing a "Good 'Ol Boys" shirt. These officers were in town to attend a memorial ceremony for fellow officers. I have not personally witnessed this video segment. Maybe this officer should be questioned in regards to the "Good 'Ol Boys".

The above statements and eye-witness accounts are the result of an investigation on the matter of racism within the BATF. We ask that these events be fully investigated and all information released to the public. We are prepared to bring forth all witnesses, including myself, if this matter will be investigated properly, we can be contacted via the information provided on the cover page of this newsletter.

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## Investigation of the Southern Poverty Law Center (SPLC)

We are requesting any information you may have on the Southern Poverty Law Center. We ask that all information be accurate and provide appropriate witnesses and documentation. It is our understanding that several cases may be pending against this organization due to defamation of certain individuals and groups who are involved in the militia movement. Again, we ask that all information be provided with proper documentation, we have always reported the facts and do not intend to print and/or pass along information that is not substantiated. All information will be passed to the proper people who are involved in any case. Please send any info to the addresses on the cover.

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The above ad has been placed for the benefit of fellow patriots who are not members of the Gadsden Minutemen. The Gadsden Minutemen's position remains the same concerning SPLC. [REDACTED] has been a major asset in the growth of our organization. Membership continues to grow, many new members have expressed the idiocy of [REDACTED] has been the motivating factor to join our group. [REDACTED] WE CANNOT THANK YOU ENOUGH, please continue your public statements on the militia, and thank you for rating us in 3rd place in your report on the national militia movement. Let us also say that we, unlike [REDACTED] are in full support of our State and their position on chain gangs.

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Investigative report by [REDACTED] Gadsden Minutemen, and other parties

The "Good 'Ol Boys" outing is held annually at Ocoee, Tn. Based on my interviews with inside sources, this event is organized by Gene Rightmeyer (BATF-Tn.) and [REDACTED] (ABI-Al.). This event has a history of being an all-white get-together. It also has a history, to which there is documentation/witnesses, of being very racist.

The "Good 'Ol Boys" attracts agents from various government agencies such as ATF, DEA, Secret Service, and other law enforcement agencies. The event usually goes for several days and includes various activities. Flyers (invitations) are sent out to selected people, for a fee you receive an arm band which allows you entrance to the campground, free beer from a beer truck within the camp, a tee-shirt, a cap and a beer mug.

I learned of this event several months ago and decided to investigate for myself. I arrived at the outer edges of the camp at approximately 11:00 a.m. EST, Friday May 19, 1995. I placed a "police" cap on, grabbed my camera and walked in via a rear unguarded entrance. I was not questioned as to whether or not I was suppose to be there, however, towards the end of my visit, I felt that I was about to be asked to leave.

Inside, I blended in and met people from all agencies, some of which wore tee-shirts stating their agencies name and where they were from. Several of the people were too drunk to carry on conversations with, however I did speak with two agents, whom I did not know, but were wearing arm bands. These agents were highly upset about quote "nigger" ATF agents that were brought in by a white ATF agent the previous night (Thursday). These agents said that they would not attend the event in the future because of the "niggers" being allowed in. All around the main campground (center of camp) I heard racial slurs and saw racial tee-shirts and other items, one being a small yellow card that reads "nigger hunting license". I also overheard guests (wearing arm bands) talking about "those niggers" that were in the camp on the previous night. The conversation was, that an altercation almost occurred between various agents due to the blacks being in the camp. I also witnessed a poker game in process between several other "guests", with, what appeared to be a large sum of money on the table and exchanging hands. Several people were wearing tee-shirts depicting O.J. Simpson on a hanging gallows. Throughout my approximate 2 hour stay, I did not see any black people in the crowd of approximately 300 people. During this time I heard numerous racial slurs and dissatisfaction that their annual gathering had, for the first time, allowed "niggers" to attend.

I took several pictures, several of various anonymous law enforcement personnel, one of a man wearing a Birmingham Narcotics tee-shirt, one of a man marked Metro Police, several shots of Gene Rightmeyer, whom I recognized from previous pictures and video, with a beer mug and what appeared to be a bottle of whiskey in a paper bag, several pictures of the campsite, including the Lite Beer truck, one picture of a North Carolina fraternal order of police vehicle, license plate [REDACTED] one of an anonymous GMC van, Tn. license plate [REDACTED] BHJ, several of unnamed people wearing tee-shirts with the words "Young Guns II" and [REDACTED] and one of the welcome sign to the entrance of "Good 'Ol Boys".

I did meet some people (agents) in the crowd who appeared to be very decent individuals, however, the majority of whom I spoke with, seemed to be very racist, judging from my conversations with them. The only illegal actions I witnessed was the open gambling and the guests I witnessed driving from the campground after drinking (drunk?).

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The Requirements of Freedom  
Article by Reverend Jim Gibson

"So you shall keep the commandments of the Lord your God, by walking in his ways...and you shall bless the Lord your God for the good land he has given you"  
[Deuteronomy 8:7, 10]

Too many of us take America and her liberties for granted, even as we take our fabulous standard of living for granted. Few of us face up to the requirements of freedom, and too few of us pause at any given time to ask, "from whence came our rights and our liberties, and how can we preserve them unstained by greed or betrayal?"

Freedom is not something handed down by families or governments. It is not something born of historic documents. Freedom is like a garden that must be fed and watered, loved and protected. Freedom like good gardens, is the result of thoughtful, earnest work - work that must be done year by year, generation by generation. And the great enemy of both gardens and freedom is neglect.

History shows that it is difficult and costly to gain freedom, but it is frighteningly difficult to regain it.

The people of Israel learned that lesson long ago. Under the heavy hand of Egypt's pharaoh they learned the preciousness of liberty. To regain it, they made their bitter trek across the wilderness. A whole generation died in the process. Finally, after such suffering and many battles, they won for themselves the land promised them. They loved their new freedom - enjoyed it - made laws to protect it - and then lost it. When the pleasures and pleasant things of life became of more value than morals and ethics, justice and mercy, prayer and faithful worship, their freedom left, and they became slaves in Babylon. They neglected freedom - failed to meet its requirements - and lost it.

Will it be any different with us as we prepare to celebrate another national birthday this summer? Our ancestors braved the wrath of rulers and ruling class, angry seas and hostile wilderness, to gain freedom. We truly do not know the price they paid, cause none of us have left family and homeland to sail for months on leaky ships and to find a homeless stretch of shore and forest that had to be tamed before we could call it home. Our ancestors were determined to be free, and they asked for no quarters in their struggle.

The years in which we live are filled with dangers - not merely from without, but from within. Nations usually rot out before they are conquered by others. And so I'd like to list some of the things which I believe can keep us from rot and rust, and so help us to protect the freedoms we now so carelessly enjoy. And so I submit the following Requirements of Freedom:

(1.) Integrity. Unless honesty lives as a vital force in each of us, our nation is doomed. A republic cannot exist, and freedom will not, in the midst of a people to whom the Ten Commandments are mere words. Our way of life demands integrity - high and trustworthy character on the part of each of us, and unless we can produce it in the vast majority of our people, our days as a nation are numbered.

(2.) Unity. America is a diverse nation, made up of diverse people, from diverse areas of the world and living under diverse climates and conditions. Yet, we must be the United States. Unity is the very blood of our republic, and without it, life cannot exist. Sameness we do not need. Unity we must have.

(3.) The right of the individual. The general good must never be purchased through the abuse of the individual or the ignoring of his rights in the court of Christian justice. When governments rob individuals of rights in the name of the general good, it is only a matter of time until there are no rights.

(see freedom, next page)



(freedom, continued)

(4.) Just laws justly applied to all.

(5.) Compassion. All commandments must be accompanied by compassion. Justice must be forever tempered by mercy. Law must never be far from that which God calls Love.

(6.) Work. Our country is built on a person's right to work. No one has the right to prevent a person from working when he wants to work and has contracted with someone who will employ him. Nor is labor merely a right. Scripture attests that for those who are able, it is a responsibility: "If a man will not work, he shall not eat" [2. Thessalonians 3:10]

(7.) Vigilance. Everything that works needs attention, whether it's a tractor, an automobile, a washing machine, or a state. Everything tends to get out-of-fix- - to run down, to weaken, to lose power, to lose efficiency. Freedom is no exception. Above all things, it demands vigilance. Without constant attention to trends and ends and means, no state can remain secure.

Many people fear personal responsibility, and most want to live by absolute authorities: it saves them from having to make up their own minds and live with the results of personal decisions. But a republic demands that we make up our own minds - that each citizen learn the facts, ponder them, and reach his own conclusions. A republic is meaningless if it does not mean freedom from any source that makes our minds for us.

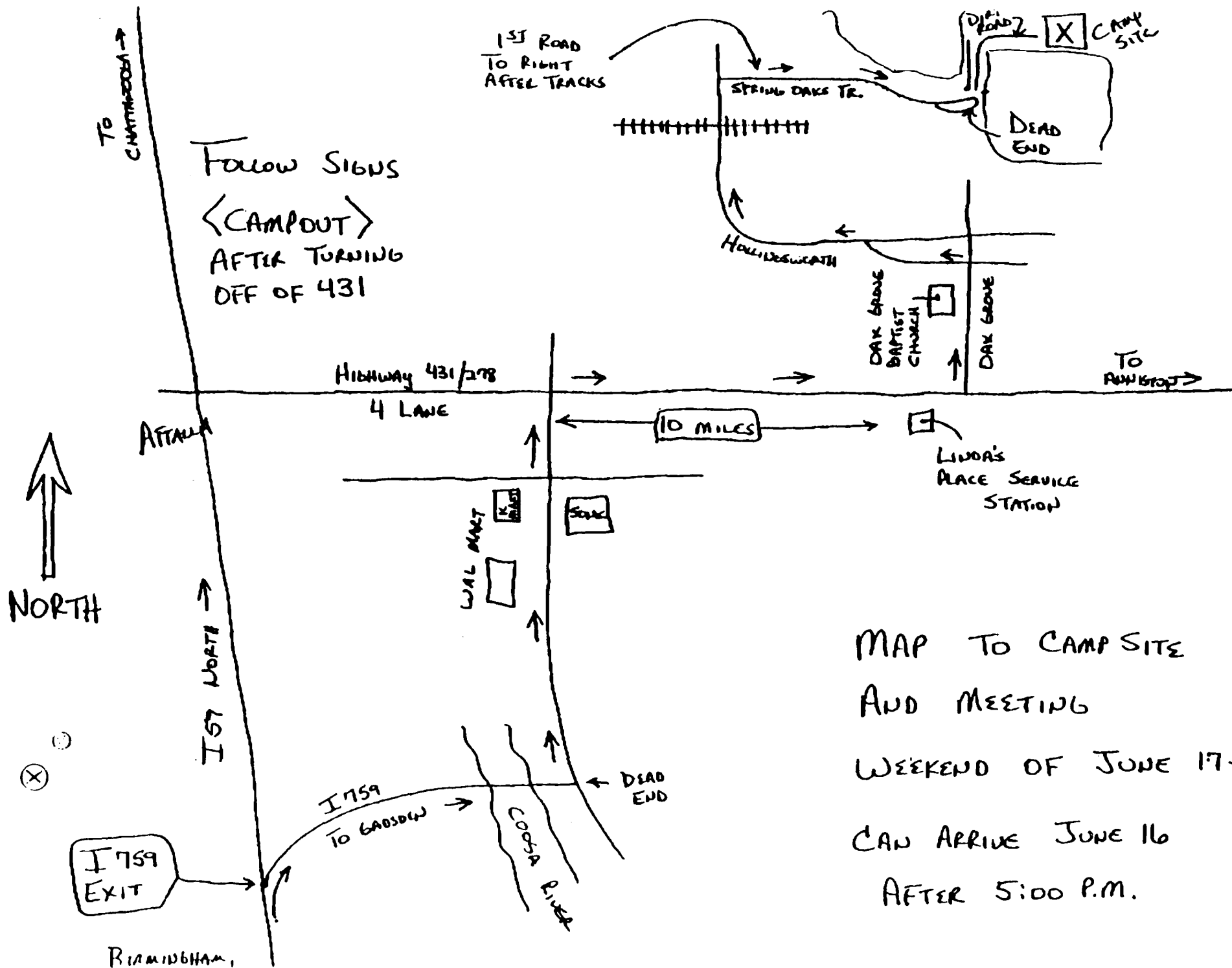
Of course we believe that God has a right to say to us, "You must." But that is not the way God speaks to any of us. We are free to climb to Heaven if we so desire; but we are also free to sink into the depths of Hell.

As I face another July 4th, I wonder how many more will be observed in the years ahead, Perhaps not too many - unless more Americans stop taking freedom for granted and start meeting the requirements which freedom demands of all who would live under God in the fellowship of a free society.

---

### The Last Word

As you have probably noticed, our newsletter style has changed, we are attempting to bring more real news to you than the usual froth-at-the-mouth letters and insults we have become so famous for. Don't worry, we are not following in Wayne-I-apologize-Lapierre's (NRA) footsteps and backing off of any previously made statements. The fact of the matter is, we have been on the federal jack-booted-thug agencies like white on rice for the past year trying to get them to respond, argue and attempt to prove their side of the cases that we have brought to their attention. No matter how hard we try, they seem to want to stay clear of us "crazy Alabama militia boys." The Gestapo agencies aren't the only ones who are avoiding us, the ADL refused to debate us publicly on the [redacted] show, after viewing their thirty minutes of fame on a Later show, I could see why they would not. [redacted] made a pitiful response to our show. It would have been a feeding frenzy if we would have been able to have a real debate. [redacted] is another fine example, how many times have we asked for a heads up, public debate with him. Maybe [redacted] (FBI) told him, [redacted] you better run, boy, these people will chew your ass up with the facts, [redacted] should know. Well anyway, we're still here, we still support the same beliefs and statements we have made, and will always remain firm with absolutely NO backing off. Please stay safe, watch your backside, keep your powder dry and shout the truth till you're hoarse.



FOLLOW SIGNS  
 <CAMPOUT>  
 AFTER TURNING  
 OFF OF 431

MAP TO CAMP SITE  
 AND MEETING  
 WEEKEND OF JUNE 17+18  
 CAN ARRIVE JUNE 16  
 AFTER 5:00 P.M.

JUN-02-1995 10:57

BIRMINGHAM FIELD DIV



SPECIAL AGENT IN CHARGE  
BIRMINGHAM, ALABAMA

95 JUN -1 PM 3: 09

BUREAU OF ATF

CRAIG VALENTICK---BATF  
2121 8th AVE N  
BHAM AL 35203



GMM  
P.O. Box 2  
Attalla, Alabama 35954



←--- Who is this man?

Robert Rodriguez, undercover ATF agent who tried to get bees to call off the ill-conceived raid, was made scapegoat. He's now the first agent to ever sue the BATF. In photo he is escorted to Davidians' trial in San Antonio by case agent Davy Aguilera, left, and unidentified agent at right, who sat in press section of court with burp gun under his trench coat. Photo: Bob Owen



SPECIAL AGENT IN CHARGE  
BIRMINGHAM, ALABAMA

95 JUN -1 PM 3: 09

BUREAU OF ATF

TO: FILE

FROM: [REDACTED]  
INSPECTION

SUBJECT: GADSDEN MINUTEMEN NEWSLETTER

THE JUNE, 1995 GADSDEN MINUTEMEN NEWSLETTER WAS SENT TO THIS OFFICE BY THE SOUTHERN OFFICE OF INSPECTION ON JUNE 5, 1995. THIS IS A MILITIA GROUP IN ALABAMA THAT CONSISTENTLY SENDS THEIR NEWSLETTERS TO THE BIRMINGHAM DIVISION AND HAS TAUNTED [REDACTED] THE MILITIA CONTENDS THAT [REDACTED] BEARS RESPONSIBILITY FOR THE TRAGIC EVENTS AT WACO, TEXAS. SOME OF THE PREVIOUS NEWSLETTERS GO SO FAR AS TO INSINUATE THAT HARM WILL COME TO [REDACTED] AS A RESULT OF HIS PARTICIPATION IN THE WACO EVENTS.

A REVIEW OF THE JUNE NEWSLETTER INDICATES THAT A MILITIA SOURCE ATTENDED A "GOOD OL BOYS" OUTING WHERE ATF PERSONNEL WERE IN ATTENDANCE. THE MILITIA CHARGE THAT RACISM IS RAMPANT AND CLAIM THEY HAVE A VIDEO TO PROVE IT. THE LETTER CITES RACIAL SIGNS AND COMMENTS TO PROVE THIS CHARGE.

THE NEWSLETTER CLAIMS THAT AN ATF SPECIAL AGENT, GENE RIGHTMEYER, ORGANIZES THIS EVENT. ATF RECORDS REFLECT THAT RIGHTMEYER RETIRED AS A SPECIAL AGENT ON 1-3-94. NO OTHER ATF AGENTS ARE MENTIONED IN THIS NEWSLETTER.

I HAVE DISCUSSED THIS ISSUE WITH A NUMBER OF AGENTS IN ATF. NONE COULD RECALL ANY MENTION OF THE "GOOD OL BOYS" EVENT IN RECENT YEARS AND STATED NO PUBLICITY WAS GIVEN IT WITHIN ATF IN MEMORY. THERE IS NO DOUBT THAT SUCH AN EVENT IS HELD, BUT NO EVIDENCE THAT ATF AGENTS ORGANIZE IT OR PUBLICIZE IT WITHIN THE BUREAU.

NO OTHER INFORMATION HAS EVER COME TO THE ATTENTION OF THIS OFFICE REGARDING THIS OUTING. THE MILITIA GROUP IS NOT A CREDIBLE ORGANIZATION AND IS CLEARLY ATTEMPTING TO HARM ATF. IN ADDITION, ATF HAS NO AUTHORITY OVER A RETIRED AGENT AND HIS PARTICIPATION AND OR BEHAVIOR IS NOT UNDER OUR JURISDICTION. THUS NO FURTHER ACTION IS BEING TAKEN ON THIS MATTER.

[REDACTED]  
6/8/95

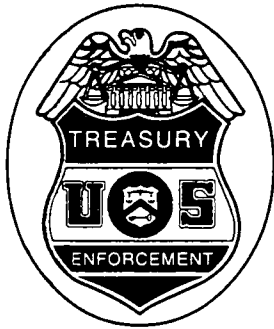


# **EXHIBIT 56**



Tracy

JULY 7, 1985



# DEPARTMENT OF THE TREASURY REPORT OF THE GOOD O' BOYS ROUNDUP POLICY REVIEW

April 1996

**DEPARTMENT OF THE TREASURY**

**REPORT OF THE  
GOOD O' BOYS ROUNDUP  
POLICY REVIEW**

**APRIL 1996**

**DEPARTMENT OF THE TREASURY  
GOOD O' BOYS ROUNDUP POLICY REVIEW**

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**Lawrence H. Summers**

*Deputy Secretary of the Treasury*

**Ronald K. Noble**

*Under Secretary of the Treasury (Enforcement)(resigned 2/5/96)*

**James E. Johnson**

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**DEPARTMENT OF THE TREASURY**  
**REPORT OF THE**  
**GOOD O' BOYS ROUNDUP POLICY REVIEW**

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## EXECUTIVE SUMMARY

### INTRODUCTION

On July 11, 1995, public attention was first drawn to allegations of misconduct by agents of the Bureau of Alcohol, Tobacco and Firearms (ATF) and other officers of federal, state, and local law enforcement agencies at an annual retreat outside Ocoee, Tennessee, known as the "Good O' Boys Roundup" (Roundup).<sup>1</sup> The following day, a local Washington, D.C. television station<sup>2</sup> aired an investigative program, "The I-Team," featuring a videotape that purported to show events at the 1995 Roundup. The initial allegations focused upon the display of racist signs, slogans, T-shirts, and paraphernalia at what was characterized as a "whites only" event. Later accusations included charges of rape, bestiality, sexual assault, sexual harassment, the possession and distribution of controlled substances, illegal gambling, public drunkenness, and lewd and disorderly conduct. Further claims were made that the event had been organized by ATF agents acting on official time and had been promoted with government resources, and that senior ATF managers were aware of the nature of the event but took no action to abate the misconduct or to discipline those involved.

Secretary of the Treasury Robert E. Rubin responded promptly to the allegations, announcing that a comprehensive and independent investigation would be conducted by the Treasury Department's Inspector General and the Under Secretary for Enforcement.<sup>3</sup> Pursuant to the powers invested in her under the Inspector General Act of 1978,<sup>4</sup> the Inspector General announced that her office would assume sole responsibility for "fact-gathering in relation to the nature and scope of participation and involvement by Department of the Treasury law enforcement personnel" in the Roundups.<sup>5</sup>

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<sup>1</sup> Jerry Seper, *Racist ways die hard at lawmen's retreat*, THE WASHINGTON TIMES, July 11, 1995, at A1.

<sup>2</sup>Channel 7, Washington, D.C.

<sup>3</sup>Statement of Treasury Secretary Robert E. Rubin, Department of the Treasury News Release, July 17, 1995. [hereinafter 7/17/95 Rubin Statement].

<sup>4</sup>5 U.S.C. app. 3 (West's Supp. 1995)

<sup>5</sup>Memorandum from Inspector General Valerie Lau to Treasury Secretary Rubin, July 19, 1995, at 1 [hereinafter Lau Mem.].

Treasury Secretary Rubin asked the Under Secretary for Enforcement to assume responsibility for conducting a two-part policy review. First, the Office of Enforcement was charged with conducting a retrospective review to “determin[e] the applicability of any existing law, policy, rule, or regulation to the facts found by the Office of Inspector General.”<sup>6</sup> Second, recognizing that such allegations of bias among federal law enforcement officers seriously undermine the Department’s ability to carry out its enforcement mission, the Secretary declared that the Treasury’s policy review would not stop with a simple determination of whether existing laws or rules had been broken, but would also contain a proactive component. Thus, the Secretary charged the Office of Enforcement with responsibility for reviewing all current laws, rules, regulations, procedures, and policies to “judge whether existing polices were adequate and sufficient to prevent participation by Treasury personnel in similar events in the future.”<sup>7</sup> As the Secretary stated in announcing the review: “Our purpose is to get to the truth, period; and then to take all necessary steps so that we can tell the American people: This will not happen again.”<sup>8</sup> The Under Secretary for Enforcement was directed further to recommend any changes in such policies necessary to ensure that in both reality and perception “justice [will be] administered with integrity, fairness and freedom from bias.”<sup>9</sup>

In his opening statement before the Senate Judiciary Committee during the July 21, 1995 hearing on the Roundups, Under Secretary for Enforcement Ronald K. Noble repeated that commitment:

[T]he Under Secretary for Enforcement will make clear that there is no place within the Department of the Treasury for law enforcement officers who engage in racist, anti-Semitic, or sexist behavior. . . . The Treasury Department’s independent review constitutes the Department’s pledge to do everything in its power to examine this ugly gathering and to ensure that appropriate action is

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<sup>6</sup>Lau Mem., *supra* note 5, at 1.

<sup>7</sup>7/17/95 Rubin Statement, *supra* note 3, at 2; *see also* Lau Mem, *supra* note 5 at 1-2 (allocating responsibility between the Inspector General and the Under Secretary for Enforcement); Department of the Treasury Memorandum, “Good Ol’ Boys Roundup” Investigation Citizens Review Panel,” Aug 9, 1995, at 1 (explaining role of Citizens Review Panel with concurrence of Office of Enforcement and Inspector General) [hereinafter CRP Mem.].

<sup>8</sup>7/17/95 Rubin Statement, *supra* note 3, at 2.

<sup>9</sup>*Id.*



taken and enforceable rules, regulations, and policies are formulated.<sup>10</sup>

The Secretary invited a Citizens Review Panel, composed of prominent citizens of unquestioned expertise and integrity on matters relating to race, the law, and law enforcement to monitor and evaluate both aspects of the Department's review.<sup>11</sup> The members of the Citizens Review Panel both evaluated the completed Inspector General investigation and report and provided ongoing input to and oversight of the Office of Enforcement's work in reviewing and proposing recommended modifications to existing laws, policies, procedures, and regulations. Under separate cover, the Inspector General has reported the results of her fact-finding investigation (IG Report).

Secretary Rubin charged the Office of the Under Secretary for Enforcement with determining the applicability of all existing laws, policies, rules and regulations to the facts found by the Inspector General. This Report has done so by detailing in Chapter Six the existing policies which govern ethical standards and rules of conduct applicable to Treasury law enforcement officers, and by finding that such policies and rules are applicable to Treasury law enforcement officers for conduct alleged to have occurred at the Good O' Boys Roundups.

Any discipline of specific employees, however, will be determined by the procedure normally followed at Treasury. The Inspector General's Report is submitted to the Secretary as well as to Congress, and will be forwarded by the Inspector General to the head of each Bureau with implicated personnel. The Inspector General will also forward to each Bureau all memoranda of interviews relevant to that Bureau's employees. The Director of each Bureau will then delegate the task of deciding upon an appropriate course of discipline for each employee. Of course, each Bureau must comply with all constitutional, civil service, and collective bargaining rights and regulations.<sup>12</sup> The Bureau official tasked with determining discipline will then report her or his actions to the Bureau Director, who will report the outcome to the Office of Enforcement.

In deciding whether to impose discipline, and if so, in deciding upon an appropriate

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<sup>10</sup>Statement of Ronald K. Noble, Under Secretary of the Treasury (Enforcement), before the Senate Judiciary Committee, July 21, 1995, at 1 [hereinafter Noble Statement].

<sup>11</sup>Rubin Statement, *supra* note 3, at 1; Statement of Treasury Secretary Robert E. Rubin, Department of the Treasury News Release, July 20, 1995 [hereinafter 7/20/95 Rubin Statement]; *see also* Lau Mem., *supra* note 5, at 2; (Inspector General concurring in the role of the Citizen's Review Panel); CRP Mem., *supra* note 7, at 1-3.

<sup>12</sup>For a discussion of the civil service discipline appeals procedure, *see* Chapter Four, *infra*.

penalty, the decisionmaker in each Bureau should consider certain factors. First, the decisionmaker should consider the employee's conduct. As part of this consideration, the decisionmaker should determine whether the employee participated in any racist act;<sup>13</sup> furthermore, the decisionmaker should determine whether the employee witnessed any acts of racism and what his or her response was. Second, the decisionmaker should consider whether an employee was on notice that racist events might occur or was genuinely surprised. An employee who was on notice that racist events might occur may have a more culpable state-of-mind in condoning the acts of racism than one who was genuinely surprised by the reprehensible conduct. Third, the decisionmaker should determine if an employee returned to the Roundup after having witnessed or heard of racist conduct. Fourth, the decisionmaker should examine the employee's history to determine whether his or her behavior is part of a pattern of racism or racial insensitivity. Fifth, the decisionmaker should determine if the employee was a manager at the time of the misconduct, because managers must be held to an even higher standard of conduct. There are certainly other factors that the Bureaus may wish to consider; however, these factors are set forth to provide a framework.

The Office of Enforcement will not prejudge any individual case. Indeed, to ensure that due process rights of employees are not infringed, this report will not comment on the conduct of any particular employee. However, the Office of Enforcement will monitor the disciplinary proceedings of the Bureaus in response to the Good O' Boys Roundups to ensure that Treasury has zero-tolerance--in deed as well as in word--for racism and other types of misconduct.

If any current employee had engaged in any overtly racist acts off-duty during the Roundups, he or she should be disciplined. On the other hand, an employee should not be referred for disciplinary inquiry if he or she only attended a Roundup in the early years to go whitewater rafting and witnessed no acts of racism. In between these two extremes is a wide range of conduct that may or may not merit discipline. For example, Roundup attendees who might be considered to have condoned racist acts by their continued presence at the Roundups are properly referred to their Bureaus for disciplinary inquiry.

In short, the Review has found that in connection with the Good O' Boys Roundups current Treasury conduct rules are sufficient to enforce discipline in cases where it is merited.

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<sup>13</sup>This passage describes the criteria to be used to determine if an employee committed racist misconduct. Disgraceful conduct at the Roundup was not, however, limited to racism. The same model should be employed to determine whether other types of misconduct took place at the Roundups, such as misuse of government property, abusive behavior towards women, and extreme public drunkenness. Such conduct could constitute infamous or notoriously disgraceful conduct and subject federal law enforcement officers who engage in such behavior to possible discipline.

Nevertheless, the fact finding of the Treasury and Justice Inspectors General makes it clear that a policy review was appropriate.

The Enforcement Policy Review Report (Report) sets forth the results of the Office of Enforcement's two-part policy review (Policy Review or Review). Section I of the Report begins with an overview of the organization, mission, and demographics of the Treasury law enforcement bureaus. It then describes the structure, scope, and methodology of the Policy Review. Finally, it summarizes the allegations that gave rise to the Review.

Sections II and III of the Report focus on Treasury's existing disciplinary and personnel policies. They also identify, analyze, and provide Recommendations concerning the rules and policies implicated by facts and allegations concerning the Roundups in each of the principal areas in which the Treasury Department interacts with its law enforcement personnel: discipline, hiring, training, and evaluation and promotion.

In sum, the Policy Review finds that the Treasury Department and the senior management of its law enforcement bureaus are committed to the impartial and professional enforcement of the laws, free from any form of bias based on race, color, religion, national origin, sex, sexual orientation, age, or disability.<sup>14</sup> Existing disciplinary rules, policies, and procedures permit the discipline of those whose conduct departs from that standard, provided the adverse effects of the misconduct upon the job performance of the officer or co-worker or upon the agency mission can be established. Existing training programs communicate these values to new federal law enforcement officers, as well as to other Department personnel, and seek to instill a code of conduct pursuant to which the officer's integrity, impartiality, and professionalism are expected to be demonstrated by both on- and off-duty conduct.

Nevertheless, the Office of Enforcement finds that room for improvement exists. No current Treasury-level disciplinary rule expressly addresses off-duty manifestations of racial and other forms of bias such as those alleged to have occurred at the Roundups. The ability to impose discipline relies instead upon the statutory authority to impose discipline for such cause as will "promote the efficiency of the service" and on the related Treasury rule prohibiting conduct "prejudicial to the agency." These sources do not offer specific guidance to federal law enforcement officers concerning the nature of discouraged conduct nor to managers concerning when to impose discipline. Moreover, employees' perceptions of the applicability of this rule to off-duty conduct are clouded by another existing Treasury rule that provides that the rules must be complied with when on duty or on government property, without mention of off-duty conduct.

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<sup>14</sup>These are the classes currently protected under the Treasury Department's nondiscrimination policy. 60 Fed Reg. § 0.214 (June 1, 1995) (to be codified at 31 C.F.R. § 0.214).

In addition, no systematic effort currently exists in the Treasury Department's hiring procedures for Treasury law enforcement officers to avoid hiring applicants whose conduct evidences invidious prejudices that are antithetical to the Department's nondiscrimination policy and may lead to the enforcement of the criminal laws in a biased manner. For example, no form of psychological screening is required in the hiring process, though it is used by hundreds of police departments throughout the country. No express inquiry concerning prior acts of bias or membership in hate groups is made in application or security clearance forms or in background investigations.

Moreover, only a few hours of the introductory training of new federal law enforcement officers is dedicated to diversity and ethics training, and only a small fraction of that time targets off-duty conduct. In-service and advanced training in these areas is minimal and does not directly address the issues implicated by the allegations concerning the Roundups: off-duty conduct and bias-related speech and conduct outside the equal employment opportunity (EEO) context. Current evaluation and promotion standards do not focus on bias-related issues for field-level federal law enforcement officers, and, even for managers and supervisors, they address only EEO decisionmaking, not manifestations of bias in other contexts related to the public's perception of the impartial administration of the law.

Section IV of the Report concludes with a plan for implementation and evaluation of the effectiveness of the Report's recommendations.

Finally, Appendix A contains the Citizens Review Panel members' evaluations of the Inspector General's investigation and the Office of Enforcement's Policy Review. Appendices B and C contain sample rules and regulations of other state and federal law enforcement agencies and a bibliography of other materials pertinent to this subject.

## **STRUCTURE OF THE POLICY REVIEW**

The Treasury Department's Policy Review was begun by Ronald K. Noble, then Under Secretary of the Treasury (Enforcement), but concluded by James E. Johnson and Elisabeth A. Bresee, upon Mr. Noble's departure from the Department of the Treasury.<sup>15</sup> The Under Secretary

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<sup>15</sup>Under Secretary Noble resigned from the Treasury Department on February 5, 1996, when this Report was nearing completion, to return to his position as an Associate Professor at the New York University School of Law. Following his departure, Under Secretary Noble continued to advise the Policy Review on a consulting basis. Elisabeth A. Bresee, Deputy Assistant Secretary of the Treasury for Enforcement, a former federal prosecutor and Director of the White House Security Review, assumed Under Secretary Noble's duties within the Treasury Department and with respect to the Policy Review until James E. Johnson was sworn in as

for Enforcement directly oversees the Department's Office of Enforcement which includes the Treasury Bureaus dedicated to law enforcement activities--the United States Secret Service (Secret Service), the Bureau of Alcohol, Tobacco and Firearms (ATF), the United States Customs Service (Customs), and the Federal Law Enforcement Training Center (FLETC)--and a component which provides support for the law enforcement function--the Financial Crimes Enforcement Network (FinCEN).<sup>16</sup>

The Under Secretary for Enforcement is also responsible for providing law enforcement policy guidance to the Internal Revenue Service Criminal Investigation Division (IRS-CID). The IRS-CID, together with the IRS Inspection Service (which serves an internal audit and investigation function), report to the Secretary of the Treasury through IRS Commissioner Margaret Richardson, who has fully supported the efforts of the Under Secretary for Enforcement in the conduct of the Policy Review since its inception.

The last of the Treasury components with a law enforcement mission is the Office of the Inspector General, which reports directly to the Secretary through the Deputy Secretary of the Treasury and to Congress. Because of the need to maintain the independence of the Inspector General's Office in its conduct of the related fact-finding investigation of the Roundups, the Policy Review did not focus on the policies or activities of the Inspector General's Office.<sup>17</sup>

In conducting the Policy Review, the Under Secretary for Enforcement drew upon the advice and counsel of the six distinguished members of the Citizens Review Panel (Panel) appointed by the Secretary of the Treasury to oversee and provide their evaluations of the Inspector General's fact-finding investigation and the Policy Review. Panel members met five times to receive briefings on the progress of the Inspector General's investigation and the Policy Review and to give advice and to provide comments on the Department's efforts. In addition, members of the Panel met and conferred individually with one another and with the Under Secretary and the staff of the Policy Review Team. The Panel members reviewed background papers and received oral briefings on policy and legal issues, considered the written position

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Assistant Secretary for Enforcement on March 15, 1996.

<sup>16</sup>Chapter One of the Report describes the mission and personnel of each of these Enforcement Bureaus, as well as of the two divisions of the Internal Revenue Service responsible for law enforcement functions.

<sup>17</sup>Following her review of the Policy Report, the Inspector General will be given an opportunity to comment on whether the Office of Enforcement's Policy Recommendations ought to be applied to law enforcement officers under the Inspector General.

paper and oral comments of the President of the National Treasury Employees Union (NTEU). received a briefing from the Department of Justice Inspector General concerning its parallel investigation of the Roundups, and commented on draft and the final versions of the Report of the Policy Review and on the report of the Inspector General's fact-finding investigation.

The following individuals who served as members of the Citizens Review Panel gave extensively of their time, shared their insights, and contributed their expertise to ensure that the Inspector General's fact-finding investigation and the Office of Enforcement's Policy Review were thorough, accurate, fair, and independent:

**NORMAN DORSEN** served as chair of the Panel and is Stokes Professor of Law at the New York University School of Law, where he has taught since 1961. He is a graduate of Harvard Law School, where he was an editor of the *Harvard Law Review*. He served as a law clerk to Supreme Court Justice John Marshall Harlan. Professor Dorsen helped write the brief in *Roe v. Wade* and appeared *amicus curiae* in the *Gideon* case, the *Pentagon Papers* case, and the *Nixon Tapes* case. He currently serves as chairman of the Board of Directors of the Lawyers Committee for Human Rights. He was the general counsel and later the president of the American Civil Liberties Union and was the founding president of the Society of American Law Teachers.

**JULIUS CHAMBERS** is Chancellor of North Carolina Central University. He received his J.D. degree from the University of North Carolina at Chapel Hill, where he was editor in chief of the *North Carolina Law Review*. Chancellor Chambers received a Master of Laws degree from Columbia University School of Law, and holds seven honorary Doctor of Laws degrees. He formerly served as executive director of the NAACP Legal Defense and Educational Fund.

**HELENE KAPLAN** is of Counsel to the firm of Skadden, Arps, Slate, Meagher & Flom, where she serves in the not-for-profit sector as counsel or trustee of many business, scientific, arts, and educational institutions. She was a member of the United States Secretary of State's Advisory Committee on South Africa from 1985 to 1987. Ms. Kaplan was formerly chair of the Boards of Trustees of the Carnegie Corporation of New York and of Barnard College. She has received an honorary Doctor of Laws degree from Columbia University.

**PATRICK MURPHY** is Director of the Police Policy Board for the United States Conference of Mayors. He was formerly Commissioner of the New York City Police Department and Commissioner of the Detroit Police Department. Director Murphy is a graduate of the FBI National Academy and holds a Master of Public Administration degree from the City College of New York. He currently serves as the chair of the Montgomery County, Maryland, Criminal Justice Coordinating Commission.

**FRED THOMAS** is Director of Public Safety for Prince George's County, Maryland. He was formerly Chief of the Metropolitan Police Department of Washington, D.C. Director Thomas holds a Masters degree in Justice from The American University and attended the FBI's National Executive Institute. Director Thomas has received Resolutions for outstanding leadership and service from the Maryland House of Delegates, the Senate of Maryland, and the District of Columbia City Council.

The sixth member of the Panel was former Solicitor General of the United States and President of Brigham Young University Rex Lee, who lost his long battle with cancer on March 11, 1996. President Lee was briefed by Under Secretary Noble and the Review Team in Utah and he continued to advise the Department despite his worsening illness, even participating in one Panel meeting via telephone from his hospital room. He will be missed.

To carry out the work of the review, the Under Secretary for Enforcement formed a Policy Review Team directed by attorneys from outside the Department of the Treasury. Sherryl Elise Michaelson, who is currently an attorney in private practice at the law firm of Hedges & Caldwell in Los Angeles, and has been active in civil rights and civil liberties matters throughout her legal career, served as the Director of the Policy Review Team. In that capacity, she reported jointly to the Under Secretary for Enforcement and the Citizens Review Panel. Ms. Michaelson is a former Assistant United States Attorney for the Central District of California, where she received the Justice Department's distinguished John Marshall Award for Excellence in Litigation, as well as awards presented by a number of federal law enforcement agencies for excellence in the administration of justice. The Policy Review Team's Assistant Director, Marc L. Greenwald, recently completed a clerkship with Judge David Thompson of the United States Court of Appeals for the Ninth Circuit after graduating *magna cum laude* from New York University in 1994 with a law degree and a Master of Arts in History.

The review could not have been completed without the valuable assistance of the following staff members of the Policy Review Team: Lorraine Rooks Cary, Writer-Editor; Janet K. Alexander, Logistics Coordinator; Lissette M. Flores, Documents Specialist; and Cynthia L. Poole, Administrative Assistant.

Members of the Department of the Treasury's Office of Enforcement provided substantial assistance to the creation of the Report. David Medina, Director of the Office of Policy Development, and two policy analysts on his staff, Court E. Golumbic and Andrew J. Mayock, reviewed and revised several chapters of the Report. R. Keith Walton, Senior Advisor to Under Secretary Noble, reviewed additional chapters, providing comments and revisions as well.

Because the policy issues implicated by the Review were heavily intertwined with complex constitutional and other legal issues, the Department's General Counsel, Edward S. Knight, personally participated in and appointed several attorneys from his office to assist in the

work of the review. These attorneys, whose efforts were supervised by Deputy General Counsel Neal S. Wolin, included Stephen J. McHale, Maurice A. Jones, E. Lee Patton, Andrew W. Winden, Julie Barry, Nina Nichols, Natalie G. Coburn, Katherine Kelley, and Mary Lewis.

The Policy Review Team's efforts were supported by liaisons representing each of the Treasury Law Enforcement Bureaus and components: Earl Housenfluk for FLETC; Kevin Richardson and John Mallone for ATF; John Kellog, Alan Doody, Charles Simonson, and John Varrone for Customs; Lucrezia Rotolo for FinCEN; Doug Gastorf, Howard Mulholland, and George Fields for IRS; and Larry Cockell for Secret Service. In addition, Victoria Duarte, James Emery, Kenneth Kunec, and Elizabeth Mathis of FinCEN assisted in the statistical analysis of data on Treasury disciplinary actions. Furthermore, the Policy Review is grateful for the assistance of Anna Dickey, Director of the Office of Finance and Administration for the Office of Enforcement, and her staff. Pablo Ruiz, from the Executive Office of Asset Forfeiture, provided much needed clerical support in the final weeks of the project. Finally, the assistance of Assistant Secretary for Management George Muñoz and his staff was invaluable.

## **SUMMARY OF THE POLICY RECOMMENDATIONS**

The balance of this Report describes the analysis undertaken by the Policy Review, together with the Recommendations in which the Review resulted and the considerations supporting those Recommendations. Those Recommendations are summarized below.

### **Organizing Principle of the Review's Recommendations**

**All of the Recommendations are driven by the following organizing principle:**

**Both the reality and the appearance of integrity, professionalism, and impartiality in the performance of duty are expected of all Treasury employees, and are essential to the ability of law enforcement personnel to perform their mission. Both on-duty and off-duty employee conduct may adversely affect the public's perception of the integrity, professionalism, and impartiality of the employee and the agency and may otherwise adversely affect the efficiency of the service.**

### **Disciplinary Recommendations**

#### **Recommendation No. 1: Off-Duty Conduct In General**

**The rules of all Treasury Bureaus and components that employ Treasury law enforcement officers should be amended, as necessary, to include the following**



**provisions:**

**(1) Treasury law enforcement officers may be disciplined for violations of the rules governing conduct and procedure, as defined in Section 0.102(a) of the Treasury Rules of Conduct, whether the violation occurs on or off duty, when violation of the rules adversely affects the efficiency of the service.**

**(2) Treasury law enforcement officers shall not engage, on or off duty, in criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the government.**

**Recommendation No. 2: Bias-Motivated Conduct by Treasury Law Enforcement Officers**

**Each Treasury Bureau or component that employs Treasury law enforcement officers should adopt the following rule prohibiting law enforcement officers within their agencies from engaging in bias-motivated conduct on or off duty:**

**Treasury law enforcement officers shall not use or engage in, on or off duty, abusive, derisive, profane, or demeaning statements, conduct, or gestures evidencing hatred or invidious prejudice to or about another person or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability.**

**As reflected in Recommendation No. 1 above, such conduct will result in disciplinary action when it adversely affects the efficiency of the service.**

**Recommendation No. 3: Membership or Participation in Hate Groups**

**Each Treasury Bureau or component that employs law enforcement officers should publish guidelines for the application of the Bias-Motivated Conduct rule set forth in Recommendation No. 2 above to membership in hate groups or other behavior through which a Treasury law enforcement officer might associate himself or herself with the prejudice-related conduct of others. Such guidelines should contain at least the following language:**

**A Treasury law enforcement officer who knowingly becomes or remains a member of or participates in a hate group or otherwise knowingly associates himself or herself with the hate-motivated activities of others, proceeds at the risk that his or her membership, participation, or association could reasonably be taken as tacit approval of the prejudice-related aspects of those groups or activities and could subject the officer to disciplinary**

**investigation and possible disciplinary action. As used here, “hate group” or “hate-motivated activities” are defined as an organization, association, event, or activity, the sole or a primary purpose of which is to advocate or promote hate, violence, or invidious prejudice against individuals or groups on account of race, color, religion, national origin, sex, sexual orientation, age, or disability.**

**The guidelines should also inform officers and their supervisors of the factors that will be applied in determining whether disciplinary action will result.**

**Recommendation No. 4: Misuse of Government Resources**

**The Treasury Department should consider what additional guidance is necessary concerning the permissible uses of government resources and, in particular, the method of obtaining approval and standards for approving the use of government resources in support of professional development and community service activities.**

**Recommendation No. 5: Study of the MSPB System and Treasury Law Enforcement Officers**

**The Treasury Department should study the role of the Merit System Protection Board system and the training, education, and accountability of managers in the screening and discipline of Treasury law enforcement officers.**

**Hiring Recommendations**

**Recommendation No. 6: Selection Criteria for Treasury Law Enforcement Officers**

**Impartiality, as demonstrated by the absence of statements or conduct evidencing hatred or prejudice on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability, should be a minimum hiring standard for all Treasury law enforcement officers. Information concerning this standard, together with the standards of conduct that apply to Treasury law enforcement officers on- and off-duty, should be provided to all applicants for Treasury law enforcement positions.**

**Recommendation No. 7: Background Investigations of Applicants for Positions as Treasury Law Enforcement Officers**

**Prior to hiring individuals as Treasury law enforcement officers, Treasury Bureaus and components should endeavor to determine whether the candidate has engaged in any act or statement evidencing hatred or prejudice against an individual or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability.**

**Recommendation No. 8: Applicant Hiring Safeguards**

**The Treasury Department should require that when a candidate who is deemed otherwise qualified and suitable for a position as a Treasury law enforcement officer has engaged in an act or statement evidencing hatred or prejudice against an individual or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability, a determination shall be made by the appropriate agency as to whether such conduct creates a reasonable basis to question (1) whether the candidate would perform duties as a Treasury law enforcement officer with impartiality; or (2) whether the candidate's employment as a Treasury law enforcement officer would otherwise adversely affect the Treasury Department's law enforcement mission.**

**Recommendation No. 9: Evaluation of Psychological Screening of Candidates for Positions as Treasury Law Enforcement Officers**

**Subject to an evaluation of the costs, benefits, and methods of implementing such a program, the Treasury Law Enforcement Bureaus should move toward the adoption of a program of psychological testing and screening for emotional stability and psychological fitness for employment in law enforcement, to be used in conjunction with the background investigation as part of the initial hiring procedures for Treasury law enforcement officers.**

**Recommendation No. 10: Promoting Workforce Diversity**

**The Treasury Department and all Treasury Bureaus or components that employ Treasury law enforcement officers should continue to promote racial and gender diversity and a prejudice-free work environment at all levels of the Treasury law enforcement workforce.**

### **Training Recommendations**

#### **Recommendation No. 11: Training in Diversity and Ethics**

**The Federal Law Enforcement Training Center and all Treasury Bureaus employing Treasury law enforcement officers should evaluate the effectiveness of existing training in diversity and ethics issues on an ongoing basis, to determine whether increased or modified training is necessary, and, if so, how such training should best be integrated into their regular curriculum and training programs.**

#### **Recommendation No. 12: Accessibility of Ethics Standards and Rules of Conduct**

**Treasury Law Enforcement Bureau-level rules should be streamlined and assembled in one place, together with government wide and Treasury ethical standards and rules of conduct, for easy reference by employees in a manner similar to that currently employed by the Internal Revenue Service. Examples of application of the rules should be included where feasible.**

### **Evaluation Recommendation**

#### **Recommendation No. 13: Evaluation of Managers and Supervisors**

**All Treasury Bureaus and components employing Treasury law enforcement officers should evaluate all managers and supervisors on their success in implementing the organizing principle of this Report as well as on the specific Recommendations of this Report for which they are responsible. Evaluations should assess the individual's success in promoting both the appearance and reality of integrity, professionalism, and impartiality in their subordinates.**

### **Implementation Recommendations**

#### **Recommendation No. 14: Responsibility for Implementation of Policy Recommendations**

**The Department of the Treasury, through the Office of the Under Secretary of the Treasury for Enforcement, acting in conjunction with the Internal Revenue Service Commissioner, the Office of the Assistant Secretary for Management, the General Counsel, and the heads of all other Treasury Bureaus or components that employ Treasury law enforcement officers, should implement the Recommendations set forth in this Report. Each Treasury Bureau or component charged with responsibility for the implementation or consideration of any Recommendation**

**should be required to adopt a written plan for implementing, monitoring, and evaluating the implementation of the Recommendations. Such Bureau-level implementation plans should contain, but not be limited to, a program of periodic review by senior Bureau managers of the handling and disposition of all disciplinary charges against Treasury law enforcement officers, and in particular, of charges involving violations of the rules set forth in this Report.**

**Recommendation No. 15: Implementing Recommendations with Respect to Members of Exclusive Bargaining Units**

**The Recommendations in this Report are relevant for all Treasury law enforcement officers. In determining to apply these recommendations with respect to bargaining unit employees, the Bureaus should be reminded that their statutory bargaining obligations must be satisfied.**



## **Section I**

### **The Background of the Policy Review**





## **CHAPTER ONE**

### **AN OVERVIEW OF TREASURY LAW ENFORCEMENT: ORGANIZATION, MISSION AND DEMOGRAPHICS**

#### **The Department of the Treasury and Law Enforcement**

The Department of the Treasury (Treasury) has jurisdiction over some of the nation's oldest law enforcement agencies. Today, the Treasury Bureaus and components that contain law enforcement officers employ over 29,000 employees in all. Together, these Bureaus and components serve Treasury and the nation through law enforcement, revenue collection, and regulation that reach a broad range of regulated and criminal activity.

The following Treasury Bureaus and components employ law enforcement officers:

- United States Customs Service (Customs)
- United States Secret Service (Secret Service)
- Bureau of Alcohol, Tobacco and Firearms (ATF)
- Financial Crimes Enforcement Network (FinCEN)
- Federal Law Enforcement Training Center (FLETC)
- Internal Revenue Service Criminal Investigation Division (IRS-CID) and  
Inspection Service
- Office of the Inspector General (OIG)
- Bureau of Engraving and Printing (BEP)
- The United States Mint (Mint)

#### *Office of the Under Secretary for Enforcement*

Treasury's Office of the Under Secretary for Enforcement coordinates law enforcement matters, formulates policies, and oversees Customs, Secret Service, ATF, FLETC, and FinCEN. Although the IRS operates under the direct supervision of its Commissioner, the Under Secretary for Enforcement provides policy oversight for the Criminal Investigation Division of the IRS. The Office of Inspector General, the internal auditor and investigator of alleged offenses within

the Department. is an independent office headed by the Inspector General. Treasury law enforcement officers at BEP and the Mint report to the Directors of their respective Bureaus.<sup>18</sup>

*Definition of Treasury Law Enforcement Officers*

For purposes of this report, the term “Treasury law enforcement officers” is limited to personnel of Customs, Secret Service, ATF, FinCEN, and IRS-CID and Inspection Service who are authorized to arrest individuals suspected or convicted of violations of federal criminal law, and to carry firearms and badges in performance of their duties, as well as FLETC instructors, training supervisors and managers.

In arriving at this definition, the Review analyzed federal statutes, judicial decisions, administrative decisions, executive orders, agency studies, and personnel rules and regulations. This examination yielded no consistent and authoritative definition of Treasury law enforcement officer. Having reviewed these and other sources, the term “Treasury law enforcement officer” is used to define those persons authorized to make arrests on behalf of the United States, to carry firearms, and to wear badges because these are the characteristics that most often mark an officer, in fact as well as in public perception, as one who is entrusted to exercise law enforcement powers on behalf of society.

Other definitions were rejected as either too narrow or too broad. For instance, as used in federal statutes and regulations, the term “law enforcement officer” is limited to measures governing salaries and benefits.<sup>19</sup> While inclusive of many Treasury personnel, this definition excludes certain other Treasury employees who make arrests, carry firearms, and wear badges. It therefore would exclude some Treasury law enforcement personnel who display the outward characteristics of an officer of the law and maintain the ability to exercise the significant powers of an officer's authority.

Conversely, the definition suggested by certain opinions of the United States Court of Appeals for the Federal Circuit Courts and the Merit System Protection Board (MSPB) is

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<sup>18</sup>To avoid any appearance of conflict with the Inspector General’s ongoing investigation into the subject matter of this Report, the Review did not include an examination of the policies, rules, and practices of the OIG. Moreover, because the BEP and the Mint each employ a relatively small component of Treasury law enforcement officers and pursue a mission unrelated to law enforcement, the policies, rules, and practices of these two entities are not explored in this Report.

<sup>19</sup>See, The Civil Service Retirement System, 5 U.S.C. 8831 *et seq.*; the Federal Employees Retirement System, 5 U.S.C. 8401 *et seq.*; Law Enforcement Availability Pay, 5 U.S.C. 5545; and Pay Administration, Premium Pay; 5 C.F.R. 550.

broader and extends the term “federal law enforcement officer” to employees who are beyond the statutory definition and without arrest authority, but who nevertheless have what the decisions call an “integral role” in the law enforcement mission.<sup>20</sup> Without addressing the merits of these decisions, this broader meaning is unsuitable for this Report because it expands the definition of law enforcement officer far beyond the Review's purposes and scope by adopting a definition that would depend greatly on the context of acts of all employees of law enforcement agencies and that would not necessarily implicate the use of police powers by those with arrest powers who carry guns and badges.

The definition ultimately chosen is supported by the United States Department of Justice's Bureau of Justice Statistics. In its survey of law enforcement officers in federal agencies, the Justice Department defined “federal law enforcement officers” as personnel who have arrest authority and are “also authorized (but not necessarily required) to carry firearms in the performance of their official duties.”<sup>21</sup> Therefore, “Treasury law enforcement officer” is a federal law enforcement officer employed by the Department of the Treasury.

#### *Demographics of Treasury Law Enforcement Officers*

Under the definition adopted, there are 19,627 Treasury law enforcement officers among the Bureaus and other components covered by the Review. The largest employer in this regard is Customs, which has 10,573 Treasury law enforcement officers. IRS employs 3,814 Treasury law enforcement officers; the Secret Service has 3,182; and ATF has 1,893. While the majority of FinCEN Treasury law enforcement officers are detailees, FinCEN has four law enforcement officers on permanent staff. Other than two officers who provide security to the training center, FLETC does not have its own Treasury law enforcement officers with arrest authority and authority to carry guns and badges. However, because FLETC is the place of instruction and training for those who ultimately fit this description, the 161 instructors, training supervisors and managers of FLETC who are responsible for training Treasury law enforcement officers are an indispensable part of any review of how Treasury law enforcement officers fulfill their missions. For this reason, the policy recommendations also extend to and cover these FLETC instructors, training supervisors, and managers.

The average age of a Treasury law enforcement officer is 41.5 years. The total work force consists of 16,378 males (83.4%) and 3,249 females (16.6%); and the racial composition is shown in the table that follows.

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<sup>20</sup>See, *Hickman v. Dept. of Justice*, 11 M.S.P.R. 153 (1982), *Padillo v. Dept of Justice*, 64 M.S.P.R. 416 (1994).

<sup>21</sup>Reaves, Brian A., *Federal Law Enforcement Officers, 1993*, UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, December 1994.

RACIAL COMPOSITION OF TREASURY LAW ENFORCEMENT OFFICERS

Position	White	African American	Hispanic	Asian	Native American	Total
Officers	14,945	1,625	2,396	529	132	19,627
Percentage	76.1%	8.3%	12.2%	2.7%	0.7%	

[Source: Treasury Integrated Management Information System February 3, 1996 and FLETC March 28, 1996]

The following sections provide a brief overview of the Treasury Law Enforcement Bureaus and components over which the Under Secretary for Enforcement has line authority or policy oversight responsibility. Specifically, it sets forth their missions, the duties of their law enforcement officers, and their demographics.

*United States Customs Service*

Established in 1789, Customs was created to collect duties. Today, Customs continues to assess and collect revenues from duties, fees, and penalties on imports. It also enforces and administers over 400 provisions of laws on behalf of forty agencies. Along with processing people, carriers, cargo, and mail across United States borders, Customs enforces laws regarding narcotics and other contraband smuggling; copyright, patent and trademark provisions; and illegal high-technology and weapons exports.

Among the 19,638 Customs employees, there are 10,573 law enforcement personnel who have arrest authority and who carry a firearm and a badge. These law enforcement officers are divided among the positions of Special Agents, Customs Inspectors, Canine Enforcement Officers, Marine Enforcement Officers, and Pilots.<sup>22</sup>

The Special Agents, who number 2,734, conduct investigations, make arrests, and help bring indictments against persons violating the laws, rules, and regulations which Customs administers. The 7,094 Customs Inspectors are responsible for enforcing Customs laws regarding passengers and cargo. They conduct searches, order detainments, and, if necessary, make arrests of persons who violate civil and criminal laws. The 430 Canine and Marine Enforcement Officers enforce the Customs laws through the use of dog patrols and boat patrols, respectively. The 315 Pilots fly the aircraft that Customs uses to patrol the nation's border against narcotics smugglers.

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<sup>22</sup>There are twenty-seven Customs Patrol Officers who also have arrest authority and carry firearms and badges. However, due to Customs restructuring, the duties of the position are being incorporated into other Customs law enforcement positions. Therefore, even though the Review Team's recommendations apply to the Officers that remain, the Officers are not treated as a separate group in the Review.

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Customs' law enforcement officers are found in forty-eight of the fifty states, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands. They also work in twenty-two foreign countries.

The average age of the Customs Criminal Investigators is 41.7 years. Customs Inspectors' average age is 44.2 years. Canine and Marine Enforcement Officers' average age is 36.7 years, and the Pilots' average age is 40 years. The following statistics provide a view of the racial and gender composition of the Customs law enforcement officers.

**RACIAL COMPOSITION OF CUSTOMS LAW ENFORCEMENT OFFICERS**

Position	White	African American	Hispanic	Native American	Asian American	Total
Special Agents	2315 84.7%	102 3.7%	250 9.1%	18 0.7%	49 1.8%	2734
Canine & Marine Enf. Officers	285 66.3%	26 6.0%	109 25.3%	4 0.9%	6 1.4%	430
Pilots	304 96.5%	1 0.3%	10 3.2%	0 0.0%	0 0.0%	315
Customs Inspectors	4698 66.2%	573 8.1%	1496 21.1%	38 0.5%	289 4.1%	7094
Total	7602 71.9%	702 6.6%	1865 17.6%	60 0.6%	344 3.3%	10,573

[Source: Treasury Integrated Management Information System February 3, 1996]

**RACIAL COMPOSITION OF CUSTOMS LAW ENFORCEMENT OFFICERS**

**MIDWEST**

Position	White	African American	Hispanic	Asian American	Native American	Total
Canine & Marine Enf. Officers	10	1	0	0	1	12
Special Agents	136	9	4	1	1	151
Customs Inspectors	435	81	31	7	6	560
Customs Bureau Total	581	91	35	8	8	723
Percentages	80.4%	12.6%	4.8%	1.1%	1.1%	

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**ROCKY MOUNTAIN**

Canine & Marine Enf. Officers	2	0	0	0	1	3
Special Agents	60	0	4	1	0	65
Customs Inspectors	179	6	14	1	4	204
Pilots	22	0	0	0	0	22
Customs Bureau Total	263	6	18	2	5	294
Percentages	89.5%	2.0%	6.1%	0.7%	1.7%	

**NORTHEAST**

Canine & Marine Enf. Officers	37	4	2	0	0	43
Special Agents	505	18	26	13	1	563
Customs Inspectors	1558	163	99	25	5	1850
Pilots	5	0	0	0	0	5
Customs Bureau Total	2105	186	127	38	6	2461
Percentages	85.3%	7.5%	5.1%	1.5%	0.2%	

**SOUTH**

Canine & Marine Enf. Officers	151	11	66	1	0	229
Special Agents	1063	45	101	7	14	1230
Customs Inspectors	1215	138	772	13	11	2149
Pilots	196	1	4	0	0	201
Customs Bureau Total	2625	195	943	21	25	3809
Percentages	68.9%	5.1%	24.7%	0.6%	0.7%	

**WEST**

Canine & Marine Enf. Officers	84	10	26	5	2	127
Special Agents	494	25	52	27	2	600
Customs Inspectors	1180	140	393	242	11	1966
Pilots	67	0	1	0	0	68
Customs Bureau Total	1832	175	472	274	15	2761
Percentages	66.0%	6.3%	17.0%	9.9%	0.5%	

[Source: Treasury Integrated Management Information System February 3, 1996]

GENDER COMPOSITION OF CUSTOMS LAW ENFORCEMENT OFFICERS

Position	Male	Female	Total
Special Agents	2440 89.2%	294 10.8%	2734
Canine & Marine Enf. Officers	384 89.3%	46 10.7%	430
Pilots	313 99.4%	2 0.6%	315
Customs Inspectors	5573 78.6%	1521 21.4%	7094
Total	8710 82.4%	1863 17.6%	10,573

[Source: Treasury Integrated Management Information System February 3, 1996]

*United States Secret Service*

The Secret Service was created in 1865 as the first general federal investigative agency. Its initial mission, which it still fulfills, was to protect the integrity of the United States currency against counterfeiting. After the assassination of President McKinley in 1901, the Secret Service acquired the additional responsibility of protecting the President. Today, the Secret Service's law enforcement personnel with authority to make arrests and carry firearms and wear badges are its 2,036 Special Agents and 1,146 Uniformed Division Officers. The Uniformed Division Officers provide security for the President and the First Family at the White House, the Vice President and family at the Naval Observatory, foreign dignitaries at foreign diplomatic missions, and at the Treasury Building, Treasury Annex, New Executive Office Building, and Old Executive Office Building. The Special Agents provide protection for the President, Vice President, former Presidents and their spouses, major presidential and vice-presidential candidates, foreign dignitaries, and other officials at the discretion of the President. They are also responsible for, on a priority basis, the conduct of intelligence investigations and related issues that could pose a potential threat to the President or Vice President. Special Agents also are responsible for investigating and arresting persons who commit offenses against United States laws regarding currency, coins, obligations, and securities of the United States, or foreign governments. They also enforce laws concerning electronic funds transfers, credit and debit card fraud, false identification, computer access fraud, food stamps fraud, and certain laws regarding financial institutions.

The average age of Secret Service law enforcement officers is 40.1 years for Special Agents and 35.7 years for Uniformed Division Officers. There are 1,866 male (91.7%) and 170 female (8.3%) Special Agents, and 1,043 male (91%) and 103 female (9%) Officers of the Uniformed Division. The racial composition of the law enforcement officers is as follows:

**RACIAL COMPOSITION OF SECRET SERVICE LAW ENFORCEMENT OFFICERS<sup>23</sup>**

Position	White	African American	Hispanic	Asian American	Native American	Total
Special Agents	1690 83.0%	168 8.3%	126 6.2%	32 1.6%	20 1.0%	2036
Uniformed Division	855 74.6%	239 20.9%	44 3.8%	6 0.5%	2 0.2%	1146
Total	2545 80.0%	407 12.8%	170 5.3%	38 1.2%	22 0.7%	3182

[Source: Treasury Integrated Management Information System February 3, 1996]

*Bureau of Alcohol, Tobacco and Firearms*

Although ATF was given separate bureau status within Treasury in 1972, it existed as a division of the Internal Revenue Service since the early 1900s. Over the years, its mission has evolved as the regulatory and criminal challenges have changed, and the 1,893 current ATF law enforcement officers, known as Special Agents, carry out numerous law enforcement and regulatory functions.

ATF Special Agents enforce federal statutes regarding the criminal use of firearms and explosives, incidents of arson, and the evasion of taxes on alcohol and tobacco products. Special Agents also assist federal, state, and local law enforcement agencies in the fight against violent crime through direct investigative efforts with the agencies and participation in a number of formal and informal task forces.

The average age of an ATF Special Agent is 39.3 years. There are 1,674 male (88.4%) and 219 female (11.6%) Special Agents and the racial composition of the Bureau is shown in the following table.

**RACIAL COMPOSITION OF ATF LAW ENFORCEMENT OFFICERS**

Position	White	African American	Hispanic	Asian American	Native American	Total
Special Agents	1535	186	134	27	11	1893
Percentages	81.1%	9.8%	7.1%	1.4%	0.6%	

[Source: Treasury Integrated Management Information System February 3, 1996]

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<sup>23</sup> Secret Service demographics by region are not available due to security concerns.



RACIAL COMPOSITION OF ATF LAW ENFORCEMENT OFFICERS BY REGION

	White	African American	Hispanic	Asian American	Native American	Total
Midwest	361	50	16	1	2	430
Percentages	84.0%	11.6%	3.7	0.2%	0.5%	
Northeast	386	54	20	6	2	468
Percentages	82.5%	11.5%	4.3	1.3%	0.4%	
Rocky Mt.	56	5	2	0.00	1	64
Percentages	87.5%	7.8%	3.1	0.0%	1.6%	
South	512	59	56	3	5	635
Percentages	80.6%	9.3%	8.8%	0.5%	0.8%	
West	215	17	31	17	1	281
Percentages	76.5%	6.0%	11.0%	6.0%	0.4%	

[Source: Treasury Integrated Management Information System February 3, 1996]

*Internal Revenue Service Criminal Investigation Division and Inspection Service*

The Treasury law enforcement officers at IRS are the Criminal Investigators (Special Agents and Inspectors) who work in either the Criminal Investigation Division or the Inspection Service. IRS-CID Special Agents enforce federal income tax laws as well as criminal statutes relating to other financial crimes such as money laundering, tax fraud, health care insurance fraud, and bankruptcy fraud. The Inspectors in the Inspection Service investigate threats and criminal activity directed at IRS employees, allegations of criminal activities or misconduct by IRS employees, and other criminal activities which may affect the integrity of the IRS.

The average age of the IRS Special Agent and Inspectors is 40.7 years. There are 2,931 male (76.8%) and 883 female (23.2%) Special Agents and Inspectors, and their racial composition is shown below.

RACIAL COMPOSITION OF IRS LAW ENFORCEMENT OFFICERS

	White	African American	Hispanic	Asian American	Native American	Total
Special Agent	3110	326	225	120	33	3814
Percentages	81.5%	8.5%	5.9%	3.1%	0.9%	

[Source: Treasury Integrated Management Information System February 3, 1996]

RACIAL COMPOSITION OF IRS LAW ENFORCEMENT OFFICERS BY REGION

	White	African American	Hispanic	Asian American	Native American	Total
Midwest	699	80	20	5	8	812
Percentages	86.1%	9.9%	2.5%	0.6%	1.0%	
Northeast	881	64	29	22	1	997
Percentages	88.4%	6.4%	2.9%	2.2%	0.1%	
Rocky Mt.	137	6	21	0.00	2	166
Percentages	82.5%	3.6%	12.7%	0.0%	1.2%	
South	912	137	80	11	17	1157
Percentages	78.8%	11.8%	6.9%	1.0%	1.5%	
West	478	39	67	82	5	671
Percentages	71.2%	5.8%	10.0%	12.2%	0.7%	

[Source: Treasury Integrated Management Information System February 3, 1996]

*Financial Crimes Enforcement Network*

FinCEN was created in 1990 to provide a multi-source intelligence and analytical network that supports federal, state, and local law enforcement efforts in the detection, investigation, and prosecution of financial crimes. The agency supports law enforcement organizations by collating, analyzing, and disseminating information on financial crimes, particularly money laundering. In 1994, FinCEN was given the authority to administer and enforce the Bank Secrecy Act.

FinCEN's permanent staff consists of 166 employees, four of whom are Special Agents who currently serve in secondary law enforcement positions. (Three of the four were originally detailed to FinCEN from other agencies.) In addition, FinCEN has twenty-five Special Agents who have been detailed to FinCEN from other agencies including the Department of Defense, the Justice Department, and Treasury Enforcement Bureaus. The Special Agents who are on the permanent FinCEN staff are four white males whose average age is 49 years old.

*Federal Law Enforcement Training Center*

Created in 1970, FLETC provides law enforcement training for all Treasury Law Enforcement Bureaus, as well as for other federal, state, local, and international law enforcement organizations and officers. FLETC trains law enforcement officers from over seventy federal agencies. It offers over 200 individual instructional programs covering such areas as basic police criminal and investigative training, specialized training and management, white-collar crime, advanced law enforcement photography, money laundering, marine law enforcement, and law enforcement instruction. FLETC also provides the use of its facilities for organizations to

conduct their own training, and produces curriculum and training techniques for outside organizations in the development of their training programs. FLETC's staff includes investigators, lawyers, auditors, research specialists, police, and security professionals. The administrative and financial operations of FLETC are overseen by the Treasury Department, but training policies and programs are set by representatives of eight departments and independent agencies.

FLETC is based in Glynco, Georgia, and has satellite training facilities in Artesia, New Mexico. FLETC's permanent training staff consists of 161 instructors, training supervisors, and managers whose average age is 48 years, and is comprised of 150 males (93%) and 11 females (7%). The racial composition is as follows.

RACIAL COMPOSITION OF FLETC LAW ENFORCEMENT OFFICERS

	White	African American	Hispanic	Asian American	Native American	Total
Total	149	4	2	0	6	161
Percentage	92.5%	2.5%	1.0%	0.0%	4.0%	

[Source: FLETC March 28, 1996]



## CHAPTER TWO

### SCOPE AND METHODOLOGY OF THE POLICY REVIEW

#### Review of Allegations and Factual Findings

Immediately after the allegations concerning the Roundups became public on July 11, 1995,<sup>24</sup> Secretary Rubin and Under Secretary Noble directed each of the Treasury Law Enforcement Bureaus to conduct internal investigations into the nature and extent of their employees' involvement. However, on July 19, 1995, the Inspector General exercised her prerogative under the Inspector General Act of 1978, as amended, (IG Act)<sup>25</sup> and assumed sole responsibility for the fact-finding investigation.<sup>26</sup> As required by the IG Act, the internal investigations being conducted by the various Enforcement Bureaus ceased and all affidavits and evidence previously gathered by the Bureaus were promptly turned over to the Inspector General.<sup>27</sup> Accordingly, the Policy Review did not undertake its own investigation into the facts underlying the Roundups.

Factual investigations were also conducted by other law enforcement agencies outside the Treasury Department. The Under Secretary of the Treasury invited the Department of Justice Inspector General who was conducting a parallel investigation to brief the Citizens Review Panel at its January 25, 1996 meeting on the results of his investigation. The Policy Review asked the Treasury Inspector General for information concerning any other federal, state, or local law enforcement agencies that had conducted investigations of the Roundups. On October 26, 1995, the Treasury Inspector General identified five such agencies to the Policy Review Team: the

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<sup>24</sup>ATF's Office of Inspection had opened its own inquiry of the Roundups approximately four weeks previously, after ATF managers learned of the event through a newsletter and an Internet posting, both by the Gadsden Minuteman militia group. Statement of ATF Director John Magaw, ATF News Release, July 11, 1995, at 1 [hereinafter 7/11/95 Magaw Statement]; Transcript of Hearings before the Senate Judiciary Committee, July 21, 1995, at 44 (testimony of ATF Director John Magaw) [hereinafter Senate Tr.].

<sup>25</sup>5 U.S.C.A. app. 3 (West Supp. 1995).

<sup>26</sup>Lau Mem., *supra* note 5, at 1; *see also* Senate Tr., *supra* note 24, at 34 (Testimony of Valerie Lau, Inspector General, Department of the Treasury).

<sup>27</sup>Senate Tr., *supra* note 24, at 34 (Lau Testimony).

Department of Justice Office of Inspector General, the Boone County and Florence, Kentucky Police Departments, the Washington, D.C. Metropolitan Police Department (MPD), and the Maryland State Police. The Policy Review contacted each of these agencies and requested copies of any reports of their investigations. In each case, the Policy Review was advised that no formal public reports had been prepared; instead, the fruits of these investigative efforts had been memorialized through entries in the personnel records of the officers under investigation. With the exception of the MPD, these agencies further stated that the records of their investigations were available only by subpoena. The Policy Review did not have subpoena power and, therefore, was unable to obtain copies of the reports of these other law enforcement investigations of the Roundups.<sup>28</sup> The Review did receive redacted versions of the letters of counseling placed in the records of three members of the MPD. These letters confirmed that the MPD's Internal Affairs Department investigation had established that certain unspecified racist activities had occurred during the Roundups, but that no active-duty MPD personnel had been implicated in those activities. The letters also corroborated one of the Treasury Inspector General's findings concerning one "Redneck of the Year" skit on a scatological, but nonracial, theme.

Because of the Department's desire to complete both components of its inquiry into the Roundup in a timely manner, it was necessary for the Policy Review to proceed in tandem with the Inspector General's investigation. During the course of that investigation, the Citizens Review Panel and the Policy Review received periodic briefings from the Inspector General and her staff concerning the allegations under investigation and the general investigative procedures and methodology being pursued. However, until the Inspector General's initial report was submitted to the Secretary on December 12, 1995, the Policy Review was not privy to the evidence discovered or the interim substantive findings of the Inspector General's independent investigation.

To advance the Policy Review during the pendency of the Inspector General's investigation, the key allegations concerning the Roundups were analyzed as reflected by press

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<sup>28</sup>The Inspector General subsequently identified to the Citizens Review Panel several additional law enforcement agencies which had conducted investigations of the Roundups. These included the Tennessee Bureau of Investigations, the Royal Canadian Mounted Police, Hamilton Provincial Police (Canada), York Provincial Police (Canada), and Bradley County, Tennessee Sheriff's Department. Because the Office of the Inspector General informed the Policy Review that it intended to incorporate the results of these investigations into the final report of the Treasury Inspector General, the Policy Review did not attempt to obtain copies of the reports of these agencies. The Policy Review did interview Lt. Col. Michael Graham, the officer in charge of the Army CID's investigation, concerning the policy implications of that investigation. Lt. Col. Graham provided copies of pertinent Army policies to the Policy Review.

accounts, the Senate hearings, and the Inspector General's briefings, and to identify the policies, procedures, rules, and regulations implicated by those allegations without regard to their merits. The Policy Review identified six general categories of alleged misconduct, which it used to identify existing rules and policies implicated by the allegations concerning the Roundups:

- (1) racist speech and conduct such as the use of racial epithets and racially demeaning symbols;
- (2) sexist speech and conduct and sexual harassment not rising to the level of sexual assault or criminal conduct;
- (3) criminal conduct, including rape, bestiality, prostitution, possession and distribution of controlled substances, and illegal gambling;
- (4) other off-duty conduct discrediting to the Department of the Treasury and federal law enforcement, such as public drunkenness and lewd conduct;
- (5) misuse of government resources; and
- (6) failure of Treasury law enforcement officers and supervisors to report offenses and take appropriate remedial action.

These categories enabled the Policy Review to move quickly, once the Inspector General's Report was submitted to the Secretary, to assimilate the factual findings and determine which existing policies appear to have been implicated and the sufficiency of existing policies and regulations to prevent incidents such as those alleged to have occurred at the Roundups.

All of the individuals whose conduct might have violated existing Departmental or Bureau policy rules and regulations with regard to their participation in the Good O' Boys Roundups will have their individual cases reviewed by the respective Bureaus. Nonetheless, in carrying out the function of assessing whether existing policies are sufficient to avoid such conduct in the future, the allegations concerning the conduct remain instructive in their description of the kind of conduct the Department wishes to deter in the future.

### **Effect of Bias on the Effectiveness of Law Enforcement**

The Policy Review conducted an exhaustive, systematic study of the issues relating to bias in law enforcement.<sup>29</sup> The Policy Review requested research support from the National Institute of Justice (NIJ), which responded with abstracts of all relevant publications held in the

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<sup>29</sup>The resources described in this section include only the most significant of the materials used in the course of the Policy Review. A more complete listing of relevant items can be found in the bibliography provided in Appendix C of this Report.

National Criminal Justice Reference Service (NCJRS) library and other pertinent materials. Members of the Policy Review conducted independent research at the NCJRS library as well as at the United States Commission on Civil Rights library and Treasury's own library. In addition to receiving guidance in this area from Citizens Review Panel members Patrick Murphy and Fred Thomas, the Policy Review interviewed Temple University's James J. Fyfe. The Policy Review consulted the major studies on this issue, including the benchmark work, *The Challenge of Crime in a Free Society*, authored by The President's Commission on Law Enforcement and Administration of Justice in 1967. The Policy Review also surveyed many publications authored by the Civil Rights Commission; examined a number of studies arising from the Rodney King beating in Los Angeles; consulted studies of ethics in law enforcement; and reviewed as well numerous resources on the nature and resurgence of racial and other hate groups in the United States. In addition, the Review interviewed Brian Levin, director of the Klanwatch project of the Southern Poverty Law Center.

### **Review of Disciplinary Policies and Regulations**

Because of the complexity and sensitivity of the legal and policy issues surrounding the government's power to remove or otherwise discipline federal law enforcement officers who engage in such conduct, much of the Policy Review's effort was directed toward the identification and analysis of existing disciplinary rules and policies. The Review reviewed all current rules of conduct and ethical standards governing Department of the Treasury law enforcement personnel, including federal statutes, such as the Civil Service Reform Act; the *Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury* and the *Department of the Treasury's Employees Rules of Conduct*; and the rules and codes of conduct promulgated by the Secret Service, ATF, Customs, and IRS. The Review also surveyed federal personnel manuals and other published interpretations of the foregoing rules and standards.

With the assistance of attorneys from the General Counsel's office, the Review also analyzed hundreds of federal employee discipline cases decided by the Merit Systems Protection Board (MSPB), the United States Court of Appeals for the Federal Circuit, and, for years prior to 1983, by other United States federal courts, as well as the leading treatise on federal employee discipline, Peter Broida's, *A Guide to Merit Systems Protection Board Law & Practice* (1994). The Review also examined hundreds of additional cases, treatises, and law review articles, which addressed, among other pertinent constitutional issues, the speech rights of public employees under the First Amendment, recent Supreme Court and federal and state jurisprudence related to hate crimes and hate speech statutes, the freedom of association, the right of autonomy and confidentiality branches of the right of privacy, and the implications of recent equal protection and affirmative action cases for policies targeting bias-animated conduct and for claims of reverse discrimination. The Review also considered federal and state cases addressing the higher



standard of conduct imposed on law enforcement officers and other public employees holding positions of special trust.

The Review also examined the relevant disciplinary policies of other agencies of the Justice Department, including the Federal Bureau of Investigation (FBI), the Bureau of Prisons, the Drug Enforcement Administration (DEA), and the Immigration and Naturalization Service (INS); all agencies of the Justice Department; the United States Army, particularly with respect to its policies on membership in extremist organizations and on sexual harassment; the Department of Health and Human Services (HHS); and the Department of Housing and Urban Development (HUD). Additionally, the Review consulted relevant portions of the *Federal Personnel Manual* and the *United States Attorney's Manual*.

With the guidance of Citizens Review Panel members Patrick Murphy and Fred Thomas, the Policy Review Team solicited examples of disciplinary policies addressing issues of bias and off-duty conduct from a number of local police departments throughout the country.<sup>30</sup> The Review interviewed representatives of the International Association of Chiefs of Police (IACP) concerning their efforts to draft model policies concerning bias-related and off-duty conduct, and obtained copies of the IACP's *Law Enforcement Officer's Code of Ethics*, which is widely used in police departments throughout the country. The Review also interviewed a representative of the Police Foundation concerning a recent study it performed on issues pertinent to bias in law enforcement.

The Review queried each of the Treasury Law Enforcement Bureaus concerning their records of disciplinary actions taken during the last three years for charges of on- and off-duty racial, sexual and other bias-related misconduct; other forms of off-duty conduct prejudicial to the government; misuse of government resources; and failure to report or take appropriate remedial action in cases involving misconduct. Redacted copies of the disciplinary proposal letters and dispositions were examined to determine what generalizations, if any, could be made concerning the nature of the conduct giving rise to discipline and of the Bureau's disciplinary response thereto.

### **Hiring and Screening Policies**

The Review obtained data from the Treasury Integrated Management Information System (TIMIS) concerning the race and gender distribution, educational background, and geographical

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<sup>30</sup>The Review interviewed representatives of, or obtained copies of disciplinary policies, and information on the hiring, background investigation, and psychological screening procedures from the police departments of New York City, Washington, D.C., Los Angeles, Chicago, Houston, Phoenix, and Prince George's County, Maryland.

distribution of assignments for all supervisory and field-level Treasury law enforcement officers. The Review consulted OPM's *Qualification Standards Operating Manual* to review qualifications for the occupational codes applicable to Treasury law enforcement officer positions. It examined the security clearance forms used in conducting background checks of all law enforcement officers employed by the Treasury Department, and interviewed representatives of each of the Treasury Bureau offices responsible for conducting pre-employment background screening of such officers to determine what questions were typically asked in the course of background checks and what responses were viewed as disqualifying or indicative of the need for further inquiry.

The Review interviewed representatives of the Commission on Law Enforcement Accreditation, which accredits hundreds of state and local police departments throughout the country, concerning their standards for hiring and psychological and background screening of law enforcement applicants and reviewed copies of the accreditation standards in those areas. It also interviewed representatives of the IACP and the American Psychological Association, as well as two psychologists whose duties include serving as pre-employment screening consultants to several federal and state law enforcement agencies, concerning the efficacy of psychological screening, in general, and attempts to screen for attitudes of racism and other forms of bias, in particular. The Review also interviewed Dr. Jane Barsaloux, Chief of the Validation And Analysis Unit of the DEA, a psychologist who is responsible for DEA's recent implementation of a preemployment psychological screening program for its Criminal Investigators. The Policy Review also examined the recommendations of the numerous studies on bias and policing with respect to their recommendations on hiring and screening criteria.

## **Training**

The Review interviewed an Assistant Director at FLETC concerning the entry-level training it provides to all Treasury law enforcement officers on diversity issues and ethics. The Review reviewed the syllabi and lesson plans for the entry-level training courses on those subjects; it also examined a list of advanced course offerings and resources available through FLETC.

The Review queried each of the Treasury Law Enforcement Bureaus concerning in-service and other training they offer to or require for their law enforcement officers on bias and ethics issues and examined course materials for such training. The Review also examined handouts, newsletters, business plans, and brochures used by Treasury Bureaus to update and inform personnel on ethics standards.

The Review also informally interviewed approximately two dozen Treasury law enforcement officers at random concerning their recollection of entry-level and other training,

and their beliefs concerning the standards of conduct expected of them by the Treasury Department, as these pertained to issues presented by the Roundups.

### **Evaluation and Promotion**

The Review reviewed the standard evaluation forms and performance criteria used by the Enforcement Bureaus for the various categories of law enforcement officers they employed to determine whether and how issues of bias, tolerance of and respect for diversity, cross-cultural sensitivity, professionalism, and ethics are evaluated.

### **Analysis and Recommendations**

Drawing upon all of the foregoing resources, the Review met regularly with Office of Enforcement officials to formulate a range of policy options for consideration. These options were submitted to the members of the Citizens Review Panel and the Office of Policy Development of the Office of Enforcement for review. Comments received from both these groups were considered carefully and, where necessary, additional legal research and policy analysis were performed. Once the options were narrowed, they were again circulated for comment to the Citizens Review Panel, as well as to the heads of each of the Treasury Law Enforcement Bureaus, the General Counsel's office, and to the Secretary and Deputy Secretary of the Treasury. The Recommendations set forth in this Report are the result of this collaborative process.



## CHAPTER THREE

### THE ALLEGATIONS

As noted above, the allegations concerning misconduct by federal, state, and local law enforcement officers at the Roundups first surfaced publicly on July 11, 1995.<sup>31</sup> The following day, the Washington-based television investigative program "I-Team," which had been broadcasting a series of programs critical of the ATF, aired a segment on the Roundups.<sup>32</sup> Featured was a videotape showing a sign with the inscription "Nigger<sup>33</sup> Checkpoint" in large letters and announcing, among other epithets, "Niggers--17 cents a pound"; an anonymous law enforcement officer charged that this sign had been posted at the entrance of the Roundup to maintain its "whites only" status. The program also included an interview with a member of the Gadsden Minutemen,<sup>34</sup> who claimed to have infiltrated the 1995 Roundup and found wide-scale evidence of overt racism, including the distribution of "Nigger Hunting Licenses" and the sale of T-shirts showing, for example, a picture of Dr. Martin Luther King superimposed on a target, and a drawing of O.J. Simpson with a noose around his neck.

In the weeks that followed, various other newspaper and magazine articles, television programs, and individuals alleged that members of federal and state law enforcement, including Treasury law enforcement officers, had participated over the last sixteen years in similar Roundups organized by a former ATF agent and supervisor, Eugene Rightmyer.<sup>35</sup> The initial

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<sup>31</sup>Seper, *supra* note 1, at A1.

<sup>32</sup>Videotape on file.

<sup>33</sup>Readers are warned that they are likely to find offensive language and activities described throughout this Report. Such material is contained in the Report to provide as complete and accurate an account as possible of the conduct alleged and/or found to have been committed at the Roundups and to permit the reader to form his or her own judgment concerning the nature of those activities based upon the behavior itself and not upon a sanitized version of it.

<sup>34</sup>The Gadsden Minutemen is a militia organization based in Gadsden, Alabama. The group is critical of federal gun control laws and of the ATF for its role in enforcing those laws. See David Jackson & Cara Tanamachi, *Treasury inquiry targets all-white parties*, DALLAS MORNING NEWS, July 18, 1995 at 3A.

<sup>35</sup>See, e.g., Seper, *supra* note 1, at A1, col. 1; THE WASHINGTON TIMES, July 13, 1995, at A18, col. 1; THE WASHINGTON POST, July 14, 1995, at A5, col. 1; THE WASHINGTON POST, July 18,

allegations focused primarily upon racist speech and conduct, including, without limitation, the attempt to exclude African Americans from attendance, the verbal harassment of those who did attend, the posting of the "Nigger Checkpoint" sign at the Roundup entrance, the distribution of "Nigger-Hunting Licenses," the performance of a "Redneck of the Year" skit portraying a robed Ku Klux Klansman sodomizing a kneeling individual in blackface, the display of Confederate flags, and the sale and wearing of T-shirts portraying acts of violence against and otherwise demeaning African Americans.

Ten days after the original allegations made the news, the scope of the alleged misconduct expanded when, during Judiciary Committee hearings on the Roundups, Senators Hatch and Feinstein indicated that the Senate Judiciary Committee had received affidavits describing illegal drug use and multiple rapes at the Roundups.<sup>36</sup> The Committee later provided these affidavits to the Inspector General. The Committee noted that it had not had the opportunity to verify these allegations or to assess the credibility of the affiants.

Witnesses also testified at the hearings that the Roundups included performances by paid strippers, excessive use of alcohol, fistfights, lewd conduct, and sexual harassment. For example, male agents were alleged to have hidden naked in trees to jump on and grope women who passed underneath.<sup>37</sup>

In addition to the allegations of other forms of misconduct, the original charges of racism were further elaborated during the hearings. For example, the Judiciary Committee heard evidence from an African-American ATF agent and his white partner. These agents testified that the African-American agent attended the 1995 Roundup at the invitation of his white partner; both agents, as well as an African-American officer from a Tennessee local police department, left after a group of local police officers in attendance called the African-American police officer

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1995, at A1, col. 1; THE NEW YORK TIMES, July 19, 1995, at A12, col. 1; THE NEW YORK TIMES, July 20, 1995, at A16, col. 1; THE WASHINGTON TIMES, July 22, 1995, at A1, col. 1; THE WASHINGTON POST, July 22, 1995, at A1, col. 1; THE PHILADELPHIA INQUIRER, July 22, 1995, at A3, col. 1; THE LOS ANGELES TIMES, July 22, 1995, at A1, col. 1.

<sup>36</sup>Senate Tr., *supra* note 24, at 92-96; *see also* Charles Pope, *Senators ask how a racist fest endured*, THE PHILADELPHIA INQUIRER, July 22, 1995, at A3; Jerry Seper, *U.S. to probe possible rape, drug use at 'Roundup'*, THE WASHINGTON TIMES, July 22, 1995, at A1 [hereinafter, Seper, *Possible Rape*]; THE WASHINGTON POST, July 22, 1995, at A1, col. 1; THE LOS ANGELES TIMES, July 22, 1995, at A1, col. 1; THE BOSTON GLOBE, July 22, 1995, at A1.

<sup>37</sup>Senate Tr., *supra* note 24, at 168, 189; Seper, *Possible Rape*, *supra* note 36, at A1.

a "nigger" and berated the white ATF agent for "ruining" the Roundup by bringing "niggers" to the event.<sup>38</sup>

From the outset, the allegations have also included charges of misuse of government resources in organizing the Roundups. For example, the article originally breaking the story reported that the ATF's Greenville, South Carolina, office was used as a collection point and location for registration fees and telephone inquiries.<sup>39</sup> Other articles specifically alleged that Gene Rightmyer, a former supervisory agent in ATF's Knoxville, Tennessee field office and the principal organizer of the Roundups, had used ATF stationery, envelopes and resources to promote the event.<sup>40</sup> Senator Fred Thompson, a member of the Senate Judiciary Committee, expressed outrage concerning reports that ATF agents had "participated in and perhaps organized the Roundups while on duty."<sup>41</sup>

In addition, Director Magaw testified before Congress that ATF officials learned of the Roundups soon after their inception in 1980 and should have been aware that African-American law enforcement officers "would not have felt welcome there," yet failed to investigate or intervene.<sup>42</sup> Senator Arlen Specter, a member of the Senate Judiciary Committee, also expressed concern that Treasury Department attorneys had failed to investigate or pass on to management the substance of deposition testimony in a civil rights suit by African-American agents against the ATF in which the Roundups had been cited as an example of racist attitudes within the agency.<sup>43</sup> This led to allegations that ATF management had either ignored or condoned racism at

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<sup>38</sup>Senate Tr., *supra* note 24, at 182-92, 211-20; Seper, *Possible Rape*, *supra* note 36, at A1. The white agent testified that he did not leave on the night of the incident with the two African American officers, but waited until six o'clock the following morning before he departed. Senate Tr., *supra* note 24, at 141.

<sup>39</sup>Seper, *supra* note 1, at A1.

<sup>40</sup>Jerry Seper, *ATF Ignored Tales of 'Roundup'*, THE WASHINGTON TIMES, July 14, 1995, at A1 (also alleging that Rightmyer was admonished in 1988 for use of ATF property to promote the Roundups).

<sup>41</sup>Jerry Seper, *Army up in arms over ATF racism*, THE WASHINGTON TIMES, July 13, 1995; Sam Fulwood III, *Investigation of ATF Whites-Only Retreat Sought*, LOS ANGELES TIMES, July 14, 1995, at A4.

<sup>42</sup>Senate Tr., *supra* note 24, at 140, 158-59; *see also* Abramowitz, *Early 'Roundup' Allegations Were Ignored by ATF Officials*, THE WASHINGTON POST, July 22, 1995, at A1.

<sup>43</sup>Senate Tr., *supra* note 24, at 75-77; Abramowitz, *supra* note 42, at A1.

the event and to demands from Congress that Treasury investigate whether the conduct alleged to have occurred at the Roundups was symptomatic of a culture of tolerance for racist conduct within Treasury Department law enforcement agencies.<sup>44</sup>

These allegations dictated the scope of the present Policy Review. As the Review learned the preliminary factual findings of the Inspector General, the focus was narrowed. Nevertheless, the Recommendations of this Review seek to ensure that no Treasury law enforcement officer ever participates in the conduct alleged above.

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<sup>44</sup>Transcript of Hearings before the Senate Banking, Housing and Urban Affairs Committee, July 14, 1995, B-14-18, at 1 (Remarks of Senator Carol Moseley-Braun) [hereinafter "7/14/95 Senate Tr."]; Senate Tr., *supra* note 24, at 35, 39-40 (remarks of Senator Specter), 41-44 (Senator Heflin), 48-49 (Senator Feinstein, proposing possible solution of statutory code of conduct for military and federal law enforcement personnel), 63-66 (Senator Grassley), 77-80 (Senator DeWine); Abramowitz, *supra* note 42, at A2; Jerry Seper, *ATF Ignored Tales of 'Roundup,'* THE WASHINGTON TIMES, July 14, 1995, at A1.



## **Section II**

### **Disciplinary Policies**



## **CHAPTER FOUR**

### **OVERVIEW OF THE FEDERAL EMPLOYEE DISCIPLINE PROCESS**

#### **The Civil Service Reform Act of 1978**

The appointment and discipline of Treasury law enforcement officers is governed by the Civil Service Reform Act of 1978 (the Act).<sup>45</sup> The Act embodies the first major reform of the federal civil service system since 1883, when the political patronage of the “spoils system” was abolished. It delineates a merit-based competitive system for the appointment and retention of career federal employees and the substantive and procedural rights of employees who face disciplinary actions. The Act also codifies the procedural requirements that federal agencies must follow when imposing serious disciplinary sanctions.

The Merit Systems Protection Board (MSPB) was established under the Act as an independent, quasi-judicial administrative agency. It consists of three members who are appointed by the President and confirmed by the Senate for nonrenewable terms of seven years. The MSPB replaced the Civil Service Commission as the body charged with adjudicating appeals by federal workers and applicants from disciplinary or other adverse personnel actions.<sup>46</sup> This adjudicative authority is in practice delegated by the MSPB to administrative judges stationed in regional offices throughout the country. The administrative judge develops a record and issues an initial or recommended decision, which becomes final. If a petition for review is filed by one of the parties, the MSPB will review the case. If the employee is part of a bargaining unit, the employee is entitled to file a grievance that is heard by an arbitrator pursuant to the terms of the applicable negotiated grievance procedure.

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<sup>45</sup> U.S.C. §§ 1101-7703 (1995).

<sup>46</sup> U.S.C. §§ 7513, 7701. An employee can appeal a removal, suspension for more than 14 days, a reduction in grade or pay or furlough for 30 days or less. Personnel disputes reach the MSPB in one of two fashions: either the employee contesting an adverse action brings an individual appeal to the MSPB or an independent Special Counsel, established by the Act to investigate and prosecute prohibited personnel practices and employment discrimination, and other violations of law within the federal civil service, petitions the MSPB for “corrective action” against an agency or employee engaged in such practices. 5 U.S.C. § 1214(b)(1)(B).

Decisions of the MSPB or an arbitrator may be appealed to the federal courts.<sup>47</sup> Since 1982, the United States Court of Appeals for the Federal Circuit has been vested with exclusive jurisdiction over appeals from MSPB decisions in disciplinary actions under the Act.<sup>48</sup> The government may appeal from an MSPB decision adverse to an agency only if (i) the Director of OPM (Director) first requests the Board to reconsider its decision and the request has been denied; and (ii) the Director has determined that the decision is based on an erroneous interpretation of law, rule, or regulation affecting personnel management and that the decision will have a substantial impact on a civil service law, rule, regulation or policy directive. The Court of Appeals has discretion to grant any such petition by the Director.<sup>49</sup>

Despite the Federal Circuit's exclusive jurisdiction over appeals from MSPB determinations in disciplinary matters, if an employee alleges that an adverse action was based on discrimination prohibited by the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Rehabilitation Act of 1973, or the Age Discrimination Act of 1967, the employee may appeal unfavorable decisions of the MSPB to another federal court as provided in the relevant act.<sup>50</sup> In such "mixed cases" in which federal courts other than the Federal Circuit review appeals in which an employee requests review of an MSPB decision on the merits and on the basis of a discrimination charge, the courts must apply the same standard of review to the merits of the adverse action as that applied by the Federal Circuit.<sup>51</sup>

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<sup>47</sup> 5 U.S.C. § 7703.

<sup>48</sup> 5 U.S.C. §§ 7121(f); 7703(b)(1). Prior to the enactment of the Federal Courts Improvement Act of 1982 (FCIA), which became effective on October 1, 1982, MSPB decisions were appealed to the United States Circuit Court of Appeals for the petitioner's domicile. The FCIA vested exclusive jurisdiction over appeals from the MSPB in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. §7703 (b)(1); *Long v. Dept. of Air Force*, 751 F.2d 339 (10th Cir. 1984); *Carroll v. Dept. of Health and Human Services*, 703 F.2d 1388 (Fed. Cir. 1983). While the decisions of the other federal circuit courts are not binding on the MSPB or the Federal Circuit, they remain persuasive authority and are included in this discussion when relevant.

<sup>49</sup> 5 U.S.C. § 7703(d).

<sup>50</sup> See 5 U.S.C. §7702(a)(1); 5 U.S.C. §7703(2). See also *Williams v. Dept. of the Army*, 715 F.2d 1485 (Fed. Cir. 1983)(finding that the Federal Circuit does not have jurisdiction over "mixed cases" in which a federal employee challenges an adverse action both on the merits and as an impermissible act of discrimination).

<sup>51</sup> 5 U.S.C. §7703(c). In rare instances in which employees charge that their constitutional rights have been violated by prohibited personnel practices for which there is no

### **Procedural Requirements for the Imposition of Employee Discipline**

Both procedural requirements and appeal rights involving federal employee disciplinary actions are dependent upon two principal factors: (i) the severity of the discipline imposed and (ii) whether the employee is a member of a collective bargaining unit.

Most Criminal Investigators are prohibited by Executive Order from being a member of a collective bargaining unit. However, some Treasury law enforcement officers, such as Customs

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appeal to the MSPB, the United States Court of Appeals for the District of Columbia Circuit has permitted employees and applicants to vindicate their constitutional rights through suits against their supervisors and employing agencies through direct suit in federal district court for injunctive relief, but not for damages. *See Hubbard v. EPA*, 949 F.2d 453 (D.C. Cir. 1991)(providing injunctive relief to an employment applicant rejected for employment because of protected speech activities in a prior job); *Spagnola v. Mathis*, 859 F.2d 223 (D.C. Cir. 1988)(finding that the Civil Service Reform Act of 1978 precludes damages claims but not injunctive relief for employees and applicants, such as Hubbard, seeking vindication of constitutional rights not otherwise sufficiently protected by the administrative remedies provided in the Act).

The District of Columbia Circuit appears to be alone in this position, however. Other circuits have refused to create a judicial alternative to the administrative remedies provided in the Civil Service Reform Act of 1978 (CSRA). *See, e.g., Saul v. United States*, 928 F.2d 829, 843 & n.27 (9th Cir. 1991)(finding that the CSRA provides injunctive relief by permitting employees to petition the Office of the Special Counsel of the MSPB to seek a stay of a prohibited personnel practice; noting that the D.C. Circuit Court differs from other circuits in providing an alternative equitable remedy); *Hallock v. Moses*, 731 F.2d 754 (11th Cir. 1984)(dismissing constitutional claim for equitable relief); *Braun v. United States*, 707 F.2d 922 (6th Cir. ), *cert denied sub nom. Hardrich v. United States*, 464 U.S. 991 (1983)(dismissing claims for equitable relief under 5 U.S.C. §702); *Broadway v. Block*, 694 F.2d 979, 986 (5th Cir. 1982)(holding that minor personnel actions are “committed to agency discretion by law” within meaning of 5 U.S.C. §701(a)(2), precluding judicial review).

With these two limited exceptions, the sole venue for federal employee discipline appeals since the enactment of the Federal Courts Improvement Act of 1982 is the Federal Circuit. *See generally, Brockmann v. Dept. of the Air Force*, 27 F.3d 544, 551 (Fed. Cir. 1994).

Inspectors, are typically represented by federal employee unions and may therefore have procedural rights that are different from those applicable to Treasury's Criminal Investigators.<sup>52</sup>

*Disciplinary Suspensions (Suspensions of 14 Days or Less)*

When the agency initiates a disciplinary action to suspend an employee for fourteen days or less, it must comply with the following procedures:

- (i)The agency must provide the employee with a written notice setting forth the charges proposed against the employee as well as the facts supporting the charges. The agency must also inform the employee that she or he has the right to review the material the agency relied upon to support the reasons for the proposed action stated in the notice;
- (ii)The agency must allow the employee a reasonable amount of time within which to review the material relied on to support its proposal and to respond orally and in writing to the charges;
- (iii)The agency must permit the employee to be represented by an attorney or other representative at the employee's own expense;
- (iv)The agency must provide the employee with written notice of its final decision as well as the reasons for the decision at the earliest practicable date; and
- (v)In arriving at its decision, the agency cannot consider any reasons for the action other than those specified in the notice of proposed action. It must also consider any answer provided by the employee.<sup>53</sup>

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<sup>52</sup>*Executive Order 12171, 44 F. R. 06565 (1979), reprinted as amended in 5 U.S.C. 7103 (1995), issued pursuant to 5 U.S.C. § 7103 (b)(1), finds that the employees of the following agencies or subdivisions of the Department of the Treasury do primarily investigative work directly affecting national security and thus should not be in a bargaining unit status: United States Secret Service; United States Secret Service Uniformed Division; Office of Special Assistant to the Secretary (National Security); Office of Intelligence Support (OIS); Office of the Assistant Secretary (Enforcement); Office of Criminal Enforcement, ATF; Office of Investigations, Customs; and the Criminal Investigation Division, IRS. Additionally, "any employee primarily engaged in investigation or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency" can be removed from coverage if dealing with integrity and honesty issues by 5 U.S.C. § 7112 (b)(7).*

<sup>53</sup>5 U.S.C. § 7503

An employee may not appeal a suspension of fourteen days or less to the MSPB. However, the employee is entitled to file a grievance through the agency's administrative grievance system or, if the employee is a bargaining unit member, to file a grievance pursuant to the terms of the negotiated grievance procedure.<sup>54</sup> The decision of an arbitrator in such a case may be appealed to the Federal Labor Relations Authority (FLRA).<sup>55</sup>

*Adverse Disciplinary Actions*

The procedures enumerated above for imposing disciplinary suspensions of fourteen days or less also apply to adverse actions. Adverse actions are defined to include removals, suspensions for more than fourteen days, and reductions in grade or pay.<sup>56</sup> However, in cases involving adverse actions, the employee is entitled to additional advance notice before the agency can impose disciplinary sanctions, and the employee has the right to appeal. Generally, the agency may not impose disciplinary sanctions until at least thirty days after the employee receives notice of the proposed sanctions. The employee generally is entitled to remain in a duty status in his or her regular position during the advance notice period. An exception to the thirty-day advance notice period applies when the agency contends that the employee has committed a

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<sup>54</sup>Employees may also file complaints of discrimination pursuant to regulations promulgated by the Equal Employment Opportunity Commission if they believe that any action taken against them was based on their race, color, religion, national origin, sex, age, handicapping condition, or in retaliation for having participated in activities protected by the various civil rights statutes. *See generally*, 29 C.F.R. Part 1614 (1995).

<sup>55</sup>Decisions of the FLRA on appeals of arbitrators' awards are by their very nature of extremely limited precedential value. The FLRA has consistently held that in cases of arbitrators' decisions involving disciplinary actions which can be appealed to the FLRA (admonishments, reprimands, suspensions of fourteen days or less), it is for the arbitrator to determine whether the penalty was for such just cause as required by the parties' collective bargaining agreement and, if so, whether the penalty assessed was reasonable. *See e.g.*, *Dept. of Veterans Affairs and International Association of Machinists*, 45 FLRA 1164 (1992); *Social Security Administration and AFGE*, 32 FLRA 765 (1988). Thus, its decisions would only be binding on the specific signatories to the agreement. Further, any such decision would depend on the specific language of the relevant sections of the collective bargaining agreement in question. Accordingly, we have not included FLRA decisions on appeals of arbitration cases in this report.

<sup>56</sup>5 U.S.C. § 7513; 5 C.F.R. § 752.401, *et seq* (1995).

crime punishable by imprisonment.<sup>57</sup> In cases where there is reasonable cause to believe an employee has committed a crime punishable by imprisonment, suspension is acceptable.<sup>58</sup>

### **Standards of Proof under the Act**

#### *The “Efficiency of the Service” Standard*

The Act provides that federal agencies may impose serious disciplinary sanctions (suspensions, demotions, or removals) upon employees who have completed their probationary periods only “*for such cause as will promote the efficiency of the service.*”<sup>59</sup> Less serious disciplinary sanctions, such as reprimands and admonishments, are not covered by this statutory standard.

Although the Act does not define the term, the “efficiency of the service” standard drives all government-employee disciplinary actions. Congress left it to the discretion of the governmental agency, subject to the appeal rights<sup>60</sup> described below to determine when a disciplinary action is warranted to promote “the efficiency of the service.” In essence, the MSPB and federal courts have held that disciplinary actions promote the efficiency of the service if the

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<sup>57</sup>5 U.S.C. § 7513.

<sup>58</sup>5 U.S.C. § 7513(b)(1).

<sup>59</sup>5 U.S.C. §§ 7503, 7513 (emphasis added). *See also* 5 U.S.C. § 2302(b)(10) (prohibiting discrimination in personnel actions for or against any employee or applicant on the basis of conduct “which does not adversely affect the performance of the employee or applicant or the performance of others . . .”). The Act establishes a different standard for disciplinary actions taken against administrative law judges, employees of national security agencies and members of the Senior Executive Service. 5 U.S.C. §§ 7521-7543.

<sup>60</sup>*Boylan v. U. S. Postal Service*. 704 F.2d 573 (11th Cir. 1983), *cert. denied*, 466 U.S. 939 (1984); *Adkins v. Hampton*. 586 F.2d 1070 (5th Cir. 1978).



grounds for the action are sufficiently related either to the employee's ability to accomplish his or her duties in a satisfactory fashion,<sup>61</sup> or to some other legitimate governmental interest.<sup>62</sup>

If an employee challenges the disciplinary sanctions that have been imposed by an agency, the agency must establish, by a preponderance of the evidence, that the action in issue promotes the "efficiency of the service." This burden may be met by the agency upon proving (i) that the employee committed the acts of misconduct charged by the agency; (ii) that a sufficient "nexus" exists between the misconduct and the efficiency of the service to sustain the disciplinary action; and (iii) that the specific discipline imposed was reasonable and selected only after consideration of all relevant factors.<sup>63</sup>

An agency is not required either under the Act, or by the MSPB or the federal courts, to allege that an employee has broken specific rules before disciplining the employee for misconduct. Moreover, there is no statutory or other legal requirement that federal employees must have violated a specific written rule or policy before they may be disciplined.<sup>64</sup> An agency may not impose disciplinary sanctions for violation of its rules or policies, however, unless the agency can prove the effect of the rule violation upon the "efficiency of the service." Thus, it is essential for the agency to prove conduct that is detrimental to governmental efficiency in every employee disciplinary action.

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<sup>61</sup>Most appellate decisions reviewing agency disciplinary actions do not attempt to define the term in the abstract; rather, they determine on an *ad hoc* basis where the agency has made a sufficient showing that its actions will promote the efficiency of the service under the facts of a particular case. PETER BROIDA, A GUIDE TO MERIT SYSTEMS PROTECTION BOARD LAW & PRACTICE 827 (1994)[hereinafter BROIDA].

<sup>62</sup> *Hatfield v. Department of the Interior*, 28 M.S.P.R. 673 (1985)(upholding removal after erroneous appointment in order to protect the competitive process for civil service appointments).

<sup>63</sup> *Parsons v. Department of the Air Force*, 707 F.2d 1406, 1409 (D.C. Cir. 1983); *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981). The *Douglas* factors discussed in this chapter are the standards that the MSPB requires agencies to consider when determining the appropriate penalty for a particular instance of misconduct.

<sup>64</sup> *Boyer v. Dept. of the Navy*, 1995 U.S. App. Lexis 12956 (Fed. Cir. 1995) (unpublished - Table Case Cite at 56 F.3d 84)(citing *Mings v. Dept. of Justice*, 813 F.2d 384, 389-90 (Fed. Cir. 1987)); *Fontes v. Dept. of Transportation*, 51 M.S.P.R. 655 (1991).

*The "Nexus" Requirement*

Under the Act, agencies are prohibited from imposing disciplinary sanctions for conduct unless it is "for such cause as will promote the efficiency of the service."<sup>65</sup> This evidentiary requirement commonly is referred to as the "nexus" requirement. The MSPB and the federal courts have held that to promote the "efficiency of the service," an agency action must: (i) establish a nexus between the misconduct and the efficiency of the service, and (ii) impose disciplinary sanctions that are reasonable in light of the gravity of the conduct and any mitigating considerations.<sup>66</sup>

*Nexus And On-Duty Misconduct*

The MSPB and the Federal Circuit generally have not required the agency to establish a nexus between an employee's conduct and the "efficiency of the service" when evaluating on-duty conduct. There is often a presumption that disruption of the office occurred where sanctions

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<sup>65</sup> 5 U.S.C. §§ 7503(a), 7513(a). *See also* 5 U.S.C. § 2302:

- (a)(2) For the purpose of this section--
  - (A) "personnel action" means--
    - (iii) an action under chapter 75 of this title or other disciplinary or corrective action;
- (b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority
  - (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability for fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States. . . ."

<sup>66</sup> One commentator has noted that "the MSPB and the courts have had extraordinary problems with nexus. The best approach in reviewing these cases is to review them all and attempt to pick out bits and pieces of opinions that apply to a particular set of facts. This is because the holdings regarding nexus are so varied and broadly stated. There are no hard and fast rules." BROIDA, *supra* note 66, at 877.

have been imposed for on-duty misconduct. In most instances, the agency is not required even to produce any actual evidence of the nexus between the misconduct and the “efficiency of the service.”<sup>67</sup> Thus, nexus is rarely an issue when disciplinary sanctions have been imposed for conduct such as misuse or theft of government resources, failure to report the misconduct of others, use of insulting or derogatory language, sexual misconduct, or sexual harassment that occurs on the job.<sup>68</sup> For example, the MSPB and the United States Court of Appeals for the Federal Circuit have found sufficient nexus to support disciplinary actions in cases involving the use of racial epithets<sup>69</sup> and verbal or physical sexual harassment,<sup>70</sup> where such conduct occurred in the work place or toward a co-worker.

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<sup>67</sup>See, e.g., *Kumferman v. Dept. of the Navy*, 19 M.S.P.R. 5 (1984); *Gray v. Dept. of the Army*, 12 M.S.P.R. 639 (1982).

<sup>68</sup>See, e.g., *Bivens v. Tennessee Valley Authority*, 8 Board 139, 8 M.S.P.R. 458 (1981) (stating that there was no doubt but that the employees' unauthorized removal, storage and use of government property adversely affected the efficiency of the service); *Watson v. Department of Justice*, Doct. No. 94-3440 (Fed. Cir. Aug. 29, 1995) (upholding the agency's removal of a border patrol agent, and finding nexus between the efficiency of the service and the employee's failure to report a coworker's violation of a rule concerning the misuse of firearms), *McClaskey v. Dept. of Energy*, 720 F.2d 583 (9th Cir. 1983)(affirming removal of agency electrician for “knowingly participating in a plan to prevent Government investigators from learning the truth about the unauthorized acquisition and use of wire paid for by the Bonneville Power Administration”).

<sup>69</sup>See, e.g., *Henry v. Dept. of the Navy*, 902 F.2d 949 (Fed. Cir. 1990)(upholding removal of payroll technician for insubordination including using abusive language toward a supervisor); *Johnson v. Dept. of Justice*, 65 M.S.P.R. 46 (1994)(upholding demotion of supervisory correctional officer for disrespectful conduct and using abusive language toward a co-worker).

<sup>70</sup>*Curry v. Dept. of the Navy*, 13 M.S.P.R. 327 (1982)(upholding demotion of shipyard foreman for denigrating a female apprenticeship program; though the isolated incident did not violate Title VII standards the remarks were “subversive of good order, efficiency, and discipline”); *Howard v. Dept. of Air Force*, 877 F. 2d 952 (Fed. Cir. 1989)(upholding removal of medical machine technician for offensive and unwelcome sexually suggestive conduct which impacted colleagues' work habits and threatened their psychological well-being); *Alexander v. U.S. Postal Service*, M.S.P.B. Docket No. SF075-94-0600-1-1 (March 24, 1995) (upholding the removal of a supervisory maintenance operator for numerous specifications of harassment of a verbal and physical nature of a female subordinate employee); *Morrison v. National Aeronautic & Space Admin.*, 65 M.S.P.R. 348 (1994)(upholding 35-day suspension of an electronics engineer who had 148 unauthorized files generating sexually explicit images on his computer and allowed one of them to be shown to a female colleague).

***Nexus And Off-Duty Misconduct.***

It is often difficult for a federal agency to establish a nexus between off-duty misconduct and the “efficiency of the service,” because it is often less likely to affect the direct job performance of an employee. In this area, the MSPB will not conclude that the requisite nexus exists in off-duty misconduct cases without affirmative evidence of such a nexus.

The MSPB first outlined the means by which an agency can establish nexus in an appeal from a disciplinary action brought for off-duty misconduct in *Merritt v. Department of Justice*,<sup>71</sup> shortly after the enactment of the Act. In *Merritt*, a Bureau of Prisons Correctional Officer was removed for off-duty use of a small quantity of marijuana in his home, including one instance in which he shared the controlled substance with fellow employees. The correctional officer argued that his removal did not promote the “efficiency of the service.” The agency contended that his use of marijuana destroyed their ability to trust him to enforce rigorously the prison's contraband regulations and caused concern that he might be subject to blackmail or other pressures by inmates who learned of his indiscretion.<sup>72</sup>

According to the MSPB, “the issue of when off-duty misconduct may justify disciplinary action involves the historically perplexing question of how such misconduct must relate to the ‘efficiency of the service’ before action may be warranted” and “the impact on [the “efficiency of the service”] standard of a statutory provision newly enacted by the Civil Service Reform Act of 1978 . . . , which now [makes] it a prohibited personnel practice to take a personnel action on the basis of conduct which does not adversely affect the performance of the

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<sup>71</sup> 6 M.S.P.R. 585 (1981) 6 M.S.P.B. 493 (1981).

<sup>72</sup>In *Merritt*, the MSPB overturned the officer's dismissal, holding that there was no nexus between the officer's off-duty marijuana use and the efficiency of the service. The continued vitality of this ruling is in doubt in light of the holding of subsequent cases recognizing the nexus implicit in a law enforcement officer's illegal use of controlled substances. See, e. g., *Thompson v. Dept of Justice*, 51 M S.P.R. 43 (1991)(deciding that removal was justified because DWI conviction and possession of marijuana disqualified a correctional officer from 1973 Rehabilitation Act mitigation consideration because it “struck at the core of his job and the agency's mission”); *Kruger v. Dept of Justice*, 32 M.S.P.R. 71 (1987) (finding nexus for discipline of a correctional officer for using marijuana outside a local tavern because the agency was charged with enforcing the nation's drug laws and drug rehabilitation programs and the employee's actions, which were antithetical to the agency's mission, could impair the efficiency of the agency by undermining public confidence despite the fact that his act was not publicized). Nevertheless, *Merritt* continues to be cited by the MSPB for its analysis of the three avenues for proving nexus.

employee or the performance of others.”<sup>73</sup> Noting that the Act's “efficiency of the service” standard was effectively a Congressional reenactment of a previously existing standard, the MSPB turned to earlier case law for instruction concerning the meaning of the term and the standard of proof required.<sup>74</sup>

The MSPB's examination in *Merritt* of the case law relating to nexus disclosed two different approaches to the issue. One method was exemplified by the Court of Claims decision in *Wathen v. United States*,<sup>75</sup> which adopted a limited “hands off” approach to judicial review of an agency's claim of a connection or nexus between disciplining an employee for off-duty misconduct and the “efficiency of the service.” The MSPB observed that the courts adopting this approach gave substantial deference to administrative decisionmaking of the governmental employer.<sup>76</sup>

In our estimation, the agencies and the Civil Service Commission are far better equipped and in a better position to make these sensitive judgments of whether and how a discharge promotes efficiency of the service. It is their prerogative, not ours, to do so.<sup>77</sup>

In contrast, the MSPB cited the District of Columbia Circuit's decision in *Norton v. Macy*,<sup>78</sup> as illustrative of a second approach, requiring closer judicial scrutiny of the purported nexus between off-duty misconduct and governmental efficiency.<sup>79</sup> Here, the court emphasized the importance of the limitations placed on agencies by the “efficiency of the service” standard:

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<sup>73</sup>*Merritt*, 6 M.S.P.B. at 493.

<sup>74</sup>*Id.* at 495.

<sup>75</sup>527 F.2d 1191 (Ct.Cl.), *cert. denied*, 429 U.S. 827 (1976).

<sup>76</sup>*Merritt*. 6 M.S.P.B. at 496.

<sup>77</sup>*Id.* at 496 n.11 (quoting *Wathen*, 527 F. 2d at 1197-98).

<sup>78</sup> 417 F.2d 1161 (D.C. Cir. 1969).

<sup>79</sup>*Merritt*, 6 M.S.P.B. at 498. In *Gueory v. Hampton*, 510 F.2d 1222 (D.C. Cir. 1974), which involved the removal of a postal employee convicted of manslaughter, the *Norton* approach was qualified and refined. In *Gueory* the concept that “such a serious crime [manslaughter] supplies the requisite nexus even without a showing of an explicit deleterious effect on the ‘efficiency of the service’” was introduced.

“[T]he notion that it could be an appropriate function of the federal bureaucracy to enforce the majority's conventional codes of conduct in the private lives of its employees is at war with elementary concepts of liberty, privacy, and diversity. And whatever we may think of the Government's qualifications to act *in loco parentis* in this way, the statute precludes it from discharging protected employees except for a reason related to the efficiency of the service.”<sup>80</sup>

For the MSPB, *Norton* “represented the cutting edge of the decade-long trend toward judicial insistence that federal employee discharges for off-duty misconduct must be related to the efficiency of the service.”<sup>81</sup> Lending itself to this view was the MSPB's consideration of whether the inclusion of Section 2302(b)(10)'s prohibition of discrimination resulting from conduct unrelated to job performance added anything to the “efficiency of the service” standard. MSPB concluded that the enactment of section 2302(b)(10) constituted “Congressional approval of the trend in judicial interpretation of the efficiency of the service standard . . . toward closer scrutiny of nexus determinations made by agencies.”<sup>82</sup>

Based on its analysis in *Merritt*, the MSPB has announced three methods by which an agency could establish the necessary nexus to link an employee's off-duty misconduct to the “efficiency of the service”:

- (i) a rebuttable presumption of nexus arising in certain egregious circumstances, generally involving serious criminal conduct;
- (ii) a showing, by a preponderance of the evidence, that the misconduct has adversely affected the job performance of the employee or the employee's colleagues or the agency's trust and confidence in the employee's job performance;
- or
- (iii) a showing, by a preponderance of the evidence, that the misconduct interferes with or adversely affects the agency's mission.<sup>83</sup>

#### *Egregious Circumstances Resulting in Presumption of Nexus*

The MSPB and federal courts infer nexus when the employee's off-duty conduct is egregious. Employees may rebut the presumption of nexus by demonstrating not only that their

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<sup>80</sup>*Merritt*, 6 M.S.P.B. at 499 (quoting *Norton*, 417 F.2d at 1165).

<sup>81</sup>*Id.* at 505.

<sup>82</sup>*Id.* at 508.

<sup>83</sup>*Kruger v. Dept. of Justice*, 32 M.S.P.R. 71 (1987); *Moten v. U. S. P. S.*, 42 M.S.P.R. 282 (1989). See also *Royster v. Dept. of Justice*, 58 M.S.P.R. 495 (1993).

off-duty conduct will not interfere with or adversely affect their own performance, but also that their off-duty misconduct will not interfere with or adversely affect the job performance of their colleagues or the overall achievement of their agency's mission.<sup>84</sup>

The Federal Circuit has affirmed this presumption as a means of proving nexus in cases involving egregious circumstances<sup>85</sup> and involving violent criminal conduct or other serious conduct. Cases in which the Federal Circuit and the MSPB have found egregious conduct sufficient to establish the presumption of nexus have generally involved serious criminal activities, such as violent acts,<sup>86</sup> child abuse,<sup>87</sup> narcotics trafficking or substance

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<sup>84</sup>The MSPB rarely reverses a presumptive finding of nexus. In one case, *Broadnax v. U.S. Postal Service*, 24 M.S.P.R. 319 (1984), the MSPB found that a letter carrier had rebutted a presumption of nexus finding through a psychiatrist's testimony that his violent behavior, which was caused by flashbacks associated with his service in Vietnam, was not likely to reoccur. In addition, in contrast to other employees engaging in egregious behavior, Broadnax was never charged with criminal misconduct. See also, *Arthur v. Dept. of Army*, 10 M.S.P.R. 239 (1982) (finding a disorderly conduct conviction insufficient to support a presumption of nexus); *Vilt v. U.S. Marshals Service*, 16 M.S.P.R. 192 (1983) (failure to pay debts insufficient to support a presumption of nexus).

<sup>85</sup>*Hayes v. Dept. of the Navy*, 727 F.2d 1535 (Fed. Cir. 1984). Prior to the creation of the Federal Circuit, a few of the other circuit courts questioned the propriety of the presumption standard, suggesting that it allowed agencies to shirk their responsibility to prove their findings by "substantial evidence." 5 U.S.C. 7703(c)(3). The most important decisions questioning the presumption standard involved sexual misconduct. *D.E. v. Dept. of the Navy*, 721 F.2d 1164 (9th Cir. 1983) (reversing removal of Naval engine mechanic for child molestation since off-duty conduct cannot give rise to presumption of nexus and Navy failed to show a connection between removal and the efficiency of the service). The MSPB has explicitly rejected the position of these courts *Johnson v. Dept. of Health and Human Services*, 22 M.S.P.R. 521, 526 (1984).

<sup>86</sup>*Robinson v. Department of the Treasury*, 42 M.S.P.R. 181 (1989) (holding felony conviction arising out of assault with a deadly weapon warranted a presumption of nexus that was not rebutted by a showing that the employee had performed successfully in her job during the one-year period between her arrest and conviction).

<sup>87</sup>*Allred v. Department of Health and Human Services*, 786 F.2d 1128 (Fed. Cir. 1986) (holding a plea of *nolo contendere* to a felony count of child molestation arising out of a sexual encounter with a 12-year-old boy was sufficiently egregious to raise a presumption of nexus); *Graybill v. United States Postal Service*, 782 F.2d 1567 (Fed. Cir.), *cert. denied*, 479 U.S. 963 (1986) (finding misconduct involving child abuse and engaging in sexual intercourse with a minor was sufficiently egregious to raise a presumption of nexus).

abuse,<sup>88</sup> and falsification of records or fraud against the government.<sup>89</sup>

*Conduct Adversely Affecting Job Performance or Trust*

Federal agencies may also establish a nexus between the efficiency of the service and employee misconduct when the actions of their employees have a direct impact on the day to day activities of the agency. Off-duty misconduct by federal employees may reflect poorly upon their ability to perform their duties, affect the abilities of other employees to perform their responsibilities, or impair the confidence reposed in them. When an agency attempts to establish a nexus between conduct and “efficiency of service” by this method, an agency is not required to prove an actual adverse impact on the employee's ability to perform specific duties. Rather, it is sufficient for the agency to show that a meaningful risk of adverse impact on the efficiency of the service exists due to the employee's misconduct.<sup>90</sup>

*Mings v. Department of Justice*<sup>91</sup> is typical of cases questioning the trustworthiness of an employee or the impact of an employee's presence on the work environment and “efficiency of the service.” Mings, a Border Patrol officer for the Immigration & Naturalization Service (INS), was discharged after writing a letter to his supervisor that contained abusive language disparaging Catholics and Hispanics and accused agency employees of incompetence. The agency discharged the officer, on the grounds that his strong bias against Hispanics and Catholics raised a serious question concerning his ability to perform his duties as a Border Patrol officer in a fair and unbiased manner, particularly given that the majority of aliens with whom he was

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<sup>88</sup>*Brook v. Corrado*, 999 F.2d 523 (Fed. Cir. 1993)(upholding removal of NASA employee following conviction for selling cocaine); *Parker v. U.S. Postal Service*, 819 F.2d 1113 (Fed. Cir. 1987)(upholding reversal for narcotics trafficking both on and off duty).

<sup>89</sup>*See, e.g., Kissner v. Office of Personnel Management*, 792 F.2d 133, 134 (Fed. Cir. 1986)(falsification of records, such as an employment application, is a type of misconduct from which a nexus between the misconduct and the efficiency of the service is presumed); *Crofoot v. Government Printing Office*, 761 F.2d 661, 664 (Fed. Cir. 1985)(defrauding the government, if proven by substantial evidence, is grounds for a presumption of nexus); *Beardsley v. Dept. of Defense*, 55 M.S.P.R. 504 (1992)(upholding removal for falsification of employment application information); *Hutton v. Office of Personnel Management*, 37 M.S.P.R. 67 (1988)(upholding negative suitability rating for the same).

<sup>90</sup>*See, e.g., Spotti v. Dept. of the Air Force*, 49 M.S.P.R. 27 (1991)(holding that by the use of marijuana before coming to work and during lunch, an aircraft mechanic clearly raised the risk that his intoxication might affect his ability to repair the guidance systems of the Minuteman missile on which he worked).

<sup>91</sup> 813 F.2d 384 (Fed. Cir. 1987).



working were of Hispanic descent. Furthermore, the agency asserted that the employee's expressed antipathy toward his co-workers and supervisors would have a disruptive effect upon the operation of the agency. Although Mings was also charged with threatening to change his testimony in an INS case unless his son was hired by the Service, the Federal Circuit focused on the bias charge in affirming his removal. The court held that the agency had established the nexus between the employee's conduct and the "efficiency of the service." The court found that the employee's bias against and intolerance of Catholics and Hispanics and his critical attitude regarding his superiors and co-workers cast grave doubts on his ability to discharge his duties in a fair and impartial manner. While the MSPB and the Federal Circuit rarely reverse a finding of nexus based on adverse impact on employee performance, they have been reluctant to accept bald assertions of negative impact unsupported by substantial evidence."<sup>92</sup>

#### *Conduct Antithetical to The Agency's Mission*

Although off-duty misconduct may not bear a relationship to an employee's job responsibilities or to the mission of an agency there are, instances where an employee's off duty misconduct "mocks the mission" of an agency.<sup>93</sup> Nexus may be proven in these cases by demonstrating that the employee's off-duty conduct is antithetical to the agency's mission. Agencies do not have to prove actual adverse impact on their efficiency in such cases, because forcing agencies to postpone employee discipline until actual impairment of their service materializes would be contrary to the public interest.<sup>94</sup> Proof that the off-duty conduct conflicts with the agency's mission suffices.

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<sup>92</sup>In *Moten v. U. S. Postal Service*, 42 M.S.P.R. 282 (1989), the Board reversed the removal of a letter carrier convicted of statutory rape, finding that he was duped into a consensual sexual relationship with a fourteen-year-old, and the agency presented no direct or specific evidence suggesting that the conviction would affect Moten's performance or the performance of his colleagues. In *Stines v. Dept. of Justice*, 765 F.2d 156 (Fed. Cir. 1985)(unreported table case discussed in BROIDA, *supra*, note 61, at 881), the Federal Circuit reinstated a federal corrections officer, finding that an overblown newspaper story about a confrontation with a local bar owner and the unsupported statement of the prison superintendent that the officer had destroyed his credibility as a correctional worker were insufficient to support a finding of nexus in light of the officer's strong service record. See also, *Ahr v. Nelson*, 632 F.Supp. 148 (S.D.Tex 1985), *aff'd*, 802 F.2d 454 (5th Cir. 1986).

<sup>93</sup>*Wild v. Dept. of Housing and Urban Development*, 692 F.2d 1129 (7th Cir. 1982).

<sup>94</sup>*Kruger v. Dept. of Justice*, 32 M.S.P.R. 71 (1987); *Morones v. Dept. of Justice*, 35 M.S.P.R. 285 (1987).

The Seventh Circuit's decision in *Wild v. Dept. of Housing and Urban Development* is typical of “adverse to the agency mission” cases.<sup>95</sup> A Department of Housing and Urban Development (HUD) appraiser was acting as the manager of apartments owned by his wife. During the period of his management, the condition of the properties rapidly declined until they became uninhabitable and were abandoned to neighborhood gangs that used them for narcotics trafficking. Following complaints from neighborhood associations, Wild's superiors admonished him either to repair or sell the apartments, but he did nothing for almost two years. Shortly after a story in the Chicago Sun-Times revealed Wild's mismanagement, the properties were condemned and he was dismissed from his job. The agency's basis for the dismissal was his violation of the code of basic principles governing the conduct of HUD employees that prohibited “involvement in or association with circumstances reasonably construed to reduce public confidence in the acts or determinations of the Department.”<sup>96</sup> The court stated:

[W]here an employee's off duty behavior is blatantly inconsistent with the mission of the employer and is known or likely to become known, most any employer, public or private, however broadminded, would want to fire the employee and would be reasonable in wanting to do so; and we find no evidence that Congress intended to deny this right to federal agencies.

It may be replied that all Wild is asking is that the agency be forced to prove a reduction of its efficiency due to off duty misconduct, rather than being allowed to infer from the relation between the misconduct and the agency's mission. But proof of *that* relation is the substantial evidence that the statute requires; to require more proof would be unnecessary and unrealistic ... [W]e will not force HUD to continue employing a “slumlord” in a responsible position until it can prove, by the cumbersome methods of litigation, what ought to be obvious -- that the credibility and effectiveness of the department are undermined by such discordance between public duty and private conduct.<sup>97</sup>

Noting the difficulty inherent in proving that a nonsupervisory employee's act of misconduct undermined the efficiency of an organization as vast as HUD, the court held that

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<sup>95</sup>692 F.2d 1129 (7th Cir. 1982).

<sup>96</sup>24 C.F.R. §0.735-201(b) (1995).

<sup>97</sup>*Wild*, 692 F.2d at 1133 (emphasis added).

such proof was not required in such cases: “We do not think it was the purpose of the Act to make it impossible as a practical matter to get rid of a civil servant whose off-duty conduct is in direct conflict with the mission of the agency that employs him.”<sup>98</sup>

The Federal Circuit embraced this reasoning in *Allred v. Dept. of Health & Human Services*.<sup>99</sup> Allred was a supervisory cost accountant for the Department of Health and Human Service (HHS). He pled no contest to charges of child molestation, stemming from a paid encounter with a twelve-year-old boy. The MSPB concluded that his conduct was directly opposed to the mission of the agency: administering health and social services to various disadvantaged individuals--including children and victims of child abuse. The MSPB went on to note that the victim of Allred's misconduct was among the beneficiaries of the agency's programs. Thus, his conduct was clearly antithetical to the very programs he had responsibility for monitoring and his removal was appropriate. The Federal Circuit affirmed his removal.

Other instances of misconduct found antithetical to agency missions by the MSPB include substance abuse by law enforcement officers,<sup>100</sup> improper fraternization by law enforcement officers with criminals or other wards of their responsibilities,<sup>101</sup> and failure to pay taxes by Treasury employees.<sup>102</sup>

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<sup>98</sup>*Id.*

<sup>99</sup>786 F.2d 1128 (Fed. Cir. 1986).

<sup>100</sup>*See, e. g., Thompson v. Dept. of Justice*, 51 M.S.P.R. 43 (1991)(deciding that removal was justified because driving while intoxicated conviction and possession of marijuana disqualified a correctional officer from 1973 Rehabilitation Act mitigation consideration since it struck “at the core of his job and the agency's mission”); *Kruger v. Dept. of Justice*, 32 M.S.P.R. 71 (1987)(finding nexus for discipline of a correctional officer for using marijuana outside of a local tavern since the agency was charged with enforcing the nation's drug laws and the employee's actions could impair the efficiency of the agency by undermining public confidence despite the fact that his act was not publicized).

<sup>101</sup>*Morones v. Dept. of Justice*, 35 M.S.P.R. 285 (1987)(upholding removal of an INS Supervisory Detention and Deportation Officer who was charged with having an improper relationship with an illegal alien).

<sup>102</sup>*Crawford v. Dept. of Treasury*, 56 M.S.P.R. 224 (1993)(supervisory Mint police officer); *Micali v. Dept. of Treasury*, 56 M.S.P.R. 127 (1992)(IRS Criminal Investigator) *but see, Monterosso v. Dept. of Treasury*, 6 M.S.P.R. 684 (1981) (reversing removal of employee who was in dire financial straits due to family medical expenses and failed to pay tax despite making efforts to do so).

*Reasonableness of the Penalty*

Assuming that an agency has proved that the conduct in question occurred and that the requisite nexus between that conduct and the “efficiency of the service” exists, the agency must still show that the penalty imposed is reasonable. This burden entails a showing that the agency imposed the penalty after giving due consideration to all the factors the MSPB has admonished agencies to consider when determining the appropriate penalty for a particular incident of misconduct. The MSPB enunciated these factors in *Douglas v. Veterans Administration*.<sup>103</sup>

In *Douglas*, the MSPB stated that its role was not to substitute its judgment for the agency in determining what disciplinary sanction is most appropriate, but rather to ensure that the agency's decision or exercise of its discretion in this area fell within the bounds of reasonableness:

Management of the federal work force and maintenance of discipline among-its members is not the Board's function. Any margin of discretion available to the Board in reviewing penalties must be exercised with appropriate deference to the primary discretion which has been entrusted to agency management, not to the Board. Our role in this area, as in others, is principally to assure that managerial discretion has been legitimately invoked and properly exercised.<sup>104</sup>

This approach to the review of an agency's selection of penalty, has been validated by the Federal Circuit.<sup>105</sup> As the court stated, “[d]eference is given to the agency's judgement . . . unless the penalty is so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion.”<sup>106</sup>

The specific *Douglas* factors are:

- (i) The nature and seriousness of the offense, and its relation to the employee's job duties (including whether the offense was intentional, was committed for gain, or was frequently repeated);

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<sup>103</sup>5 M.S.P.B. 313 (1981).

<sup>104</sup>*Id.* at 328.

<sup>105</sup>*Beard v. GSA*, 801 F.2d 1318 (Fed. Cir. 1986) (finding abuse of discretion is the proper standard for MSPB review of agency penalty decisions).

<sup>106</sup>*Parker v. U.S.P.S.*, 819 F.2d. 1113, 1116 (Fed. Cir. 1987).

- (ii) The employee's job level and type of employment, including supervisory or fiduciary role, and contact with the public;
- (iii) Past disciplinary record;
- (iv) Past work record, length of service;
- (v) Effect of the offense on supervisor's confidence in the employee's ability to perform the job duties;
- (vi) Consistency of penalty to those imposed in similar situations;
- (vii) Consistency of penalty with those called for in applicable table of penalties;
- (viii) Notoriety of the offense or impact on the agency's reputation;
- (ix) Clarity with which the employee was on notice of any rules which were violated or warned about the conduct in question;
- (x) Potential for employee's rehabilitation;
- (xi) Mitigating circumstances, such as job tensions, harassment, provocation, etc.; and
- (xii) The adequacy and effectiveness of alternative discipline.<sup>107</sup>

Although an agency is required to consider relevant *Douglas* factors when determining what penalty to impose in off-duty misconduct cases, the factors that the MSPB and Federal Circuit appear to consider most closely include the employee's job level and type of employment, the nature and seriousness of the offense, its notoriety, and the resulting effect on the supervisor's confidence in the employee's ability to perform job duties. Cases describing the operation of two of the factors are described for purposes of illustration.

There is no requirement that the employee's conduct in question must be a matter of public knowledge to constitute notorious conduct (*Douglas* factor number viii). For example, in *Taylor v. Dept. of the Navy*,<sup>108</sup> the MSPB sustained the removal of an employee convicted of manslaughter in the death of her son. Though the newspaper reports of the conviction did not connect Taylor with her agency, the removal was reasonable since her conduct was well known throughout her place of employment and her co-workers considered the conduct disgraceful.

Finally, in considering the factor of a supervisor's trust and confidence in the employee, the MSPB found in *Dolezal v. Dept. of the Army*,<sup>109</sup> that because the responsible agency officials had lost trust in an SES employee's ability to exercise his professional judgment after he carried out an adulterous relationship with a subordinate employee and used the agency electronic mail

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<sup>107</sup>*Douglas* 15 M.S. P. B. at 332.

<sup>108</sup>35 M.S.P.R. 438 (1987).

<sup>109</sup>58 M.S.P.R. 64 (1993), *aff'd*, 22 F.3d 1104 (Fed. Cir. 1994).

system to write love notes, his removal was reasonable. In *Schulmeister v. Dept. of the Navy*,<sup>110</sup> the agency removed an employee for off-duty possession of cocaine and methamphetamine. Her position required an extraordinary degree of trust and confidence because defective work could cause a catastrophic radiological accident. In sustaining her removal, the MSPB noted that her conduct had severely undermined the agency's ability to repose trust and confidence in her.

In short, employees may be disciplined seriously for any misconduct that detracts from the efficiency of the service. If the discipline is a suspension of more than two weeks, a reduction in grade or pay, or removal, the employee may appeal to the MSPB. The MSPB, in deciding these appeals, looks at whether the agency has proven the employee committed the misconduct charged and whether the agency has shown a nexus between the misconduct and the efficiency of the services. The MSPB also may mitigate the penalty after applying the *Douglas* factors. The next chapter discusses how agencies are granted more discretion by the MSPB and the courts in finding nexus and the *Douglas* factors when considering discipline of law enforcement officers.

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<sup>110</sup>46 M.S.P.R. 13 (1990).

## CHAPTER FIVE

### THE HIGHER STANDARD OF CONDUCT APPLICABLE TO LAW ENFORCEMENT OFFICERS

#### The Higher Standard in Federal Employment Discipline Cases

When reviewing disciplinary sanctions that have been imposed against law enforcement officers, the MSPB and the federal courts generally hold federal law enforcement officers to a higher standard of conduct than that required of other federal employees. In some cases, the authorities invoke the higher standard of conduct when they address the nexus between the officer's conduct and the "efficiency of the service." In others, the authorities invoke it to justify the imposition of higher disciplinary sanctions for law enforcement personnel than for other employees. This chapter will describe the higher standard for law enforcement officers both in the context of the civil service system.

#### *Justifications for Higher Standard*

There are six justifications generally cited in MSPB and federal court opinions for this higher standard of conduct: (i) law enforcement officers hold positions of public trust and responsibility,<sup>111</sup> (ii) they are required to maintain a reputation for honesty and integrity,<sup>112</sup> (iii) they are expected to refrain from notorious acts reflecting poorly on the law enforcement community,<sup>113</sup> (iv) they are expected to act responsibly,<sup>114</sup> (v) they are expected to demonstrate sound judgment,<sup>115</sup> and (vi) they may be required to testify in court and in grand jury proceedings.<sup>116</sup>

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<sup>111</sup>See, e.g., *Hickman v. Dept of Justice*, 11 M.S.P.R. 153, 155 (1982).

<sup>112</sup>See, e.g., *Austin v. Dept of Justice*, 11 M.S.P.R. 255, 257-58 (1982).

<sup>113</sup>See, e.g., *Wilber v. Dept of the Treasury*, 42 M.S.P.R. 582, 588 (1989), *aff'd*, 780 F.Supp. 837 (D.D.C. 1990).

<sup>114</sup>See, e.g., *Scofield v. Dept of the Treasury*, 53 M.S.P.R. 179, 187 (1992).

<sup>115</sup>See, e.g., *MacDonald v. Dept of the Navy*, 4 M.S.P.R. 403, 404 (1983).

<sup>116</sup>See, e.g., *Rhoads v. Dept. of Treasury*, 12 M.S.P.R. 115, 118 (1982).

*Categories of Federal Law Enforcement Officers Subject to Higher Standard*

Neither the MSPB nor the Federal Circuit has defined the term “law enforcement officer.”<sup>117</sup> Criminal Investigators obviously meet this definition.<sup>118</sup> The MSPB has also applied the higher standard to Treasury Department non-1811 enforcement personnel, such as Customs Inspectors<sup>119</sup> and the Uniformed Division of the Secret Service.<sup>120</sup> The courts have applied the higher standard to many non-1811 federal personnel, including Veterans Administration police officers,<sup>121</sup> correctional officers,<sup>122</sup> and Border Patrol officers.<sup>123</sup> The Federal Circuit has even applied the higher federal law-enforcement standard to a security guard at the National Gallery of Art.<sup>124</sup> Therefore, Treasury law enforcement officers (those with arrest authority and the authority to carry a firearm) should be held to a higher standard by the MSPB and the Federal Circuit.

*The Higher Standard and Roundup Activities*

The MSPB and the Federal Circuit have held law enforcement officers to a higher standard in numerous cases of misconduct similar to some of the activities that were alleged to have occurred at the Roundups. Law enforcement officers have been strongly disciplined for misuse of government property (particularly government-owned vehicles), substance abuse, sexual misconduct, and sexual harassment. These cases largely address the veracity and credibility of the individual law enforcement officer.

Law enforcement officers have been disciplined for some activities which would not otherwise be subject to legal sanction. In many cases, the MSPB has strictly applied the high conduct standard in cases of obscene, abusive, and insulting behavior that demonstrates either

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<sup>117</sup>See discussion of the various definitions of the term “law enforcement officer” in Chapter One, *supra*.

<sup>118</sup>See, e.g., *Wilber v. Dept of the Treasury*, 42 M.S.P.R. 582 (1989), *aff'd*, 780 F.Supp. 837 (D.D.C. 1990).

<sup>119</sup>See, e.g., *Rampado v. U.S. Customs Service*, 28 M.S.P.R. 71 (1985).

<sup>120</sup>See, e.g., *Canevari v. Dept of the Treasury*, 50 M.S.P.R. 311 (1991).

<sup>121</sup>See, e.g., *Huntley v. Veterans Administration*, 18 M.S.P.R. 71 (1982).

<sup>122</sup>See, e.g., *Boatman v. Dept of Justice*, 66 M.S.P.R. 58 (1994).

<sup>123</sup>See, e.g., *Barnhill v. Dept of Justice*, 10 M.S.P.R. 378 (1982).

<sup>124</sup>*Wiggins v. Nat'l Gallery of Art*, 980 F.2d 1436 (Fed. Cir. 1992).



insensitivity or a lack of tolerance toward others. Law enforcement officers have been disciplined for physically abusing aliens, making obscene and threatening phone calls, and addressing colleagues, inmates, and even strangers with obscene, abusive, racist, or otherwise offensive speech. Law enforcement officers also have been disciplined for fraternizing with individuals subject to legal sanction. The overriding concern addressed in these cases is the threat such activities posed to the impartial execution of the nation's laws.<sup>125</sup>

The MSPB and the federal courts have considered law enforcement employee relationships with individuals and organizations that are dedicated to abusive behavior toward other members of our society. The opinions in this field, however, include only incomplete references to relationships with hate groups in federal employee discipline cases. For example, membership in the Ku Klux Klan has been mentioned in two appeals from negative suitability findings in applications for federal law enforcement officer positions. Unfortunately, the opinions are not instructive on how those appellate panels would treat such an association.

In *Thomas v. Justice*,<sup>126</sup> a correctional officer was removed for falsifying his employment documents and security investigation forms. Although Thomas initially made a suitability discrimination based on his possible affiliation with the Ku Klux Klan, the MSPB did not pass on this claim because it was not raised in his petition for review. Also, in *Schaefer v. Dept. of Justice*,<sup>127</sup> in which an individual appealed a finding of negative suitability

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<sup>125</sup>The following is not an exhaustive list, but gives examples of the other kinds of cases for which the MSPB has upheld discipline of federal law enforcement officers. *Devine v. Nutt*, 718 F.2d 1048, 1056 (1983) (misuse of a government owned vehicle); *Kruger v. Dept. of Justice*, 32 M.S.P.R. 71 (1987)(use of even a small amount of a controlled substance); *Stephenson v. Dept. of the Air Force*, 40 M.S.P.R. 431 (1989) (drunkenness combined with other misconduct); *Dunnington v. Dept. of Justice*, 956 F.2d 1151 (Fed. Cir. 1992)(illegal acts of sexual misconduct); *Hackney v. Dept. of Justice*, 23 M.S.P.R. 462 (1984) (off-duty sexual misconduct with a twelve-year-old girl); *Alsedek v. Dept. of the Army*, 58 M.S.P.R. 229 (1993)(repeated or deliberate sexual advances, or overt physical contact of an unwelcome nature to sustain discipline for sexual harassment); *Royster v. Dept. of Justice*, 58 M.S.P.R. 495 (1993)(non-physical and off-duty abuse, such as the abusive phone calls); *Mings v. Dept. of Justice*, 813 F.2d 384, 389 (Fed. Cir. 1987)(abusive and insensitive remarks addressed towards colleagues).

<sup>126</sup>44 M.S.P.R. 460 (1990).

<sup>127</sup>25 M.S.P.R. 277 (1984).

for the Border Patrol, the MSPB determined that the agency had not supported its allegation of Schaefer's membership in the Ku Klux Klan by substantial evidence.

There are, however, cases where the courts have upheld discipline of federal law enforcement officers for improper fraternization with suspect individuals such as felons and aliens illegally present in the United States. For example, the MSPB upheld the removal of two correctional officers for soliciting the aid of an inmate in the financing of a liquor store.<sup>128</sup> The relationship violated the agency's standards of employee conduct and responsibility: accepting favors from inmates is strictly forbidden. Another correctional officer was subject to these sanctions after he was caught giving marijuana to an inmate.<sup>129</sup>

In those cases involving police officers who engaged in deceitful behavior to protect felons with whom they are acquainted, the biased enforcement of the laws is obvious. In one case, a Deputy United States Marshal received \$100 from a known felon upon whom the Marshal was supposed to serve a grand jury subpoena.<sup>130</sup> The target of the subpoena was an acquaintance of his, and the Deputy Marshal also provided advice on how to avoid the subpoena. The MSPB did not, however, address the nexus standard in determining that the Deputy's removal would promote the "efficiency of the service," perhaps because that conduct was clearly contrary to the mission of the agency.

Federal law enforcement officers who consort with foreign nationals who are unlawfully present in the United States also are subject to disciplinary penalties based upon the higher standard. In *Morones v. Dept. of Justice*,<sup>131</sup> the MSPB upheld the removal of an INS supervisor who harbored a foreign national for over a year even as she was facing deportation proceedings. The MSPB concluded that this conduct violated both federal statutes and agency rules. Despite the officer's candor, unblemished and exemplary work record, expressed remorse, and plea for continued employment, the agency's deciding official sustained the proposed removal due to the serious nature of the violation. And although the officer's misconduct was neither deemed notorious nor found to affect either his own or his colleagues' job performance, the MSPB found a nexus between his removal and the "efficiency of the service" because the conduct was considered antithetical to the mission of the agency. Again, the MSPB emphasized the necessity of avoiding any appearance of impropriety in the conduct of the agency's mission.

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<sup>128</sup>*Bolton and Turpin v. Dept. of Justice*, 26 M.S.P.R. 658 (1985).

<sup>129</sup>*Bain v. Dept of Justice*, 15 M.S.P.R. 515 (1983).

<sup>130</sup>*Middleton v. Dept. of Justice*, 23 M.S.P.R. 223 (1984).

<sup>131</sup>35 M.S.P.R. 285 (1987).

## **CHAPTER SIX**

### **EXISTING ETHICAL STANDARDS AND CODES OF CONDUCT RELEVANT TO THE ALLEGATIONS CONCERNING THE GOOD O' BOYS ROUNDUPS**

As discussed in Chapter Four, no specific rule or standard of conduct is a prerequisite to discipline; the Department may take action without reference to any other rule or policy if it can demonstrate that the discipline imposed promotes the efficiency of the service. However, rules and policies serve a number of other important functions. They help to crystallize for the Department as an institution its fundamental values and priorities. They communicate to the public the values that the Department considers most important. They provide guidance to supervisors and managers on what behavior the Department expects them to discipline. They also serve as training tools for employees, marking the outer boundaries of expected and acceptable behavior. In this regard, the promulgation and communication of rules and policies also serves a deterrent function. To the degree the rule also establishes penalties for its violation, or otherwise conveys the importance which management attaches to it, a rule or policy also serves as a caution light, illuminating the types of conduct in which employees engage at their peril. Further, express rules and policies help to establish that employees have ample notice that particular forms of behavior will be considered misconduct and subject to discipline. Although notice is not necessary to impose discipline, it is one of several factors to which the MSPB looks in determining whether the penalty imposed was reasonable. For all of these reasons, it is important to analyze what guidance current rules and policies governing the conduct of Treasury employees, especially law enforcement officers, offer.

#### **The Hierarchy of Governmental Conduct Codes and Ethical Standards**

The executive branch of the United States government imposes upon its employees a multi-tiered system of behavior requirements that fall into two general categories: (1) ethical standards, and (2) rules or codes of conduct. In theory, the ethical standards govern one category of behavior, and the rules or codes of conduct govern another. In general, the ethical standards tend to focus upon structural relationships that might create a conflict or appearance of conflict of interest on the part of a public employee; in contrast, the conduct codes and rules deal with all other kinds of behavior deemed inappropriate for government employees. For instance, the rules with respect to seeking employment outside the government, which could create an actual or apparent conflict of interest on the part of the employee, appear in the ethical standards, but not in the rules or codes of conduct. On the other hand, rules relating to drinking or gambling while

on duty or on government property appear in the rules of conduct, not in the ethical standards.<sup>132</sup> In practice, however, the distinction between ethical standards and rules of conduct is not always clear, and there is some degree of overlap between these two categories of regulations. Similarly, rules relating to the general misuse of government property and resources appear in the governmentwide ethical standards,<sup>133</sup> while a rule prohibiting misuse of government vehicles appears in the Treasury Conduct Regulations,<sup>134</sup> and both the ethical regulations and the conduct rules applicable to Treasury employees address the personal financial interests employees may hold.<sup>135</sup>

## **Ethical Standards**

The United States Office of Government Ethics (OGE) Standards of Ethical Conduct (OGE Ethical Standards)<sup>136</sup> set forth the ethical guidelines applicable to all executive branch employees. The OGE Ethical Standards focus on matters such as the acceptance of gifts from prohibited sources or given because of official position, conflicts of interest, appearances of lack of impartiality, misuse of position, and limitations on outside employment and other outside activities.

In addition to the OGE Ethical Standards, all Treasury employees must abide by the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury

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<sup>132</sup>See *Office Personnel Management Rules on Employee Responsibilities and Conduct*. 5 C.F.R. §735.201 (1995)(gambling) [hereinafter *OPM Conduct Reg*]; 60 Fed. Reg. at 28.537 (1995)(to be codified at 31 C.F.R. §0.204 (use of controlled substances and intoxicants) (proposed June 1, 1995)). [hereinafter *Treasury Conduct Rules*].

<sup>133</sup>*Standards of Ethical Conduct for Employees of the Executive Branch*. [hereinafter *OGE Ethical Standards*]. 5 C.F.R. §§ 2635.101 (6)(9), 2635.704 2635.705.

<sup>134</sup>*Treasury Conduct Rules*, *supra* note 1; 60 Fed. Reg. at 28.538 (1995) (to be codified at 31 C.F.R. § 0.209).

<sup>135</sup>*OGE Ethical Standards*. 5 C.F.R. §§ 2635.601-2635.606 (1995). Compare *Treasury Conduct Rules*. 60 Fed. Reg. 28.535, 28.538 (1995)(to be codified at 31 C.F.R. § 0.217 (personal financial interests)), with *Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury*, 60 Fed. Reg. 41.193, 41.194 (1995) (to be codified at 5 C.F.R. §3101.103 (prohibition on purchase of certain assets)) [hereinafter *Treasury Supp. Ethical Standards*].

<sup>136</sup> C.F.R. Part 2635 (1995).

(Treasury Supplemental Ethical Standards).<sup>137</sup> As their title suggests, the Treasury Supplemental Ethical Standards supplement rather than supersede or modify the OGE Ethical Standards. Among other things, the Treasury Supplemental Ethical Standards prescribe rules governing the acceptance of certain types of gifts; outside employment; financial interests and sources of income; and third-party relationships for employees of certain Treasury Bureaus and, in some instances, their family members, where such activities, interests, or relationships could cause one to question the impartiality of the employee's execution of his or her responsibilities.

### **Employee Rules and Codes of Conduct**

Generally, rules and codes of conduct control behavior outside the purview of the ethical standards referred to above. The Office of Personnel Management (OPM) Employee Responsibilities and Conduct Regulations<sup>138</sup> (OPM Conduct Regulations) regulate the behavior of all employees of the executive branch of the federal government. The OPM Conduct Regulations consist of only three rules: (1) prohibiting (with limited exceptions) gambling while on duty or on government property;<sup>139</sup> (2) prohibiting misuse of official, non-public information relating to OPM and Foreign Service examinations;<sup>140</sup> and (3) broadly prohibiting employees from engaging in “criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.”<sup>141</sup> The OPM Conduct Regulations expressly contemplate that they may be supplemented by regulations issued by the employee's agency and provide that a violation of such supplemental regulations may be cause for discipline.<sup>142</sup>

The Department of the Treasury's Employee Rules of Conduct<sup>143</sup> (Treasury Conduct Rules) supplement the OPM Conduct Regulations with guidelines that apply solely to Treasury employees. The Treasury Conduct Rules contain provisions relating to such topics as political activity, strikes, gifts or gratuities from foreign governments, use of controlled substances and

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<sup>137</sup>60 Fed. Reg. 22.249 (1995) (to be codified at 5 C.F.R. Part 3100).

<sup>138</sup>5 C.F.R. Part 735 (1992).

<sup>139</sup>5 C.F.R. § 735.201.

<sup>140</sup>5 C.F.R. § 735.202.

<sup>141</sup>5 C.F.R. § 735.203.

<sup>142</sup>5 C.F.R. § 735.103.

<sup>143</sup>60 Fed. Reg. 42.042 (1995) (adopting without alteration interim rules published at 60 Fed. Reg. 28.535) (to be codified in 31 C.F.R. Part O).

intoxicants, disclosure of information, use of government vehicles, solicitation, and distribution of literature, conduct prejudicial to the government, and personal financial interests. The Treasury Conduct Rules also set forth the Department's nondiscrimination policy.

### **Laws Enforcement Bureau Rules or Codes of Conduct**

In addition to the OGE Ethical Standards, Treasury Supplemental Ethical Standards, OPM Conduct Regulations, and the Treasury Conduct Rules, most, if not all Treasury Bureaus, including each of the Law Enforcement Bureaus, promulgate their own rules or codes of conduct which apply only to personnel employed by the issuing Bureau (Bureau Rules). For example, Customs issues standards of conduct governing the behavior of Customs Service personnel only.

Prior to February 3, 1993, when the OGE Ethical Standards became effective, Bureau Rules commonly addressed both conduct rules and what are now considered to be ethical standards. Today, as a general matter, Bureaus lack authority to supplement ethical standards; this can be done only at the departmental level and then only with the concurrence of OGE.<sup>144</sup> However, the Treasury Department may delegate to the Bureaus the Department's authority to make determinations required or permitted by the OGE Ethical Standards, such as granting or denying approval to engage in certain activities. Both the Treasury Department and the Bureaus may also issue instructions establishing internal procedures for documenting or processing such determinations, and may issue handbooks or other explanations of the ethical standards.<sup>145</sup> There are no similar restrictions on the authority of the Bureaus to promulgate rules governing employee conduct, so long as they do not contradict governmentwide or Treasury-level rules.<sup>146</sup> In addition to the OPM and Department of the Treasury rules of conduct, this chapter examines the Bureau Rules for Customs, ATF, Secret Service, and IRS.<sup>147</sup> For the most part, these Bureau

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<sup>144</sup> 5 C.F.R. § 2635.102(a)(adopting definition of agency set forth in 5 U.S.C. § 105); 2635.105 (proscribing procedure for agency issuance of supplemental ethical standards); Executive Order 12674 54 Fed. Reg. 15159 (1989), *as modified by* Exec. Order 12731 55 Fed. Reg. 42547 (1990) (revoking Exec. Order 11222 and authorizing OGE to issue a *single* comprehensive set of standards of conduct for all executive branch employees).

<sup>145</sup> 5 C. F. R. § 2635.105(c)(1995)

<sup>146</sup> *See* 5 C.F.R. § 2635.105(c)(3).

<sup>147</sup> FinCEN's staff includes twenty-five Special Agents on detail from other federal agencies. These employees are subject to the rules issued by their respective agencies. In addition, FinCEN currently is in the process of developing an employee handbook which will address ethical standards and codes of conduct.

Rules cover the same general topics already addressed by one or more of the rules of conduct promulgated by OPM or the Department of the Treasury. However, Bureau Rules explicate these standards in greater detail. Of the various standards and rules discussed herein, the Bureau Rules always give way to Departmental and OPM regulations in the event of a conflict.

Those OGE and Treasury Supplemental Ethical Standards, OPM Conduct Regulations, Treasury Conduct Rules, and Bureau Rules that are pertinent to the allegations concerning the Good O' Boys Roundups will be discussed below by topic.<sup>148</sup>

### **Employee Familiarity with Requirements of the Rules**

The Treasury Conduct Rules direct all Bureau heads to distribute to employees of their respective Bureaus the OGE Ethical Standards, Treasury Supplemental Ethical Standards, and Treasury Conduct Rules.<sup>149</sup> In addition, Bureau heads are required to explain to all new employees the application and contents of these documents.<sup>150</sup> Treasury employees are, in turn, required to read and adhere to all of these standards.<sup>151</sup> By Executive Order 12674, Part III, Section 301(c), agencies are required to provide annual training on ethics and rules of conduct.

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FLETC has issued several directives which address the matters covered by the United States governmentwide and Treasury Rules of Conduct. FLETC Directives 67-35.A, 35.B, 35.C, 35.E and 36.G. Several of these directives are being revised to conform with Treasury's Supplemental Ethical Standards and Treasury Conduct Rules.

<sup>148</sup>It should be noted that the Bureau Rules are, or soon will be, undergoing a process of revision to bring them into conformity with the Treasury Conduct Rules, which were themselves revised and repromulgated in August 1995. Typically, Bureau Rules are repromulgated whenever the Treasury Rules they supplement are revised. However, the current Bureau Rules remain in effect unless they have been superseded by or are in conflict with the OGE Ethical Standards, Treasury Ethical Standards, OPM Rules of Conduct, or Treasury Conduct Rules.

<sup>149</sup>60 Fed. Reg. at 28, 536 (1995) (to be codified at 31 C.F.R. § 0. 106). The OPM standards and the OGE Ethical Standards of Conduct were published by the Treasury Department in a 1993 booklet entitled "Standards of Ethical Conduct for Employees of the Executive Branch," copies of which were issued to all Treasury employees.

<sup>150</sup> *Id.*

<sup>151</sup>60 Fed. Reg. at 28, 537 (1995) (to be codified at 31 C.F.R. § 107(a)(1)).

Chapter Nine of this Report addresses the adequacy of current departmental training initiatives with respect to ethics and diversity issues. However, one observation concerning the mechanics through which the Bureaus attempt to comply with this employee familiarization requirement of the Treasury Conduct Rules is worthy of mention at this juncture. Handbooks setting forth the OGE Ethical Standards and pamphlets explaining the import of these standards are widely circulated and are readily accessible upon request to agency ethics, training, or personnel officers. The Treasury Supplemental Ethical Standards and Treasury Conduct Rules have been published in the Federal Register in both their interim and final versions and will eventually be codified in the Code of Federal Regulations. These publications are available in libraries but are not readily accessible to employees, particularly those who are not lawyers.

The Bureau Rules collectively consist of hundreds of pages of rules, policy statements, personnel directives, tables of penalties, and/or administrative manuals covering a wide variety of topics. Some have been assembled into manuals or handbooks, but these volumes are not always issued to each employee of the Bureau nor are they always kept up to date. In other cases, rules, policy statements, and directives appear to have been issued and circulated on an isolated and sporadic basis to address specific issues or concerns, but have not been collected into a standardized format for ready reference. In general, the Bureau-level rules could be more centrally located.

With the exception of the IRS, which provides each of its employees with a plastic portfolio containing a copy of all levels of ethics and conduct rules, as well as other literature on the topic of ethics, none of the Bureaus has assembled all applicable rules in a single semi-permanent but updatable format and disseminated the rules in this format to all of the personnel to whom they apply. Moreover, except for the OGE Ethical Standards and a now-obsolete guide to the rules of conduct issued by the IRS for supervisors in 1986, there is no written vehicle for disseminating explanations and illustrations of the rules to Department employees.

In sum, the Bureau-level rules can be difficult to locate.<sup>152</sup> This observation does not excuse employees for engaging in conduct that any reasonable person would understand to be inappropriate. Moreover, as Treasury law enforcement officers are sure to know, “ignorance of the law is no excuse.” It does mean, however, that the Department could be more effective in availing itself of the educative and deterrent value of the standards it promulgates. As a result, specific recommendations for improvements in training and in the accessibility of the ethics and conduct regulations are set forth in Chapter Nine of this Report.

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<sup>152</sup>Notwithstanding that there are potential difficulties, it is important to note that Bureau managers periodically use written reminders to employees regarding standards of conduct. These reminders in the form of directives and orders, often include specific examples of proscribed behavior.



### **General Rules Applicable to Activities and Associations Creating an Appearance of Bias**

The OGE Ethical Standards contain several references to the duty of all government employees to maintain both the fact and the appearance of impartiality. While these provisions typically refer expressly to “financial interests” or matters of “private gain” that would create a real or apparent conflict of interest, some are expressed in broader terms. For example, in reciting the general principles of ethical conduct applicable to every employee, the OGE Ethical Standards provide in relevant part:

- (8) Employees shall act impartially and not give preferential treatment to any private organization or individual. . . .
- (10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities. . . .
- (14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.<sup>153</sup>

Although these broad principles make no specific reference to off-duty participation in racist activities or other acts of bias, such acts would certainly create at least an appearance that an employee would be unable or unwilling to act impartially and might give preferential treatment to certain organizations or individuals on the basis of race or other impermissible criteria. For the reasons discussed above, such activities would also conflict with the official responsibilities of a law enforcement officer.

However, the surrounding context, with its emphasis on financial conflicts of interest, has traditionally caused these principles to be viewed in a more narrow light as requiring financial independence in the matters in which an employee is called upon to exercise his or her discretionary authority. This view is reinforced by the specific standards implementing the general principle of impartiality. One of these standards requires an employee to disqualify himself or herself from participating in a matter, when the circumstances would cause “a reasonable person with knowledge of the relevant facts to question his impartiality in the

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<sup>153</sup> 5 C.F.R. § 2635.101(b).

matter.”<sup>154</sup> However, by its terms, this standard applies to situations where the doubt concerning the employee's impartiality arises because the employee knows that the matter is “likely to have a direct and predictable effect on the *financial interest* of a member of his household,” or that “a person with whom he has a covered relationship is a *party to [the] matter*. . . .”<sup>155</sup> Covered relationships include “an organization, other than a political party . . . in which the employee is an active participant,” as well as certain kinds of business, contractual or financial relationships, service within the previous year as an officer, director, or other principal of a corporation or organization that is a party to the matter in question, and “close personal relationships” between parties and the employee or a member of his or her households.<sup>156</sup> Thus, under this standard any kind of financial interest that would cause a question concerning impartiality to arise would be prohibited, but nonfinancial relationships are banned only if an organization or individual with whom the employee is associated is involved as a party in a matter under the employee's purview. Under this conflict-of-interest standard, an active member of the Ku Klux Klan would be disqualified from acting in a matter, for example, a tax audit or criminal prosecution, in which the Klan was a party. However, Ku Klux Klan membership would not necessarily preclude the employee under this particular standard from acting in other matters in which the Ku Klux Klan was not a party but race was an issue despite the Klan's well-known advocacy of discrimination and even violence against African-Americans and other racial minorities. Indeed, the commentary to this standard states that “[n]othing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious, or moral views.”<sup>157</sup>

Another ethical standard prohibiting the employee from engaging “in outside employment or *any other outside activity that conflicts with his official duties*” would at first appear to be more to the point.<sup>158</sup> The commentary makes clear that the outside activities prohibited under this standard extend beyond financial relationships when it uses the example of an Environmental Protection Agency employee's presidency of a nonprofit environmental organization that routinely submits comments on regulations under the employee's purview.<sup>159</sup> By its terms, this ethical standard would not at first glance appear to require that an organization

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<sup>154</sup>5 C.F.R. § 2635.502(a).

<sup>155</sup>*Id.* (emphasis added).

<sup>156</sup>5 C.F.R. § 2635.502(b)(1)

<sup>157</sup>5 C.F.R. § 2635(b)(1)(v), note.

<sup>158</sup>5 C.F.R. § 2635.801 (emphasis added).

<sup>159</sup>5 C.F.R. § 2635.802(b), commentary.

or outside activity be a party to a matter before such an affiliation will be disqualifying. However, the standard defines a “conflict with official duties” in a manner that incorporates by reference the preceding standard on “covered relationships,” as well as another standard that is limited to prohibited financial interests.<sup>160</sup> Thus, here again, the employee's participation would not be expressly prohibited by the standard unless the organization or individual with whom the employee is involved were an actual party to the matter under the employee's responsibility.

There is a third possibility, however. Under the definitions applicable to this standard, an activity may also conflict with an employee's official duties if it is prohibited by statute or by an agency supplemental regulation.<sup>161</sup> Thus, non-financial associations or activities, such as participation in the Good O' Boys Roundup, *could* involve a violation of this standard if the Treasury Supplemental Ethical Standards or Conduct Code or Bureau rules specifically prohibited them. However, the Treasury Supplemental Ethical Standard rules on this topic prohibit only “outside employment or *business activities*, ” whether compensated or uncompensated, unless the employee obtains prior written Bureau-level approval.<sup>162</sup>

The Bureau Rules relating to outside activities were all promulgated prior to the adoption of both the OGE Ethical Standards or the Treasury Supplemental Ethical Standards. Unlike conduct rules which Bureaus are free to supplement with their own requirements, Bureaus cannot expand the scope of an OGE or Treasury-level ethical standard. The ATF Bureau rules expressly prohibit employees from engaging in outside activities which (a) interfere with the efficient performance of official duties, (b) might bring discredit on or cause unfavorable and justifiable criticism of the Government, or (c) might reasonably result in a conflict of interest, or an apparent conflict of interest, with official duties and responsibilities.”<sup>163</sup> Outside activities are not defined in a manner that would limit them to commercial contexts. Participation by law enforcement officers in certain activities alleged to have occurred at the Good O' Boys Roundups has already brought unfavorable criticism; participation in hate groups and other racist or bias

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<sup>160</sup>5 C.F.R. § 2635.802(b)(incorporating by reference 5 C.F.R. §§ 2635.402 (conflicting financial interests) and 2635.502 (covered relationships)).

<sup>161</sup>5. C.F.R. § 2635.802(a).

<sup>162</sup>5 C.F.R. § 3101.104.

<sup>163</sup>ATF Order 2735.1, *Employee Responsibilities and Conduct* 38(a)(11) at 6 (May 31, 1974).

related outside activities would certainly do the same and could also seriously interfere with the efficient performance of the employee's official duties.<sup>164</sup>

The Secret Service rules are similar in some respects to those of ATF, but the differences introduce an element of ambiguity that could render the application of the rule to racist conduct such as that alleged to have occurred at the Good O' Boys Roundups less certain. In its *Guide to Permitted Activities*, the Secret Service rules expressly permit all employees to join, serve, and hold office in civil, fraternal, community, professional, and other types of organizations, "where such office or services do not entail the management of a business type activity."<sup>165</sup> However, another section of the Secret Service Bureau rules provides in part that:

*No permission* will be granted to any employee to engage in outside activities, whether or not listed in the Guide for Permitted Activities . . . which:

1. Interfere with the efficient performance of official duties.
2. Might bring discredit on or cause unfavorable and justifiable criticism of the Government. . . .<sup>166</sup>

Casting the rule in terms of the giving or withholding of permission, rather than as an express prohibition of such activities, introduces an unfortunate but readily curable circularity. Under the OGE Ethical Standards, permission is required only if the outside activity (1) involves a prohibited financial conflict; (2) involves a covered relationship with an individual or organization who is a *party* to a matter under the employee's jurisdiction; or (3) was affirmatively prohibited by the Treasury-level rules.

The Customs Bureau Rules define a conflict of interest as a situation in which "an employee's private interest, usually of a financial nature, conflicts or interferes with, or

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<sup>164</sup>Theoretically, were it republished under the umbrella of an expanded Treasury-level standard on outside activities, this section of the ATF rules could be invoked to prohibit or discipline improper conduct related to such activities.

<sup>165</sup>Secret Service PER-5(2). *Guide for Permitted Activities* 1, at 6 (Dec. 1. 1989).

<sup>166</sup>Secret Service PER-5(2). *Other Outside Activities: Restrictions Applicable to All Employees* 1.2. at 1 (December 1, 1989) (emphasis added). Each employee is held personally responsible to inform his or her supervisor of "any change in status with respect to activities or circumstances" that would result in conflict with these principles. *Id.*

reasonably appears to interfere with, the ability to objectively, impartially, and fairly perform official duties.<sup>167</sup> Thus, while the emphasis is plainly on financial conflict, the rule contemplates conflicts arising from other situations as well. However, although the rule states in part that “[a]ny activity involving an incompatibility of interest is prohibited,” the remainder of the rule which identifies incompatible interests, albeit nonexclusively, addresses only private employment, the acquisition of interests in private businesses, and the acceptance of fees, gifts, and things of monetary value.<sup>168</sup>

The IRS Bureau Rule on outside activities as conflicts of interest was expressly limited to “outside employment and business activity”: the rule was structured to permit employees to engage in any outside employment or business activity with prior written permission, unless the activity was expressly prohibited.<sup>169</sup> Prohibited employment and business activities included legal employment, accounting, bookkeeping, or financial planning and investment services involving tax matters, preparation of tax returns, appearances in tax matters on behalf of taxpayers, and employment in casinos or gambling establishments.<sup>170</sup> Membership in social, community, and similar organizations was specifically authorized under the rules and did not require prewritten approval.<sup>171</sup> However, the IRS also had a separate rule which provided that “[e]mployees will be held responsible for any public discredit which may result from unjustified association with criminal or notoriously disreputable persons.”<sup>172</sup> No definition of “notoriously disreputable persons” is provided, but the term is broad enough to have encompassed application to certain hate groups. However, the IRS considers all of the foregoing rules to have been superseded for non-bargaining unit employees by the adoption of the OGE Ethical Standards, the Treasury Supplemental Ethical Standards, the OPM Conduct Regulations, and the Treasury Conduct Rules.<sup>173</sup>

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<sup>167</sup>*United States Customs Service Policies & Procedures Manual 51735, Conduct and Employee Responsibilities* § 41735.2(W)(1)(b), at 20 (December 29, 1977) [hereinafter *Manual*].

<sup>168</sup>*Id.* § 41735.2(W)(1)(c), at 20.

<sup>169</sup>*IRS Interim Handbook of Employee Conduct and Ethical Behavior*, §§ 221.1, 225.1 (Sept. 30, 1994).

<sup>170</sup>*Id.* § 224.1, 225.2.

<sup>171</sup>*Id.* § 229.2 (1).

<sup>172</sup>*Id.* § 216.2. The Customs Service has a similar rule regarding unjustified associations.

<sup>173</sup>*IRS Rules of Conduct* are still applicable to bargaining unit employees until its bargaining obligation with the union is satisfied.

### **Rules Expressly Applicable to Alleged Racist Acts and Activities**

The OGE Ethical Standards command all executive branch employees to “adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.”<sup>174</sup> This charge commands all employees to adhere to the equal employment opportunity laws in force in the United States. Accordingly, at a minimum, it prohibits racial discrimination in the work place.

The Treasury Rules of Conduct contain an explicit ban on discrimination or harassment of certain persons on the basis of such person's race, color, religion, national origin, sex, sexual orientation, age, or disability.<sup>175</sup> This nondiscrimination rule officially forbids any discrimination against or harassment of a fellow employee, applicant for employment, or person doing official business with the Treasury Department on any of the bases listed above. No definition of either discrimination or harassment accompanies the prohibition.

In addition to the nondiscrimination rules set forth in the OGE Ethical Standards and the Treasury Conduct Rules. Customs employees have the responsibility of adhering to Customs' own discrimination proscription, which prohibits employees from directly or indirectly authorizing, permitting, or participating “in any official action, event, or course of conduct which they know or should know may improperly subject any person to discrimination on the basis of race, color, religion, sex, national origin, age, marital status, partisan political affiliation or physical handicap.”<sup>176</sup> Thus, under Customs' rules, employees may be disciplined for authorizing, permitting, or participating in at least certain kinds of racist activities and other acts of bias. The scope of this prohibition depends upon how one interprets the use of the word . . . official.”

ATF has issued an order on sexual harassment and periodic policy statements regarding its commitment to equal opportunity. On February 2, 1995, ATF Order 1050.5 “Prevention and Elimination of Sexual Harassment in the Workplace” was issued. That Order notifies employees that engaging in sexual harassment may subject them to disciplinary action up to and including dismissal. On June 15 1995, ATF issued a specific policy statement concerning discrimination based on sexual orientation to all its employees. Furthermore, the Director of ATF has

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<sup>174</sup>See 5 C. F. R. § 263 5. 1 01 (b)( 13).

<sup>175</sup> See 31 C.F.R. § 0.214

<sup>176</sup>See *Customs Manual* § 51735.2(D)(1977).

established a Diversity/Peer Group that meets periodically to review the Bureau's policies and practices regarding equal opportunity and diversity.

The Secret Service supplements the OGE and Treasury nondiscrimination rules.<sup>177</sup> The *Secret Service Administrative Manual* affirms the Service's policy of providing equal opportunities in employment and personnel operations to all employees regardless of race, color, religion, sex, or national origin. According to the *Manual*, the policy applies to “appointments, assignments, career development, training, promotion, and to any other action or situation affecting employment status in the service.”<sup>178</sup> Thus, like the OGE Ethical Standards and Title VII, the policy bars discrimination with respect to employment-related activities. This conclusion, however, is ameliorated by the following sentence which describes the policy as stating that deliberate sexual, racial, religious, or ethnic harassment, including verbal comments, actions, and/or physical contact of a sexual nature, directed toward *any one* will not be tolerated.<sup>179</sup> The use of this term renders it unclear whether the *Manual* intends to proscribe only work place harassment or to prohibit any sort of bias-motivated abuse. Typically, however, harassment refers to abusive behavior aimed directly toward a specific victim, it would not usually be applicable toward racially offensive conduct indicative of bias but exhibited toward an audience other than the victim.

The IRS issued a diversity policy that asserts its commitment to providing equal employment opportunities to all of its employees.<sup>180</sup> This policy provides:

The Internal Revenue Service is an organization which respects each employee and tax diverse public which it serves. In working to fulfill the mission of the Internal Revenue Service, all employees will have the opportunity to develop fully their potential to be valued for the characteristics and talents they bring to the organization.<sup>181</sup>

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<sup>177</sup>See *United States Secret Service Administrative Manual, Employee Responsibilities and Conduct*. § PER-5(2) (1993) [hereinafter *Secret Service Manual*].

<sup>178</sup>*Id.*

<sup>179</sup>*Id.* (Emphasis added).

<sup>180</sup>See Issuance 5. Internal Revenue Service *Interim Handbook of Employee Conduct and Ethical Behavior* (1994) [hereinafter *IRS Handbook*].

<sup>181</sup>*Id.* (Diversity Policy).

In a subsequent policy section entitled “IRS Policy Against Sexual Harassment,” the IRS Handbook goes on to state that “[i]t is the policy of the Internal Revenue Service that all our employees will be able to enjoy a work environment free from all forms of discrimination including sexual harassment.”<sup>182</sup> These policies are limited to work place discrimination.

### **Rules Applicable to Alleged Sexual Harassment and Other Noncriminal Sexual Misconduct**

With respect to all employees of the Department of the Treasury, the aforementioned discrimination prohibitions found in the OGE Ethical Standards and the Treasury Conduct Rules bar discrimination or harassment on the basis of sex as well as race. The OGE Ethical Standards command Treasury employees to respect all equal employment opportunity laws applicable to allegedly discriminatory behavior based on sex or gender. At a minimum, this rule prohibits sexual discrimination or harassment in the workplace.

As previously mentioned, the explicit ban on discriminatory behavior found in the Treasury Conduct Rules forbids discrimination against or harassment of an employee, applicant for employment, or person doing official business with the Treasury Department on the basis of sex or sexual orientation. Because the protected persons include only employees, applicants for employment, and people conducting business with the Department of the Treasury, and because the language of the prohibition item closely tracks that of equal employment opportunity laws, this proscription targets discrimination with respect to hiring, promotion, and other employment-related activities.

As has been previously noted, ATF issued a February 2, 1995 Order entitled “Prevention on Elimination of Sexual Harassment in the workplace.” The order defines sexual harassment as follows:

a. Briefly stated, unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct constitute sexual harassment regardless of where the conduct takes place, when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual.

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<sup>182</sup>*Id.* (IRS Policy Against Sexual Harassment).



(3) Such conduct has the purpose or effect of interfering with an individual's work performance or creating or intimidating, hostile or offensive working environment.

The Order cites as examples of harassment “unwelcome letters or telephone call.” “distribution or display of materials of a sexual nature,” “unwelcome and deliberate touching, pinching, or physically intimidating behavior,” “unwelcome pressure for sexual favors or dates in an unwelcome sexually suggestive body gestures, teasing, jokes, remarks, and or suggestions.” Proscribed conduct subjecting an employee to protecting sanctions under this Order appears to include conduct both inside and outside the workplace.

Customs prohibits employees from “authorizing, permitting, or participating in any official action, event, or course of conduct that discriminates against any person on the basis of sex.”<sup>183</sup> As in the case of race, the scope to this prohibition depends upon whether one views the word “official” as modifying only the word “action” or the entire subsequent phrase. Customs has no additional rules specifically addressing sexual harassment. However, the provision in the Customs table of penalties governing violations of the nondiscrimination rule provides separate penalties for “[u]se of critical, demeaning, defamatory, ignominious, or degrading remarks, comments, observations or statements,”<sup>184</sup> and for sexual harassment defined as “[u]nwelcomed sexual advances, request for sexual favors and other verbal conduct of a sexual nature.”<sup>185</sup>

Customs also has a rule requiring that employees “be courteous and business like in every official activity involving contact with others,”<sup>186</sup> and prohibiting the making of “any abusive, derisive, threatening, profane, obscene, or other insulting, offensive or provocative statement or gesture to or about another person in their presence.”<sup>187</sup> This proscription embraces such conduct that would constitute sexual harassment if directed to or about another person on account of gender.

In its *Administrative Manual*, the Secret Service defines sexual harassment as “deliberate or repeated unsolicited verbal comments, gestures, or physical contact of a sexual nature which

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<sup>183</sup>*Customs Manual*. §51735.2(1)) ( 1977).

<sup>184</sup>*Customs Table of and Penalties* 44(a).

<sup>185</sup>*Id.* 44(c).

<sup>186</sup>*Customs Manual*. §5.1735.2(G).

<sup>187</sup>*Customs Manual*, §51335.2(G)(1).

are unwelcome.”<sup>188</sup> The Secret Service Directive on this issue provides that such harassment directed toward anyone, will not be tolerated.<sup>189</sup> The Secret Service prohibits sexual harassment when it “results in discrimination for or against an employee on the basis of conduct not related to performance such as the taking or refusal to take personnel action, including promotion of employees who submit to sexual advances or refusal to promote employees who resist or protest sexual overtures.”<sup>190</sup> In addition, a supervisor or any employee engages in sexual harassment if he or she “uses implicit or explicit sexual behavior to control, influence, or affect the career, salary or job of an employee.”<sup>191</sup> Thus, despite the use of the phrase “directed toward anyone” in describing the scope of its anti-harassment policy, the Secret Service guidelines implementing that policy focus exclusively on sexual harassment that occurs within the workplace. While the definition of sexual harassment does not limit its applicability to the work place, the explication of the concept focuses entirely on work place behavior.

The IRS' policy defines sexual harassment as “unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature which create an intimidating, hostile or offensive work environment or which impact an employee's employment status.”<sup>192</sup> The policy includes as sexual harassment “repeated offensive sexual flirtation, verbal harassment or abuse, subtle pressure for sexual activity, graphic or degrading verbal comments about an individual or his or her appearance, physical assault, the display of sexually suggestive objects or any offensive or abusive contact.”<sup>193</sup> The targeted sexual harassment for which an employee may be disciplined pursuant to this policy is conduct that affects an employee's workplace status.

### **Rules Applicable to Alleged Criminal Behavior**

The allegations of rape, criminal sexual misconduct, illegal drug use, and other alleged criminal violations of state or federal law implicate both the specific Treasury Conduct Rules

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<sup>188</sup>*Secret Service Manual*, §PER-5(5).

<sup>189</sup>*Id.*

<sup>190</sup>*Id.*

<sup>191</sup>*Id.*

<sup>192</sup>Issuance 5. *IRS Handbook*.

<sup>193</sup>*Id.*

providing that “employees shall not engage in criminal, infamous, [or] dishonest conduct,”<sup>194</sup> and a general provision stating that the Rules “provide for disciplinary action for the violation of (e) any other rule, regulation or law governing Department employees.”<sup>195</sup> Customs and ATF also have their own rules prohibiting criminal behavior.<sup>196</sup> The OGE Ethical Standards charge employees to avoid actions that may create even the appearance that such employees' actions violations such constitute a violation of the law.<sup>197</sup> As discussed below, certain interpretations of violations such as illegal drug use, may run afoul of other rules as well. Moreover, certain categories of racist activity may, be a violation of criminal law. One federal criminal statute provides that: “[I]f two or more persons conspire to injure, oppress, threaten or intimidate any person . . . in the free exercise of any right or privilege secured to her by the Constitution or laws of the United States,” they commit a felony.<sup>198</sup> Likewise, anyone who under color of law, “wilfully subjects any person . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States” commits a felony.<sup>199</sup> The rights protected under these provisions include all those protected by the United States Constitution, including rights of freedom of association and of interstate travel.<sup>200</sup>

### **Rules Applicable to Alleged Illegal Use of Drugs**

The Treasury Conduct Rules contain a two-part provision addressing the use of controlled substances and intoxicants. Section 0.204 of the Treasury Conduct Rules provides that employees “shall not sell, use or possess controlled substances or intoxicants in violation of the law while on Department property or official duty. . . .”<sup>201</sup> Notably, the rule is not limited to the use of illegal drugs, but extends to all intoxicants (including alcohol) and controlled substances

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<sup>194</sup>*Treasury (Conduct Reg.*, 60 Fed. Reg. at 28, 537 (to be codified at 31 C. F.R. §6.2 13).

<sup>195</sup>*Id.* at 28, 536; and 31 C.F.R. § 0. 101

<sup>196</sup>*See Customs Manual* § 51735.2.2A1 *Bureau of Alcohol, Tobacco and Firearms Employee Responsibilities and Conduct*, § 3.56 (1974) [hereinafter *ATF Conduct Rules*].

<sup>197</sup>5 C.F.R. §2635.101(b)(14).

<sup>198</sup>18 U.S.C. §241 (1995).

<sup>199</sup>18 U.S.C. §242 (1995).

<sup>200</sup>*See, e.g., United States v. Ruest* 383 U.S. 745 (1966). *United States v. Price*, 383 U.S. 787 (1966).

<sup>201</sup>60 Fed. Reg. at 28.538 (to be codified at C.F.R. § 0.204) (emphasis added).

(which can be legally issued by prescription). The first half of this rule prohibits the sale, use, or possession of such intoxicants or controlled substances on duty or on government property only when done “*in violation of law.*” A regulation promulgated by the General Services Administration (GSA) dictates when the sale, use, or possession of controlled substances and intoxicants on government property is unlawful.<sup>202</sup> The second half of the rule goes on to address use of intoxicants and controlled substances off duty and off government property. Here the requirement that the possession, use, or sale violates the law is abandoned and the rule instead provides: “. . . or use a controlled substance or intoxicant in a manner that adversely affects their work performance.”<sup>203</sup>

In addition to the foregoing Treasury Conduct Rule, federal law enforcement officers, like all federal employees, are subject to an Executive Order designed to establish the federal government as a drug-free workplace.<sup>204</sup> This Executive order contains an express prohibition of *all* use of illegal drugs, to go with presumptions of nexus as ineluctably flowing from such conduct:

- (a) Federal employees are required to refrain from the use of illegal drugs.
- (b) The use of illegal drugs by Federal employees, whether on or off duty, is contrary to the efficiency of the service.
- (c) Persons who use illegal drugs are not suitable for Federal employment.

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<sup>202</sup>41 C.F.R. § 101-20.307 provides:

Operation of a motor vehicle while on the [federal government] property by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates [*sic*], or amphetamines [all but alcoholic beverages collectively referred to hereafter as “controlled substances”] is prohibited. Entering upon the property, or while on the property, under the influence of or using or possessing any [controlled substances] is prohibited. The prohibition shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician. Entering upon the property, or being on the property, under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on the property is prohibited except upon occasions and on property upon which the head of the responsible agency or his or her designee has for appropriate official uses granted an exemption in writing.

<sup>203</sup>*Id.*

<sup>204</sup>Executive Order 12,564; 51 Fed. Reg. 32,889 (1986).

The constitutionality and regulatory validity of this rule has been upheld.<sup>205</sup>

ATF has its own Bureau Conduct rules that expressly ban illegal drug use. The use of drugs that are illegal to possess and the use of other controlled drugs in an illegal fashion (i.e., without prescriptions) result in “severe disciplinary action.”<sup>206</sup> The rule expressly links the Bureau's policy on illegal drug use to the ATF's mission in reducing crime and violence, as well as with employee job performance.<sup>207</sup>

The IRS had a Bureau rule, now deemed superseded for bargaining unit employees by the Treasury Conduct Rules, that provides that: Employees must refrain from using controlled substances habitually, to excess or in anyway which adversely affects their work performance. In addition, employees are forbidden from engaging in the illegal sale, use or possession of controlled substances while on Department premises or on official duty. Customs prohibits the use or possession of illegal drugs. Customs also has a general rule prohibiting criminal conduct.<sup>208</sup> Secret Service has its own rule prohibiting the use of illegal drugs.<sup>209</sup>

### **Rules Applicable to Alleged Misuse of Government Property**

The Treasury Department may discipline an employee for misuse of government property pursuant to the OGE Ethical Standards. The OGE Ethical Standards make clear that all government employees are prohibited from using government time and property for other than authorized purposes.<sup>210</sup> This rule applies to every form of government property, including office supplies, telephone and telecommunications equipment, copy machines, government mails, and vehicles, and employees are required not only to refrain from misusing government property themselves, but also not to allow such misuse by others. Thus, if an employee knows a fellow employee is using government property in an unauthorized manner and does not report or

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<sup>205</sup>*Id.* Because the courts have interpreted this Executive Order as incorporating the requirement that the government bear the burden of proving nexus in appeals taken from adverse disciplinary action, the two presumptions must be construed as rebuttable. *See NTEU v. Bus*, 891 F.2d 99 (5th Cir. 1989).

<sup>206</sup>*ATF Conduct Rules*, §3.¶42a(1)(a) and (b).

<sup>207</sup>*Id.*

<sup>208</sup>*Customs Manual*, 51735.2A1.

<sup>209</sup>*Secret Service Drug Deterrence Manual* Section DDP-1, at 2.

<sup>210</sup>OGE Ethical Standards. 5 C.F.R. § 265.704(a). For official time *see* 5 C.F.R. 2635.705.

attempt to prevent the unauthorized use, both employees would violate the OGE Ethical Standards.<sup>211</sup>

The OGE Ethical Standards concerning misuse of government property are complemented by Treasury and Bureau-level conduct rules. The Treasury Conduct Rules ban the use of government vehicles for unofficial purposes.<sup>212</sup> This rule notes that unofficial purposes include transporting unauthorized passengers, but does not further define unofficial purposes or unauthorized use of a government vehicle.<sup>213</sup>

Customs prohibits the use or authorization of use of government property for unofficial purposes.<sup>214</sup> Customs rules do not attempt to define unofficial purposes. ATF Bureau rules reiterate the prohibition against using government cars for other than official purposes,<sup>215</sup> as well as the broader ban upon using or allowing the use of any federal property for other than officially approved activity.<sup>216</sup> Neither the Secret Service nor the IRS addresses the issue of the use of government property in its rules.<sup>217</sup> All of these prohibitions are reinforced by criminal sanctions, since anyone who “knowingly converts to his own use or to the use of another” property of the United States government commits a felony if the value of the property exceeds \$100 or a misdemeanor if the value of the property is less than \$100.<sup>218</sup>

Despite all of these prohibitions against unauthorized use of government property generally and vehicles in particular, what is less than clear is when the use of government resources is and is not authorized, particularly when the use in question is at least partially related to professional or community relations purposes. The OGE Ethical Standard provides

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<sup>211</sup>5 C.F.R. § 2635.704(b)(2).

<sup>212</sup>31 C.F.R. § 0.209.

<sup>213</sup>*Id.*

<sup>214</sup>*Customs Manual*. § 51735.2(P).

<sup>215</sup>*ATF Conduct Rules* § 3 ¶46; *see also*, *Customs Manual* 51735.2P(3).

<sup>216</sup>*Id.* at § 3 ¶50.

<sup>217</sup>Although not set forth in the Secret Service’s Standards of Conduct, the issue of use is set forth in manual sections which deal with each type of property, such as telephones and government owned vehicles.

<sup>218</sup>18 U.S.C. § 641.

that “[a]uthorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.”<sup>219</sup> This standard does not do a great deal to elucidate what uses of government property are allowed or disallowed, especially where the use in question has at least a colorable connection to legitimate governmental interests. For example, it is unclear what purposes are “authorized in accordance with law or regulation.” There are very few laws or regulations that expressly authorize or prohibit particular uses of government resources. The only such Treasury-level rule is the one noted above, prohibiting the use of government vehicles for “unofficial purposes,” and expressly prohibiting the use of government vehicles to transport unauthorized passengers or to transport employees between their homes and places of work, unless authorized by statute.<sup>220</sup>

The OGE Ethical Standard's provision that a use of government property is authorized if the property may be used by the general public for the same purpose sheds little light on the subject. Employees routinely make many uses of government property for which there is no specific statutory authorization and which simple logistics dictate cannot be extended to the general public. For example, there may be many legitimate uses to which an employee can use a government computer that are not addressed by law or regulation; presumably these uses would nonetheless be viewed as “authorized,” even though members of the public would not be allowed to wander into government offices and use the computers for similar purposes.

A currently pending proposed OPM rule would provide somewhat greater clarity to the situation regarding use of government property in support of certain civic and professional organizations.<sup>221</sup> If adopted, this rule would allow agencies to provide nonprofit civic, professional, and special interest organizations, other than labor unions, with government resources.<sup>222</sup> Among other qualifications, to receive such assistance, an organization (1) must provide information, views or services that will “contribute to improved agency operations, personnel management, and employee effectiveness”; (2) must have a constitution and by-laws

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<sup>219</sup>5 C.F.R. § 2635.704(b)(2).

<sup>220</sup>60 Fed. Reg. at 28,538. Use of government vehicles to transport government employees between their domiciles and places of employment is prohibited by statute, except for (1) medical officers on outpatient medical service; (2) officers or employees performing pre-approved field work; (3) the President; (4) heads of executive departments; and (5) principal diplomatic and consular officials. 31 U.S.C. § 1344 (1995).

<sup>221</sup>60 Fed. Reg. 51,371.(1995).

<sup>222</sup>*Id.* Although the rule does not define what kind of resources the agency can or should provide to such organizations, it offers as illustrations access to meeting facilities, bulletin boards, internal mail and E-mail systems.

providing for minimum standards of fiscal responsibility and democratic nomination and election of officers; and (3) must not discriminate in terms of membership or treatment because of race, color, sex, national origin, age or handicapping condition.<sup>223</sup> Questions remain, however, as to how an agency is supposed to determine which organizations it will support, what kinds of support and resources the agency is allowed to provide, and who within an agency is empowered to make those decisions.

Most issues of appropriate use of government property can be resolved through the exercise of simple common sense. Thus, where the use is purely personal in nature and involves more than a *de minimus* consumption of public resources, it would constitute a misuse of government property. However, where the effect on the government is minimal or the use has at least a quasi-public nexus, the lines are less clear. For example, the OGE Ethical Standards cite as an example of a permitted use, General Services Administration regulations that permit an employee to use government property--a telephone--for purely personal purposes, so long as the employee charges any long distance call to the employee's personal calling card.<sup>224</sup> Similarly, although there is no particular regulation that applies to such uses, it is common practice within the government for employees to conduct office social events on government property to mark birthdays, holidays and special events for colleagues. While employees typically provide the food and beverages for such events from their own pocketbooks, a strict reading of the use of government property would prohibit employees from using a federal office facility or the government's water and power supply to conduct the event or from using telephones or government computers or office supplies to generate announcements for such events. Nevertheless, supervisors routinely permit such gatherings because it is clearly in the government's interest to foster good morale and collegiality among employees. This is done even though there is no law or rule expressly permitting it and even though the doors to government offices could not be thrown open to permit any interested member of the general public to conduct parties there.

Similarly, there may be certain kinds of outside activities related to one's work which the government may wish to encourage. The Treasury Department is aware that other agencies have regulations regarding such activities, but until Treasury adopts its own regulations such activities are not open to its employees. For example, the OGE Ethical Standards cite, as an example of unauthorized use of government property, a provision of the now obsolete Federal Personnel Manual which permitted a Department of Justice attorney to use an office computer and government copy machine to prepare a paper to be presented at a conference sponsored by a

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<sup>223</sup>*Id.* at 51,372.

<sup>224</sup>*See* 5 C.F.R. § 2635.704(b)(2), example 1 (citing C.F.R. § 201-21.601).



professional association to which the attorney belongs.<sup>225</sup> Analogously, the Comptroller General has held that an agency may grant administrative leave or excused absences for brief periods to its employees to facilitate their support of professional and charitable organizations, and employees may be excused from duty without a loss of pay, even for lengthy periods, to participate in such groups, if the absence would further a function of the employing agency.<sup>226</sup> Indeed, government agencies have statutory authority to assign employees, with the mutual consent of all parties, to certain categories of nonprofit organizations.<sup>227</sup> The Federal Personnel Manual also cited as instances of permissible support for professional organizations the posting of messages on agency bulletin boards and the use of inter-office mail on an organization's behalf.<sup>228</sup> Expenditure of limited amounts of resources is also allowed to support and promote civic activities, such as blood drives or savings bond drives.<sup>229</sup> As discussed below, this Review recommends that the Department evaluate whether regulations should be adopted to clarify the conditions and procedures governing authorization of the use of government property for both civic and other purposes.

### **Catch-All Rules: Rules Applicable to All Forms of Misconduct Prejudicial to the Government**

Both the OPM Conduct Regulations and the Treasury Conduct Rules prohibit employees from engaging in conduct "prejudicial to the Government."<sup>230</sup> Indeed, the provisions on this subject that appear in the OPM Conduct Regulations and the Treasury Conduct Rules mirror one another. The OPM Conduct Regulations state that an employee "shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to

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<sup>225</sup>*Id.*, example 3 (citing *Federal Personnel Manual*, ch. 252 (revoked)). Although much of the *Federal Personnel Manual*, including chapter 252, has been revoked, it is still at times referred to for guidance on ethical matters.

<sup>226</sup>63 Comp. Gen. 542 (1984); 61 Comp. Gen. 652 (1982); 44 Comp. Gen. 643 (1985).

<sup>227</sup>The Intergovernmental Personnel Act, 5 U.S.C. § 3372(b), permits the assignment of federal government personnel to state and local governments, institutions of higher education, and to nonprofit organizations which have as one of their principal functions "the offering of professional advisory, research, educational, or developmental services, or related services, to governments or universities concerned with public management."

<sup>228</sup>*Federal Personnel Manual*, ch. 252, § 1-(4)(1)(revoked).

<sup>229</sup>71 Comp. Gen. 469 (1992).

<sup>230</sup>See 5 C.F.R. § 735.203 and 31 C.F.R. § 0.213.

the Government."<sup>231</sup> The Treasury Conduct Rules disallow an employee from engaging in "criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government."<sup>232</sup> Neither of these provisions defines any of the various types of proscribed behaviors listed therein.

Customs,<sup>233</sup> ATF,<sup>234</sup> Secret Service<sup>235</sup> and IRS all have similar catch all rules against conduct prejudicial to, or which discredits the Bureau or government. Of these rules, only the Secret Service's rule expressly refers to off-duty conduct, while only the IRS's rule is expressly limited to "official relations with the public" and to the impact of the misconduct on the

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<sup>231</sup>5 C.F.R. § 735.203.

<sup>232</sup>31 C.F.R. § 0.2 13. The Treasury Conduct Rules do not list immoral conduct as one of the banned behaviors. That one omission constitutes the only material difference between the two provisions.

<sup>233</sup>*Customs Manual* § 5173.2(A).

<sup>234</sup>*ATF Order* 3000.1D. December 13, 1984 at 8B. #11. This section places an affirmative obligation on Special Agents to comply with the standards of conduct prescribed in Chapter 735 of the Treasury Personnel Manual. *See also ATF Conduct Rules*. §3.¶56. This rule identifies and explains three specific instances that likely will be deemed prejudicial to the Government: (a) Association with Disreputable Persons; (b) Criticism of Accountants and Accounting Systems; and (c) Irregular Arrangements in Examining Taxpayer's Books. The ATF rule defines some prohibited conduct, such as: "except in connection with official business, employees may not associate with individuals or groups when the association tends to discredit, directly or indirectly, the character, reputation or integrity of the employee or the Bureau."

<sup>235</sup>*Secret Service Manual* at 1 per-5(1)(Policy). The Secret Service policy differs from the OGE Ethical Standards, Treasury Conduct rules, and the Customs and ATF Bureau rules on prejudicial conduct in that it is stated as an affirmative expectation, rather than a prohibition.

Each Secret Service employee is expected to adhere to these written standards and to standards of behavior in general which reflect credit on the Government and the citizens we serve, both on and off the job.

The absence of a specific published standard of conduct covering an act tending to discredit an employee or the Department does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

*Id.*

employee's job performance.<sup>236</sup> The Customs rule is the only one that defines the meaning of the various categories of misconduct.

Employees will not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct prejudicial to the Government. For purposes of this provision the following definitions or interpretations are applicable:

1. "criminal" conduct means conduct which has been determined by verdict and judgement of a court to have constituted commission of a crime, as defined and made punishable by law.
2. "infamous" conduct means criminal conduct as defined above, but which results in a disqualification to hold public office, to vote, or renders the convicted employee incompetent as a witness in the particular jurisdiction, or tends to seriously and adversely affect the employee's credibility as a witness.
3. "dishonest" conduct implies an act of lying, cheating, wrongful taking of money or property, or deceitful act or practice.
4. "immoral" conduct is interpreted as an act contrary to the generally accepted moral norm or standard. Immoral conduct may or may not involve a violation of law. It does not encompass every act which may violate a particular religious or moral concept or tenet. "Immoral" conduct most probably will involve an interference or threat of interference with a right of another person or other persons, and/or an element of serious incompatibility with the duties of the employee's position or a mission of the Customs Service.
5. "notoriously disgraceful" conduct is interpreted as conduct widely and unfavorably known and discussed. It implies conduct which results in a loss of public respect for the employee.
6. "prejudicial" conduct is interpreted to mean any act or failure to act which adversely affects or tends to adversely affect (1) the efficiency of the Customs Service in carrying out its mission and/or (2) the public confidence in the integrity of the Customs Service.

The alleged wrongdoing connected with the Roundups could constitute behavior "prejudicial to the Government." In addition, any of the criminal misconduct alleged to have occurred at the Roundups is likely to be prejudicial to the government since such behavior may potentially diminish the public's willingness to respect, rely upon, trust, and follow the instructions of law enforcement officers.

Racist acts and activities and sexual harassment and misconduct constitute immoral and notoriously disgraceful activities. When engaged in by federal law enforcement officers,

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<sup>236</sup>*Customs Manual* §51735.2(A), *IRS Handbook* §211 (Sept. 30, 1994).

particularly under circumstances that become the subject of public attention, they also result in prejudice to the government. In the law enforcement context, recent criminal trials receiving national attention reveal the prominent role that alleged racism plays in people's perception of individual law enforcement officers as well as entire law enforcement agencies.

### **Applicability of Rules to Off-Duty, Off-Site Behavior**

The Treasury Conduct Rules state that employees must adhere to all conduct regulations when such employees are on official duty or in or on government property.<sup>237</sup> The Rules do not explicitly charge employees to abide by the conduct regulations when they are off duty and off government property. However, in the past, the Department of the Treasury and its Bureaus have disciplined its employees for off-duty, off-government property behavior.<sup>238</sup> This fact represents powerful evidence that the drafters and enforcers of Treasury Rules did not intend to limit their proscriptions to violations occurring on duty or on federal government property provided there is nexus to the efficiency of the service.

### **Potential Consequences of Violating Rules**

The Treasury Conduct Rules state that an employee found to be in violation of any of the OGE Ethical Standards, Treasury Supplemental Ethical Standards, Treasury Conduct Rules, or applicable Bureau rules, “may be instructed to take remedial or corrective action to eliminate the conflict.”<sup>239</sup> Such remedial action includes, but is not limited to, the following: (i) reassignment of work duties; (ii) disqualification from a particular assignment; (iii) divestment of a conflicting interest; or (iv) other appropriate action.<sup>240</sup>

Moreover, the Treasury Conduct Rules state that an employee who violates any of the OGE Ethical Standards, Treasury Supplemental Ethical Standards, Treasury Conduct Rules, or Bureau rules may be disciplined in proportion to the “gravity of the offense committed, including removal.”<sup>241</sup> All applicable laws and regulations must be followed when disciplining an employee. An employee's explanation of his or her behavior and any mitigating factors must be

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<sup>237</sup>31 C.F.R. § 0.210.

<sup>238</sup>The Review Team has reviewed every discipline case pursued by Treasury's Law Enforcement Bureaus in the last three years.

<sup>239</sup>31 C.F.R. § 0.102(b).

<sup>240</sup>*Id.*

<sup>241</sup>31 C.F.R. § 0.102(c).

considered prior to taking any disciplinary action. Such action may include any additional penalty prescribed by law.<sup>242</sup>

The heads of the various Treasury, Bureaus or their designees must take the necessary corrective or disciplinary action against an employee who violates any of the OGE Ethical Standards, Treasury Supplemental Ethical Standards, Treasury Conduct Rules, or any other applicable law, rule or regulation.<sup>243</sup> In addition, the Bureaus must take the necessary corrective or disciplinary action against any supervisor who fails to take or recommend corrective or disciplinary action when appropriate and required.<sup>244</sup> Treasury employees must report to the Inspector General or the appropriate internal affairs office of ATF, Customs, IRS, or Secret Service, information (i) implicating any employee, former employee, contractor, subcontractor, or potential contractor in criminal conduct or (ii) indicating a violation of any of the OGE Ethical Standards, Treasury Supplemental Ethical Standards, or Treasury Conduct Rules by any employee or former employee.<sup>245</sup> Any attorney in the Legal Division of the Treasury Department who, while representing any Treasury Bureau, acquires information such as that described in this paragraph has the responsibility to report such information to the appropriate Chief or Legal Counsel or the Deputy General Counsel who must report the information to the Inspector General or appropriate internal affairs officer.<sup>246</sup>

### **Conclusion: Nexus is a Prerequisite for Disciplining an Employee**

Ultimately, all rules discussed herein constitute mere guidelines. On the one hand, an employee need not violate a written rule to be disciplined. On the other hand, a mere violation of a rule does not provide sufficient justification for disciplinary action. As discussed above, the law provides that federal employees may be disciplined only for “such cause as will promote the efficiency of the service.”<sup>247</sup> Thus, to discipline an employee because the employee violated a standard of ethical conduct or a rule or code of conduct, an agency must show that such violation adversely affects the activities and/or mission of the agency. To discipline an employee for

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<sup>242</sup>*Id.*

<sup>243</sup>31 C.F.R. § 106(c) (1995).

<sup>244</sup>*Id.*

<sup>245</sup>31 C.F.R. § 0.107. The Bureau rules would appear to be included in the list as well; however, they were not listed.

<sup>246</sup>*Id.*

<sup>247</sup>5 U.S.C. § 7513.

participating in any of the alleged misbehavior connected with the Roundups, the Department of the Treasury must prove that such participation adversely affects the efficiency of the service. In essence, Treasury officials must show a nexus between the alleged Roundup conduct and the undermining of the agency's ability to do its job.

## CHAPTER SEVEN

### RECOMMENDED MODIFICATIONS OF EXISTING DISCIPLINARY POLICIES

#### **The Need for Clarification of Existing Policy**

As discussed above,<sup>248</sup> existing rules and policies already allow for the discipline of an employee who engages in racist, sexist, or other forms of conduct evidencing invidious prejudice. Under existing law, disciplinary action may be taken, whether such misconduct occurs on or off duty, when it adversely affects the efficiency of the service. Such an adverse effect on the efficiency of the service can be shown either by demonstrating a negative impact upon the job performance of the employee who commits the misconduct, or of his or her co-workers, or by showing that the conduct in question is fundamentally inconsistent with the mission of the agency.

It is imperative that Treasury law enforcement officers have a steadfast commitment to the fair and impartial enforcement of the law. When conduct evidencing invidious prejudice is established, it impairs the credibility of the officer, as well as the public's perception of the agency, and undermines the level of trust that supervisors, co-workers, and members of the public are willing to repose in an officer who engages in such conduct or in an agency that tolerates such an officer.<sup>249</sup>

Therefore, the purpose of any modification of existing rules resides in the communicative functions such disciplinary rules would perform, separate and apart from providing the authority to take disciplinary action. The adoption of rules and policies expressly addressing specific types of behavior serves a number of purposes that simple reliance upon the general "efficiency of the service" formula of the Civil Service Reform Act cannot achieve. For example, the promulgation of such specific rules and policies communicates to employees and the public at

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<sup>248</sup>See Chapters 4-6, *supra*.

<sup>249</sup>Certain other forms of misconduct alleged to have occurred at the Roundups--such as public drunkenness and lewdness--could also have a negative effect upon an officer's credibility and job performance, as well as on public perception of the Treasury Department, if established. When such a job-related nexus is demonstrated, such misconduct would likewise be subject to discipline under existing rules. This Report, however, will focus on the conduct suggestive of racism and sexism (and, by extension, other forms of invidious prejudice) on the part of federal law enforcement officers.

large the values of the institution and the relative significance the institution attaches to those values. Specific rules and policies give guidance to managers and supervisors concerning the application of the broad standard of efficiency of the service. Specific rules and policies also give notice to employees of the expectations of the Department, thereby serving a training and deterrent function by reinforcing those expectations.

Specific rules and policies also enhance the ability of the agency to impose appropriate levels of discipline for serious offenses. This is true, first, because the agency bears the burden of establishing the nexus between the conduct in question and the efficiency of the service. Especially where off duty conduct is at issue, the process and discussion accompanying the adoption of the rule or policy can provide substance to the agency's contention that certain forms of conduct in fact adversely affect the efficiency of the service. Moreover, one of the *Douglas*<sup>251</sup> factors the MSPB routinely considers in determining whether discipline is appropriate or should be mitigated is the degree of notice given to the employee that the particular conduct in question would subject him or her to such discipline.

Indeed, despite the fact that no express rule is necessary for the Department to exercise its statutory authority to impose discipline "for such cause as promotes the efficiency of the service,"<sup>252</sup> the federal government, the Treasury Department, and the Treasury Bureaus have consistently elected to promulgate disciplinary rules and policies because of the obvious importance the government attaches to communicating specifically and unambiguously to employees and the public alike those categories of misconduct to which it assigns the greatest importance.

Public trust and confidence in the fair and impartial enforcement of the laws and in the integrity and professionalism of Treasury law enforcement officers are of paramount importance to the law enforcement mission. Due to the importance of communicating specific and unambiguous rules to its employees and the public and to ensure public trust and confidence, the Treasury Department should promulgate an express rule prohibiting invidiously prejudiced conduct, whether on or off duty, by its law enforcement officers. The Treasury Department does not currently have such a rule. The Department does have a "catch-all" rule generally proscribing "criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the Government." Although certain kinds of off-duty misconduct may prejudice the government, the existing rule makes no express reference to off-duty conduct. Likewise, the Department currently has a nondiscrimination policy. However, although that rule

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<sup>251</sup>*Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). See Chapter Four at 61-63, *supra*.

<sup>252</sup>5 U.S.C. §§ 7503, 7513.



communicates the intent of the Department that employees not discriminate or harass others based on race and other bias-related classifications, the rule does not define the terms “discrimination” or “harassment.” Departmental employees are also subject to a governmentwide prohibition on “outside activities” that conflict, or create an appearance of conflict, with the employees’ duties.<sup>253</sup> Despite its broad language, however, this rule typically has been interpreted and applied to outside employment, business, and financial activities, and the Treasury Department’s implementing regulations expressly limit the standard to such commercial activities.<sup>254</sup> Supplemental rules on each of the foregoing topics promulgated by some of the Treasury Enforcement Bureaus provide additional guidance, but do not specifically or consistently address the issue of off-duty and bias-motivated conduct.

To remove any question that might otherwise exist in the minds of employees or the public on the Department’s policy on off-duty conduct evidencing invidious prejudice, the Review proposes the following recommendations.

### **Organizing Principle of the Policy Recommendations**

All of the policy modifications advanced in this and subsequent chapters are driven by a single organizing principle:

**Both the reality and the appearance of integrity, professionalism, and impartiality in the performance of duty are expected of all Treasury employees, and are essential to the ability of law enforcement personnel to perform their mission. Both on-duty and off-duty employee conduct may adversely affect the public’s perception of the integrity, professionalism, and impartiality of the employee and the agency and may otherwise adversely affect the efficiency of the service.**

The Treasury Department’s nondiscrimination policy currently prohibits discrimination on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability.<sup>255</sup> Conduct, on or off duty, demonstrating hatred or prejudice toward individuals and groups on the basis of any of these characteristics can reasonably cause one to question the integrity, professionalism, and impartiality of the employee and the agency. Conduct demonstrating such invidious prejudices undermines the ability of law enforcement personnel to perform their mission and is inconsistent with the Treasury Department’s law enforcement mission. Such

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<sup>253</sup>5 C.F.R. §§ 2635.801, 2635.803.

<sup>254</sup>See, e.g., 31 C.F.R. § 3101.104, *et seq.*

<sup>255</sup>31 C.F.R. § 0.214.

conduct therefore should not be tolerated by the Treasury Department and its Law Enforcement Bureaus. This principle should be reflected and implemented at all phases of the Department's dealings with its federal law enforcement officers, from initial screening and hiring procedures, in introductory and advanced training, through evaluation and promotion measures, and ultimately by disciplinary policies and actions.

### **Recommendation No. 1: Off-Duty Conduct In General**

**The rules of all Treasury Bureaus and components that employ Treasury law enforcement officers should be amended, as necessary, to include the following provisions:**

- (1) Treasury law enforcement officers may be disciplined for violations of the rules governing conduct and procedure, as defined in Section 0.102(a) of the Treasury Rules of Conduct, whether the violation occurs on or off duty, when violation of the rules adversely affects the efficiency of the service.**
- (2) Treasury law enforcement officers shall not engage, on or off duty, in criminal, infamous, dishonest, or notoriously disgraceful conduct, or any other conduct prejudicial to the government.<sup>256</sup>**

**Discussion:** As noted in the discussion of existing policies, the Treasury Department has statutory authority to take disciplinary action when such action promotes the efficiency of the service. The Treasury Department has in the past taken disciplinary action when employees' off-duty conduct adversely affected either the mission of the agency or the job performance of the employee or of co-workers. The MSPB and the United States Court of Appeals for the Federal Circuit have upheld such sanctions for off-duty conduct when government agencies have supported their claims and have demonstrated the necessary nexus to job performance or agency mission. By modifying existing rules to make this principle explicit, employees will be placed on notice that their off-duty conduct can be the subject of disciplinary action.

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<sup>256</sup>Because the mission of the Policy Review, as originally chartered by the Secretary of the Treasury, was to propose any necessary modifications to the existing rules and policies governing Treasury law enforcement personnel to prevent a recurrence of behavior such as that alleged to have occurred during the Roundups, the policy recommendations advanced in this Report are limited to Treasury law enforcement officers. However, the Treasury Department may wish to consider whether corresponding changes to the current Treasury Conduct Regulations, 60 Fed. Reg. 42,042, 28,535-38 (to be codified at 31 C.F.R. §§ 0.101, *et seq.*), may be appropriate.

**Recommendation No. 2: Bias-Motivated Conduct by Treasury Law Enforcement Officers**

**Each Treasury Bureau or component that employs Treasury law enforcement officers should adopt the following rule prohibiting law enforcement officers within their agencies from engaging in bias-motivated conduct on or off duty:**

**Treasury law enforcement officers shall not use or engage in, on or off duty, abusive, derisive, profane, or demeaning statements, conduct, or gestures evidencing hatred or invidious prejudice to or about another person or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability.**

**As set forth in Recommendation No. 1 above, such conduct will result in disciplinary action when it adversely affects the efficiency of the service.**

**Discussion:** Racist, sexist, and other forms of conduct evidencing invidious prejudice<sup>257</sup> on the part of Treasury law enforcement officers pose special problems for the public and for the Treasury Department's law enforcement mission, and officers can and should be held to a higher standard in this area. This rule states clearly and unequivocally the standard that Treasury law enforcement officers should not make statements or engage in conduct evidencing hatred or invidious prejudice against any of the groups protected under the Department's nondiscrimination policy. The rule is stated, as are other departmental rules of conduct, in a simple, imperative fashion.

The Department considers racism, sexism, and other conduct on the part of Treasury law enforcement officers evidencing hatred and invidious prejudice against any group of citizens to be reprehensible. There are, however, limitations on the Department's ability to impose discipline for such conduct. In the first instance, prejudice-related conduct would be subject to disciplinary investigation only when it has come to the attention of the Department in some fashion. An officer who harbors prejudice so privately that no statement, act, or gesture is reported to or otherwise learned of by the Treasury would obviously not be subject to discipline. Second, the Department is committed to abiding by those procedural safeguards that currently exist with respect to all forms of disciplinary action to ensure that the rights of individual Treasury law enforcement officers are protected. Thus, the Bureau would be required to

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<sup>257</sup>For ease of reference, abusive, derisive, profane, or demeaning statements, conduct, or gestures evidencing hatred or prejudice to or about another person or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability will be referred to hereafter alternatively as "bias-motivated conduct" or as "conduct evidencing invidious prejudice."

establish the veracity of the underlying allegation of misconduct before taking any action. Moreover, as in any disciplinary action, the Bureau would be required to comply with its statutory obligation to prove an adequate nexus between the misconduct and the efficiency of the service in order to impose discipline.

Courts accord substantial deference to a public employer's prediction of future harm from certain kinds of misconduct in employee discipline cases. As the Supreme Court held in *Connick v. Myers*, "We do not see the necessity for an employer to allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action."<sup>258</sup> More recently, a plurality of the Supreme Court observed in *Waters v. Churchill*:

[W]e have consistently given greater deference to government predictions of harm used to justify restriction of employee speech than to predictions of harm used to justify restriction on the speech of the public at large. Few of the examples we have discussed [in prior cases] involve tangible, present interference with the agency's operation. The danger in them is mostly speculative. . . . But we have given substantial weight to government employers' reasonable predictions of disruption, even when the speech involved is on a matter of public concern.<sup>259</sup>

The MSPB also recognizes that certain types of offenses have an inherent impact on the efficiency of the service.<sup>260</sup> In such cases, an employee's otherwise satisfactory job performance or even evidence that the offense has not been widely publicized will be unlikely to be sufficient to rebut the inference arising from the inherent relation between the employee's misconduct and the agency's mission, and the agency need not always prove a case-specific impact on the efficiency of the service before taking disciplinary action up to and including dismissal.<sup>261</sup> Indeed, the agency need not even "await actual impairment of service efficiency before taking action, which would be contrary to the public interest. . . ."<sup>262</sup> For the reasons discussed below, the Bureaus should be able to establish in a disciplinary case that racist and other conduct evidencing invidious prejudice is incompatible with the law enforcement mission and will

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<sup>258</sup>461 U.S. 138, 152 (1983).

<sup>259</sup>114 S. Ct. 1878, 1887 (1994).

<sup>260</sup>See e.g., *Schumacher v. U.S. Postal Service*, 52 M.S.P.R. 575 (1992) (conflict of interest from dual employment).

<sup>261</sup>*Id.*

<sup>262</sup>*Id.*

severely impair an officer's ability to carry out his or her job responsibilities in a satisfactory manner.

In addition to the generally destructive effects of conduct evidencing invidious prejudice upon Treasury law enforcement job performance and the agency mission, the Bureau could present any additional evidence of nexus specific to the individual case. The employee, on the other hand, would have the opportunity of coming forward with evidence or arguments, if any, to establish why nexus did not exist. As they do with respect to other offenses, managers would be able to exercise a measure of discretion with respect to the institution of disciplinary proceedings in those presumably rare factual circumstances in which the effect of prejudice-related conduct upon job performance and the agency's mission is found to be attenuated. Managers would also have the flexibility to adjust the severity of discipline as appropriate in light of the seriousness of the offense and any surrounding mitigating or aggravating circumstances. Employees would retain their current rights to obtain review of these determinations.

Many police forces currently have policies that strictly prohibit racist language or behavior, at least in an on-duty context, under threat of suspension or termination if the behavior persists.<sup>263</sup> Racist and other forms of bias-related conduct by law enforcement officers impair the law enforcement mission, even when the conduct takes place outside the work setting. Such expressions of prejudice create an unacceptable risk that officers will act on their prejudices in a professional setting, whether through biased targeting of individuals for investigation, search, or arrest; excessive use of force; racial, sexual, or other forms of harassment of co-workers or citizens; failure to provide appropriate backup to a partner, or to respond promptly and effectively in situations involving a victim or complainant who is a member of a group against which the officer is prejudiced; or through many other forms of possible discriminatory conduct. To continue to invest the armed authority and discretion of a Treasury law enforcement officer in an individual who has through statements or conduct expressed hatred or prejudice against certain groups of citizens poses a serious danger to public safety. Such prejudice also places the government at risk of liability in civil rights actions based upon the officer's conduct.

If left unchecked, the racism, anti-Semitism, sexism, or other invidious prejudice of even a few officers would cast doubt on the essential functions performed by every one of Treasury's law enforcement components. The following hypothetical statements illustrate the potential

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<sup>263</sup>Kevin Sack, *Racism of a Rogue Officer Casts Suspicion on Police Nationwide*, NEW YORK TIMES, Sept. 4, 1995, at 1, col. 2. This article does not distinguish between rules prohibiting such conduct in an on-duty context and rules expressly extending to off-duty behavior. The same article notes that sixty-five cities have civilian review boards that enforce rules against racism and excessive force--a more than 300 percent increase since 1985.

problem.<sup>264</sup> For example, a Secret Service protective detail for an African or Israeli head of state might be mistrusted by the protectees if there was racist or anti-Semitic sentiments ascribed to even a few agents. Customs checks at the border could become suspect if even a few Inspectors were known to have previously singled out people for searches for drugs and other contraband based upon the color of their skin or their ethnic origin. ATF agents working with local law enforcement agencies to stem the tide of gang-related violence in inner cities may find their arrests of armed career criminals nullified by judges or jurors who came to believe that defendants have been unfairly targeted based on their race or ethnicity, not on their extensive felony records. If an IRS agent harbored invidious prejudice based on race or religion, it could cause the public to question whether investigations of tax cheaters are predicated upon impermissible factors.

Even if these risks never materialize and the officer's on-duty conduct is wholly exemplary, off-duty expressions of invidious prejudice can nonetheless impair job performance and the agency's mission. One of the most immediate effects is the undermining of the officer's credibility. Criminal cases may often turn upon a single officer's testimony concerning, for example, a cross-racial identification of a suspect or the officer's reasons for a stop, search, or interrogation of a suspect. Prosecutors are required to disclose any evidence bearing upon an officer's credibility to the defense; it does not matter whether such evidence relates to on-duty or off-duty conduct, once the government becomes aware of the behavior or statements in question.<sup>265</sup>

The nation has recently been exposed to a widely publicized demonstration of the effect of off-duty expressions of bias upon the credibility of Los Angeles Police detective Mark Fuhrman in the O.J. Simpson trial. Past cases in which an officer has testified may have to be relitigated when the government or the public learns of the officer's bias-related conduct; at a minimum, the criminal justice system is further taxed by habeas corpus petitions from those who claim their convictions hinged on the officer's tainted testimony.

The damage is not limited to the performance of the individual officer who engages in the prejudice-related conduct, however. Co-workers, especially members of the group against

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<sup>264</sup>These hypotheticals are intended for illustrative purposes only, and are not based on actual situations.

<sup>265</sup>*Giglio v. U.S.*, 405 U.S. 150 (1972)(holding that prosecution has a duty to present all material evidence to the jury including a promise of leniency made to a key witness for the prosecution); *U.S. v. Henthorn*, 931 F.2d 29 (9th Cir. 1990)(finding district court erred in denying defendant's request for discovery of personnel files of police officers called as witnesses in his case).

whom the officer has exhibited prejudice, may be unwilling to work with such an officer or do so reluctantly or resentfully. Moreover, when the public perceives that a law enforcement agency has in its ranks officers who have expressed attitudes of prejudice, the ability of the agency to perform its mission is undercut. For example, the effect of bias upon credibility is not limited to the individual officer who engages in such bias if potential jurors generalize that such conduct is accepted within the agency. Hence, a public perception that law enforcement is racist or otherwise biased can result in jury nullification even when evidence of guilt is clear.

In addition, public perception that a law enforcement agency has racist officers in its midst endangers the safety of the public and of other officers. Law enforcement effectiveness depends upon the willingness of the vast majority of the public to comply voluntarily with the instructions of law enforcement officers and to submit to their summary authority, even if the citizen believes that the officer is wrong in a given case. If, however, significant segments of the public believe that they are being policed by individuals with racist attitudes, the probability of such peaceful acquiescence is diminished and the likelihood of escalating force and violence are correspondingly increased. Moreover, the public will not usually know that it is Officer X or Agent Y who has expressed bias against them; if they believe that the agency has prejudiced officers in its midst.

An example of the consequences of perceived bias upon the ability of police agencies to deploy personnel was provided in the aftermath of the Roundups. Two “rookie” officers identified as having attended one of the Roundups were assigned by the Director of the Memphis, Tennessee Police Department to patrol LeMoyne Gardens, a predominantly African-American housing project.<sup>266</sup> Though the two officers were not identified by name, the public was made aware of the reassignment of two young, white male officers to the project and of the officers’ attendance at the Roundups. The officers and their union sued to enjoin the transfers, citing the physical risk to both these officers and other officers because of the public perception that the department was assigning racist officers to the project. The court granted the injunction, finding that the placement endangered not only the lives of the two officers in question, but also the residents of the housing project and other officers “because of the inflammatory situation created.”<sup>267</sup> The court went on to conclude:

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<sup>266</sup>*Memphis Police Association v. City of Memphis*, No. 106252-1 R.D., slip op. at 2 (Tenn. Chancery Ct. Sept. 8, 1995). The reassignment apparently stemmed from an attempt by the police department’s director to punish the rookies for attending the Roundups without benefit of any administrative hearing or other due process or evidentiary findings concerning their own conduct and to teach them cultural diversity by placing them in an assignment in a majority African-American community.

<sup>267</sup>*Id.* at 6-7.

Sadly, in a sense, the real victims of this unfortunate controversy have been the law abiding residents of LeMoyne Gardens, and the needed, effective, and popular police substation project placed there for the good of the community. . . . The overwhelming majority are honorable, honest, good people who simply want a peaceful, safe, calm community, where their police officers are not suspect or distrusted, where their police officers are not branded or feared, where their police officers are not afraid or distracted, but are a part of the community, a welcomed part, because the police officers want to be there and are wanted. . . . [T]he job, the dangerous, grueling job, of a police officer is hard and dangerous enough without being distrusted and distracted, not because of proven conduct and character, but because of unintended association with others. Both the officers and the citizens of LeMoyne Gardens deserve better.<sup>268</sup>

In the Memphis case, the court found credible the officers' denial of participation in any of the racist activities alleged to have occurred at the Roundups, and the police department had advanced no evidence that the officers had in fact engaged in, or even witnessed, any such conduct. The court nevertheless found that the safety of these two officers, their fellow officers, and the general public was jeopardized because of the public perception that stemmed from their association with racist activities by others. The same job-related consequences obviously follow with even greater force when law enforcement officers have in fact personally engaged in prejudiced conduct, even in their off duty hours.

As the cases and hypotheticals set forth above make clear, it is difficult to conceive of a situation in which the Treasury Department could learn of racist conduct on the part of a federal law enforcement officer but be unable to show nexus to the officer's job performance and the agency's mission. Once allegations of such conduct come to the attention of the Treasury, both the Department and the general public have a compelling interest in maintaining the reality and the perception that such prejudice is not tolerated.

Although it is true that the rule may impinge upon federal law enforcement officers' ability to engage in racist and other prejudice-related speech, the Supreme Court has routinely upheld the constitutionality of analogous restrictions on the First Amendment rights of public employees. Courts have adopted an approach far more deferential to governmental restrictions on speech and associational rights when the government is acting not as sovereign but in the role of employer. Although courts have routinely held that citizens do not relinquish all of their First Amendment rights when accepting public employment, they have consistently recognized that these rights must be balanced against the competing governmental interest in the efficiency of the service.

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<sup>268</sup>*Id.* at 8-9.



The Treasury Department has a sound legal basis, as well as the moral obligation, to take the steps recommended in this Report. Indeed, each of the senior public officials who addressed the early allegations concerning the Roundups made clear that such racist and biased conduct was incompatible with service as a federal law enforcement officer. The President unequivocally condemned such conduct at the time the Roundups were first publicized: "I want to say that if anybody who works in Federal law enforcement thinks that kind of behavior [referring to the allegations of racist and other misconduct at the Roundups] is acceptable, they ought to think about working someplace else."<sup>269</sup>

Treasury Secretary Robert Rubin seconded that sentiment in announcing the commencement of the Department's fact-finding investigation and policy review:

An enduring legacy of American racism is the belief--justified in many instances--among African Americans and other minorities that justice at times is enforced against them in a discriminatory fashion. For these reasons, law enforcement officials--in perception *and* reality--must demonstrate on and off the job that they are as free from bias as their jobs require them to be. And it is the responsibility of their supervisors, right up to the Office of the Secretary, to be vigilant--so justice is administered with integrity, fairness and freedom from bias. We condemn as totally abhorrent the participation of law enforcement officials in the 'Good O' Boys Roundup,' because it included abjectly racist and anti-Semitic behavior totally inappropriate for law enforcement officers, and because no one who participated in it had the good sense or decency to do anything about it. That is unacceptable and we will make sure it does not happen again. . . .[T]he men and women of the Treasury Department's enforcement Bureaus . . . do dangerous and difficult work. . . . [That work] absolutely requires our support for them to be effective. And that support in turn depends on law enforcement officials conducting themselves with scrupulous fairness, without any hint of racism or bias.<sup>270</sup>

In addition, Under Secretary Noble forcefully reiterated the Treasury Department's policy against racism, sexism, anti-Semitism, and other forms of bias in law enforcement in his remarks to the Senate Judiciary Committee during its July 1995 hearing on the Roundups:

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<sup>269</sup>Statement of President Clinton at July 20, 1995 Press Conference, as reported by Fox Butterfield, *Clinton Assails Officers' Racist Event; Gathering Is Defended by the Organizer as Get-Acquainted Party*, NEW YORK TIMES, July 20, 1995, at A16.

<sup>270</sup>Rubin Statement, *supra* note 3, 1-2.

As Secretary Rubin has stated time and again, and well before this incident came to light, there is no place at Treasury for discrimination or racism of any kind. This principle has been, and will continue to be, our guide at Treasury Enforcement as we address issues of race, including those raised by this ugly gathering. To take any other attitude would call into question the moral and legal authority upon which law enforcement rests. . . . [R]acist sentiment anywhere within law enforcement is a threat to right minded, legitimate law enforcement everywhere. If left unchecked, the racism, anti-Semitism or sexism of even a few officers would cast doubt on the essential functions performed and missions carried out by the entire law enforcement community. [O]ne person in attendance at an expressly discriminatory and racist event is one too many. . . . A racist law enforcement officer cannot effectively enforce the laws of our society while ensuring the essential civil rights of its citizens. Such a person therefore should have no place in law enforcement.<sup>271</sup>

Under Secretary Noble also testified that the basis for this policy was universally understood within the federal law enforcement community:

I would say that no Federal law enforcement officer can say that he or she would be unaware of the cost to their testimony and their credibility if it were known that in their private lives or in some organization they espoused or articulated or held racist, anti-Semitic, or sexist views.<sup>272</sup>

Shortly after the allegations concerning the Roundups surfaced, ATF Director John Magaw issued his own statement declaring a policy of “zero-tolerance” for such conduct by law enforcement officers assigned to his Bureau:

Since coming to ATF as Director in October 1993, I have continually stated that we have zero tolerance to any kind of discrimination or harassment. If any of this misconduct exists in ATF, I want it searched out and destroyed. I am appalled that an event such as the one reported in today's *Washington Times* would happen in any facet of our society--particularly involving law enforcement officers. . . . Everyone at ATF knows of my intolerance for discrimination and harassment. If

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<sup>271</sup>Noble Statement, *supra* note 10, at 2-3, 8-9. Under Secretary Noble also affirmed his personal commitment to making clear that “there is no place within the Department of the Treasury for law enforcement officers who engage in racist, antisemitic, or sexist behavior.” *Id.* at 9.

<sup>272</sup> 7/21/95 Senate Tr., *supra* note 24, at 101.

an inquiry finds that anyone is involved in these practices, I will do everything in my power to mete out the strongest possible discipline.<sup>273</sup>

These views are not limited to representatives of the executive branch of government. The chair, the ranking minority member--indeed, all of the members of the Senate Judiciary Committee on both sides of the aisle who addressed the issue--agreed that bias was antithetical to the mission of law enforcement that those who engage in it should be punished, and that a clear message must be sent that such conduct will not be tolerated. Thus, referring to the statements of Under Secretary Noble, Director Magaw, and other witnesses who testified at Senate Judiciary Committee hearings on the Roundups that bias within law enforcement was unacceptable,<sup>274</sup> Senator Orrin Hatch, chair of the Committee, stated, "I personally am pleased with your statements. I think you have sent a message throughout this country that you are not going to tolerate this crap, and I think it is about time."<sup>275</sup> Each of the members of the Senate Judiciary

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<sup>273</sup>Statement of ATF Director John Magaw, ATF News Release, July 11, 1995.

<sup>274</sup>*See, e.g.*, Statement of Deputy Attorney General Jamie Gorelick, 7/21/95 Senate Tr., *supra* note 24, at 30 ("We must assure that the public continues to have confidence in law enforcement's ability to treat all citizens fairly and equitably. Even if just a few Federal law enforcement officials engage in racist activities of the kind that has been alleged here, they tarnish the reputation of all of us. This is unacceptable."); Statement of FBI Director Louis B. Freeh, *id.* at 38, 41, 120-121 ("In my view, it is not a close question. Anyone who attended this event with knowledge of any racist overtones, or who returned to that event with that knowledge, has no place in law enforcement and should not be in law enforcement. We will not tolerate participation and support of any FBI personnel in any activity that is racist or otherwise illegal or improper. . . . We have too much to lose by tolerating this kind of behavior, even if it is one FBI agent participating for one day with knowledge of the activities. So we are committed to rooting this out."); Statement of DEA Director Constantine, *id.* at 50, 53 ("What happens is that if people believe that law enforcement officials use race or sex or any other type of criteria to use that tremendous power to take somebody's life or to detain somebody, you have lost your credibility, and once you lose your credibility, you have lost your effectiveness. . . . I think it is absolutely apparent that something went radically wrong down there, and that will be in the memory of the American people forever, regardless of which individual is responsible or which individual ran it or which individual knew it was happening. It is indelibly printed in the minds of people in America right now that somewhere in the law enforcement system there are people who are racially motivated in their principles. . . . The end result very likely will be the death of agents or police officers if the system does not believe in them and they do not have credibility.").

<sup>275</sup>7/21/95 Senate Tr., *supra* note 24, at 55.

Committee who made statements at the hearings on the Roundups echoed similar sentiments regarding the fundamental incompatibility of racism and other forms of bias with the responsibilities of federal law enforcement:

**Senator Hatch:** “ Americans. . . . must be able to rely on the impartiality of those who enforce the law. . . . Matters of life and death and the protection of our liberties are entrusted to law enforcement officials. If someone authorized to wield a gun in the name of the law can knowingly organize, participate, and find comfort in gatherings such as . . . [the Roundups], in my opinion, that person does not deserve the public trust, and I don’t know anybody else who would differ with that. Faced with a threatening situation or the perception of a threat, can we be confident that such an agent would not react based at least in part on prejudice if the situation involved an African American and perhaps other minority people? This is not a matter of concern to African Americans only. Prejudice is not so readily limited, and I would not want someone exhibiting such poor judgment and such prejudice enforcing the law with respect to me either. Those who participate in such an event, knowing of its racist nature, should not carry a badge, plain and simple. It does not take very much judgment or wisdom to understand that such a gathering is no place for a Federal, State, or local law enforcement officer. One purpose of this hearing, of course, is to send just that message, and I hope that every law enforcement agency in the country, including Federal, State, and local law enforcement agencies, will adopt it. . . . We expect the highest caliber people in law enforcement. [W]e expect them to be people who are fair and decent and non-discriminatory, who really abide by what those badges mean. So that when they exercise their authority and their power . . . people will accept it and understand that this is being done fairly and with [sic] discrimination.”<sup>276</sup>

**Senator Biden:** “The allegations [concerning racist and sexist conduct at the Roundups], if true, reveal a behavior that falls far, far short of any standard of conduct and professionalism that not only do we demand, but that we should expect. . . . But unless you all are able to communicate that, in fact, to the American public, you all have a problem. We have a problem; the Government has a problem; law enforcement has a problem. . . . This besmirches the reputation, if it turns out to be true, of everybody who

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<sup>276</sup>7/21/95 Senate Tr., *supra* note 24, at 1-4, 161-62. Senator Hatch also made clear that he wanted to know more about whether the MSPB system was thwarting appropriate law enforcement disciplinary actions, because “[w]e have got to get people who act like this out of agencies. We have got to have confidence in our law enforcement people.”

has a badge, and I think you owe it to them to make sure you understand, by whatever means you can, legal and societal, you make these folks pay.”<sup>277</sup>

**Senator Heflin:** “The underlying aspect of this ought to be investigated and there ought to be action that is taken with the idea of eliminating [racial prejudice] that exists in law enforcement, or certainly minimizing it, if it exists today.”<sup>278</sup>

**Senator Feinstein:** “[T]his really concerns me greatly, not only generally the racial bigotry that took place, but accompanying it, apparently, was excessive use of alcohol, possible rape of women, and possible use of narcotics. . . . My thinking is that it may very well be time that there be a federally drafted and passed code of conduct for behavior, both public behavior and private behavior, for those who serve in the military and those who serve in law enforcement in our country because there seems to be event after event that takes place with behavior that casts a pall over all the good people in law enforcement nationwide. . . . I just do not believe that we can allow inappropriate, very often illegal conduct to take place by anybody in the military or law enforcement people in their private time. They take an oath of office. They are essentially sworn, and with that oath, I think, come special responsibilities”<sup>279</sup>

**Senator Thurmond:** “We deplore racist activity and find it even more reprehensible if practiced by law enforcement. We live in a country where justice is blind and where the laws are enforced even-handedly. The American people must have confidence that this is a reality and not a goal. If law enforcement officials have participated in the type of activities reportedly occurring at these annual gatherings, then they should be disciplined immediately. Public trust must not be betrayed.”<sup>280</sup>

**Senator Thompson:** “If people want to pay \$90 and travel hundreds of miles to go out into the woods and act like fools, that is their constitutional right, but they do not have a right to spend one penny of Government assets in doing so. They do not have a right to

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<sup>277</sup>*Id.* at 7, 10. Although Senator Biden expressed uncertainty as to whether authorities would be able to take legal action in cases of off-duty conduct and asked the witnesses to inform the Committee of their conclusions in that regard, he noted, “But I think we should make it clear that anybody who attended these things, if they turn out to be as bad as it appeared, at a minimum, they should be shunned; they should be disgraced out of their badge.” *Id.* at 10.

<sup>278</sup>*Id.* at 87-88.

<sup>279</sup>*Id.* at 93, 97, 102.

<sup>280</sup>*Id.* at 118.

utilize one second of Government time in doing so, and they don't have a right to do it if they are Federal law enforcement agents and, by that conduct, make their job and their fellows' jobs that much more difficult. . . . Thousands of criminal defendants across this country will now have another arrow in their quiver in every conceivable kind of criminal prosecution now because of what these relatively few people did down there from time to time. . . . Think of the relationships between the black and white officers who go out shoulder to shoulder and risk their lives together, and what it does to that. That is what we are dealing with. That is why it is so important. . . . I have been concerned about some of the things that I have heard about you can't discipline anybody anymore. . . . You must show a nexus between the activity and the fact that it makes it more difficult to carry out their job. But I cannot think of any closer nexus than this kind of activity, if it is true.<sup>281</sup>

**Senator Leahy:** "You have law enforcement of all branches in this country given a great deal of power, a great deal of responsibility. But it also means you also give up some of the kinds of freedoms that you might feel you have otherwise. . . . [W]e all know you cannot say, well, I do not have my badge and my uniform on now so now I can be a racist, now I can [be] insensitive, now I can do things that would be a crime for anybody else to do. In fact, in many ways the argument can be made just the opposite, that you cannot raise hell and you cannot do things others might be able to do, no matter how reprehensible, just because they may not reach the level of criminality."<sup>282</sup>

**Senator DeWine:** "I think what we expect of law enforcement is that, at least in 1995, we do not tolerate this [racism] anymore. We do not tolerate that type attitude, because there has to be an understanding that type mental attitude, even among a small number of people in an agency, is just wrong."<sup>283</sup>

**Senator Abraham:** "[O]ne of the most disturbing elements of the criminal justice system right now . . . is the extent to which we see trials turn from a determination of the guilt or innocence of the accused into a trial of law enforcement and its performance. . . . [I]ncidents such as this, I think, give those on the defense counsel side of the ledger further reasons to try to put the police on trial or to put the Federal Bureau of Investigation on trial or whatever."<sup>284</sup>

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<sup>281</sup>*Id.* at 131-33, 137.

<sup>282</sup>*Id.* at 145.

<sup>283</sup>*Id.* at 147.

<sup>284</sup>*Id.* at 155.

The Bias-Motivated Conduct Rule is intended to declare, in a manner consistent with the force and clarity with which all of those public leaders spoke on this issue, that such conduct will not be tolerated by the Department of the Treasury. The intention of the rule is to make sure that there is no doubt on the part of the public and the Treasury Department's law enforcement officers concerning the Department's commitment to prevent and, failing that, to discipline instances of racist and other forms of conduct evidencing invidious prejudice. Although the Department could take disciplinary action under existing rules, a rule expressly addressing biased conduct serves a communicative and deterrent goal. First, despite the presence of the catch-all rule and various articulations of the Treasury Department's nondiscrimination policy, it is clear from the Inspector General's Report that a number of the Department's law enforcement personnel attended, many on a recurring basis, an event that was, at the least, largely segregated (whether intentionally or *de facto*) along racial and gender lines and that involved racist and sexist conduct in various forms by some of the participants. According to the Inspector General's Report, at least some of the Treasury law enforcement officers who attended the events have admitted observing overtly racist incidents and making no response.<sup>285</sup>

Moreover, both the promulgation of a rule and the failure to promulgate a rule convey a message. For example, in response to problems that developed over the years, the organizers of the Roundups published a set of rules requiring the wearing of wristbands for beer and food access and prohibiting fighting, fireworks, attendance by persons under eighteen years old, the presence of press, or the disclosure of embarrassing stories about events that transpired at the Roundups. However, despite the repeated instances of racist conduct, the organizers never published a rule prohibiting such conduct.<sup>286</sup> The failure to adopt a rule prohibiting racist and inappropriate sexual behavior may well have communicated to those who attended the event, and certainly suggests to those examining it in retrospect, a measure of tolerance for such conduct.

In the same way, the Treasury Department sends a message about what it considers most important when it determines what forms of conduct should be addressed by formal rules. The Department and its Bureaus currently have rules concerning, among other topics, drinking and gambling on public property, soliciting donations or distributing advertisements or other

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<sup>285</sup>It is not the intention of this Report to assign blame to or to exonerate any individual; that will be the duty of Bureau managers who will have before them all of the available facts and evidence with respect to a given individual's knowledge and conduct.

<sup>286</sup>The Inspector General's Report noted some evidence that at one of the Roundups a card stating "no racism" was placed at the registration table. Other witnesses responded they did not see such a sign. In either case, it is undisputed that no prohibition of racist conduct was added to the rules published in the Roundup invitations, even after serious instances of racist misconduct occurred.

literature in the work place, and misusing government vehicles. In the wake of an incident such as the Roundups, the communicative need for a rule expressly addressing off-duty racist and other bias-motivated conduct by Treasury law enforcement officers is now clear. Moreover, the constitutional sensitivity of the application of disciplinary action to off-duty expressive activity calls for as much specific guidance as possible concerning the categories of conduct that would trigger an investigation and discipline. Although, as described elsewhere in this Report, the catch-all “efficiency of the service” rule can supply the legal basis for discipline and has been upheld against vagueness challenges,<sup>287</sup> the greater the specificity of the guidance provided concerning when and how discipline will be applied, the less intrusive the disciplinary process will be upon other, protected forms of expression and conduct. The Treasury Department performed an extensive review and analysis of the case law bearing upon the constitutionality of the Recommendations set forth in this Report and concluded that the actions proposed do not impermissibly infringe the constitutional rights of the employees affected.

Moreover, the Treasury Department owes a duty to its managers and supervisors who will be required to make the front-line decisions to provide as much clarity as possible about when and how discipline is expected to be applied. Obviously, the ability of managers and supervisors to exercise discretion appropriate to the facts of individual cases must be maintained. However, the legal and policy issues involved in this Report are both important and complex and involve delicate balancing of civil rights and civil liberties. These issues have been the focus of a number of the Department’s lawyers and senior policy makers on a full-time basis for approximately seven months. By recommending this rule the Department fulfills a duty to field-

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<sup>287</sup>*Arnett v. Kennedy*, 416 U.S. 134 (1974)(finding the “such cause as will promote the efficiency of the service” standards in 5 U.S.C. 7501 not impermissibly vague or over broad in its regulation of speech of federal employees); *Parker v. Levy*, 417 U.S. 733 (1974)(finding Uniform Code of Military Justice rule authorizing court-martial for “conduct unbecoming an officer and a gentleman” neither unconstitutionally vague or over broad). A number of courts have rejected vagueness and overbreadth challenges to broadly phrased police and fire department conduct rules, noting the need for strict discipline and camaraderie. See, e.g., *Vorbeck v. Schnicker*, 660 F.2d 1260 (8th Cir. 1981), cert. denied, 445 U.S. 921 (1982)(relying on *Parker* and *Kelly v. Johnson*, 425 U.S. 238 (1974)); *Davis v. Williams*, 617 F. 2d 1100 (5th Cir.), cert. denied, 449 U.S. 937 (1980); *Aiello v. City of Wilmington*, 623 F.2d 845 (3rd Cir. 1980); *Janusaitis v. Middlebury Volunteer Fire, Etc.*, 607 F.2d 17 (2d Cir. 1977); *Kannisto v. City and County of San Francisco*, 541 F.2d 841 (9th Cir. 1976); *Harper v. Crockett*, 868 F.Supp. 1557 (E.D. Ark. 1994); *Fire Fighters Ass’n v. Barry*, 742 F.Supp. 1182 (D.D.C. 1990); *Hopkins v. Mayor & Council of City of Wilmington*, 600 F.Supp. 542 (D.De. 1984); *Marshall v. City of Atlanta*, 614 F.Supp. 581 (N.D.Ga. 1984); *Magri v. Giarusso*, 379 F.Supp. 353 (E.D.La. 1974).



level supervisors, most of whom have no legal training, to clearly articulate the policy that these supervisors will be expected to carry out.

### **Recommendation No. 3: Membership or Participation in Hate Groups**

**Each Treasury Bureau or component that employs law enforcement officers should publish guidelines for the application of the Bias-Motivated Conduct Rule set forth in Recommendation No. 2 above to membership in hate groups or other behavior through which a Treasury law enforcement officer might associate himself or herself with the prejudice-related conduct of others. Such guidelines should contain at least the following language:**

**A Treasury law enforcement officer who knowingly becomes or remains a member of or participates in a hate group or otherwise knowingly associates himself or herself with the hate-motivated activities of others, proceeds at the risk that his or her membership, participation, or association could reasonably be taken as tacit approval of the prejudice-related aspects of those groups or activities and could subject the officer to disciplinary investigation and possible disciplinary action. As used here, “hate group” or “hate-motivated activities” are defined as an organization, association, event, or activity, the sole or a primary purpose of which is to advocate or promote hate, violence, or invidious prejudice against individuals or groups on account of race, color, religion, national origin, sex, sexual orientation, age, or disability.**

**The guidelines should also inform officers and their supervisors of the factors that will be applied in determining whether disciplinary action will result.**

**Discussion:** When a Treasury law enforcement officer knowingly participates in a hate group the public will often infer that the officer shares the objectives of the organizations and activities to which the officer lends his or her name and time.<sup>288</sup> As a result, membership or participation in racist organizations or activities causes the same damage to the credibility of and public perception toward the officer and the agency to which he or she belongs as has been discussed above with respect to the officer’s personal participation in prejudice-related conduct. Thus, courts have recognized that police officers are subject to limitations on their associational rights, where the nature of the association is antithetical to the law enforcement mission. For example,

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<sup>288</sup>Recent events such as the alleged murders of an African-American couple by two soldiers stationed at Fort Bragg who were members of a racist skinhead group have highlighted the dangers of participation in hate groups by members of the military.

an officer can be disciplined for fraternizing with felons, organized crime figures, or undocumented aliens (and, under some circumstances, with their family members), even though there is no direct evidence that the officer has engaged in or agreed to engage in illegal activity him or herself.<sup>289</sup> Adverse public reaction to a law enforcement officer's participation in an organization or event whose hate, violence or prejudice-related goals or methods are antithetical to the mission of law enforcement is likewise a sufficient basis for investigation.<sup>290</sup>

These guidelines, which supplement the Bias-Motivated Conduct Rule set forth in Recommendation No. 2, underscore the need for Treasury law enforcement officers to exercise good judgment in their choice of the groups and activities in which they become involved, because such involvements may bear upon the officer's credibility and upon public perception of the impartiality, professionalism, and integrity of the individual officer and his or her law enforcement agency, thereby adversely affecting the efficiency of the service.

The guidelines should encourage Treasury law enforcement officers to assess the appropriateness of their affiliations and activities on an on-going basis with an appreciation of the effect they will have on the credibility and effectiveness of the officer and on the perception of the agency were they to become known to the general public. For example, the guidelines could indicate that if an officer is uncertain about the propriety of attendance at an event that has multiple purposes but might be publicly perceived as promoting bias, he or she should seek guidance in advance from a supervisor or ethics officer after making full disclosure of the possible bases for negative perception. Absent a legitimate purpose, such as intelligence gathering, an officer who joins a hate group or associates with the hate-driven activities of others proceeds at the risk that his or her presence may reasonably be taken as tacit approval of the

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<sup>289</sup>See, e.g., *Bolton and Turpin v. Department of Justice*, 26 M.S.P.R. 658 (1985) (correctional officers removed for soliciting financial aid from an inmate for officers' business venture); *Morones v. Department of Justice*, 35 M.S.P.R. 285 (1987) (supervisory Immigration and Naturalization Service officer removed for personal relationship with alien facing deportation proceedings); *Baron v. Meloni*, 602 F.Supp. 614 (W.D.N.Y. 1985), *aff'd*, 779 F.2d 336 (2d Cir.), *cert. denied*, 474 U.S. 1058 (1986); *Swank v. Smart*, 898 F.2d 1247, 1252 (7th Cir.) (suggesting that contrary analysis in *Wilson v. Taylor*, 733 F.2d 1539 (11th Cir. 1984), which had overturned a police officer's termination for dating the daughter of an alleged mobster, had itself been tacitly overruled by *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), which rejected the notion of a constitutional right to social associations), *cert. denied*, 498 U.S. 853 (1990).

<sup>290</sup>See, e.g., *McMullen v. Carson*, 754 F.2d 936, 940 (11th Cir. 1985) (upholding dismissal of an active member of and recruiter for the Ku Klux Klan from position as sheriff's department dispatcher).

prejudice-related aspects of those groups and activities will subject the officer to discipline. This rule does not imply that mere membership is sufficient grounds for disciplinary action.

As discussed above with respect to the Bias-Motivated Conduct Rule, the agency retains the burden of demonstrating nexus between the officer's membership or participation in a group or activity and the officer's job or the agency's mission. Moreover, in applying the rule, managers should be mindful of the factual circumstances surrounding an officer's involvement in a group or event that might affect the reasonableness of the conclusion that membership or participation indicates the officer's support of the discriminatory goals of the organization or event.

For example, a Treasury law enforcement officer would be hard-pressed to justify participation in a group or event whose sole or primary purpose of inflaming hatred against particular classes of citizens is open and notorious. Other groups, however, may have multiple objectives, some malicious and others benign. Issues may also arise as to whether, for example, expressions of bias or hatred by a group's leader reflect only the leader's personal opinions, or views that are shared by the group. Under such circumstances, an officer might be able to credibly claim to have been unaware of the negative implications of membership or participation in the group or event or that he or she did not intend, by participating, to convey personal approval of the prejudice-related connotations surrounding the group or event.

Where an officer is genuinely and reasonably unaware of the adverse connotations associated with an organization or event, the obvious remedy is training or informal disciplinary action such as counseling. Where the evidence establishes that the officer did know of the hate and prejudice-related focus of an organization or activity, but nevertheless participated for reasons unrelated to those negative purposes, the application of discipline must turn upon whether the circumstances surrounding the officer's participation would give rise to reasonable questions concerning the impartiality, professionalism, or integrity of the officer or the Bureau in their performance of the law enforcement mission. Where membership or participation in groups or events that promote prejudice occurs under such circumstances that the Bureau concludes that such prejudice may reasonably be imputed to the individual participant, action may be taken under the rule prohibiting prejudice-related conduct. Officers should be expected to exercise good judgment about the consequences of their affiliations upon the reputations of themselves and their agencies. The rule is not intended, however, to apply to situations in which it would be unreasonable to attribute the group's biased belief or conduct to the individual member or to draw a conclusion based on an officer's participation in a group that his or her impartiality, professionalism, or integrity is suspect.

Treasury law enforcement officers hold extremely sensitive positions and their effectiveness depends upon the cultivation of public confidence in the fairness, impartiality,

credibility, and good judgment of the officer and the agency--all of which are incompatible with participation in hate groups and activities. The Supreme Court has recognized that not only an individual's own actions, but also his or her group affiliations, such as membership in a White Aryan gang, can be used to impeach a witness' testimony when the characteristics and objectives of the organization are relevant to the facts of the case.<sup>291</sup> Thus, for example, an officer's involvement in a racist organization may be used to undermine his or her credibility where a defendant or opposing witness is a member of a racial group held in contempt by that organization. A prosecutor would therefore be obliged to turn over to the defense information concerning such memberships once the government became aware of them.

In addition, an officer's membership or participation in racist or other forms of hate groups and hate-oriented activities would create the same damage to public confidence in the agency as has been described above with respect to an officer's prejudice-related conduct. That loss of public trust carries with it the attendant threats of damage to the credibility of other officers who do not participate in such groups and of an escalation of the measure of force required to compel those whose distrust of the agency's impartiality and fairness leads them to resist assertions of authority. There are many positions for which it can be said that the proper remedy to an employee's advocacy of abhorrent viewpoints is further education in the virtues of democracy. However, the harms springing from a toleration of racism or bias in law enforcement are substantially more serious and permanent.

The policy set forth in this Recommendation places the initial responsibility on the Treasury law enforcement officer to use common sense in choosing groups and events with which to associate. It is hoped that the issuance of this policy will be sufficient to sensitize most officers to the need to avoid affiliations that might compromise their own credibility or the reputation of the Treasury Department. Failing that, officers are warned of the risk that their associations may result in a finding that they support the hate-related aspects of the group or event and, if so, of the risk that they may be subject to discipline.

**Recommendation No. 4: Misuse of Government Resources:**

**The Treasury Department should consider what additional guidance is necessary concerning the permissible uses of government resources and, in particular, the method of obtaining approval and standards for approving the use of government resources in support of professional development and community service activities.**

**Discussion:** One of the accusations concerning the Roundups that engendered public outrage was the allegation that not only had racist and sexist activities been conducted at the Roundups,

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<sup>291</sup>*United States v. Abel*, 469 U.S. 45 (1984).

but that government resources had been used to organize the event. As discussed above,<sup>292</sup> governmentwide ethics standards make clear that all government employees are prohibited from using government time and property for other than authorized purposes.<sup>293</sup> However, there is very little guidance provided under existing rules applicable to Treasury employees concerning when the use of government resources is and is not authorized. Likewise, the procedures governing how an employee is expected to procure authorization and the circumstances pursuant to which a supervisor is permitted to convey such authorization are not currently spelled out. Although many questions concerning the appropriate use of government property can be resolved through the exercise of simple common sense, the issues become more complex when the use in question is at least partially related to professional or community relations purposes.

For obvious reasons, the Treasury Department has a strong interest in supporting events to foster networking and positive relationships between federal and state and local law enforcement officers. Additional guidance concerning the use of government resources in support of these and other professional and community-related events is warranted. Standards should be established to guide decisionmaking with respect to the kinds of activities for which a minimal use of governmental resources would be appropriate. In addition, a procedure should be established for obtaining prior official approval of such uses. Such a procedure would place the supervisory chain of command on notice of the event and of the use of government resources to conduct it, and supervisors could therefore be expected to monitor the event more closely to ensure that it was conducted in a fashion that reflected favorably upon the government.

No specific rule governing the use of government resources has been proposed in this Report because such a rule would necessarily affect many interests beyond the mission of this Policy Review. However, the Department should consider the need for additional guidance to employees and supervisors on this issue.

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<sup>292</sup>See Chapter 6, *supra*.

<sup>293</sup>OGE Ethical Standards, 5 C.F.R. §§ 2635.101b(9)(basic obligations of public service), 2635.704 (government property), 2635.705 (official time); *see also* 31 U.S.C. § 1349 (mandatory suspension for no less than thirty days for willful misuse, or authorization of misuse of a government vehicle); Treasury Conduct Reg., 60 Fed. Reg. 28,535, 28,538 (June 1, 1995) (to be codified at 31 C.F.R. § 0.209) (prohibiting use of Government vehicles for unofficial purposes).

**Recommendation No. 5: Study of the MSPB System and Treasury Law Enforcement Officers**

**The Treasury Department should study the Merit System Protection Board system and the training, education, and accountability of managers in the discipline of Treasury law enforcement officers.**

**Discussion:** One of the issues raised at the Senate Judiciary Committee hearings on the Roundups was whether the MSPB system prevents federal law enforcement agencies from taking appropriate action to maintain discipline and to remove from federal service federal law enforcement officers who prove unworthy of their badges. A complete analysis of this issue was beyond the scope of this Report. However, in the course of gathering information pertinent to this Report, the Review heard sufficient complaints from managers and human resources personnel in federal law enforcement agencies to warrant a recommendation for the further study of this issue. The information the Review was able to collect is reported here in support of that recommendation.

The gravamen of the complaints heard from managers was that the MSPB, and decisions in related employee appeals to the Federal Circuit, prevented agencies from exercising appropriate discretion in the selection and discipline of law enforcement officers. Most of the evidence for this view was anecdotal. Agencies did not maintain separate records of cases in which factual allegations against the employee were deemed to be meritorious but discipline nevertheless was not imposed because the agency feared reversal by the MSPB; instead, all such cases were treated as though the allegations had been resolved in the employee's favor.

The Review's analysis of MSPB decisions revealed not only that discipline against federal law enforcement officers is frequently upheld, but that the MSPB holds law enforcement officers to a higher standard than that demanded of most other federal employees. Indeed, of all employee appeals to the MSPB generally, nearly half (45 percent) are dismissed, principally for lack of jurisdiction, and of those that are not dismissed and proceed to final adjudication, nearly three-quarters are affirmed.<sup>294</sup>

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<sup>294</sup>95 Federal Merit Systems Reporter V-95-5 (March 27, 1995). "Of the 7,530 initial appeals decided, 3,422 (45 percent) were dismissed. Of the dismissals, 77 percent were for lack of jurisdiction, agency cancellation of the action, or appellant withdrawal of the appeal. . . . Of the 4,108 (55 percent) appeals that were not dismissed, 2,022 (49 percent) were settled, and 2,086 (51 percent) were adjudicated on the merits. With regard to those appeals adjudicated on the merits, 1,538 (74 percent) were affirmed, 427 (20 percent) were reversed, and 104 (5 percent) were mitigated." *Id.*

To be sure, MSPB decisions are not always consistent, and the level of penalty is sometimes mitigated even when the imposition of discipline is itself affirmed. Moreover, some MSPB rulings, as well as Federal Circuit decisions in MSPB appeals, have had a negative impact on law enforcement personnel practices.<sup>295</sup>

A more significant problem, however, appears to be that agencies are engaging in self-censorship in determining whether to pursue discipline, because of a common perception that it is unlikely that the MSPB will uphold serious discipline in any but the most egregious cases. Whether or not that perception is accurate, it presents a serious risk that discipline is being underutilized and that when discipline is invoked, agencies are imposing less serious penalties than might otherwise be called for in order to avoid the appellate jurisdiction of the MSPB.

The seriousness of these concerns warrants further study. The Review therefore recommends that Treasury Law Enforcement Bureau management evaluate discipline cases involving the issues addressed by this Review in order to ensure that discipline is being imposed in a consistent and appropriate fashion and that penalties commensurate with the offense are being imposed. Because, as discussed in Chapter Eight, the MSPB system also affects the ability of the Treasury Department and its Law Enforcement Bureaus to investigate candidates for positions as federal law enforcement officers for conduct evidencing invidious prejudice, as well as for other suitability factors, this study should also encompass the effects of the MSPB system on the hiring and screening of federal law enforcement officers. If, as a result of that study, the Department determines that appropriate screening and discipline cannot be implemented for Treasury law enforcement officers because of MSPB decisions, that information should be brought to the attention of Congress for corrective legislation. At the same time, Treasury Law Enforcement Bureaus should study whether additional training is required for managers and supervisors with respect to the disciplinary process and the manner in which appropriate disciplinary action can be taken consistent with the constitutional, statutory, and procedural rights of Treasury law enforcement officers and other employees.

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<sup>295</sup>An example of such decisions is the Federal Circuit's holding in *Grubka v. Department of the Treasury*, and subsequent MSPB cases applying *Grubka*, which held that an agency may not charge an employee both with underlying misconduct and with lying to investigators concerning the misconduct. *Grubka*, 858 F.2d 1570 (Fed. Cir. 1988); accord, e.g., *Walsh v. Department of Veterans Affairs*, 62 M.S.P.R. 586, 593-95 (1994). This ruling imposes a special burden upon law enforcement agencies because of the paramount importance of the integrity of their officers. For a law enforcement officer, lying in response to an official inquiry is a serious offense that casts serious doubt upon the officer's credibility in other matters and is discoverable in criminal cases in which the officer may be called as a witness. As a result, a false statement made by an officer during an inquiry may be far more serious than the underlying misconduct.





## **Section III**

### **Additional Personnel Policy Issues**



## CHAPTER EIGHT

### **HIRING: EXISTING POLICIES AND RECOMMENDED MODIFICATIONS**

One of the best ways to prevent exhibitions of racism and other forms of bias-motivated conduct among Treasury law enforcement officers is to investigate carefully for evidence of such conduct that would render the individual unsuitable for law enforcement work. This chapter examines the existing hiring criteria and procedures employed by Treasury Law Enforcement Bureaus in the selection of law enforcement officers and makes several recommendations for improvement.

#### **Recommendation No. 6: Selection Criterion for Treasury Law Enforcement Officers**

**Impartiality, as demonstrated by the absence of statements or conduct evidencing hatred or prejudice on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability, should be a minimum hiring standard for all Treasury law enforcement officers.<sup>296</sup> Information concerning this standard, together with the standards of conduct that apply to Treasury law enforcement officers on and off duty, should be provided to all applicants for Treasury law enforcement positions.**

**Discussion:** In the field of law enforcement, personal characteristics may be as important, or even more important, than “paper credentials.” The President’s Council on Integrity and Efficiency (PCIE) has published *Quality Standards for Investigations* establishing minimum criteria to be used in recruiting and selecting candidates for positions in federal investigative agencies. Among these minimum qualifications is one relating to character:

Each investigator must possess and maintain the highest standards of conduct and loyalty in both official and personal matters.

Every citizen is entitled to have complete confidence in the integrity of government affairs. Investigators must help earn and must honor that trust by their own integrity and conduct in all official actions. Because of the sensitivity

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<sup>296</sup>For ease of reference, statements or conduct evidencing hatred or prejudice on the basis of race, color, religion, national origin, sex, sexual orientation, age, or disability will be referred to alternatively hereafter as “bias-motivated conduct” or “conduct evidencing invidious prejudice.”

of the investigative functions, a suitability determination should be made as to the investigator's character, reputation, trustworthiness and overall fitness for such a position. A determination as to one's suitability will be based on the results of a background investigation, including personal interviews, written inquiries and confirmations, record searches and a review of the applicant's compliance with programs administered by the agency (e.g., income tax checks for IRS investigators). . . . Such suitability decisions should be made prior to the appointment of an individual as an investigator.<sup>297</sup>

The President's Commission on Law Enforcement and the Administration of Justice made similar observations concerning the requirements of law enforcement officers generally:

It has often been stated that policing a community is personal service of the highest order, requiring sterling qualities in the person who performs it. . . . Few professions are so peculiarly charged with individual responsibility. Officers are compelled to make instantaneous decisions--often without clear cut guidance from a legislature, the judiciary, or from departmental policy--and mistakes in judgment could cause irreparable harm to citizens, or even to the community.

Complexities inherent in the policing function dictate that officers possess a high degree of intelligence, education, tact, sound judgment, physical courage, emotional stability, *impartiality*, and honesty.<sup>298</sup>

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<sup>297</sup>PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY, QUALITY STANDARDS FOR INVESTIGATORS 2-3 (1987).

<sup>298</sup>THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT & ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE POLICE 125 (1967) [hereinafter THE POLICE]. See also IACP, *Law Enforcement Code of Ethics*:

The public demands that the integrity of police officers be above reproach. Police officers must, therefore, evoke any conduct that might compromise integrity and thus undercut the public confidence in a law enforcement agency. . . . Police officers will behave in a manner that does not bring discredit to their agencies or themselves. A police officer's character and conduct while off duty must always be exemplary, thus maintaining a position of respect in the community in which he or she lives and serves. The officer's personal behavior must be beyond reproach.

One essential feature of the character and conduct of any federal law enforcement officer is impartiality both in actuality and in appearance. The PCIE expressed this standard in the following fashion:

In all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence . . . . and must maintain an independent attitude.

This standard places upon agencies, investigative organizations and investigators the responsibility for maintaining independence, so that judgments used in obtaining evidence, conducting interviews and making recommendations will be viewed as impartial by knowledgeable third parties.<sup>299</sup>

The PCIE goes on to observe that “[t]here are circumstances in which investigators may experience difficulty in achieving impartiality because of their views or personal situations.”<sup>300</sup>

Two specific personal impairments to independence and impartiality the PCIE standards require investigators to avoid are:

- (1) Pre-conceived opinions of individuals, groups, [or] organizations . . . that could bias the investigation; and
- (2) Biases--including those induced by political or social conventions--that result from employment in, or loyalty to, a particular group or organization. . . .<sup>301</sup>

As the President’s Commission on Law Enforcement and Administration of Justice put it, “The most promising way to avert. . . police-community [racial] tensions is to recruit and

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<sup>299</sup>PCIE, *Quality Standards for Investigators*, *supra* note 297, at 5.

<sup>300</sup>*Id.* at 6.

<sup>301</sup>*Id.* at 6. *See also* IACP, *Law Enforcement Code of Ethics* (“A police officer shall perform all duties impartially, without favor or affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity. Officers will never allow personal feelings, animosities or friendships to influence official conduct. . . . They will conduct themselves in appearance and deportment in such a manner as to inspire confidence and respect for the position of public trust they hold.”).

promote those. . . with a sound respect for people.”<sup>302</sup> As a practical matter, the only meaningful way in which to assess an applicant’s impartiality is by investigating and evaluating his or her statements and conduct.

Given the discretion and power entrusted to those who carry a badge and gun on behalf of the federal government and in light of the diverse constituency that federal law enforcement is called upon to serve, impartiality, as demonstrated by absence of conduct evidencing invidious prejudices, should be deemed a minimum standard for entry into service as a Treasury law enforcement officer.

The current OPM criteria for the position of Criminal Investigator (GS-1811) include certain educational and experience requirements, which will be further discussed below, and also contains a “Personal Qualities” requirement, which provides that appointment is contingent upon a “satisfactory report of character and background investigation.”<sup>303</sup> The only qualities currently described under this standard as the subject of the character and background investigation are loyalty to the United States government, honesty, and integrity.<sup>304</sup> At various other places scattered throughout the qualifications standard, the following personal characteristics are also mentioned: (1) emotional and mental stability;<sup>305</sup> (2) the ability to deal effectively with individuals or groups in stressful or confrontational situations, to collect and assemble pertinent facts for investigations, and to prepare concise written reports;<sup>306</sup> (3) poise, tact, and ability in oral expression;<sup>307</sup> and (4) the ability to make rapid, accurate judgments and sound decision

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<sup>302</sup>THE POLICE, *supra* note 298, at 153.

<sup>303</sup>OPM *Qualifications Standards Handbook for General Schedule Positions*, IV-B-227 (July 1993) [hereinafter *OPM Handbook*]. OPM publishes qualification standards for each federal occupational classification based upon submissions from the federal agencies employing personnel in that classification.

<sup>304</sup>*Id.*

<sup>305</sup>*Id.* at IV-B-227 (listed in the medical standard).

<sup>306</sup>*Id.* (all included in optional section concerning experience that may be substituted for education for all Treasury Criminal Investigators other than IRS Special Agents).

<sup>307</sup>*Id.* at IV-B-229 (discussed in a section describing the evaluation of personal qualifications during the interview process).

making in applying regulations, instructions, and procedures.<sup>308</sup> Other Treasury law enforcement officer positions have similar personal requirements. For example, one of the skills required of Secret Service Uniformed Division officers is the “ability and willingness to accept responsibility and make decisions.”<sup>309</sup> Among the most expansive definitions of required personal characteristics is the qualifications standard for Customs Inspectors:

Among [the personal qualities required] are alertness, ability to work effectively in stress situations, ability in oral expression, tact, capacity for effective public relations, and good judgment. Candidates must give evidence that they are capable of representing the United States satisfactorily in contacts with persons from other countries. A Customs Inspector is often the first person an alien sees and talks to upon arriving in the United States, and the Inspector’s behavior is important in forming the impression and attitude of the person toward the United States and its law enforcement representatives.<sup>310</sup>

All of the characteristics mentioned in the various standards are important to success as a Treasury law enforcement officer. Thus, the Department should seek authority from OPM to revise the relevant qualification standards.<sup>311</sup> Specifically, all the characteristics mentioned in the various OPM qualification standards applicable to Treasury law enforcement officers should be pulled together in a single coherent fashion, together with any additional traits which Treasury Bureaus and components employing federal law enforcement officers agree are necessary to successful performance of the law enforcement mission. Moreover, these characteristics should

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<sup>308</sup>*Id.* at IV-B-227 (part of a description of one of several forms of prior investigative experience that may substitute for education for Criminal Investigators other than IRS Special Agents).

<sup>309</sup>Secret Service, *Supplemental Statement Secret Service Uniformed Division Officer* p.1 (used in application process).

<sup>310</sup>*OPM Handbook, supra* note 303, at TS-1, IV-B-227.

<sup>311</sup>OPM informed the Policy Review that there would be no barrier to revising qualification standards applicable solely to Treasury law enforcement officers if the Department submitted a justification relating the proposed revision to job performance requirements. For qualification standards applicable to classifications of personnel employed by other federal agencies in addition to Treasury, revision of the standard would require coordination with those agencies. Alternatively, OPM could publish “selective factors” exclusively for Treasury law enforcement officers within the classification. OPM was receptive to the identification of impartiality, as demonstrated by the absence of statements or conduct evidencing invidious prejudices, as a qualification for employment as a Treasury law enforcement officer.

be expressly identified as “Personal Qualities” that are uniformly required of all Treasury law enforcement officers, rather than being sprinkled through the various elements of the existing qualifications standards, some of which are optional.<sup>312</sup>

Current standards do not expressly address the issues of impartiality or respect for diversity. However, by including criteria in the standards that would require an applicant’s impartiality, as demonstrated by the absence of conduct evidencing invidious prejudices, the Treasury Department could attempt to identify and eliminate applicants who are not able to perform law enforcement duties among individuals or groups of other races or religions. For example, an intolerant officer might be able to deal effectively with individuals or groups of his or her own background, but not with groups against whom the officer harbors animosity or invidious prejudice. Moreover, investigating thoroughly any previous bias-motivated conduct and where appropriate eliminating invidiously prejudiced candidates from the selection pool serves a communicative function that is not performed by simply stating, for example, that an applicant must deal well with others: it tells prospective Treasury law enforcement officers from the point of initial contact that impartiality is an absolute “must” for Treasury employees and that conduct evidencing invidious prejudices will not be tolerated.

The intention of this Recommendation is not to hold applicants to an impossible standard. The manner in which the Treasury Department would attempt to identify and evaluate evidence of a lack of impartiality is described in Recommendations No. 7 and No. 8 below. Treasury Law Enforcement Bureau managers and human resources personnel should have the necessary judgment to distinguish between, on the one hand, conduct demonstrating an applicant’s invidious and intractable prejudice and, on the other hand, a candidate’s simple ignorance of the customs, values, and sensitivities of groups from cultural and social backgrounds different from that of the applicant. The former trait should be disqualifying for service as a federal law enforcement officer, while the latter may be susceptible to training if the applicant demonstrates a willingness to learn and to grow. The Treasury Department’s hiring criteria should make absolutely clear from the outset that those whose acts of racism or other forms of bias-motivated conduct evidence a lack of impartiality need not apply.

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<sup>312</sup>This Recommendation is not intended to alter any authority individual Bureaus or components may currently possess to articulate supplemental selective factors relating to qualifications unique to law enforcement positions within the Bureau or component in question. Rather, it is to suggest that to the extent existing hiring standards applicable to all Treasury law enforcement officers attempt to identify personal characteristics required of applicants, this should be done in as clear and comprehensive a fashion as possible, and the standard should include, at a minimum, impartiality, as evidenced by the absence of bias-motivated conduct.



Recommendations No. 7 and No. 8 both relate to the process through which candidates are investigated for fitness for employment as Treasury law enforcement officers. They are therefore discussed together.

**Recommendation No. 7: Background Investigations of Applicants for Positions as Treasury Law Enforcement Officers**

**Prior to hiring individuals as Treasury law enforcement officers, Treasury Bureaus and components should endeavor to determine whether the candidate has engaged in any act or statement evidencing hatred or prejudice against an individual or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability.**

**Recommendation No. 8: Applicant Hiring Safeguards**

**The Treasury Department should require that when a candidate who is deemed otherwise qualified and suitable for a position as a Treasury law enforcement officer has engaged in an act or statement evidencing hatred or prejudice against an individual or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability, a determination shall be made by the appropriate agency as to whether such conduct creates a reasonable basis to question (1) whether the candidate would perform duties as a Treasury law enforcement officer with impartiality; or (2) whether the candidate's employment as a Treasury law enforcement officer would otherwise adversely affect the Treasury Department's law enforcement mission.**

**Discussion:** All applicants for positions as Treasury law enforcement officers are currently evaluated for qualification and suitability prior to their employment.<sup>313</sup> In addition to objective qualifications such as education, experience, and medical fitness, a candidate's loyalty, honesty, and integrity are assessed.<sup>314</sup>

The primary vehicle for this assessment is a background investigation, typically consisting of a detailed questionnaire, a check of arrest records confirmed by submitting fingerprints and other identifying information to the Federal Bureau of Investigation, and a credit check; where appropriate, an examination of military records; a confirmation of employment,

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<sup>313</sup>Each of the Bureaus performs its own background investigations under authority delegated by the OPM pursuant to Executive Order 10450 and 5 C.F.R. § 731.103.

<sup>314</sup>*OPM Qualifications Handbook*, *supra* note 303, at IV-B-227.

educational, and social references supplied by the candidate; and an additional field background investigation accomplished principally through the questioning of individuals in a position to know the applicant's ability and character. The investigators might or might not personally interview the applicant as part of this process, depending upon the level of security clearance required by the officer's position and whether derogatory information concerning the applicant arises in the course of the investigation. Each Bureau performs or contracts for the performance of its own field background investigation, which varies widely in scope, depending upon the position.

For example, all applicants for positions in the Secret Service are required to undergo "single-scope" background investigations. A single-scope investigation is the most comprehensive background investigation possible and is a fundamental qualification for access to information that is classified Top Secret or higher. As performed by Secret Service, and unlike other Treasury Law Enforcement Bureaus whose single-scope investigations cover only the prior ten years of an applicant's life, the Secret Service background investigation has no limit to its coverage. Due to the differing factors that may apply to each candidate--e.g., number of places lived, jobs held, etc.--the amount of time it takes to perform an investigation will vary. For some applicants, the hiring and screening process may extend over as much as eighteen months, during which time investigators conduct multiple personal interviews of the applicant and exhaustive questioning of the applicant's friends, acquaintances, teachers, employers, and family members concerning their knowledge of the applicant. The Secret Service also uses polygraph examinations as part of its hiring process for certain positions including all law enforcement officer positions; the Secret Service is currently the only Treasury Law Enforcement Bureau to employ polygraphs as part of its pre-employment screening process.<sup>315</sup>

Background investigations for other Treasury law enforcement positions may vary in scope, in part due to the number and nature of positions that must be filled, as extensive checks can consume much time and money. The IRS Inspection Service performs "full-field" background investigations (the level immediately below a single-scope investigation), which review the applicant's previous five years for all IRS federal law enforcement officer positions. IRS law enforcement officers do not typically hold security clearances unless a particular assignment creates a special need for one. The background check generally takes between ninety and one hundred days to perform and includes personal interviews with witnesses who know the candidate, but not a personal interview with the applicant unless derogatory information is developed in the course of the investigation. In addition to the full-field background check, IRS performs a credit check and audits the applicant's tax return for the two years preceding

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<sup>315</sup>ATF will be submitting to OPM (via the Treasury Department) a formal request to conduct pre-employment polygraph examinations for Special Agent positions. The Department of the Treasury has endorsed this action.

employment for all IRS personnel, including Treasury law enforcement officers. The purpose of this financial screening is not to develop leads concerning the applicant's general character, but rather to determine whether the applicant is in violation of the tax code or other laws the IRS enforces and to ensure that the individual is responsibly paying his or her debts and is not in such a state of financial disarray which might make the employee susceptible to corruption.

ATF conducts single-scope background checks when reviewing its applicants for law enforcement positions. The single-scope investigation is employed because all ATF agents are required to obtain a security clearance level of Top Secret. The ATF check covers the ten years preceding the investigation, or goes back to the applicant's eighteenth birthday, whichever is shorter. ATF currently requires that each background investigation include statements from two secondary references developed independently from the applicant's list of references or from the listed schools, workplaces, or neighborhoods, so that the information uncovered is less dependent on the leads provided by the applicant.

The standard background investigation required for all law enforcement officer positions within Customs is the full-field background investigation,<sup>316</sup> covering the preceding five-year period for employment references, a period of seven years for police and credit records, and a neighborhood check going back three years. All Customs background investigations require an interview of the applicant and a statement from at least one "developed" lead, not included in the applicant's own list of references. Customs background investigations typically require approximately thirty-five days to complete, unless derogatory information is developed.

FLETC requires background investigations on all of its employees. For its permanent GS-1811 (Criminal Investigators) and GS-1712 (Training Instructors) and supervisory positions, the investigations range from limited background to single-scope investigations based on the nature of the position. Clearances are issued as appropriate and updated investigations are provided as required by regulations. Other than ensuring that the background investigations have been conducted and the clearances for access have been granted, FLETC is not responsible for conducting investigations on the 116 employees detailed to it from Treasury Bureaus or other agencies. Prior to accepting a detailee, FLETC interviews the applicant and reviews his or her qualifications to determine suitability. When a background investigation is required for a federal law enforcement officer assigned to FLETC, it is performed by the IRS Inspection Service.

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<sup>316</sup>Customs law enforcement officers may undergo the more extensive single-scope background investigation when their specific assignment requires them to hold a Top Secret security clearance. However, single-scope background investigations are not routinely employed for pre-employment screening of Customs law enforcement officers.

Most law enforcement officers employed by FinCEN are detailed from other agencies; the four officers employed directly by FinCEN are lateral hires from other federal law enforcement agencies and typically receive updates of previously obtained clearances at five-year intervals. FinCEN background investigations are prompted when applicants or detailees seek positions which are designated high-risk public trust positions or, more commonly, when security clearances are required due to a particular assignment. Customs performs background investigations for FinCEN.

To assist the Treasury Department in determining suitability, applicants are required to fill out one of two standard forms for background investigations, the SF 86 Questionnaire for National Security Positions or the SF 85P Questionnaire for Public Trust Positions.<sup>317</sup> Although former versions of these forms asked the applicant to list all organizations of which he or she had been a member as an adult, in their current version, these forms do not ask this broad a question

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<sup>317</sup>In general, the SF 86 is used to investigate applicants for positions as federal law enforcement officers in ATF, Customs, and the Secret Service. In general, IRS-CID and IRS Internal Security complete the SF 85P, and Customs uses the less-detailed SF 85P for law enforcement officer positions not requiring a security clearance. Both forms focus principally upon the applicant's educational background and employment history, military service, criminal history, use of illegal drugs, and history of psychiatric or other treatment for emotional disorders. However, the SF 86 devotes more attention to matters relating to foreign contacts.

The Secret Service also uses the SSF 86A Supplemental Investigative Data, which provides information to the Secret Service going back even further than ten years.

of candidates for most federal law enforcement positions.<sup>318</sup> Instead, the following question regarding membership in associations appears on the SF 86:

Have you ever been an officer or a member or made a contribution to an organization dedicated to the violent overthrow of the United States Government and which engages in illegal activities to that end, knowing that the organization engages in such activities with the specific intent to further such activities?<sup>319</sup>

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<sup>318</sup>The Review considered but ultimately rejected the option of recommending a return to a security clearance form and background investigation that inquired into *all* of an applicant's memberships in organizations. This approach would have had the advantage of removing any subjectivity from the process by eliminating the applicant's responsibility for assessing whether an organization or event in which he or she has been involved "advocates or promotes hate, violence, or bias against individuals or groups on account of race, color, religion, national origin, sex, sexual orientation, age or disability." It would also have provided a more encompassing base of information from which to perform a background check, enabling investigators to identify and interview a wider range of associates who would be familiar with the candidate's character and conduct. Although there are circumstances in which such a broad inquiry may be required, the Review nevertheless concluded that a more narrow inquiry would suffice in identifying conduct indicating that a candidate may not possess the requisite impartiality for the job, especially when that inquiry is coupled with a field background investigation which, as set forth in Recommendation No. 7, expressly attempts to elicit such evidence if it exists. The broader approach may be revisited if its necessity is established after the current recommendations have been implemented.

<sup>319</sup>The SSF 86A employed by the Secret Service asks a more expansive question:

Are you now or have you ever been a member of any foreign or domestic organization, association, movement, group or combination of persons which is totalitarian, fascist, communist, or subversive or *which has adopted, or shows, a policy advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of government of the United States by unconstitutional means?* (Emphasis added.)

In addition, the majority of Secret Service employees are required to meet eligibility requirements for acquiring Sensitive Compartmented Information (SCI) access. Secret Service background investigations are conducted to meet the standards mandated by the Central Intelligence Agency (CIA) for meeting eligibility requirements for SCI access. These standards

Applicants are also permitted to indicate positions held in organizations where they wish this information to be considered in evaluating their judgment and leadership skills. However, such information is not mandatory, and there is no question in either of the background forms specifically addressing membership in hate groups. Nor do the forms inquire into any information that would reflect the applicant's expressed views concerning women and racial, ethnic, religious, or other minorities or into past incidents of conduct evidencing bias or prejudice against such groups (unless the incident resulted in an arrest or conviction of a crime or dismissal from previous employment).

OPM has issued written guidelines concerning the types of questions the Bureaus should use in the course of background investigations to probe an individual's qualifications and suitability to occupy a particular position and, where applicable, to hold a security clearance. The Bureaus may supplement these guidelines with questions of their own, provided the questions are relevant to the candidate's suitability or qualification for office. None of the standard OPM questions specifically addresses an applicant's impartiality or bias-motivated conduct.

The closest any of the Bureaus comes to a deliberate inquiry into memberships in hate groups or other bias-motivated conduct is a question asked by the Customs Service, whose background investigations are performed by nongovernmental contractors hired specially for that purpose. During the personal interview of the candidate, the contractors ask the applicant the following question drawn from a list of written questions provided by the Customs Service:

Are you now, or have you ever been a member of, affiliated with, or associated in any way, with any association, movements, groups or combinations of persons or any others which have adopted a policy of *advocating or approving the commission of acts of force or violence to deny other persons their rights under the constitution of the United States*, or of seeking to alter the form of government of the United States by unconstitutional means?

This question has been included in the Customs personal interview for over twenty years. A similar question is asked by Secret Service both in a supplement to the SF 86 and in background interviews.<sup>320</sup> Other Bureaus may ask witnesses whether the applicant supports, or is a member

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include investigating into outside activities involving groups advocating the deprivation of the constitutional rights of others through force and violence, as well as involvement in other kinds of subversive organizations.

<sup>320</sup>Chapter 736 of the *Treasury Personnel Management Manual* mandates investigative factors which serve as minimum requirements for personnel security investigations of applicants

of an organization that supports, the violent overthrow of the United States government, but do not typically include in the question support of, or membership in an organization that supports, the denial of civil rights.

With the exception of the foregoing Customs and Secret Service questions, none of the Treasury Law Enforcement Bureaus routinely asks questions during its interviews of applicants, their references, or other background witnesses concerning the applicants' statements or past conduct in this area. Indeed, the Review identified differences of opinion among those responsible for hiring and background screening in the Treasury Law Enforcement Bureaus concerning whether background investigators could legally inquire into such matters, and even as to whether it would be disqualifying for a position as a Treasury law enforcement officer if, for example, credible evidence that the applicant was a member of a hate group such as the Ku Klux Klan should nonetheless surface in the course of an applicant's background investigation. Such differences reflect a need for clearer guidance and additional training of some of those responsible for performing hiring activities and background investigations.

In fact, although inquiries into and reports concerning an applicant's organizational affiliations are generally prohibited by OPM, exceptions to this rule are provided under circumstances in which such associations are relevant to security concerns or to the candidate's

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for (or occupants of) positions designated as Critical-Sensitive (a designation which includes many Treasury law enforcement officer positions). The investigative scope for Critical-Sensitive positions is defined as follows:

Efforts will be made during reference and associate interviews and records checks to determine if a subject or members of the immediate family has or formerly had membership in, affiliation with, sympathetic association towards, participated in, or subscribed to or regularly read publications of any foreign or domestic organization, association, movement, group, or combination of persons which *unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or any State*, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means. (Emphasis added.)

The Secret Service's *Investigative Manual* contains a similar requirement. Despite this requirement, only the Secret Service and Customs indicated they routinely ask such questions in the course of their background investigations of applicants for positions as Treasury law enforcement officers. Moreover, there are many forms of conduct evidencing invidious prejudice, other than affiliation with groups advocating the use of force or violence to deprive others of their Constitutional rights.

qualifications or suitability for the position in question. Such inquiries are specifically authorized by OPM where necessary to determine prerequisite traits for positions of trust, such as personal responsibility, good character, reliability, and trustworthiness.

Moreover, the OPM guidelines allow for the addition of supplemental “special factors” questions, tailored to the job-related requirements of particular positions, when such coverage is requested by the federal agency engaged in screening for such positions. Existing special factors for investigator positions include a sense of the rights of others, and OPM informed the Review that it would be receptive to a request from the Treasury Department to include an inquiry into conduct evidencing invidious prejudices as a special factor for Treasury law enforcement positions.

The Treasury Department has not as yet made such a request, nor do Treasury Law Enforcement Bureaus routinely pose such questions to applicants or to their background witnesses. Instead, with the exception of the above-described question used by Customs and Secret Service, interviews of references and witnesses typically involve more general questions concerning the witness’ knowledge of information that would discredit the applicant or reflect unfavorably on his or her loyalty or patriotism toward the United States or suitability for a position of public trust. For example, ATF background investigators typically ask witnesses, “Tell me anything you think is relevant to the candidate’s suitability for a position of trust and responsibility in the government.” Other Bureaus indicated that their investigators routinely ask witnesses whether they believe the applicant is loyal to the United States or if they know of anything in the applicant’s background that would be cause for embarrassment or blackmail. Witnesses are also routinely asked whether they know of any history of alcohol or drug abuse on the part of the candidate.

Exclusive reliance on such general “catch-all” questions can be problematic, because the Bureau’s ability to raise issues concerning the candidate’s personal biases is dependent upon the personal viewpoint of the witness and willingness to volunteer derogatory information not expressly queried by the investigator. Many witnesses simply might not think to include matters concerning a candidate’s possible acts of racism or personal bias in framing a relevant response to a question regarding loyalty, blackmail, or suitability for a position of public trust. Others may not view such information as derogatory. For example, members of white supremacist organizations often consider themselves to be “true patriots,” and witnesses who are themselves members of such groups would therefore be unlikely to volunteer the fact of a candidate’s membership as evidence of disloyalty or susceptibility to blackmail. Moreover, experienced background investigators interviewed by the Review attest to the reluctance of many witnesses to share derogatory information concerning applicants for fear of being sued or subjected to other forms of retaliation or uncomfortable relations if the applicant learns of their statements. For example, investigators viewed as fairly common the failure of former employers to apprise investigators of stealing, dishonesty, sexual harassment, or other serious reasons for an



applicant's discharge, even though the employer is asked directly why the employee left the job. Thus, it seems reasonably likely that even individuals who view racial and other forms of bias with disfavor may be reluctant to share such information concerning a candidate's conduct evidencing such invidious prejudices with an investigator who has not expressly asked about it directly.

Recommendations No. 7 and No. 8 attempt to seal these gaps. As past experience has shown, even with a single-scope investigation, it may not be possible to identify and eliminate all applicants who may ultimately engage in bias-motivated conduct. However, the Treasury concluded that the Department could do more to investigate applicants' past instances of bias-motivated conduct. Recommendation No. 7 requires the applicable entities within the Treasury Department to take reasonable steps to determine whether a candidate for a position as a Treasury law enforcement officer has engaged in any act or statement evidencing racism or other forms of invidious prejudice. The precise manner in which this is to be accomplished will be left to the respective hiring authorities to determine. Presumably, these efforts would include some form of written or oral inquiry of applicants concerning any past conduct or statements, including membership in hate groups (as defined in Recommendation No. 3), that might be perceived by the public as raising reasonable questions concerning the applicant's impartiality. Questions could also be posed concerning an applicant's membership in segregated organizations, provided the investigation also elicited further information concerning the nature of and reasons for the "segregation." There are a number of reasons why a group may be segregated along racial or, even more often, gender or religious lines. Some of those reasons may be benign; others might reflect invidious discrimination. Many professional organizations--for example, the National Organization of Black Law Enforcement Executives--exist to advance career skills and interpersonal networking among those who have historically been excluded from or discriminated against in certain occupations. Typically, such professional groups are not segregated *de jure*, but may be segregated *de facto* because, although their membership or functions are open to everyone, they are heavily dominated by members of the class they seek to assist. Where memberships or involvements do not reflect animus or invidious prejudice against other groups, but merely seek to elevate the personal or professional or social skills and bonds of the group in question at no expense to others, they should not lead to disqualification from employment as a federal law enforcement officer.

On the other hand, membership in, for example, a country club, of a size sufficient to be considered a public accommodation, that discriminates against women, racial minorities, or members of particular religious persuasions presents a different case. Because such instances of segregation have no readily apparent benign rationale, such a membership would at least raise grounds for further inquiry as to whether the applicant personally harbors invidious bias against such groups or is unconcerned with the unfavorable effects such an affiliation might have upon a Treasury law enforcement officer's credibility or effectiveness in dealing with the public if the applicant retains the membership while in service. At the farthest end of the spectrum, knowing

and active membership in extremist organizations that promote doctrines of racial supremacy or other forms of hatred, violence, or bias is fundamentally incompatible with a career in law enforcement.

Plainly, a system that relied exclusively upon an applicant's self-identification of racism or other bias-related conduct would be an impotent tool for weeding out unsuitable candidates. Recommendation No. 7 also contemplates that background investigators will make possible bias-motivated conduct on the part of an applicant a subject of inquiry in every investigation. Questions to be posed to character witnesses could be similar to those currently used to evaluate the fitness of candidates for judicial office in which references are asked whether they are aware of any evidence that the candidate holds a bias on the basis of race or other invidious criteria. If the reference responds affirmatively, he or she is then queried concerning the specific conduct or statements upon which the opinion is based. Alternatively, questions similar to those currently used for NASA astronauts or foreign service positions could be used.<sup>321</sup> Regardless of how the question is framed, affirmative answers would require further inquiry into the nature of the conduct and the surrounding circumstances as well as appropriate efforts to assess the credibility of the witness' statement.

As Recommendation No. 8 makes clear, where the foregoing inquiries produce unfavorable information concerning past conduct or statements evidencing racism or other forms of invidious prejudice, a further determination must be made as to whether such conduct or statements demonstrate a reason to question the candidate's impartiality at the present time or otherwise render the applicant unqualified or unsuitable to hold a position as a Treasury law

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<sup>321</sup>The questions proposed to be asked of candidates and references maybe somewhat broader than the categories of behavior that would render an applicant unqualified or unsuitable for employment as a Treasury law enforcement officer. The purpose of these inquiries is to allow investigators and managers the opportunity to explore all areas that could potentially support a conclusion that the candidate displays impermissible bias-related conduct. *See Law Students Civil Rights Research Council v. Wadmond*, 401 U.S. 154 (1971) (though mere membership in Communist Party would be insufficient basis for exclusion from licensure as an attorney, it is a legitimate basis for further inquiry). For example, under this Recommendation, the applicant could be asked about membership in segregated organizations, even though such membership would not necessarily be grounds for a finding of unsuitability if it did not support a reasonable question concerning whether the applicant would perform law enforcement duties impartially, professionally, and with integrity.

enforcement officer.<sup>322</sup> This determination should be based on standards similar to those governing the discipline of Treasury law enforcement officers.

The Review identified a difference of opinion within the Treasury Law Enforcement Bureaus, Main Treasury, and OPM concerning whether evidence of a prospective Treasury law enforcement officer's bias-motivated conduct was appropriately considered a qualifications issue or a suitability issue. The answer to this conflict depends on whether personnel officers or managers, on the one hand, or security officers, on the other, would be the appropriate authorities to adjudicate questions of bias-motivated conduct; this issue also affects what standards must be applied to this adjudication, and what appeal rights the applicant will have in event of an

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<sup>322</sup>Obviously, this determination need be reached only if the Bureau or component has not otherwise found a candidate to be unqualified or unsuitable and has not selected another candidate as better qualified for the position.

unfavorable determination.<sup>323</sup> However, all parties agreed that it was important that matters of bias-motivated conduct be resolved before an applicant is hired.

As a general matter, personnel specialists who are charged with making qualification determinations, uniformly viewed the question as one of suitability, appropriately resolved by security officers. There were two general reasons underpinning this viewpoint. First, they tended to view qualifications as objective criteria, such as education and experience requirements, and to lump all subjective traits and requirements--such as loyalty, honesty, integrity, good character, sound judgment--and, if added to the hiring criteria, impartiality--as suitability factors. This view prevailed despite the fact that several of these characteristics appeared in the "Personal Qualities" section of OPM's Qualification Standard for Treasury

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<sup>323</sup>Choices among candidates based on job qualifications may be made by any Treasury employee with hiring authority over the position in question, while the right to make suitability decisions about candidates on OPM certificates, is reserved to OPM by law. In practice, OPM has delegated the authority to make suitability determinations to Customs, as well as to IRS in the case of hires of current IRS employees to fill IRS law enforcement officer positions. *See* 5 C.F.R. §731.103. Moreover, OPM has proposed rules pursuant to which it would relinquish the authority over all suitability determinations to the hiring agencies. 61 Fed. Reg. 394-402 (Jan. 6, 1996). However, even when authority to make suitability determinations is delegated, the agency must employ the same criteria and factors that apply to suitability matters adjudicated by OPM. *See* 5 C.F.R. §731.102(b).

If a category of conduct implicates suitability, the suitability determination is not limited to applicants but must be repeated for current employees at five-year intervals as their clearances are updated. 5 C.F.R. § 731.302(c). In contrast, once an applicant is found to be qualified and is hired, the qualification issue is finally satisfied and need not be periodically revisited.

Prior to taking a suitability action, the following procedures must be observed: (1) written notice of proposed suitability action to the affected individual (with a copy to the involved agency); (2) opportunity for the affected individual to respond in writing or orally to the notice of proposed action and to review, upon request, the materials relied upon by OPM; (3) written notice of the suitability decision; and (4) statement of the right to appeal the decision to the MSPB and any further appeal right. The removal of an individual found to be unsuitable cannot be effected sooner than 30 days following the date of the decision. 5 C.F.R. § 731.402.

Finally, disappointed applicants have the rights to appeal to the MSPB from adverse suitability determinations, but not from qualification decisions. On appeal to the MSPB, OPM bears the burden of establishing by a preponderance of the evidence that one or more of these factors exists and warrants the finding that the individual is unsuitable.

enforcement agents; the personnel specialists interpreted this provision of the Qualification Standard merely as a notice that applicants must satisfy a background check to determine their suitability. In contrast, they interpreted the OPM regulations on suitability determinations as making any matter involving conduct on the part of the candidate that could reasonably be expected to interfere with, or prevent, either (1) the applicant's ability to serve effectively in the position applied for, or (2) the agency's ability to carry out its duties, a matter of suitability.<sup>324</sup>

Second, personnel specialists pointed to a procedural difficulty that would ensue if impartiality or any of the foregoing subjective traits were characterized as job qualifications rather than suitability factors. All parties agreed that the most likely place for evidence of bias-motivated conduct to surface is during the background investigation, because applicants are relatively unlikely to disclose such conduct themselves and cursory checks with immediate prior supervisors performed by hiring managers prior to the background investigation are less likely to yield information concerning questionable conduct than is a full-field investigation. However, the Equal Employment Opportunity Commission (EEOC) guidance concerning implementation of the Americans with Disabilities Act (ADA)<sup>325</sup> and the Rehabilitation Act of 1973<sup>326</sup> has been interpreted as prohibiting employers from conducting background investigations until all non-medical qualifications have been evaluated and the applicant has been given a conditional offer of employment.<sup>327</sup> Once the conditional offer of employment has been made, legal problems may be presented if the employer reopens issues of nonmedical qualifications based on adverse

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<sup>324</sup>5 C.F.R. §§ 731.202(a). An applicant or appointee may also be rejected as unsuitable if a statute or regulation precludes the lawful employment of the individual in the position sought. *Id.*

<sup>325</sup>42 U.S.C. §§ 12,101-17, 12,201-13 (Supp. V 1994).

<sup>326</sup>Rehabilitation Act of 1973 §§ 501, 503, 504, 29 U.S.C.A. §§ 791(g), 793(d), 794(d) (West Supp. 1994).

<sup>327</sup>*EEOC: Enforcement Guidelines on Pre-Employment Inquiries Under the Americans with Disabilities Act (ADA)*, EEOC Compliance Manual (BNA) No.205, at N: 2319 (Oct 1995) [hereinafter *ADA Guidelines*]. Although employers are allowed to check references prior to making a conditional offer of employment, background investigations may touch upon issues such as prior drug addictions or psychological stability which may implicate "disabilities" within the meaning of the ADA regulations and guidance. *See id.* at N: 2322-23. Even though much of the background investigation is nonmedical in nature, disability-related questions may not be posed until a conditional offer of employment has been made. Rather than bifurcating the background check, which would be extremely inefficient and costly, agencies typically satisfy themselves as to the applicant's other qualifications and extend a conditional offer of employment before the background investigation is initiated.

information developed in the course of the background investigation.<sup>328</sup> Therefore, the personnel specialists prefer to identify character-related concerns as suitability factors, rather than as qualifications.

For their part, security specialists of all agencies nearly uniformly considered matters relating to a candidate's impartiality or invidious prejudices as implicating job qualifications, not suitability determinations. They pointed to the definition of qualifications for federal service as including "all aspects of one's ability to act consistently with the public trust and in a manner that promotes the efficiency of the public service."<sup>329</sup> The security specialists viewed the broad definition of suitability criteria in the OPM suitability regulations as having been limited by eight factors, specified by OPM regulations, to which they are allowed to look in making suitability determinations. They regard these factors--all of which relate to concrete categories of conduct--as exhaustive,<sup>330</sup> and these eight factors identified in the OPM regulation do *not* include a candidate's impartiality or bias, even as measured by conduct. Moreover, these suitability factors are common to all federal employees, and are not specific to particular jobs or occupational classification.<sup>331</sup> Thus, security specialists believe that they are limited to an examination of objective criteria and that subjective qualities, even if evidenced by objective conduct, are relegated to the realm of qualifications. They argue that even though candidates must be pre-screened for qualifications prior to being referred to security for background checks, job offers are expressly contingent upon satisfactory completion of the background investigation and may be withdrawn for matters relating to qualifications, just as they may be withdrawn for unsuitability. Alternatively, they contend that personnel managers should simply do a more

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<sup>328</sup>One personnel officer also related practical concerns that her office does not typically receive sufficient information from security to inform an applicant concerning the reasons why an initial positive assessment of qualifications might be changed. Rather, they receive a simple affirmative or negative response concerning the candidate's suitability. However, OPM informed the Review that this was purely a matter of agency practice, and that there is no barrier to the sharing of the report of a background investigation with the agency personnel office for purposes of making a qualification decision.

<sup>329</sup>*Hougens v. United States Postal Service*, 38 M.S.P.R. 135 (1988).

<sup>330</sup>In fact, the preamble to the factors states that these are reasons that "*may* be considered a basis for finding an individual unsuitable," not that they are the *only* reasons that may be considered. 5 C.F.R. § 731.202(b)(emphasis added).

<sup>331</sup>Although the list of factors can be expanded by OPM regulatory action, OPM communicated to the Review its reluctance to expand the list to encompass impartiality, as demonstrated by the absence of bias-motivated conduct.

thorough job of investigating applicants for impartiality and other qualifications prior to referring them for background checks.

The Review takes no position as to whether impartiality, as demonstrated by the absence of bias-motivated conduct demonstrating an applicant's invidious and intractable prejudice, should be considered a job qualification or a suitability factor or both. For all the reasons discussed above with respect to discipline of Treasury law enforcement officers, impartiality as evidenced by the absence of bias-motivated conduct, is an essential prerequisite to effective performance in that capacity. A determination that an individual meets this prerequisite must be made regardless of who makes the decision or how it is characterized.

Personnel and security specialists within the Treasury Department should work cooperatively with each other and with their counterparts at OPM to establish the most suitable method by which to make these determinations. If necessary to effectuate the determination of a law enforcement officer candidate's qualifications or suitability in terms of his or her impartiality, regulatory or legislative relief should be sought.<sup>332</sup> Alternatively, if the study of the effects of the MSPB system on screening and discipline of Treasury law enforcement officers, set forth in Recommendation No. 5 above, should prove it warranted, the Treasury Department could seek legislative action removing its law enforcement officers from the competitive service.

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<sup>332</sup>Among other options, OPM could be requested to amend the list of suitability factors or to clarify that the existing list is not exhaustive of the reasons on which an agency may base a determination that an applicant's conduct may reasonably be expected to interfere with, or prevent, efficient job performance or accomplishment of the agency's duties and responsibilities. See 5 C.F.R. § 731.202. Alternatively, the *ADA Guidelines* currently recognize that circumstances may exist in which an employer "cannot reasonably obtain and evaluate *all* non-medical information at the pre-offer stage." *ADA Guidelines*, *supra* note 327, at N:2324. The *ADA Guidelines* cite as an example a law enforcement employer for which it is too costly to perform two polygraph examinations--one pre-offer, solely devoted to non-medical information, and the second post-offer, asking disability-related questions. *Id.* Another example is an employer who cannot reasonably obtain and evaluate non-medical information to be gleaned from a reference check because the employee has asked that his or her current employer not be contacted until an offer of employment has been extended. *Id.* These situations are analogous to those confronting the Treasury Law Enforcement Bureaus with respect to information that can only be gathered through background checks. Thus, the Treasury Department could attempt to work with EEOC to reach an understanding that considerations of cost and efficiency render it unreasonable to expect that law enforcement employers will be able to complete their assessment of all non-medical information until post-offer background investigations have been concluded.

Regardless how the inquiry is characterized, concern for the interests of the individual applicant requires that the substantive determination include a consideration of whether the circumstances surrounding any bias-motivated conduct identified in the course of the investigation create a reasonable question concerning the applicant's current ability to function as a Treasury law enforcement officer with both the reality and the public perception of impartiality. If a Bureau concludes that an applicant who is otherwise qualified and suitable has in fact engaged in conduct that would raise a legitimate doubt concerning the impartiality, professionalism, or integrity of a Treasury law enforcement officer, the burden would shift to the applicant to demonstrate mitigating circumstances or remediation sufficient to convince the hiring authority that there is no reasonable basis for such a doubt to persist. In this regard, the considerations that govern suitability determination are instructive. These include: (1) The kind of position for which the person is applying or in which the person is employed, including the degree of public trust and risk in the position; (2) The nature and seriousness of the conduct; (3) The circumstances surrounding the conduct; (4) The recency of the conduct; (5) The age of the person involved at the time of the conduct; (6) Contributing societal conditions; [and] (7) The absence or presence of rehabilitation or efforts toward rehabilitation.<sup>333</sup>

Thus, an applicant might be able to establish that an isolated instance of conduct evidencing invidious prejudice--for example, the use of a racial epithet--occurred long ago in the heat of anger and is so aberrant in light of the candidate's usual behavior that it would be unreasonable to conclude that the conduct is reflective of deeply held prejudice or is likely to recur if the candidate is hired as a Treasury law enforcement officer. Likewise, an individual might have publicly renounced the views of a hate group to which he or she previously belonged and demonstrated the sincerity of that change of heart. Or, at least in cases involving less serious forms of conduct that might reflect bias, an applicant might be able to establish that he or she was legitimately unaware of the significance of the conduct and did not mean to convey an prejudice, or that he or she exercised poor judgment and has since developed an understanding of the inappropriateness of such conduct. It might be unfair to consider a person permanently tainted by a single act of conduct that is no longer a reliable indicator of an existing attitude of bias. It is not unfair or inappropriate, however, to inquire of an applicant who has engaged in bias-motivated conduct to determine whether he or she nevertheless has the necessary personal qualifications for service as a Treasury law enforcement officer.

**Recommendation No. 9: Evaluation of Psychological Screening of Candidates for Positions as Treasury Law Enforcement Officers**

**Subject to an evaluation of the costs, benefits, and methods of implementing such a program, the Treasury Law Enforcement Bureaus should move toward the**

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<sup>333</sup>5 C.F.R. § 731.202(c).



**adoption of a program of psychological testing and screening for emotional stability and psychological fitness for employment in law enforcement, to be used in conjunction with the background investigation as part of the initial hiring procedures for Treasury law enforcement officers.**<sup>334</sup>

**Discussion:** Psychological screening of applicants for emotional stability and psychological suitability has long been a minimum requirement for accreditation of state and local police forces.<sup>335</sup> The Drug Enforcement Administration (DEA) recently became the first federal law enforcement agency to adopt a pre-employment psychological screening program for its special agents, and such programs are also employed by military intelligence services.<sup>336</sup> However,

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<sup>334</sup>It was the strong view of the Citizens Review Panel that the Treasury Department should adopt a program of pre-employment psychological screening for its law enforcement officers. The Panel recognizes that the scope of this Review did not allow a complete analysis of the issue as it relates to Treasury law enforcement bureaus, and that the Department needs to study this issue further.

<sup>335</sup>The Commission on Accreditation of Law Enforcement Agencies (CALEA) is a nonprofit organization established in 1979 by four parent organizations--the International Association of Chiefs of Police (IACP), the National Sheriffs Association, the National Organization of Black Law Enforcement Executives (NOBLE), and the Police Executive Research Forum (PERF) --to promote and maintain excellence, efficiency, and professionalism in law enforcement agencies through administering an international accreditation program. CALEA publishes a series of standards governing the policies and procedures a law enforcement agency is required to maintain in order to attain accreditation, and performs on-site assessments of the agency's implementation of those standards. Currently, 368 state and local law enforcement agencies throughout the United States, as well as Canada, the Caribbean, and Pacific Islands, have achieved accreditation. Standard 32.3.8, requiring that "[a]n emotional stability and psychological fitness examination of each candidate is conducted and assessed by a qualified professional prior to appointment to probationary status," has been in force for more than twelve years. *Standards for Law Enforcement Agencies*, 3rd ed., 1994.

<sup>336</sup>The DEA has contracted with a consulting firm to perform the psychological screening of candidates, but has not yet begun the screening process because various details of the program, such as who will have access to the psychological evaluations and what use may be made of incriminating answers, are still being worked out. Although the DEA is the first federal law enforcement agency to adopt pre-employment psychological screening as a standard, as noted above, such screening is routinely employed by state and local law enforcement agencies. Moreover, according to Dr. Jane Barsaloux of the DEA, the Central Intelligence Agency and the

though IRS-CID, IRS Internal Security, and Customs all use such testing to screen both new and more experienced federal law enforcement officers who are under consideration for undercover assignments, none of the Treasury Law Enforcement Bureaus currently employs psychological testing or evaluation as part of its screening process for law enforcement applicants.<sup>337</sup>

As used in police pre-employment screening programs, psychological evaluation typically involves the completion of one or more “paper and pencil” profiles, such as the Minnesota Multi-Phasic Personality Inventory-2 (MMPI-2), which is the most commonly used and well-validated test worldwide for applicant screening and is used not only for the screening of law enforcement personnel but also for other professions, such as airline pilots or nuclear plant operators, requiring a high-degree of personal reliability. Other commonly used and well-validated psychological screening tests include a sixteen-factor personality test and clinical assessment published by the Institute for Personality Assessment at the University of Illinois specifically for law enforcement screening, and the California Personality Inventory, a test aimed directly at personal skills and traits correlating positively with success in law enforcement. DEA has adopted four standardized tests--the MMPI-2, the California Personality Inventory, the Rotter Incomplete Sentence Blank; and the State Trait Anger Expression Inventory. The Rotter Incomplete Sentence Blank makes an overt attempt to determine whether the test-taker harbors attitudes of racism or other forms of bias by asking the applicant to complete open-ended sentences, such as “I think blacks are \_\_\_\_\_,” “I think whites are \_\_\_\_\_,” “I think women are

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National Security Agency have also used psychological screening for candidates for intelligence positions. The same consulting firm that provides covert operations screening to IRS CID also provides pre-employment screening services to Air Force intelligence operations. In addition, the Immigration and Naturalization Service, working in conjunction with OPM, has developed and implemented a Suitability Assessment Test, which contains some elements of personality and temperament testing, for its Border Patrol officers.

<sup>337</sup>To assess the utility of psychological screening, both in general, and as a potential tool for screening candidates for racism and other forms of bias, the Review interviewed the following professionals: Dr. Samuel Levinson, Ph.D. the director of the consulting firm that provides psychological testing and support services to IRS-CID in its covert operations testing program; Dr. Stephen Curran, Ph.D., chair of the police psychology section of the IACP, who also performs psychological screening for the Philadelphia, Washington, D.C., and Baltimore police departments; Dr. Scott Allen, Chair of the Police and Public Safety Section of Division 18 (Psychologists in Public Service) of the American Psychological Association; Dr. Jane Barsaloux, Ph.D., a psychologist and chief of the Validation and Analysis Unit of the DEA; Kim Kohlhepp, a policy analyst for the IACP; Phil Lynn of the National Policy Center of CALEA; and Robin Toma of the Los Angeles Human Relations Commission, which is engaged in an ongoing study of methods of screening for racism and bias in law enforcement personnel.

\_\_\_\_,” and so forth. DEA is also preparing its own Life History Questionnaire, which asks applicants whether they have ever engaged in certain forms of conduct, such as cruelty to animals or fistfights, or have had certain conditions, such as dizziness, anxiety, or hangovers, that may correlate to inability to handle stress or anger or to substance abuse; the questionnaire requires further explanation of affirmative responses.

These written tests are coupled with a personal interview by a clinical psychologist who explores with the candidate the significance of responses to the questionnaires and inventories and makes a recommendation concerning the suitability of the candidate for work in law enforcement. Typically, the psychologist screens officer candidates for traits such as emotional stability, psychological pathology, maturity, ability to handle stress, responsibility, and authority and rates the candidate's propensity for a career in law enforcement on a five-point scale from "well-recommended" to "not recommended" or "recommended with reservations." Racial attitudes are often evaluated as part of this process. Both Dr. Levinson and Dr. Curran emphasized the importance of using clinicians who are specially trained to read mid-curve profiles for nonpathological--*i.e.*, "normal"--individuals, who although not clinically ill may possess a number of character traits that are inappropriate for law enforcement.

Dr. Levinson and Dr. Curran advised the Review that the utility of psychological screening has been documented in follow-up studies that they have performed comparing the ratings received on the psychological screening with the candidate's performance at police academies and while on probation. While neither of them claims 100 percent accuracy for any predictive test, the studies performed by Drs. Curran and Levinson indicate that the psychological evaluation methods they have employed on behalf of the police agencies are reliable indicators of potential problems with discipline and adjustment to police work.<sup>338</sup> As a general matter, Dr. Allen reported that projective tests, such as the MMPI-2, the sixteen-factor test, the California Personality Inventory, and the Inwold Psychological Inventory (another test that is specifically designed and validated for law enforcement screening), that are based upon well-documented studies and elicit objective data concerning personality traits and pathological conditions, are considered by police psychologists to be reliable methods of screening for career suitability, including law enforcement pre-employment screening. On the other hand, "nonprojective tests," such as ink blot tests, that are based upon the test-taker's subjective

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<sup>338</sup>An obvious drawback of such studies is that they can only assess the performance of candidates who were in fact appointed; there is no means of evaluating whether candidates rejected because of poor scores on the psychological evaluation would have nevertheless performed well in police work. However, the studies can determine whether candidates who were positively recommended for police work based on psychological screening or candidates who were hired despite negative psychological ratings performed well or poorly in training and on-duty.

responses and the psychologist's subjective interpretation of those responses, are considered less reliable. Dr. Allen also viewed integrity tests as not useful for pre-employment screening.

These assessments comport with information acquired by Dr. Barsaloux in evaluating whether DEA should embark upon a psychological screening program. Typically, psychological screening is employed only after candidates have been contingently selected for hiring based on aptitude testing, personal interviews, experience, and other factors. The psychological evaluations of the vast majority of such candidates find them suitable for police work, although Dr. Allen indicated that psychological evaluations can screen out as much as twenty to thirty percent of an applicant pool. However, the results of the psychological evaluations are often confirmed by information developed in background investigations or other sources of information. In interviewing police departments which employed psychological evaluation programs, Dr. Barsaloux found that even though the programs only infrequently identified unsuitable candidates who were not also identified as such by other means, such as background investigations and polygraph testing, the departments were unwilling to discontinue psychological screening because of those cases, though small in number, where the screening had turned up information that proved absolutely critical. Indeed, DEA undertook its consideration of the implementation of psychological screening because of the appreciation the DEA's director developed for the program in his former post as head of the New York State Troopers.

Controversy exists within the psychological community concerning the utility of written tests currently being marketed as testing directly for racism or bias. All of the experts interviewed by the Review concurred that racism and bias were not personality traits or psychological conditions *per se*, but rather attitudes, opinions, or forms of behavior. As a result, all expressed some degree of skepticism concerning the ability of "paper and pencil" tests to detect such qualities and the susceptibility of such testing or other forms of direct questioning concerning racial issues and attitudes to manipulation by the candidate. On the other hand, all also agreed that racism and bias were frequently associated with qualities such as authoritarianism, rigidity, defensiveness, insecurity, immaturity, the ability to handle stress and to employ variations in problem solving, and the absence of tolerance, flexibility, and healthy self-esteem; these are personality traits that can be and are reliably evaluated through existing standardized tests and clinical interview techniques. Thus, psychological testing and interviews *can* be used to evaluate a propensity toward bias-related conduct. Because these broader-based and better documented personality inventories are based on questions that have less conspicuously "right" or "wrong" answers and also contain imbedded questions designed to detect patterns of deceptive responses on the part of the test-taker, they may afford a more reliable means of testing for traits associated with racism and bias. Moreover, these are the same traits that are independently indicative of general unsuitability for law enforcement work.

However, as the *Christopher Commission Report* that followed the police beating of Rodney King and subsequent riots in Los Angeles documented, not all emotional and adjustment

problems that result in law enforcement misconduct are preexisting; some are acquired or developed on the job.<sup>339</sup> Though many of the factors it cited as contributing to the development of psychological difficulties on the job are unique to life as a patrol officer, most have their analogues in the stressful life of a law enforcement officer:

An officer's personality may change dramatically after years on the force. Among the many factors that modify a police officer's behavior is the "culture" of police officers, which tends to isolate officers and make them feel set apart from the rest of the world. Fear is also a ubiquitous part of life as a patrol officer. Officers learn they cannot control every situation and that they are, quite literally, risking their lives every time they stop a car or intervene in a domestic dispute. Officers also may become frustrated and cynical when they learn that even their arrests of obviously guilty suspects may not result in a conviction. Facing this fear, frustration, and stress on a daily basis may alter the behavior of even the most well adjusted officer. . . . Thus, some officers may enter the force seemingly well suited psychologically for the job, but may suffer from burnout, alcohol related problems, anxiety, cynicism, or disenchantment, all of which can result in their having poor control over their impulses and behavior.<sup>340</sup>

As a result, that study recommended that officers be retested regularly for psychological and emotional, as well as physical, problems.<sup>341</sup> Whether such a program of psychological "checkups" and retesting would be useful and cost-effective in the typically smaller context of Treasury law enforcement, or whether existing channels of supervision and counseling are sufficient to identify and assist those officers who develop emotional problems on the job warrants further study.

One of the chief reservations concerning the use of psychological evaluations is concern about cost. Dr. Barsaloux estimated the DEA's cost of psychological screening as approximately \$300 per applicant. Proponents of such evaluations indicate that cost can be managed effectively, however, by employing such screening toward the end of the selection process when the number of potential candidates has been winnowed. DEA's plan waits until a person has been extended a *bona fide* offer of employment as a special agent, the offer being expressly contingent on successful completion of a polygraph examination, psychological and medical

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<sup>339</sup>CHRISTOPHER COMMISSION REPORT at 109-10.

<sup>340</sup>*Id.* at 114.

<sup>341</sup>*Id.* at 110, 116.

screening, and the background check.<sup>342</sup> Proponents of psychological testing also argue that the cost of psychological testing and evaluation is offset by savings in the cost of training unsuitable candidates, as well as in decreased exposure to liability for excessive use of force and other discipline-related complaints. As Dr. Barsaloux put it, “A bad selection decision is costly in every way: lawsuits, dollars, morale.”

Until relatively recently, federal agencies, including law enforcement components, were prohibited by OPM from adopting personality testing in hiring for any position.<sup>343</sup> This bar has since been rescinded, and agencies are now free to adopt their own policies on psychological screening.

Currently, the primary point in the hiring process for Treasury law enforcement officers aimed toward establishing a candidate’s psychological stability and fitness is the background investigation.<sup>344</sup> The forms used in the background investigations require the candidate to disclose professional treatment received for emotional or mental problems; applicants are also required to execute waivers of professional privilege and confidentiality, allowing investigators to obtain the candidate’s treatment records and to interview therapists. Whatever the other virtues of this technique may be, it runs the risk of intruding heavily into the privacy of those who seek assistance in dealing with personal problems or for personal growth, while bypassing individuals with mental health challenges who do not seek out professional treatment. Moreover, psychological evaluation of all candidates may prove to be a more reliable means of detecting personality traits and motivations that are generally undesirable in Treasury law enforcement officers.

Psychological screening is not intended as a substitute for a thorough background investigation. CALEA standards require both background screening and psychological fitness

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<sup>342</sup>Deferral of psychological screening until after a conditional offer of employment has been extended may be required under the ADA, depending upon whether the test attempts to identify mental disorders or impairments or is designed and used to measure only non-medical traits such as honesty, tastes, and habits. *ADA Guidelines, supra* note 327, at N:2323.

<sup>343</sup>*See Federal Personnel Manual* (rescinded).

<sup>344</sup>Some Bureaus, in particular the Secret Service, also use applicant interviews, in conjunction with the preceding applicant documentation, to obtain information concerning traits such as behavioral flexibility, stress tolerance, resilience, independence, listening and communication skills, job motivation and career ambition, range of interests, and initiative.

testing.<sup>345</sup> According to Dr. Allen, the two techniques provide qualitatively different types of information; background investigations yield the subjective opinions of associates with varying degrees of personal knowledge of the candidate's past behavior, whereas appropriately administered psychological evaluations offer an objective inventory of the candidate's personality traits and mental or emotional pathologies, if any. In addition, even well-informed, unbiased, and cooperative background witnesses may be poorly suited to predict a candidate's suitability for law enforcement; for example, a witness may give an individual favorable recommendations based on his or her superlative performance in a current or former occupation; yet, such references may be poor indicators of the candidate's suitability for law enforcement work when transitioning from a different field of employment. Moreover, the investigators who conduct background checks are typically Criminal Investigators, skilled and trained in accurately gathering and reporting factual data concerning an individual's past conduct; they are unlikely, however, to be clinical psychologists, trained in the identification of subtle indicia of pathologies or in interpreting personality indicators.

Thus, the psychological evaluation and the background check should be viewed as complementary, not mutually exclusive. Although procedures vary from one department to another, Dr. Levinson indicated that the psychologist will often have the results of the background investigation available at the time of the clinical interview and will use that information to assess the candor of the applicant and to guide areas of inquiry. Conversely, agencies which use the psychological inventory earlier in the hiring process may use its results in performing the background investigation and to identify certain issues flagged during the psychological evaluation.

The value that can be provided by psychological screening--both in terms of general screening of candidates for suitability and as a means of weeding out racist and otherwise biased candidates--should be studied in greater detail. The Office of Enforcement, in conjunction with the Treasury Law Enforcement Bureaus, should coordinate a study of the various forms of psychological testing and evaluation that could be implemented and their associated costs and benefits. After completing their evaluations within a reasonable period of time, the Treasury Enforcement Bureaus should report to the Secretary, through the Under Secretary for Enforcement and the Commissioner of Internal Revenue, their findings and conclusions. This study should thoroughly evaluate the costs, benefits, methods and legal ramifications of

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<sup>345</sup>CALEA Standard 32.2.1 requires a background investigation of each candidate prior to appointment to probationary status, including, at least, verification of qualifying credentials, a criminal record check, and verification of at least three personal references. The Commentary to this standard also strongly recommends that the investigation routinely involve a home visit with the candidate and his or her family and in-person interviews with neighbors. CALEA Standard 32.2.2 also requires special training of background investigators.

implementing a testing program. In addition, in conducting this study Treasury should contact the Department of Justice and the DEA to learn from their experience in implementing a similar program.

*Educational and Experiential Requirements for Treasury Law Enforcement Officers*

At the suggestion of members of the Citizens Review Panel, the Review considered whether a minimum educational requirement of a four-year college degree for all Treasury law enforcement officers should be established as one method of attempting to avoid future racist, sexist, and other misconduct such as that alleged to have occurred at the Roundups.

The Review is aware of the substantial body of literature advocating such a standard as an entry-level requirement for police officers. As long ago as 1967, the President's Commission on Law Enforcement and the Administration of Justice recommended: "The ultimate aim of all police departments should be that all personnel with general enforcement powers have baccalaureate degrees."<sup>346</sup> Since that time, there have been many studies endorsing such a requirement. The Fifth Circuit Court of Appeals, in rejecting a Title VII action against the education requirement of the Dallas Police Department, cited the findings of these studies approvingly.<sup>347</sup>

Although a college diploma is obviously not a certification that the recipient is free from racism and other forms of bias, two of the benefits studies repeatedly associate with a degree requirement for law enforcement officers are that college education:

- Developed a greater empathy for minorities and their discriminatory experiences through coursework and interaction in the academic environment; and
- Engendered understanding and tolerance for persons with different lifestyles and ideologies, which could translate into more effective communication and community relationships in the practice of policing.<sup>348</sup>

A recent Police Education Research Forum (PERF) Discussion Paper cites other salutary effects that a college education provides for a law enforcement officer's performance of his or her duties. These include:

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<sup>346</sup> PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 109 (1967).

<sup>347</sup> *Davis v. Dallas*, 777 F.2d 205, 218-223 (5th Cir. 1985).

<sup>348</sup> David L. Carter & Allen D. Sapp, *Police Education and Minority Recruitment: The Impact of a College Requirement* (A PERF Discussion Paper) 2 (1991).



- Developed a broader base for decision making;
- Inculcated responsibility in the individual through course requirements and achievements;
- [P]ermitted the individual to learn more about the history of the country and the democratic process, and to appreciate constitutional rights, and the democratic form of government;
- Engendered the ability to handle difficult or ambiguous situations with greater creativity or innovation;
- Helped officers to communicate and respond to the crime and service needs of the public in a competent manner, with civility and humanity;
- Helped officers to develop better overall community relations skills, including engendering the respect and confidence of the community;
- Engendered more “professional” demeanor and performance;
- Enabled officers to cope better with stress and to be more likely to seek assistance with personal or stress-related problems, and thereby to be more stable and more reliable employees;
- Enabled officers to adapt their styles of communication and behavior to a wider range of social conditions and classes;
- Tended to make officers less authoritarian and less cynical with respect to the milieu of policing;
- Enabled officers to accept and adapt to organizational change more readily.<sup>349</sup>

An even more recent report confirmed the benefit of college education on law enforcement officers’ job performance. “Research has found a positive relationship between higher education and fewer citizen complaints, fewer disciplinary actions against officers, and fewer allegations of excessive force.”<sup>350</sup> The report concluded that educated officers “are more professional and more dedicated to policing as a career rather than as a job.”<sup>351</sup>

Under current rules and qualification standards, a four-year college degree is not required for any position as a Treasury law enforcement officer. Instead, every entry-level Treasury law enforcement position other than the Secret Service Uniformed Division requires four years of

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<sup>349</sup>*Id.* at 4-5.

<sup>350</sup> Alan T. Vodicka, *Educational Requirements for Police Recruits: Higher Education Benefits Officers, Agency*, 42 LAW AND ORDER 92 (March 1994).

<sup>351</sup>*Id.*

undergraduate study leading to a bachelor's degree *or* three years qualifying experience.<sup>352</sup>

Some combination of partial education and partial experience may also qualify an applicant for a Treasury law enforcement position. For the Uniformed Division, the only education requirement is a high school diploma or a General Equivalency Diploma (GED); there is no experience requirement or substitute for the diploma or GED.

For all practical purposes, Treasury Law Enforcement Bureaus hire almost exclusively college graduates for positions as Criminal Investigators. Indeed, given the current market, vacancies for Criminal Investigator positions are usually filled with applicants who are both degreed *and* experienced. The Bureaus attribute their ability to limit their hiring selections for these positions to college graduates, despite the absence of a standard requiring a college degree, to the high desirability of careers in Treasury law enforcement and the resulting highly competitive pool of applicants for Criminal Investigator vacancies.

Because of this trend in recent hiring, more than 83 percent of Treasury Criminal Investigators and almost two-thirds of Treasury law enforcement officers currently hold at least a bachelor's degree. Almost 95 percent of ATF Special Agents have at least a bachelor's degree, while over 82 percent of IRS Special Agents and Inspectors have a bachelor's degree or higher. More than 67 percent of Customs Special Agents currently possess at least a bachelor's degree; however, because of the large number of Customs Inspectors, less than half of whom hold a college degree, the percentage of Customs law enforcement officers holding college degrees or better is slightly less than half.<sup>353</sup> The overwhelming majority of Secret Service Special Agents hold college degrees or better (roughly 98 percent), but, again, because fewer than 27 percent of Secret Service Uniformed Division Officers hold college diplomas, the percentage for Secret Service law enforcement officers overall is roughly 62 percent. Thus, Treasury law enforcement officers are already a credentialed and well-educated professional group.

A federal statute currently provides that for positions in the federal competitive service, OPM and other federal agencies:

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<sup>352</sup>In the case of an IRS CID position, the applicant must have fifteen semester hours in accounting and nine hours in finance, economics, business law, tax law, money and banking, or a field closely related thereto. The nature of the experience required varies with the position.

<sup>353</sup>For Customs Inspectors, 42.9% hold college degrees or higher. The figures for other Customs law enforcement officers holding at least college degrees are as follows: Customs Patrol Officers (9.7%); Canine Enforcement and Marine Enforcement Officers (11.5%); Pilots (60.5%).

may not prescribe a minimum educational requirement for the competitive service except when the Office [of Personnel Management] decides that the duties of a scientific, technical, or professional position cannot be performed by an individual who does not have a prescribed minimum education. The Office shall make the reasons for its decision under this section a part of its public record.<sup>354</sup>

Treasury Law Enforcement Bureaus report that OPM has rejected their previous efforts to obtain a ruling authorizing a college-degree requirement even for Criminal Investigators.<sup>355</sup> However, another Treasury report addressing a number of personnel issues relating to Criminal Investigators is currently advancing the option of obtaining OPM authorization for such a requirement. Given current Bureau hiring practices and the pendency of another report addressing this issue, there is no immediate need for this Report to articulate a recommendation for a college-degree requirement for Treasury Criminal Investigators.<sup>356</sup>

### **Recommendation No. 10: Promoting Workforce Diversity**

**The Treasury Department and all Treasury Bureaus or components that employ Treasury law enforcement officers should continue to promote racial and gender diversity and a prejudice-free work environment at all levels of the Treasury law enforcement workforce.**

**Discussion:** Treasury is already committed to an Equal Employment Opportunity (EEO) policy for all its employees. The use of this EEO policy in evaluation and promotion is discussed in Chapter Ten. Relevant here is the fact that this EEO policy has improved the racial minority and female representation in the Treasury's Law Enforcement Bureaus as evidenced by the statistics set out in Chapter One. This has been accomplished without diminishing the talent and professionalism of the law enforcement ranks. It is essential that Treasury and its Law Enforcement Bureaus continue their commitment to promoting racial and gender diversity and a bias-free work environment at all levels of Treasury law enforcement. If past progress is not to be eroded, more junior law enforcement officers must also see that opportunities for professional

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<sup>354</sup>5 U.S.C. § 3308.

<sup>355</sup>The FBI has been able to implement a college-degree requirement without OPM approval, because its Special Agents are excepted from the competitive service.

<sup>356</sup>With regard to non-Criminal Investigators, the Department is awaiting the opportunity to consider the results of the implementation of the personnel issues report relating to Criminal Investigators before taking further action.

advancement are open to them without regard to race, sex or other extraneous factors.<sup>357</sup> Moreover, the presence of a diverse workforce also helps to constrain displays of bias on the part of fellow officers.<sup>358</sup>

Treasury Law Enforcement Bureaus should, therefore, periodically reevaluate their recruiting plans and policies to ensure that the Department is doing all it can to develop the pool of minority and women candidates who are well-qualified to work as Treasury law enforcement officers. This can be done through "*effective recruiting and innovative personnel programming.*"<sup>359</sup>

The presence of racially, sexually, and culturally diverse co-workers will underscore the value of good judgment and mutual respect. Therefore, EEO policies that secure the continued strong presence of a diverse workforce are an important tool in the project of ending any vestige of bias in federal law enforcement.

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<sup>357</sup>NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *BEYOND THE RODNEY KING STORY* 92-93 (1995) [hereinafter, *BEYOND KING*]; *THE POLICE*, *supra* note 298, at 153-54.

<sup>358</sup>*BEYOND KING*, *supra* note 357, at 84-86; JEROME H. SKOLNICK & JAMES J. FYFE, *ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE* 137-8 (1993)[hereinafter *ABOVE THE LAW*]; *THE POLICE*, *supra* note 298, at 153-54.

<sup>359</sup>Carter & Sapp, *supra* note 348, at 21(emphasis in original).

## **CHAPTER NINE**

### **TRAINING: EXISTING POLICIES AND SUGGESTIONS FOR FUTURE STUDY**

The Department of the Treasury strives to provide the highest quality training to its personnel and through the Federal Law Enforcement Training Center (FLETC) to other federal, state, local, and international law enforcement agencies. This chapter presents a preliminary analysis of the training provided to Treasury law enforcement employees designed to prevent bias and misconduct, canvasses the present training efforts of Treasury and its Law Enforcement Bureaus, and provides one Recommendation regarding future evaluation of training and one Recommendation regarding the accessibility of ethics standards and rules of conduct for employees.

#### **Present Training Policies**

FLETC trains all Treasury law enforcement officers. ATF, Secret Service, IRS, and Customs Special Agents, as well as Customs Pilots and Marine Enforcement Officers receive FLETC's nine-week Criminal Investigator basic course. Secret Service Uniformed Division Officers attend FLETC's eight-week police basic training course. Customs Inspectors attend an eleven-week course designed and taught cooperatively by FLETC and Customs personnel. As part of the Criminal Investigator course, FLETC offers a single two-hour block of instruction combining sexual harassment prevention and diversity training, and a two-hour course on ethical conduct. The police training course, which is attended by Secret Service Uniformed Division, offers five hours on ethics. New Customs Inspectors receive two hours of diversity and sexual harassment prevention training, and attend a three-hour course called "Values."

Each of the Bureaus offers training to its law enforcement personnel in addition to the basic training at FLETC. Besides this supplemental training, which covers ethics, diversity, and sexual harassment issues, the Bureaus also offer training for some or all of their non-law enforcement personnel. The specifics of this training are detailed below.

#### *Diversity Training*

Diversity training is designed to sensitize and enable employees to understand various races, ethnic groups, religious groups, and cultural groups. With this understanding of cultural differences, agents are better prepared to interact with the public, with co-workers, and with people they supervise.

Departmental Offices. The Departmental Offices (Treasury's headquarters) have a number of ongoing activities designed to educate their employees and increase their level of awareness. For example, Departmental Offices sponsor educational programs for all of their employees for Black History Month, Hispanic-American Month, Asian-Pacific Islander Month, National Women's History Month, and Take Your Children to Work Day. These activities are well attended by individuals from all backgrounds and provide insight and information into the diverse cultural groups that make up Department Offices.<sup>360</sup>

Diversity training is also included in other management training provided by the Departmental Offices. Mandatory AIDS awareness training was held for all Departmental Offices employees, and information on the topic is readily available to all employees. Executives and managers were invited to attend a diversity seminar, "Diversity in the Workforce," sponsored by the Treasury Executive Institute (TEI). TEI offered this training to managers at headquarters, to all Senior Executives in the Washington metropolitan area, and to GS-15 managers.

FLETC. In addition to providing training to employees of other bureaus, FLETC also provides substantial diversity training to its own employees. The FLETC Behavioral Science Division conducts three hours of mandatory training in sexual harassment and cultural diversity, providing an annual refresher class for the sexual harassment component as well. FLETC plans to add cultural diversity training to its annual refresher course. Other related initiatives undertaken by FLETC include month-long celebrations in February and September, respectively, to honor the contributions of African Americans and Hispanic Americans; the observance of Cultural Unity Day to honor the cultural differences and contributions of all FLETC employees; and active recruitment of candidates at meetings of professional minority associations. FLETC has undertaken other initiatives in furtherance of the goal of sexual harassment prevention and education, including the installation of a sexual harassment hotline in the Office of the Director to allow anonymous reporting of allegations of sexual harassment.

ATF. In January 1995, the executive staff and senior managers at ATF Headquarters attended a diversity awareness workshop. Diversity awareness training has been incorporated into a mandatory course for all new first-line supervisors and a diversity awareness briefing was given for ATF Headquarters' employees in December 1995. The briefing was videotaped and copies and facilitation guides were forwarded to all field offices for their use. Many ATF law enforcement courses taught at the National Academy include segments on the rules of conduct, ethical standards, or diversity.

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<sup>360</sup>Treasury also sponsors a Departmental Advisory Committee for Individuals with Disabilities composed of Bureau representatives which sponsors informational meetings and events designed to encourage full participation in the work force for employees with disabilities.

ATF has also established a Diversity/Peer Group program which is composed of volunteers from specific groups: African Americans, Hispanics, Asian American/Pacific Islanders, Native Americans, Women, White Males, Persons with Disabilities, and Gays/Lesbians. The volunteers solicit information from their peers and identify issues and concerns that affect the work place. These issues are then addressed and resolved by ATF's executive staff. One of their recommendations was that all ATF employees should receive diversity awareness training, which is being implemented.<sup>361</sup>

Customs. Customs supervisors, managers, and Special Agents receive training specific to diversity issues. Since 1993, Customs has sent managers from many of its offices to the National Louis University where, as part of the curriculum, a three-hour course is offered on cultural diversity. Some Customs supervisory employees have attended elective courses on cultural diversity given at FLETC. Additionally, all Customs supervisors receive four hours of mandatory training at FLETC regarding managing diverse work forces. In 1995, supervisory inspectors attended a course presented by a consulting firm on cultural diversity that focused on valuing differences, managing diversity, and increasing cross-cultural communication skills.

Commencing in February 1996, Customs initiated a new refresher course for Special Agents which includes an hour of instruction on cultural diversity. Special Agents who recruit for Customs receive an eight-hour session on cultural diversity. Furthermore, Customs established other initiatives in pursuit of the goal of sensitizing its employees to the issue of cultural diversity in the work place.<sup>362</sup>

Most recently, Customs has created a diversity training course for Inspectors who work at borders that focuses on working effectively with a diverse public. In the first module, "Overview

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<sup>361</sup>In addition, ATF celebrates its diversity through recognition programs for Black History Month, National Women's History Month, and a cultural diversity fair. ATF also funds participation by its employees in events and conferences held by the National Organization for Black Law Enforcement Executives (NOBLE), the Hispanic Agent Conference, the Women in Federal Law Enforcement (WIFLE), and the Asian/Pacific Islanders Peace Officers Conference. ATF is committed to continued career training in diversity by sponsoring programs, sending supervisors to external courses, and developing additional training, such as the award winning AIDS Awareness course it developed in 1994.

<sup>362</sup>For example, Customs designated November 1995 as Diversity Awareness Month; and its Employee Assistance Program, a counseling and referral service, offers training and other services in this area. Also, Customs regional offices periodically conduct diversity training exercises for their employees.

of Workplace and Marketplace,” the course book states, “For the U.S. Customs Service in particular, a diverse workforce expands your organization’s ability to serve the increasingly diverse traveling public.”<sup>363</sup> In addition, the topic “Key Points for Communicating Across Cultures” in the same course book focuses on the role of differences in style:

Because your role as U.S. Customs Supervisors/Inspectors requires you to interact with a very diverse workforce -- as well as a very diverse traveling public -- it is crucial that you are aware of, and understand, the key points for communicating across cultures: When conflict occurs while communicating, be aware that it may be the result of differences in style or process rather than by the actual content being discussed.<sup>364</sup>

The course also offers opportunities to practice conflict resolutions that arise from cultural differences in the public and with other employees.

IRS. The IRS engages in systematic and nationwide diversity training. Highlights of this training include executive seminars designed to educate and inform the executive cadre on the most recent thinking concerning managing a diverse work force. In each field office, the IRS has identified and trained a diversity consultant, usually a line manager, who is available to managers of that office for advice and guidance on diversity issues in the work place. Only a few field offices, however, provide diversity training to *all* employees and managers. Such training focuses on helping employees and managers understand the implications of a diverse work force and diversity in the taxpaying public on work place and business operations. Field offices provide such training based on their local circumstances and issues. IRS-CID provides one hour of diversity training in three separate training courses at FLETC: Special Agent Basic Training, On the Job Instructor Training, and Management Training. Internal Security provides diversity training as a part of two training courses at FLETC: Basic Inspector School and Background Investigators School. IRS-CID has also developed an eight-hour course entitled Recognizing, Accepting and Valuing Everyone (RAVE), which is available for presentation in all districts.

Secret Service. Diversity training is provided to all Secret Service employees in various courses offered at different times. During their first week in training, all new employees receive instruction on awareness of discrimination and diversity issues as part of their introductory training course at the Secret Service’s James J. Rowley Training Center (JJRTC). This course (new employee orientation) is a two-day course in understanding cultural, gender, racial, ethnic,

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<sup>363</sup>U.S. Customs Service, Office of Field Operations, *Diversity Training Program Participant Course Book*, I-7.

<sup>364</sup>*Id.* at 2-7.



job series, religious, and societal differences. This course stresses agency integrity and accountability, personal responsibility on the job, and team building. All employees receive additional in-service training on a regular basis throughout their careers.

Managers must attend a course entitled, "Diversity on the Team," which covers various diversity concepts from a variety of perspectives, the encouragement of individuality and personal responsibility for feelings, biases, and prejudices. All supervisors and employees are required to attend a three-day diversity-focussed conference. The conference discusses challenges of working within an increasingly diverse work force and society, and negative impacts upon the Service if those challenges are not met. It also encompasses interpersonal awareness instruction and a briefing regarding the Service's Ombudsman Program. Moreover, the Secret Service offers voluntary courses in office professionalism, managing anger and conflict, and conflict resolution. Each of these courses addresses diversity issues, including professional resolution of diversity-based conflict.

All law enforcement personnel are required to attend an AIDS Awareness training class. The Service also has a regional recruiter program that provides advice and assistance to recruiters in their efforts to recruit a diverse work force. Secret Service reports it has also established a diversity/peer group program which is composed of volunteers from specific groups: African Americans, Hispanics, Asian American/Pacific Islanders, Native Americans, and women. The volunteers solicit information from their peers and identify issues and concerns that affect the work place. These groups meet quarterly to discuss issues with the Director and staff.

#### *Sexual Harassment Prevention Training*

Departmental Offices. Departmental Offices have offered sexual harassment prevention training to both non-supervisory and supervisory personnel. In 1992, twelve sessions were offered and approximately 350 employees attended, including all employees under the supervision of the Assistant Secretary for Management. In 1995, the Deputy Assistant Secretary for Departmental Finance and Management mandated sexual harassment prevention training for all of his employees, and this training was attended by more than 100 Finance and Management employees. The Department's Advisory Panel on Sexual Harassment Prevention and EEO is chaired by the Assistant Secretary for Management and, as a result of the recommendations of that panel, the Secretary has issued a policy statement against sexual harassment to all Treasury employees and established a hotline for reporting allegations of sexual harassment. In addition, a brochure defining sexual harassment and explaining employees' rights and responsibilities was distributed to *all* Treasury employees. The brochure is included in the orientation materials for all incoming Departmental Offices employees, and is available in the personnel office to employees or managers for distribution to their staff. In addition, several videos and other training resources have been made available for managers.

FLETC. FLETC offers an array of sexual harassment training both to its own employees and to its law enforcement students from the Treasury Enforcement Bureaus and other federal, state, and local law enforcement agencies. The basic one- and two-hour courses on sexual harassment have been described above in connection with the training received by employees of the various Treasury Enforcement Bureaus. In addition, FLETC has developed an expanded eight-hour block of instruction, consisting of four hours each on sexual harassment and cultural diversity. This course is designed to be exportable to other enforcement agencies. FLETC also offers various "train-the-trainer" programs for its client Bureaus and regularly reviews them to assess their effectiveness.

As part of its mandatory training for all employees on government wide standards of conduct, FLETC emphasizes, among other things, sexual harassment prevention training. Employees receive mandatory annual refresher training on this topic. Moreover, the Behavioral Science Division of FLETC conducts a formal orientation session for all new FLETC employees which includes the requirements for and performance expectations of new employees in the area of preventing sexual harassment.<sup>365</sup>

ATF. Since 1992, all ATF employees, including Special Agents, have received sexual harassment prevention training on an annual basis. Additionally, in 1995, ATF offered its employees a refresher course on preventing sexual harassment and a course on sexual harassment investigative techniques. Further, ATF continues to implement the nineteen recommendations outlined in its "Blue Ribbon Panel" report from 1992 to make systemic changes within ATF to prevent sexual harassment.

Customs. Customs law enforcement personnel receive mandatory sexual harassment prevention training at FLETC. Since October 1993, all new Customs Inspectors have participated in a two-hour segment at FLETC on EEO principles and diversity issues with an emphasis on sexual harassment prevention. In addition, new Customs Inspectors receive one additional hour of instruction in sexual harassment prevention at FLETC. In 1993, approximately ninety trainers received a three-day train-the-trainer course at FLETC. From 1993 through 1994, these trainers provided sexual harassment prevention training to an estimated 12,000 Customs employees.

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<sup>365</sup>Other FLETC initiatives related to this issue include the following: FLETC is presently producing a training video entitled "Women in Law Enforcement," which depicts the expanding role of women in law enforcement; FLETC has a standing EEO committee that aggressively addresses all EEO matters and makes recommendations for improvement; FLETC's Federal Women's Program, which regularly holds luncheons designed to enhance women's careers, has established a mentoring program for women in training.

Customs field offices provide additional, periodic training focused on sexual harassment prevention to their employees.<sup>366</sup>

IRS. Up until now, sexual harassment prevention training has been provided at IRS headquarters and individual field offices on a discretionary basis. However, IRS currently has a servicewide training plan in development which will provide uniform mandatory sexual harassment prevention training to all employees and supervisors by September 30, 1996. Additionally, one hour of sexual harassment training is provided by IRS-CID in the Special Agent Basic Training course.

Secret Service. The Secret Service provides sexual harassment prevention training to its employees. The Office of Training develops, administers, and coordinates all of the Service's training programs for all Service employees. In addition to the FLETC course mentioned above, new Special Agents in the Secret Service receive an additional one-hour course at JJRTC on this subject. During their first week on the job, new Special Agents receive instruction on sexual harassment prevention from the Office of Training. Thereafter, employees receive systematic, regular instruction in this area as well as other areas; some training is voluntary, and some is mandatory. The Secret Service has prepared and distributed a brochure to all employees regarding sexual harassment. Additionally, the Director periodically issues memoranda reminding employees of their obligations to conduct themselves in a professional manner, free from discriminatory behavior.

#### *Other Available Training Resources*

In addition there are resources at the Treasury Department that may be used for additional training. For example, the Career Resource Center at ATF has various diversity videotapes, books, and other materials; pamphlets on diversity are also available and have been distributed to all employees. The IRS has a self-study course catalog which it distributes to its employees

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<sup>366</sup>Customs engages in other efforts designed to prevent and/or punish occurrences of sexual harassment. Such other efforts include: establishing, in 1992, a sexual harassment task force that evaluates allegations and determines appropriate responses on an agencywide basis; training Special Agents investigating allegations of sexual harassment; issuing, in 1993, various directives to supervisors, managers, and employees on such topics as the definition of sexual harassment, reporting alleged misbehavior to the sexual harassment task force, preventing its occurrence in the work place; and establishing a hotline for reporting these allegations.

Since 1993, the sexual harassment task force has logged over 191 allegations of sexual harassment. Three employees lost their jobs, fifteen received suspensions, three received reassignments, twenty received reprimands, thirty-four receive cautions/counseling, three resigned/retired, and one received a downgrade.

annually. Departmental Offices offers books and videos covering diversity and non-discrimination issues.

*Ethical Standards and Rules of Conduct Training*

Departmental Offices. Departmental Offices and each of the Bureaus train or instruct all employees with respect to the ethical standards and conduct rules and requirements. All Departmental Offices employees were given copies of the Standards of Ethical Conduct for Executive Branch Employees in early 1993. All new employees also receive a copy of the rules of conduct. Departmental Offices redistributed copies of the Standards and the new supplemental ethics standards and rules of conduct to all of their employees in January 1996. In addition, over 500 Departmental Offices employees, including all senior officials, annually receive one hour of mandatory ethics training.

FLETC. FLETC offers several courses on ethics and conduct to law enforcement trainees from Treasury Bureaus and other agencies. These include a three-hour course on values, a two-hour basic training course on the standards of conduct for law enforcement officers, and a presentation on ethical behavior for federal officers that can be offered in segments of either five or six hours. The basic two-hour segment on ethics includes instruction on federal and Treasury conduct and ethics rules, and also on the Law Enforcement Code of Ethics promulgated by the International Association of Chiefs of Police, which sets forth the stringent standards of on- and off-duty conduct demanded of law enforcement officers.

FLETC provides mandatory training to all of its employees on governmentwide conduct requirements. In addition, FLETC requires that employees take mandatory annual refresher courses in this area. Reinforcing this training is a FLETC video, "FLETC Integrity in the Workplace," and an accompanying brochure. Finally, the orientation session for new employees conducted by FLETC's Legal Counsel covers ethics requirements.

ATF. ATF provides ethics training annually to all of its employees, who must be certified as having attended the course. Additionally, new supervisors are trained in personnel practices, rules of ethics and conduct, and on how to identify integrity issues.

Customs. Customs uses several approaches to inform its employees about ethics and standards of conduct. In 1987, Customs issued a policy that outlined its standards of ethical conduct and employee responsibilities. The policy covers such matters as conduct prejudicial to the federal government, defining immoral conduct, and disgraceful conduct. This policy also explains the prohibitions on the misuse of government property. Customs has also issued directives on illegal drug use and possession and consumption of alcohol. Since 1991, as part of an Integrity Program, Customs employees have received instruction at FLETC on such matters as conflicts of

interest, gifts, and the Hatch Act.<sup>367</sup> Additionally, at Customs, Internal Affairs provides two hours of instruction in bribery awareness and four hours of instruction in integrity awareness to law enforcement employees.

IRS. Approximately six years ago, IRS developed a strategic initiative on ethics for its employees. Every IRS employee, as part of that initiative, was required to attend a one-day seminar on ethics and was given a copy of *Ethics: Principles and Practices Resources Guide*. This *Resources Guide* is a permanent, expandable portfolio designed to hold all existing conduct and ethics rules governing federal employees; the table of penalties prescribed for violations of the rules; general educational materials on ethics and values; and IRS newsletters addressing ethical issues. Managers and human resources personnel are responsible for providing similar training to new employees. In addition, a one-hour ethics training refresher course is provided annually to those IRS employees designated to receive such training under applicable OGE regulations.

Secret Service. The Secret Service distributes to new employees all applicable ethical standards and conduct regulations and requires the employee to certify that he or she has read these rules. In each subsequent year, employees must certify that they have read and understood the rules. In addition, new supervisors and those persons interested in applying for supervisory positions are instructed on the misuse of government vehicles, alcohol consumption, and professional and nondiscriminatory conduct in the work place. Each Secret Service Deputy Director has issued a memorandum to all employees reminding them of the policy on misuse of government vehicles. Additionally, the Secret Service engages in a federally mandated "Drug Deterrence Program." All Secret Service SES personnel and all employees of the Secret Service who are Confidential Financial Disclosure Filers, Contracting Officers, or Procurement Officials, receive special training in ethics which is mandated by the Office of Government Ethics. All new employees are provided with ethics training during their initial training at Secret Service's Training Center, and current special agents are provided with ethics training during field in-service training.

### **Recommended Modifications**

Given the scope limitations of the Policy Review, the Review has determined that a future study of training in diversity is required. Visits to FLETC and other Bureau training sites would be desirable, and extensive student interviews and surveys need to be conducted in order to fully assess the training that is currently being provided. In addition, based on our preliminary findings, the Review recommends to further study Treasury law enforcement diversity and ethics training. This Recommendation refers to the training that law enforcement officers receive at

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<sup>367</sup>In less than seven months, over 17,000 Customs employees received Integrity Program lessons from approximately 320 instructors who had received two days of train-the-trainer instruction at FLETC.

FLETC and at the Bureaus. The second Recommendation is intended to make the ethics standards and rules of conduct more accessible to employees.

**Recommendation No. 11: Training in Diversity and Ethics**

**The Federal Law Enforcement Training Center and all Treasury Bureaus employing Treasury law enforcement officers should evaluate the effectiveness of existing training in diversity and ethics issues on an ongoing basis, to determine whether increased or modified training is necessary, and, if so, how such training should best be integrated into their regular curriculum and training programs.**

**Discussion:** FLETC currently offers new federal law enforcement officers two hours of sexual harassment training and no diversity training.<sup>368</sup> In contrast, the Christopher Commission found the Los Angeles Police Academy's eight hours on cultural awareness "insufficient."<sup>369</sup> The FLETC course on ethics and values is only five hours for the basic police training and only two hours for the Criminal Investigators, and these focus largely on issues such as accepting gifts and failing to pay debts. A list of sample questions and answers in the student workbook, for example, revealed that all the questions focus on monetary conflicts-of-interest or the consequences of violating the rules. These issues are important to the curriculum; however, greater focus could be paid to non-monetary ethical issues as well, such as the behavior alleged to have taken place at the Roundups. A law enforcement officer who appears to act improperly because he or she is motivated by racial hatred is as harmful to the efficiency of Treasury law enforcement as one who appears to take bribes.

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<sup>368</sup>FLETC's basic police training course is 369.5 hours. FLETC's Criminal Investigator program is 367 hours, and the Customs Service Criminal Inspector Program is 440 hours.

<sup>369</sup> *Christopher Commission Report* at 122. The Christopher Commission pointed to the San Francisco Police Department, which requires forty hours of cultural awareness training. By way of additional comparison, the St. Louis County Police Department requires 40 hours of cultural awareness training (out of a total of 600 hours of training); the Missouri State Highway Patrol devote 30 of the 1,000 hours of basic training to cultural awareness; the Miami Police Department dedicates 50 out of 820 hours of basic training to cultural awareness, sensitivity, and community relations; and the Houston Police Department is revising and expanding its training curriculum because it has assessed the 16 hours of work it includes on cultural awareness during its cadet training as insufficient even when followed by field training. *BEYOND KING*, *supra* note 357, at 97-98.

A future study of FLETC training should determine whether the “Sexual Harassment” and the “Ethical Behavior” courses should be expanded. The Treasury Law Enforcement Bureaus, too, should evaluate the effectiveness of their follow-on training in diversity awareness and ethics as they relate to the issues raised by this Report. Although the training provided by the Bureaus varies widely, as a general matter, much of the ongoing diversity awareness training is nonmandatory and is aimed at work place equal employment opportunity issues, such as hiring, promotion, and handling of EEO complaints, rather than at officers on- and off-duty attitudes toward and interactions with segments of the public. Moreover, annual ethics training often focuses on conflict-of-interest issues, such as acceptance of gifts and outside employment or business activities, and on Hatch Act restrictions on political activities, rather than on off-duty standards of conduct and the reasons for those standards.

The Review’s preliminary findings suggest that integrating diversity and ethics issues into the entire FLETC curriculum may be an effective way to increase the effectiveness of its training.<sup>370</sup> Often students learn lessons taught indirectly as well as those taught directly: students may learn writing skills in any course regardless of subject matter if they are presented with examples of good writing. Therefore, sensitizing Treasury law enforcement officers to the diverse populace of the United States may be included as an objective for many of the courses that FLETC offers. These courses could also have an ethics component. Real life questions of ethics are rarely freestanding--rather, they are integral to all the decisions a law enforcement officer makes each day. The future study should investigate how FLETC’s training could be designed to communicate this reality.

Based on the Review’s preliminary findings, the Review recommends continuing quality control of diversity and ethics training. FLETC has expertise in determining the best plan for assessing effectiveness; for example, FLETC has successfully integrated training on use of force into its curriculum, and therefore can take the lead in developing a plan to integrate diversity training. The Review suggests testing students not only at the end of the stand-alone ethics and diversity classes, but also prior to graduation, on diversity and ethics issues.

**Recommendation No. 12: Accessibility of Ethics Standards and Rules of Conduct**

**Treasury Law Enforcement Bureau-level rules should be streamlined and assembled in one place, together with governmentwide and Treasury ethical standards and rules of conduct, for easy reference by employees in a manner**

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<sup>370</sup>Changes to FLETC’s common training programs are determined during curricula conferences as prescribed by policy and procedures established under an interagency board of directors. In addition to Treasury Law Enforcement Bureaus, FLETC serves sixty-seven other agencies. FLETC must work with all participating agencies to implement changes to training.

**similar to that currently employed by the Internal Revenue Service.  
Examples of application of the rules should be included where feasible.**

**Discussion:** Law enforcement officers are charged with knowing every rule of conduct and ethical standard. The Policy Review found it a cumbersome and frustrating task to track down all applicable rules and standards. The Bureaus and Departmental Offices, therefore, should provide their employees easy and clear reference to these rules. The presentation of the information, through language and graphics, should be clear and easy to update inexpensively as rules and standards change. The future study should consider how to distribute these manuals to employees. Furthermore, the future study should consider issuing them to the public. Treasury's customers, the public, will then know the rules and standards for Treasury law enforcement officers and be assured that Treasury law enforcement officers are aware of the same.



## CHAPTER TEN

### EVALUATION AND PROMOTION: EXISTING POLICIES AND RECOMMENDED MODIFICATIONS

Policies aimed at improving the hiring and training of Treasury law enforcement personnel will succeed only if Treasury also evaluates and promotes its officers based on their continuing dedication to diversity, equal opportunity, and the absence of invidious prejudice. Every Treasury Law Enforcement Bureau believes in the tenets of equal opportunity and diversity awareness, but not all have evaluation criteria in place to ensure formal recognition of this commitment. This chapter describes the existing evaluation criteria that address the value of freedom from prejudice in law enforcement employees. Generally, these criteria break down into two categories: "equal employment opportunity" (EEO) effectiveness in managers; and professionalism in non-manager law enforcement employees. The chapter concludes with a recommendation regarding the evaluation of Treasury managers and supervisors.

#### **Present Evaluation Policies**

The Treasury Department, like all federal agencies, has in place an Office of Personnel Management-approved "Performance Appraisal System."<sup>377</sup> This system requires that each employee be rated yearly by a supervisor. The supervisor--in consultation with the employee, if feasible--must establish "elements," which are the components of the employee's job responsibilities, and "standards," which are statements of the supervisor's expectations regarding those responsibilities. At least one element must be labeled a "critical element." Unacceptable performance in any critical element results in reassignment, reduction-in-grade, or dismissal--regardless of the employee's performance on all other components of the position. The supervisor also can establish "non-critical elements." In either case, the supervisor evaluates the employee's performance with respect to the elements, and may assign a summary rating. The number and categories of ratings may vary by bureau from as few as two ("Pass"/ "Fail"), to as many as five (e.g., "Outstanding;" "Exceeds Fully Successful;" "Fully Successful;" "Minimally Successful;" or "Unacceptable"). The Department of the Treasury recently revised its performance appraisal system to allow for pass/fail appraisal programs.

Treasury policy mandates that certain elements be included in all Performance Appraisal Systems. Among these is an EEO element which provides that: "All executives must be

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<sup>377</sup>This system is detailed in a Department of the Treasury publication entitled *Treasury Personnel Policy Manual* Chapter 430, (February 16, 1996).

appraised on their EEO effectiveness (to the extent their positions involve such responsibilities.)”<sup>378</sup> The term “executives” limits this element to managers and supervisors, at the Senior Executive Service (SES) level. Treasury grants its Law Enforcement Bureaus discretion to deem this element critical or non-critical.

The focus of the EEO element is on evaluating supervisory performance towards subordinates, rather than maintaining general standards of professionalism. Other performance elements developed by the Bureaus address the latter question. The following section examines, on a Bureau-by-Bureau basis, existing performance evaluation elements which advance EEO in effectiveness in managers, and professionalism in non-manager law enforcement personnel.

*Bureau of Alcohol, Tobacco and Firearms*

Management. For the past five years, ATF has deemed the EEO element “critical” for its executives and supervisors, including supervisory special agents. The language used in the EEO critical element for SES positions is applicable to a broader range of activity than simply fostering prejudice-free promotion policies, however. The element, entitled “Equal Employment Opportunity Efforts,” includes the following criteria:

- A. Provide leadership and policy direction that will advance equality in all personnel actions.
- B. Ensure selection, development, and assignment of employees is consistent with EEO principles and is in a manner that maximizes the use of their skills in achieving Bureau goals.
- C. Maintain an effective discrimination complaint processing system that reviews the formal complaints to ensure timely attempts at resolution, identifies internal organizational problems before they give rise to complaints, and ensures that employees cooperate in EEO investigations and provide necessary information. Take corrective action when problems are identified in any phase of complaints processing.
- D. Demonstrate commitment to EEO principles and programs by developing all subordinates and providing opportunities for advancement through job restructuring and maximum utilization of skills and knowledge.
- E. Continue the design of a new Bureau-wide career development plan and performance appraisal system, in consultation with an outside expert.
- F. Complete the following action item related to the EEO Special Blue Ribbon Panel Report: finalize and distribute the ATF Order entitled, “Adverse Action and Discipline,” which includes a Table of Penalties.

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<sup>378</sup>*Department of the Treasury Personnel Management Manual*, Chapter 430, Subchapter II-4. February 19, 1987.

- G. Guide, mentor, and support the Diversity Group which represents the concerns of women at ATF.

Division Chiefs at the middle management level are subject to the following performance element on EEO effectiveness: "Measures supervisors' knowledge of, and adherence to, Bureau EEO policies, including responsibilities concerning prevention of sexual harassment; degree to which support of EEO principles is demonstrated; and progress in meeting affirmative action and FEORP<sup>379</sup> goals." The performance standards for this element are the following behaviors:

Value Diversity

show and foster respect and appreciation for each person whatever that person's background, race, age, gender, disability, values, lifestyle, perspectives, or interests

accurately assess your own attitudes, assumptions and feelings about people who are different than you;

seek to understand the worldwide view of others;

see differences in people as opportunities for learning about and approaching things differently.

Special Agent. The Performance Appraisal System governing non-supervisory Special Agents does not include a critical element expressly addressing non-biased professionalism. It does include a "Professional Attributes" critical element, however, which covers conduct consistent with professionalism. For example, an employee will receive a rating of "Unacceptable" if she or he "[d]isplay[s] an unprofessional or negative attitude toward assignments, co-workers, supervisors, professional contacts, or the public."

Notwithstanding the existence of the Professional Attributes element, it would be desirable to include a performance evaluation element and corresponding performance standards which explicitly promote professionalism as regards race, ethnic, religious, and cultural issues. Since Special Agents' investigative work continuously brings them in contact with people of diverse backgrounds, reviews of that work should include a measure of their respect for, and sensitivity to, this diversity.

*United States Customs Service*

Management. Customs also has made the EEO element "critical" for all managers and supervisors. Citing the *Treasury Personnel Manual* regarding appraisal of SES employees, a

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<sup>379</sup>FEORP stands for Federal Equal Opportunity Recruitment Program.

May 10, 1989 Customs Directive states: "All executives must be appraised on their EEO effectiveness to the extent their positions involve such responsibilities." This language is amended somewhat in the performance elements for general schedule managers. Under the "Mandatory Elements" section for those employees it states: "[S]upervisory personnel are responsible for managing other employees work. Accordingly, performance plans for supervisors covered by this system shall include the following core elements to the extent the supervisor is held responsible and accountable for the following areas: EEO effectiveness."<sup>380</sup>

*Special Agent.* Customs Special Agents do not have critical element expressly addressing non-biased professionalism. They have one, non-critical element, "Liaison," which addresses working "effectively and harmoniously with others, promoting cooperation and interactions."

The nature of Customs Special Agents' work is such that they interact with citizens of every racial, ethnic, religious and cultural persuasion. In evaluating the Agents' performance, it would be advantageous to have in place elements and standards which expressly call for sensitivity to differences along racial, ethnic, religious and cultural lines.

*Customs Inspector.* Customs Inspectors too maintain a high level of public exposure which requires an awareness of cultural differences in the attitudes and behaviors of a diverse public. The Inspector position has a critical performance element for "Professionalism" that evaluates interpersonal interactions. The element provides that the Inspectors be "courteous, tactful, and business-like when dealing with the public and co-workers. Maintains poise in confrontational situations." There is no explicit review of unbiased behavior, however. An element specifically speaking to this subject would be desirable.

*Canine Enforcement Officer.* There are two critical elements in Canine Officers' performance evaluation which might address prejudice-related behavior: "Professionalism" and "Courtesy." The "Professionalism" element contains the following language: "Immediately reports all management integrity related incidents and takes appropriate action when placed in a compromising position. Actions reflect an in-depth knowledge of the Code of Conduct." The "Courtesy" element addresses similar behavior: "Maintains a harmonious relationship with the traveling and importing public, co-workers and supervisor. Conducts business in a professional manner as evidenced by few, if any, justified complaints of discourtesy or incidents of providing erroneous information to the public."

Canine Officers use personal observation of individuals to evaluate and detect potential violators. Increased awareness of cultural differences between persons would enhance their

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<sup>380</sup>Additional actions at Customs to promote awareness include the recent approval of a long-term series of studies of EEO compliance throughout the Service. The Office of Investigations is the first office to be studied and currently is undergoing review.

ability to evaluate a diverse traveling public. For this reason, incorporating a performance evaluation element and corresponding standards precisely tailored to understanding cultural differences would be a positive development.

*Marine Enforcement Officer.* Customs Marine Enforcement Officers operate ocean-going vessels to enforce compliance with Customs laws and related federal laws. Presently, Marine Officers are not subject to a critical performance element addressing professionalism in matters of diversity. The one relevant, non-critical performance element is designated “Courtesy.” A Marine Officer will be rated “Fully Successful” under this element if he or she achieves the following:

Deals with the public projecting consideration and respectful politeness, while conducting Service business. Meets and confers with contemporaries in Customs, other Federal, State and local police agencies fostering a spirit of goodwill and cooperation.

The Marine Officer will be only “Marginally Successful” if he or she “[d]isplays minimal socially acceptable standard of politeness and consideration when dealing with co-workers and/or members of the public, on more than two occasions.”

*Internal Revenue Service*

*Management.* At IRS, the imperative of meeting EEO objectives has been incorporated into three specific critical elements, representing specific goals: “Increase Voluntary Compliance,” “Maximize Customer Satisfaction and Reduce Burden,” and “Achieve Quality-Driven Productivity Through Systems Improvement and Employee Development.” Executives, Managers, and Management Officials are evaluated under these elements by the following performance standards:

*Increase Voluntary Compliance*

Foster personal and employee development to better match the skills, abilities, ideas, and experiences of our diverse workforce to appropriate market segments. . . .

Administer the tax laws with empowered employees who protect taxpayers’ rights and treat them ethically with honesty, integrity, fairness, and respect.

*Maximize Customer Satisfaction and Reduce Burden*

Use the skills and abilities of a diverse workforce and technology to redesign/maintain business processes that reduce expenditures of time, money, and resources for taxpayers and internal customers.

Achieve Quality-Driven Productivity Through Systems Improvement and Employee Development

...

Coach and develop employees to achieve parity at all grade levels which is reflective of the Civilian Labor Force by eliminating barriers in recruiting, hiring, training, and promoting minorities, women, and persons with disabilities. . . .

Support a healthy, safe work environment, free from harassment and discrimination, in which the privacy of employees is respected.

Promote a workplace where ethical behavior is paramount and everyone is treated with honesty, dignity, and respect.

Criminal Investigators and Internal Security Inspectors. Employees of both the Criminal Investigation Division and Inspection Service are subject to the same critical elements. One of these, pertaining to interpersonal relationships, requires that “dealings with other IRS officials and employees, representatives of other agencies, and the public are conducted in a mature, courteous, and tactful manner.” A critical element explicitly addressing non-biased professionalism would be desirable.

IRS Inspector and Criminal Investigator positions both entail a significant amount of interaction with a diverse public. Inspectors’ and Investigators’ conduct with respect to issues of diversity thus should be an element by which their performance is measured.

*United States Secret Service*

Management. The Secret Service’s SES Appraisal System follows the Treasury personnel requirement to appraise managers and supervisors on their EEO effectiveness. The Secret Service *Administrative Manual, section PER-6, Performance Appraisal System for Non-SES Employees* states the following in its “Standards for Implementing Equal Employment Opportunity Programs:”

All supervisors at the GM-14 or GM-15 levels and in Uniformed Division, sergeants and above, must have a critical element in the performance plan to evaluate equal employment opportunity (EEO) responsibilities and meet affirmative action goals. . . .

For GM-13 supervisors, an EEO element similar to the one identified for GM 14/15 supervisors may be appropriate; however, the element should be written so that it reflects these duties and responsibilities at the GM-13 level. Other GS or Uniformed Division supervisory personnel should have an appropriate EEO element outlining their responsibilities.

Note: Inspectors assigned to the Office of Inspection are not classified as supervisors. The element is not, therefore, mandatory for these positions.

Uniformed Division Officers. Uniformed Division Officers are subject to a critical element, designated "Interpersonal Relations," which evaluates their performance regarding non-discrimination and sensitivity towards diversity. The standard corresponding to this element reads "maintains standards in the following interpersonal areas: Teamwork, Interaction with others, and EEO." An officer must meet the following guidelines to be rated "Fully Successful" in connection with this element:

--Supports affirmative action principles by maintaining effective and harmonious working relationships with co-workers. . . .

--Relates, responds, and provides aid to people from various social, cultural, and economic backgrounds.

To be rated "Outstanding" the officer must, in addition to satisfying the "Fully Successful" standards, meet the following criteria, among others:

Tactfully and professionally responds and renders assistance to people from various social, economic, and cultural backgrounds. . . .

Assists peers in dealing with work force diversity. Seeks opportunities to contribute to the Service's EEO programs. . . .

Special Agents. There are no explicit EEO or professionalism-related performance elements for Secret Service Special Agents. One critical element, "Conducting Investigations," may be an appropriate place to include a measurement of the agent's sensitivity in dealing with people from diverse backgrounds. This element includes procedures for conducting interviews and interrogations.

*Federal Law Enforcement Training Center (FLETC)*

Management FLETC's SES Appraisal System expressly addresses EEO effectiveness. Setting forth "Equal Opportunity Enforcement Performance Objectives," the System calls on all SES personnel:

- a. to aggressively guard against any discrimination in the FLETC hiring, promotion, and general workplace activities based on race, color, religion, sex or national ancestry, reporting any infractions and proposed corrective actions to the Director's Office as soon as practical to do so, and

b. with the assistance of the FLETC Personnel Service Division, to continually monitor the numbers of minority employees in all position levels in ADM and aggressively recruit qualified minority applicants to increase the representation where the percentages do not meet the standards established for the available workforce; special efforts and progress will be reported routinely to the Director's Office.

Mid-level managers and other supervisory personnel are also subject to EEO-based performance criteria. The evaluation system governing Training Division Chiefs includes a critical element designated "Division and Human Resources Management." This element states: "The employee directs a management system, including a performance appraisal system, for meeting divisional and occupational goals. The employee . . . appraises and manages staff performance through appropriate rewards and corrective action. . . ." Among the standards by which an employee is judged to have met this element are that he or she "consistently . . . applies EEO and affirmative action principles to employee recruitment and management."

The Performance Appraisal System for the position of Assistant to the Director includes an "Equal Opportunity Efforts" element. To achieve a "Fully Successful" rating under this element, and employee must:

Fully and visibly support[ ] equal opportunity efforts; take[ ] appropriate corrective action when confronted with a reported situation of sexual harassment, cultural insensitivity, or racial bias, assist[ ] in recruitment activities designed to attract minority personnel.

Managers and Supervisors in the Office of Administration are subject to an element entitled "Human Resources Management and Equal Opportunity." A "Fully Successful" rating under this element requires, in part, that the employee "Is committed to EEO by annually reviewing the organizational structure and taking timely action to ensure compliance with affirmative action principles."

*Training Branch Chief, Senior Instructor, and Lead Instructor.* FLETC Training Branch Chiefs, Senior Instructors, and Lead Instructors are not subject to a critical element addressing non-biased professionalism. They are evaluated against critical elements which indirectly touch upon the issue, however. For instance, Training Branch Chiefs are reviewed under an element entitled "Initiative, Industry, Resourcefulness, and Professional Qualities." Meeting this element necessitates that the employee "[c]omplies with all FLETC directives, regulations, and division policies which define performance requirements." Similarly, Senior Instructors and Lead Instructors are subject to a critical element designated "Professional Qualities," which mandates that employees adhere to the aforementioned directives, regulations and policies.



FLETC policy, as articulated in Director's bulletins and directives, the FLETC Ethics Manual, handbooks and various other sources, clearly supports the maintenance of prejudice-free standards of conduct among its personnel.<sup>381</sup> Accordingly, these standards are incorporated by reference in the aforementioned critical element. Still, it would be desirable to include an element which speaks directly to non-biased professionalism so as to better ensure that this issue receives the attention it is due.

### **Recommended Modifications**

Commitment to a law enforcement force free of prejudiced conduct evidencing hatred is an important goal of the Treasury Department and each of its Bureaus. Treasury's Law Enforcement Bureaus should adopt evaluation procedures that further this goal. To this end, a new critical element should be mandated by Treasury to apply to executives, managers and supervisors.

### **Recommendation No. 13: Evaluation of Managers and Supervisors**

**All Treasury Bureaus and components employing Treasury law enforcement officers should evaluate all managers and supervisors on their success in implementing the organizing principle of this Report as well as on the specific Recommendations of this Report for which they are responsible. Evaluations should assess the individual's success in promoting both the appearance and reality of integrity, professionalism and impartiality in their subordinates.**

**Discussion:** This Recommendation is designed to ensure that executives, managers and supervisors not only hire a diverse work force, but consider commitment to diversity in the individuals they hire. Managers and supervisors should be required to take action when they learn that their subordinates are involved in conduct that effects the efficiency of the service.

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<sup>381</sup>The Director of FLETC has issued a number of bulletins to all employees delineating FLETC policy regarding diversity sensitivity in the work place. For example, an April 18, 1991 bulletin entitled "Professional Conduct," addressed the importance of maintaining respect for racial, sexual, cultural, religious and other differences. A September 1, 1995 bulletin discussed sexual harassment prevention. Directives also have been issued which set forth regulations governing employee conduct in connection with diversity issues.

All FLETC employees receive copies of and are given annual certification training in Treasury's *Standards of Ethical Conduct* and the principles set forth therein. Employees also receive a copy of and mandated training regarding a manual entitled *Ethics for the FLETC Employee*. Both documents set forth standards of non-biased professionalism.

This Recommendation calls on managers to be vigilant in fostering the goals of professionalism, integrity, and impartiality. At the same time, it affords Treasury's Law Enforcement Bureaus the discretion necessary to tailor implementation to their particular mission and labor force. Moreover, as Bureaus review their appraisal systems they should consider the goals of this Policy Review. Bureaus should look for creative ways to incorporate the goals of tolerance, equal opportunity and diversity into the evaluation process for law enforcement officers at all levels.

Under the federal employee performance appraisal system, only work performance factors may be considered in evaluations.<sup>382</sup> With respect to managers and supervisors, part of job performance involves taking reasonable steps to encourage employees' compliance with applicable conduct rules on and off duty and taking appropriate disciplinary action if misconduct nevertheless occurs. The foregoing discussion of existing performance evaluations for field-level Treasury law enforcement officers includes job-specific recommendations for modifications of existing performance factors for each position. Off-duty misconduct by field-level officers would be addressed through the disciplinary Recommendations discussed in Chapter Seven.

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<sup>382</sup>5 U.S.C. § 4302.

## **Section IV**

### **Conclusion**



## CHAPTER ELEVEN

### IMPLEMENTATION

This Policy Review was initiated following allegations of widespread racist conduct by law enforcement officers at the Good O' Boys Roundup. The allegations led members of Congress and the public to question the conduct of the nation's law enforcement officers. Secretary Rubin made clear the Department's commitment to upholding the high standards of ethical conduct and professionalism expected of Treasury's law enforcement officers both on and off duty.

The Review made thirteen Recommendations to enhance and maintain the high standards of conduct already in place for Treasury law enforcement officers. To achieve their purpose, the Recommendations require continuous stewardship by the Treasury Department and its Law Enforcement Bureaus. To that end, the Review makes two additional Recommendations which specifically address the implementation of the preceding Recommendations. These Recommendations represent a starting point for communicating the substance of this Report: that Treasury Law Enforcement Bureaus will not tolerate conduct that evidences invidious prejudice or hatred by its law enforcement officers.

#### **Recommendation No. 14: Responsibility for Implementation of Policy Recommendations**

**The Department of the Treasury, through the Office of the Under Secretary of the Treasury for Enforcement, acting in conjunction with the Internal Revenue Service Commissioner, the Office of the Assistant Secretary for Management, the General Counsel, and the heads of all other Treasury Bureaus or components that employ Treasury law enforcement officers, should implement the Recommendations set forth in this Report. Each Treasury Bureau or component charged with responsibility for the implementation or consideration of any Recommendation should be required to adopt a written plan for implementing, monitoring, and evaluating the implementation of the Recommendations. Such Bureau-level implementation plans should contain, but not be limited to, a program of periodic review by senior Bureau managers of the handling and disposition of all disciplinary charges against Treasury law enforcement officers, and in particular, of charges involving violations of the rules set forth in this Report.**

**Discussion:** The Under Secretary for Enforcement is Treasury's chief law enforcement officer and has line authority over most Treasury law enforcement officers. The Under Secretary for Enforcement is also responsible for providing policy guidance to the Department on law

enforcement issues. Therefore, the Office of Enforcement should ensure that the goals of this Policy Review are met. It must coordinate with the IRS Commissioner and heads of other Bureaus or components that employ law enforcement officers, on all issues concerning personnel who report to them. The Office of Enforcement will consult regularly with the General Counsel's office and the Office of the Assistant Secretary for Management on these issues as well. The Office of Enforcement should coordinate the results, formulate further policy recommendations if necessary, and report to the Secretary of the Treasury.

**Recommendation No. 15: Implementing Recommendations with Respect to Members of Collective Bargaining Units**

**The Recommendations in this Report are relevant for all Treasury law enforcement officers. In determining to apply these recommendations with respect to bargaining unit employees, the Bureaus should be reminded that their statutory bargaining obligations must be satisfied.**

**Discussion:** The Review recognizes the important role played by collective bargaining when formulating new rules and policies for bargaining unit members. The Review therefore suggests that its Recommendations be implemented immediately for non-bargaining unit employees. As for affected bargaining unit employees, Bureaus must satisfy all statutory bargaining obligations concerning these Recommendations.

## CONCLUSION

The Recommendations of this Report are over-arching objectives, leaving to Treasury's Office of Enforcement and Law Enforcement Bureaus, which are best situated to know the particular missions, needs, and resources of their own entities, the responsibility for determining the best means of achieving the intended results. Regular reporting will help to focus the process of creating a methodology and timetable for bringing these goals to fruition, and will also provide a system of accountability and regular communication concerning the crucial issues of bias and ethics in law enforcement.

After implementing the Recommendations, the Bureaus and components that employ Treasury law enforcement officers must follow up periodically to ensure that these values endure. The Bureaus and components must accurately assess the extent of their compliance with the goals of professionalism, integrity, impartiality, and respect for diversity both on and off duty. This may be achieved through surveys, focus groups, town hall meetings, or other means.

There are many ways in which managers and supervisors can communicate to the Treasury law enforcement community the importance that the Department places upon the

impartiality, professionalism, and integrity of Treasury law enforcement officers. The attitudes that managers and supervisors exhibit toward these Recommendations will ultimately determine the effectiveness of this Review. Training should be delivered in a way that communicates to students the importance that the Department places on freedom from prejudice and the highest standards of ethics on the part of Treasury law enforcement officers. If, on the other hand, a trainer directly or indirectly conveys the attitude that the training is not worthwhile, the results will inevitably be ineffective. The same is true of discipline. Rules can be promulgated in Washington, but they will fail to deter misbehavior if field managers are lax in enforcing them. In contrast, when managers and supervisors take an unyielding stand against bias and other misconduct, their attitudes will take root among their subordinates. As the statements quoted at the beginning of this Report demonstrate, the President of the United States, the Secretary of the Treasury, and the Under Secretary for Enforcement are deeply committed to the values of ethical conduct, professionalism, and respect for diversity both on and off duty. Managers and supervisors must embrace and communicate these values with the same level of commitment, so that they pervade the culture of the Treasury Department and, most importantly, of Treasury's law enforcement officers.

Bureaus should seriously consider implementing a program to monitor the handling and disposition of all disciplinary charges against Treasury law enforcement officers for misconduct that evidences invidious prejudice. This program would ensure that discipline is being meted out in an equal fashion, and further, that Treasury continues to have "zero-tolerance" for invidious prejudice. Bureaus which are employing new programs for disciplinary review, such as ATF's Professional Review Board, may attempt to include this monitoring duty as part of the program. Careful monitoring of disciplinary trends is especially important for the Treasury Department to ascertain whether the MSPB system permits the new rule prohibiting prejudice-related conduct to achieve its intended effect.

As the Recommendations are implemented, their effectiveness will be monitored and evaluated regularly. Through this ongoing process, Treasury law enforcement management and personnel will have the opportunity to comment on the methods of implementation. It is expected that as the respective Bureaus bring their leadership and experience to bear on the issues of professionalism, integrity, and impartiality in law enforcement, additional recommendations for action will evolve. The periodic reporting process will ensure that time is set aside at regular intervals for Treasury Law Enforcement and the Law Enforcement Bureau Heads to focus on these important issues and will provide a framework through which managers can learn from the ideas and experiences of their colleagues in other Bureaus and components.





## **Appendix A**

### **Individual Comments of the Members of the Citizens Review Panel**





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Norman Darsen  
Stokes Professor of Law

March 29, 1996

The Honorable Robert Rubin  
Secretary of the Treasury  
Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Mr. Secretary:

On July 20, 1995, you named six members to an independent Citizens Review Panel for the Treasury Department's investigation and policy review of the Good O' Boy Roundup. In early August the other members of the Panel selected me to be the chairman of the Panel. The Panel worked assiduously to comply with your charge to evaluate the Inspector General's fact-finding investigation and report as well as the policy report of the Under Secretary for Enforcement. The Panel met five times and had several conference telephone calls to discuss issues relating to both aspects of its task. Unfortunately, one member of the Panel, Rex Lee, former Solicitor General of the United States and president of Brigham Young University, became ill over the summer and was unable to attend any of the Panel's meetings. However, the Treasury staff and I briefed Mr. Lee periodically during the fall and received his views on pending issues. Rex Lee died on March 11, 1996, prior to the completion of the Panel's work. This was a great loss.

Pursuant to your charge to the Panel, this letter provides my comments on the final report of the Inspector General ("the IG") on the investigation of the Good O' Boy Roundup ("the IG Report") and on the final report of the Under Secretary on policy matters ("the Policy Report"). In preparing the letter I have consulted closely with the other Panel members. Each member concurs in the letter and, pursuant to the terms under which the Panel was established, the members are writing you individually.

#### I. The IG Report

Initially, I want to commend the Inspector General and her staff for the enormous amount of work that they devoted to this investigation, which we were informed was the largest in the history of the Treasury Department. The extensive effort required to gather the facts on numerous events that occurred over many

years is reflected in the Report. I also appreciate the graciousness with which the IG and her staff received many comments from members of the Review Panel during several meetings and particularly her acknowledgement toward the end of the process that the Panel's suggestions had been helpful to her and her colleagues.

Despite the substantial energies devoted to the IG report, I must record reservations about it.

The IG Report does not make findings of fact or draw conclusions concerning possible individual culpability. Nor is it possible, despite the voluminous data contained in the Report and its many exhibits, for a reader to make an independent judgment on this matter. This is partly because of the Report's format, but it is also because of how the results of the investigative fact-finding are analyzed. Specifically, while the IG Report states that the "investigation did not reveal that any Federal agents performed [acts of racism]" (p. 20), there is no comparable finding on whether any individuals should be faulted for seeing and not reporting racist acts, for possible misuse of government resources, or for other possible acts of wrongdoing. For example, the Report refers to the events of witnessing racist acts and using government resources inappropriately, but there is no determination that the individuals involved should be considered for further discipline.

This omission, it seems to me, may be attributable in part to the fact that the Report does not contain a nuanced evaluation of the evidence so as to permit reliable assessment of the Report's probative value on the key issue of whether any Treasury law enforcement officers behaved improperly. The IG's transmittal letter to the Secretary says that the investigation corroborated information provided by witnesses through the statements of other witnesses and through documentary evidence, that follow-up interviews were performed to clarify conflicting statements, and that the Report notes uncorroborated statements. But the Report does not explain exactly how corroboration was sought or how credibility was evaluated in individual cases.

My most important concern in this respect is the IG's treatment of the obligation of management employees who attended one or more Roundups to take action regarding racist conduct that they may have witnessed. The Report states (p. 51):

Of the 118 managers who had knowledge of the Roundup prior to July 11, 1995, 12 had first-hand knowledge of the event, since they had actually attended one or more Roundups. Half of the managers who attended went once; most also went before 1990. These 12 managers stated that they did not witness any racial events (Exhibit 48). Further, they stated that they did not witness any other inappropriate or illegal actions at any of the Roundups they attended.

We know from Exhibit 48 that four managers attended Roundups after 1988, the period of most reported racist behavior, and two of these managers apparently attended Roundups more than once in those years. Apart from the managers who attended, there are indications in the Report that other managers received information about the Roundups and did not pursue an investigation. The Report does not disclose whether or how the investigation sought to determine whether any of the managers' exculpatory statements could be confirmed. There are several ways in which this inquiry might have been pursued. For example, the IG could have interviewed other persons at the Roundups who might have seen a manager at one or more of the racist events detailed in the Report. Another possible avenue could have been retired Treasury law enforcement officers who attended one or more Roundups. The Report does not attempt to quantify the number of retirees who attended the Roundups. Twenty five who did attend were interviewed (Exh. 47), but others apparently were not. In the absence of such inquiries, the managers' unsupported statements stand without possibility of contradiction.

The Panel was advised that there is a question about the extent of the duty of law enforcement officers to report misbehavior (including racist behavior) engaged in by other law enforcement officers while off-duty. This information is apparently contradicted by the Policy Report, which in chapter 6 cites the Treasury Conduct Rules, which create a duty on the part of employees to report misconduct and for supervisors to take appropriate action. The problem may arise from the fact that, as stated in chapter 7 of the Policy Report, the Treasury "does not currently have a rule" that articulates its expectations "with respect to conduct whether on- or off-duty evidencing invidious prejudices". The Policy Report seeks to remedy this.

Whatever may be the appropriate rule for other law enforcement officers, law enforcement managers seem to me to have a special responsibility and accountability. The Report suggests as much in its executive summary, where it is stated that the IG's investigative purpose was to address three concerns, the third of which is "to ascertain if Treasury managers were aware of the Roundup and what that awareness was and what actions, if any, they had taken in light of their awareness" (p. 3). See also page 10 of the Report and other references, including the statement at page 51 quoted above.

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\*This creates another problem. The total extent of Treasury participation at Roundups may have been underestimated because some of the retirees may have been in active service when they attended. The IG could not compel the testimony of such individuals, but there is no indication in the Report whether it was determined whether the retirees who were not interviewed would have been willing to speak to the IG, who told us that retirees were often good sources.

Perhaps because of the lack of information concerning whether anyone who attended a Roundup contradicted or confirmed the statements of managers that they did not witness a racial event, there is no finding in the Report regarding the possible culpability of any manager (or any other Treasury employee). Instead, as the IG informed the Citizens Review Panel, files on each Treasury employee, including the Memoranda of Interviews (MOIs), will be sent to the various Treasury Bureaus for review and possible disciplinary action.

The IG explained that it was not the custom of her office to recommend specific penalties. However, there is no need to recommend penalties for the Report to reach factual conclusions regarding possible culpability. And although it would plainly be improper to discipline any employee without providing a full and fair procedure to ascertain culpability, it would seem appropriate for the IG to recommend that punishment be considered for particular individuals or categories of individuals -- without mentioning their names -- based on evidence adduced and weighed by the IG.

The absence of any such finding as to the possible culpability of any Treasury employee, especially at the managerial level, has the unfortunate consequence that the experience and judgment of the IG have not been brought to bear in evaluating possible evidence of wrongdoing and that all Treasury law enforcement officers who attended a Roundup remain in anxious limbo while their Bureau chiefs determine whether to proceed against them. In addition, the impression is conveyed, no doubt inadvertently, that despite the findings in the Report that many acts of racism occurred, and that 125 Treasury law enforcement officers attended one or more Roundups, no Treasury employee committed wrongdoing of any kind. This may be true, but a finding one way or the other as to possible culpability of Treasury employees, especially the managers, would have been helpful in clarifying the matter.

Turning to another issue, the members of the Citizens Review Panel were not afforded an adequate opportunity to review the MOIs to ascertain whether they supported the Report and whether the investigation was conducted properly. We were advised a few days before the Panel's last meeting on the IG's investigation that all of the hundreds of MOIs would be "available" to the Panel at the meeting, but there clearly was insufficient time at a meeting with a packed agenda to perform an appropriate review. The Panel had requested the MOIs more than a month before the meeting.

The IG Report is not wholly adequate in its treatment of the question of whether the Roundup was functionally a whites only event. The founder and organizer of the Roundups, Gene Rightmyer, is quoted as saying that "Although black people did not commonly attend the Roundup, [he] and others made efforts to invite black police officers so that the Roundup would not be viewed as a whites

only event" (pp. 19-20). And it is true, as the Report notes, that a few non-white officers attended some Roundups. The Report also details a number of "acts of racism" at the Roundups. But it does not make a finding that these racist events, sometimes with no reported action by the Roundup organizers against them, created a hostile environment that might reasonably have led African-Americans to feel that they were not welcome and that, at least from their standpoint, the Roundups were indeed a "whites only event."

The IG is referring questions of culpability to the Bureaus, in accordance with the procedure and criteria set out in Part A of the executive summary to the Policy Report. Because it is desirable that decisions be made and announced promptly, I recommend that you ask the Bureaus to act and make a public announcement by a specified date on what, if any, disciplinary action they are taking concerning Treasury employees.

## II. The Policy Report

While it has been necessary to read the Policy Report under time constraints,\*\* I am pleased to write that the Report is thorough and professional, and that it contains sensible conclusions and recommendations on difficult and controverted issues.

The Treasury staff at several meetings reviewed with the Panel drafts of the main recommendations, and on March 25 they reviewed with us a draft of the entire Report. Panel members at times expressed strong views, often questioning staff positions. The staff responded in a knowledgeable and responsive manner that led, in my opinion, to an improved final product. This constructive approach is particularly evident in Chapter 7, which recommends modifications of existing disciplinary policies, including those relating to "Prejudice Related Conduct" by law enforcement officers, while simultaneously trying to protect the officers' First Amendment right to freedom of association and assuring those

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\*\*The Panel received drafts of the more than 250 page Report for the first time on Friday, Saturday and Sunday, March 22-24, and we were expected to, and did, provide comments on it to Treasury staff at a meeting starting at 8 a.m. on Monday, March 25. We did not receive the final proposed report until late Wednesday, March 27 (on Thursday for one member), and we had to submit our letters to you by Friday afternoon, March 29, to meet the printer's deadline. Although the staff surely faced a formidable task in preparing the Policy Report, and while the pressure on the Panel was somewhat mitigated by its familiarity with the policy recommendations, which it had studied over several months, the Panel should have had more time to read and reflect on the full drafts before having to react.

charged with wrongdoing a fair administrative process for determining culpability. The sophisticated legal discussion should be of great value to the Department as it proceeds in this sensitive area.

There are two specific matters in Chapter 7 on which I wish to comment.


The first concerns the absence of any discussion of the constitutional issues that will inevitably be triggered by the analysis and recommendations contained in Chapter 7. The constitutional analysis was presented to the panel in the form of internal legal memoranda, which we were informed would be presented to the Bureaus that will implement any policy changes. But because the constitutional issues are complex and extremely important, I think it would have been desirable for constitutional analysis to have been included in the Report.

The second matter concerns Recommendation No. 5, which proposes that the Treasury study the role of the Merit System Protection Board (MSPB). I have two cautions. First, the Report correctly notes that while there is currently insufficient data about possible problems with the MSPB system, there is apparently a "common perception" among managers that the MSPB will uphold serious discipline in only the "most egregious cases." Apart from questions about the persuasiveness of such "anecdotal" evidence, the Report notes that the MSPB review process recently resulted in reversal or mitigation of discipline in 531 cases out of a total of 7,530 appeals decided. This is hardly an exceptional ratio, although to each employee who prevailed it may have been a career-saving event. My second caution is that, if the study documents a need for change, there should be, as the Report suggests, an emphasis on the training of managers and supervisors and on the manner in which appropriate disciplinary action can be taken "consistent with the constitutional, statutory, and procedural rights of Treasury law enforcement officers and other employees."

My comments on these two matters are not intended to detract from the praise that the Policy Report merits. It is a work of high quality.

It was a privilege to serve as chairman of the Citizens Review Panel, and I hope that this letter is helpful to you and the Treasury Department.

Sincerely,



Norman Dorsen  
Chairman, Citizens Review Panel





Office of the Chancellor

March 28, 1996

The Honorable Robert Rubin  
Secretary  
The United States Department of Treasury  
Washington, D.C. 20220

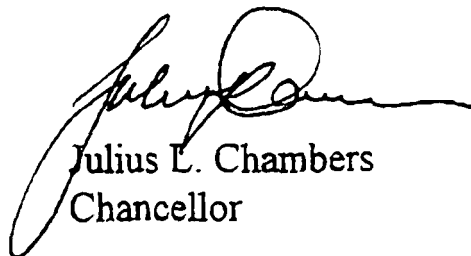
Dear Secretary Rubin:

It was an honor and an educational experience to serve as a member of the Citizens Review Panel to assist the Department in its investigation and policy review of the Good O' Boys Roundup.

The Citizens Review Panel met several times and extensively reviewed the report of the Inspector General and the Policy Recommendations. Mr. Norman Dorsen, who served as Chair of the Citizen Review Panel, has submitted to you a letter and response to the Inspector General's report and to the Policy Recommendations.

I have reviewed Mr. Dorsen's report and fully concur with his letter, including the concerns expressed about the Inspector General's report and the Policy Recommendations. I also concur with his concluding comment about the high quality of the work of staff and of the Policy Report.

Sincerely,



Julius L. Chambers  
Chancellor

JLC/mmf

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March 29, 1996

The Honorable Robert Rubin  
Secretary of the Treasury  
Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Mr. Secretary:

On July 20, 1995, you appointed me as one of six members to a Citizens Review Panel for the Treasury Department's investigation and policy review of the "Good O' Boy Roundup". Your charge to the Panel was to evaluate the fact-finding investigation and report of the Office of the Inspector General (the "OIG") as well as the report of the Under Secretary for Enforcement on the applicability of current laws, policies, rules and regulations to the facts discovered by the OIG.

I have read with great care Chairman Dorsen's letter to you which comments on the final reports of the Inspector General and the Under Secretary and I fully endorse his statements and recommendations. I recognize and commend the OIG and the Under Secretary, and their respective staffs, for the commitment and dedication which they devoted to this large and complex investigation.

Thank you, Mr. Secretary, for the opportunity to have served on the Citizens Review Panel. It has been an honor and privilege to have participated in the work of the Panel under the outstanding leadership of Professor Norman Dorsen as its Chairman. I hope that our efforts are helpful to you and to the Treasury Department.

Sincerely,

*Helene L. Kaplan*

Helene L. Kaplan



# THE UNITED STATES CONFERENCE OF MAYORS

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## POLICE POLICY BOARD

March 29, 1996

The Honorable Robert Rubin  
Secretary  
The United States Department of Treasury  
Washington, D.C. 20220

Dear Mr. Secretary:

Your appointment of me as a member of the Citizens Review Panel for the Treasury Department's investigation and policy review of the Good O' Boy Roundup provided an opportunity that I deeply appreciate. Under the splendid and energetic leadership of our distinguished Chairperson, Professor Norman Dorsen, the Panel in my opinion was unusually effective in exerting a positive influence.

Lee Michaelson, Marc Greenwald and their staff were most cooperative and productive.

Undersecretary Noble and Inspector General Lau were faced with Herculean tasks to be completed within a relatively short time frame. They and their staffs performed outstandingly in completing their work on schedule. The Policy Report is professional and comprehensive. The implementation of its recommendations will significantly reduce the risk of a repetition of embarrassing behavior by Treasury law enforcement personnel in the future as well as strengthen management and leadership through strict but reasonable accountability from first line supervision to top administration.

After careful review I fully concur with the statements and recommendations of Chairman Dorsen.

I wish also to join in the excellent analysis and conclusions of Chief Fred Thomas concerning law enforcement agents of the Treasury Department who stated they had witnessed racist incidents at Roundups yet attended them again. Beyond their willingness to condone racism and poor judgment in attending future gatherings they demonstrated a lack of loyalty to their

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MAIETHA WOOD  
Mayor of Wisconsin-Sales

### Executive Director:

The Honorable Robert Rubin  
March 29, 1996  
Page 2

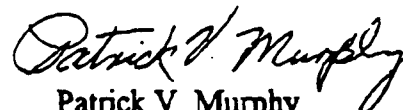
agencies if they failed to alert supervision/management to a very serious problem.

Law enforcement personnel must be held to a higher standard. It is maintained by higher standards of management and supervision than are required in non law enforcement functions. Only strict accountability is acceptable in law enforcement.

In 1967 the President's Crime Commission called for a four year college degree for all police officers with law enforcement authority. They make decisions as important as those of any professional. They exercise broad discretion. Treasury law enforcement agents should meet the same standard. Their salaries and benefits are more conducive than those of most local police departments for recruiting college graduates.

It has been a rewarding experience to work with the dedicated and very capable personnel of your Department. Thank you for the opportunity.

Sincerely,

  
Patrick V. Murphy  
Director

**Fred Thomas  
P.O. Box 1684  
Bowie, Maryland 20716**

March 28, 1996

**The Honorable Robert Rubin  
Secretary of the Treasury  
Department of Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220**

**Dear Mr. Secretary:**

**On July 20, 1995, when you appointed six members to a Citizen Review Panel, the members were charged with the duty of assisting the Department of Treasury with its inquiry about the allegations that employees of the Department had participated in an annual "Good O' Boy Roundup." The inquiry was separated into two parts. The Office of the Inspector General (OIG) was responsible for the fact-finding portion of the inquiry; and the Office of the Under Secretary for Enforcement (Under Secretary) was responsible for determining the applicability of current laws, policies, rules and regulations to the facts discovered by the OIG. The Under Secretary was also charged with recommending changes to current laws and policies, rules or regulations, if deemed appropriate.**

**I am pleased and honored to have been named as a Panel member. The Panel started its work in early August under the able leadership of Professor Norman Dorsen as its chair. The Panel was given the charge to evaluate the Inspector General's "fact-finding investigation and subsequent report." The scope of that report was to address three concerns: (1) "to ascertain what transpired at the Roundups, including any allegations of racism, sexual misconduct, misuse of government property, or other inappropriate conduct; (2) to determine the extent of participation by Department of the Treasury personnel; and (3) to ascertain if management was aware of the Roundups, what that awareness was, and what actions, if any, were taken in light of the awareness." The Panel was also asked to review and evaluate the "Policy Report" which was to be prepared by the Under Secretary.**

The Honorable Robert Rubin  
Secretary of the Treasury  
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Before I begin my assessment of the inquiry, I want to acknowledge and commend the tireless and committed efforts of the OIG, the Under Secretary and their respective staffs. The scope, complexity and public sensitivity to the inquiry made the investigation difficult.

As a Panel member, I fully endorse the findings and recommendations contained in Chairman Dorsen's report to you. Additionally, I offer the following view of the reports prepared by the OIG and the Under Secretary.

Office of Inspector General Report:

The OIG conducted an exhaustive investigation of the stated allegations. The OIG's report clearly documented that acts of racism did occur at several of the Roundups; however, the "investigation did not reveal any evidence that Federal agents participated in any of these acts." What has also been documented is that there were at least 12 Treasury employees who stated they witnessed racist incidents and attended one or more subsequent Roundups after witnessing the racist incidents.

Those employees, who continued to attend the Roundups with prior knowledge that acts of racism were being committed annually, demonstrated that they condoned and/or supported such acts. It is a generally accepted principle that law enforcement officers are held to a higher standard of conduct than are other public employees. The public trust and confidence in fair and impartial law enforcement, and the integrity and professionalism of federal law enforcement officers, are important to the federal law enforcement mission.

The primary exception I take with the OIG's report is that it does not provide findings and conclusions that clearly document which of the 12 employees who attended the Roundups violated established Department of Treasury rules or policies and which ones did not. The OIG explained to the Panel that the traditional role of the Department of Treasury's OIG is only to conduct a fact-finding investigation, not to address the culpability of the participants.

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While I accept the OIG's explanation, this inquiry was unique in its scope and more complex than any other the Department of Treasury may have undertaken in the recent past. The OIG did point out that the OIG's "Memoranda of interview would be forwarded to the affected Bureaus of the Department of Treasury for whatever action they deem appropriate." If this is the course of action which must be followed, then I respectfully recommend that the affected bureaus be given clear and definitive instructions on how and when to report their findings and conclusions to the Secretary of Treasury.

Policy Report:

I concur with all the findings and recommendations of the Under Secretary and the Policy Review Team in its policy report. With respect to Recommendation No. 9, Psychological Screening, I strongly recommend that the Department of Treasury implement a policy that mandates psychological testing and screening for emotional stability and psychological fitness as a pre-employment conditions of any law enforcement officer empowered to make arrests and a carry a firearm. The International Association of Chief of Police, the National Sheriffs Association, the National Organization of Black Law Enforcement Officers, and the Police Executive Forum have long recognized this as a critical hiring standard through the Commission of the Accreditation of Law Enforcement Agencies.

Again, Mr. Secretary, thank you for the opportunity to serve on the Citizen Review Panel. I offer my comments in the spirit of support and encouragement.

Respectfully



Fred Thomas

Member, Citizen Review Panel





## **Appendix B**

### **Text of Sample Rules and Regulations of Other Law Enforcement Agencies**



## APPENDIX B

### SAMPLE DISCIPLINARY RULES AND POLICIES PERTAINING TO OFF-DUTY MISCONDUCT AND BIAS

#### STATE AND LOCAL LAW ENFORCEMENT AGENCIES

##### **Prince George's County, MD, Police Department**

###### *Prince George's County General Order Manual*

1/103 Unbecoming Conduct. As the most visible representative of government, employees must display unblemished professional conduct. To that end, employees are duty bound to avoid excessive, unwarranted, or unjustified behavior that would reflect poorly on themselves, the Department, or the County government, regardless of duty status. Employees will refrain from using harsh, violent, profane or derogatory language which would demean the dignity of any person. The use of such language or other unbecoming conduct which relates to race, color, national origin, gender or religion of any person(s) shall not be tolerated.

The use of abusive, demeaning, and/or derogatory language or other unbecoming conduct relating to the race, color, national origin, gender, or religion of any person was recently reclassified as a Category IV offense, punishable by termination.

##### **New York City Police Department**

###### *Patrol Guide*

###### Prohibited Conduct.

1. Using discourteous or disrespectful remarks regarding another person's ethnicity, race, religion, gender, or sexual orientation.
2. Knowingly associate with any person or organization:
  - a. Advocating hatred or oppression of, or prejudice toward any racial or religious group. . . .
4. Engaging in conduct prejudicial to good order, efficiency or discipline of the Department.

The N.Y.P.D.'s rules apply to both on-duty and off-duty conduct unless they expressly state that they are limited to conduct on-duty or in uniform. (For example, Rule 7 prohibits joining any political club within the precinct, Rule 8 prohibits being a candidate for the School Board, Rule 10 prohibits patronizing unlicensed establishments, such as after-hours clubs, and Rule 11 prohibits accepting other positions of public trust unless retired; all of these rules obviously apply to off-duty conduct even though they do not expressly so state. In contrast, Rule 9 prohibits having an interest in or association with illegal gambling operations, smoke shops or

after hours clubs, "except in the performance of duty," and Rule 12 prohibits smoking while in uniform.

### **Los Angeles Police Department**

*Manual of the Los Angeles Police Department*

210.10 Law Enforcement Code of Ethics. As a law enforcement officer, my fundamental duty is to serve mankind . . . and to respect the Constitutional rights of all men [sic] to liberty, equality and justice. I will keep my private life unsullied as an example to all . . . . Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. . . . I will never act officiously or permit personal feelings, prejudices, animosities, or friendships to influence my decisions. . . . I will enforce the law courteously and appropriately, without fear or favor, malice or ill will . . . .

210.13 Respect for Others. The cosmopolitan nature of the City is reflected in the diversity of Department employees. In such a diverse environment, biases or prejudices relating to factors such as race, ethnicity, sex, age, economic status, position in the community, or employee status with the Department must not be allowed to influence decision making or conduct involving other employees. While employees are entitled to their personal beliefs, they must not allow individual feelings or prejudices to enter into professional contacts. Employees must treat one another with respect and be constantly mindful that other people are individuals with emotions and needs as significant as their own.

### **Houston Police Department**

*Rules Manual of the Houston Police Department*

2.3 Conduct and Behavior. Officers whether on-duty or off-duty shall follow the ordinary and reasonable rules of good conduct and behavior and shall not commit any act in an official or private capacity tending to bring reproach, discredit, or embarrassment to their profession or the department. . . .

2.5 Responsibility to Respect the Rights of Others. Officers shall respect the rights of individuals, and shall not engage in discrimination, oppression or favoritism. Officers shall maintain a strictly impartial attitude toward complainants and violators.

## FEDERAL GOVERNMENT AGENCIES

### United States Army

#### *Army Command Policy*

##### 4-12. Extremist organizations.

The activities of extremist organizations are inconsistent with the responsibilities of military service. Active participation by soldiers is prohibited.

- a. Military personnel, duty bound to uphold the Constitution, must reject participation in organizations which--
  - (1) Espouse supremacist causes.
  - (2) Attempt to create illegal discrimination based on race, creed, color, gender, religion, or national origin.
  - (3) Advocate the use of force or violence, or otherwise engage in efforts to deprive individuals of their civil rights.
- b. Passive activities, such as mere membership, receiving literature in the mail, or presence at an event, although strongly discouraged as incompatible with military service, are not prohibited by Army policy. Positive actions to limit soldier participation are listed in *d* below.

Paragraph (d) consists of a list of nine non-inclusive actions, some with multiple subparts, which “Commanders should take when soldiers in their units are identified as members of extremist groups and/or when they engage in extremist group activities.” The list ranges from educating soldiers concerning the Army’s policy of fair and equitable treatment to imposing off-limits orders, ordering soldiers not to attend certain events, revoking security clearances, considering the membership in evaluations and promotion decisions, barring reenlistment, and initiating involuntary administrative separations or courts martial.

### Department of Justice

All Department of Justice components, including the Federal Bureau of Investigation, Immigration and Naturalization Service, Drug Enforcement Administration, Marshal Service, Federal Bureau of Prisons, and all United States Attorney’s Offices, are subject to the following standards.

#### *Standards of Employees Conduct and Responsibility*

7. Policy. In Title 28, Code of Federal Regulations (CFR), Section 45.735, and Federal Personnel Manual Chapter 735.

- a. Conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and

official, they should always be mindful of the high standards of behavior expected to them.

b. Avoid any action which might result in, or create the appearance of, affecting adversely the confidence of the public in the integrity of the Government.

## **Federal Bureau of Investigation**

### *Manual of Investigative Operations and Guidelines*

#### Part I. 67-7.6 Objectives Of Investigation.

(1) To determine whether applicant is or is not qualified for Bureau employment and whether his/her employment would constitute security risk.

(2) Following specific points of inquiry are basic and fundamental and must be kept in mind throughout course of investigation. All contacts and interviews should be directed at developing these objectives:

(f) Bias or prejudice - the existence of bias or prejudice against any class of citizens or any religious, racial or ethnic group, is of interest and concern to the FBI. Investigators should conduct appropriate investigation to obtain comments to resolve any issue and/or allegation of bias or prejudice that is received concerning an applicant.

### *Manual of Administrative Operations and Procedures*

#### ¶ 1-2 Personal Conduct.

(1) Employees . . . must not, at any time, engage in criminal, dishonest, immoral or disgraceful conduct or other conduct prejudicial to the Government.

#### ¶ 1-21.2 Standards of Conduct. . . .

(2) According to [E.O. 12764, Departmental Order 350-65, and rules and regulations of the FBI], investigations will be conducted in connection with violations of the standards and will include an interview of the employee involved. . . . The inquiry may encompass any conduct which is reasonably related to work performance. Thus, a disciplinary inquiry is not restricted to activities within the critical elements and performance standards of the employee's position and may also include on- or off-duty conduct when such conduct affects an employee's ability to perform his or her job or adversely affects the Bureau's ability to secure needed cooperation from members of the public. . . . Failure by an employee to follow all regulations will result in appropriate disciplinary action, including possible dismissal.

### *Air-Tel Directive; August 16, 1995, from Director Freeh to Employees regarding Standards of Personal and Professional Conduct.*

One of my unwavering goals for the FBI is that the conduct and personal integrity of our employees be consistently recognized and praised as conforming to the highest professional

standards. The public has a special interest in ensuring that those in whom it entrusts the power to enforce the law are beyond reproach. Our positions, therefore, carry a duty to serve as examples of excellence of character in both our personal and professional lives. One of the cornerstones of such excellence is seeing and treating others, particularly those who are different than ourselves, as we would like to be seen and treated.

Most of you are undoubtedly aware of the recent press reports concerning the annual event known as the "Good Ol' Boys Roundup." The event was attended by members of the Federal, state and local law enforcement community, and reportedly involved blatantly racist behavior on the part of some of the participants.

In light of these reports, I want to remind all FBI employees of their obligation not to engage in criminal, infamous, dishonest, or notoriously disgraceful conduct. All employees are expected to conduct themselves at all times in a manner that creates and maintains respect for the FBI and the U.S. Government. In all their activities, personal and official, Bureau employees should always be mindful of the high standards of behavior expected of them. I expect strict adherence to these standards.

The success of our mission depends on the respect and cooperation of the public. Bigotry on part of the Bureau employees, whether it occurs on or off duty, casts doubt on our ability to enforce the law fairly, even-handedly and without bias. Even the appearance that the FBI lacks objectivity in enforcing the law will undermine the public's respect and confidence in our organization. This in turn results in the loss of public cooperation in our efforts to conduct investigations and enforce the law. Bigotry can also undermine the offending employee's credibility and call into question his or her ability to perform assigned duties in a fair and unbiased manner. Bigotry on the part of FBI employees also hurts the Bureau morale by undermining the mutual respect and cooperation among our employees which is essential to our efficiency.

I will not tolerate employee behavior that detracts from the reputation and effectiveness of the FBI. Conduct or speech which wrongfully promotes or condones invidious prejudice or discrimination based on race, creed, color, gender, religion, national origin, disability, or sexual orientation is subject to discipline. Most importantly, such behavior will be disciplined if there is likelihood that it could adversely affect the Bureau's ability to perform its mission, the employee's ability to carry out his or her duties, or the Bureau's esprit de corps.

Each of us should take this opportunity to renew and heighten our sensitivity to these concerns. I urge all of you to recommit yourselves to the high standards of personal and professional conduct which makes the FBI the best and most highly respected organization in the Nation and the world.

## **Drug Enforcement Administration**

### *Standards of Conduct*

#### 2735.16 Employee Conduct.

N. Unprofessional Conduct. Every DEA employee is responsible for behaving in a professional manner appropriate to the setting, and in a civil and courteous manner toward other DEA employees and toward the general public.

#### Standard Schedule of Disciplinary Offenses.

18. Disrespectful conduct, use of insulting, abusive or obscene language to or about others. (Penalty of official reprimand to removal for first offense.)

27. Criminal, dishonest, infamous, or notoriously disgraceful conduct--on or off duty. (Penalty of official reprimand to removal for first offense.)

41. Conduct prejudicial to the government. (Penalty of official reprimand to removal for first offense.)

## **Bureau of Prisons**

### *Standards of Employee Conduct & Responsibility*

7. Policy: . . . In general, the Federal Bureau of Prisons expects its employees to conduct themselves in such a manner that their activities, both on and off duty, will not discredit either themselves or the agency.

As stated in the above regulations, employees shall:

a. Conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U.S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them.

b. Avoid any action which might result in, or create the appearance of, affecting adversely the confidence of the public in the integrity of the Government.

. . .

d. Failure by employees to follow these regulations or this policy will result in appropriate disciplinary action, up to and including removal.

8. Personal conduct: . . . b. Employees shall not allow themselves to show partiality toward or become emotionally, physically, sexually, or financially involved with inmates, former inmates, or the families and friends of inmates and former inmates.

. . .



(2) No employee shall show favoritism or give preferential treatment to one inmate, or group of inmates, over another.

(4) Use of obscene or verbally abusive language by employees when communicating with inmates or others will not be tolerated. Employees will conduct themselves in a manner which will not be demeaning to inmates, former inmates, their families or friends, or others.

(5) An employee who becomes involved in a set of circumstances as described above (or any situation that might give the appearance of improper involvement with inmates or former inmates or the families and friends of inmates and former inmates) must report the contact in writing to the CEO. This includes, but is not limited to, telephone calls or written communications outside the normal scope of employment. The employee will then be instructed as to the appropriate course of action.

#### **U.S. Marshals Service**

*Policy Notice; April 27, 1995*

*United States Marshals Service Policy Regarding Racially/Sexually Offensive Language.*

Racial slurs, ethnic jokes, obscene, abusive or insulting comments (hereinafter racially/sexually offensive language) are unprofessional, inappropriate, and will not be tolerated within the USMS work environment. This Policy Notice provides guidance concerning the use of racially/sexually offensive language.

The use of racially/sexually offensive language disrupts the operations of the workplace and undermines the integrity of the employment relationship. As USMS employees working for a law enforcement agency with a history of civil rights enforcement, we must set a positive example within the law enforcement community. Thus, I expect all employees of the USMS to refrain from and to maintain a work environment free of racially/sexually offensive language. The key to developing and maintaining a conducive work environment is to treat each individual with mutual respect, fundamental fairness, and decency.

*Policy Notice; April 27, 1995*

*United States Marshals Service Policy Regarding Racially/Sexually Offensive Language.*

Each manager and supervisor is individually responsible for setting a good example, ensuring the workplace is free of racially/sexually offensive language, and for developing a fair and decent work environment where every employee is encouraged to participate fully in every aspect of the Service. A manager or supervisor can help prevent sexual harassment by demanding and demonstrating professional behavior at work, refraining from using racially/sexually offensive

language and letting subordinates know when their language is inappropriate. In addition, where a manager or supervisor has identified a situation involving racially/sexually offensive language, he/she is responsible for taking immediate corrective action.

Any employee who engages in the use of racially/sexually offensive language is subject to severe discipline up to and including removal. Thereafter, if an employee engages in a continuing pattern of racially/sexually offensive language he/she will be subject to removal from the Federal Service.

Management is responsible for reporting the use of racially/sexually offensive language to the Employee and Labor Relations Branch, the Equal Employment Opportunity (EEO) Office, or the Office of Inspections.

Any manager who condones or fails to correct such racially/sexually offensive language and/or fails to report a continuing pattern of this language shall also be subject to discipline.

In accordance with the USMS Code of Conduct, I expect all USMS employees to demonstrate the highest standards of personal and moral conduct expected of law enforcement officers and government employees, and to be courteous and respectful to all other USMS personnel and to the general public.

*Code of Professional Responsibilities*

Responsibilities. Each employee whose conduct on and off duty reflects upon the Federal government is required to adhere to this code. This code of professional responsibilities also pertains to intermittent employees, guards, and deputized court security officers employed or contracted by the Marshals Service.

24. Discrimination. Not illegally discriminate against or sexually harass an employee or applicant for employment or engage in any prohibited personnel practices.

26. Personal Activities. Refrain from any activity which would adversely affect the reputation of the Department of Justice.

27. Personal and Business Associations. Avoid personal and business associations with persons known to be convicted felons or persons known to be connected with criminal felons or persons known to be connected with criminal activities. This does not apply to immediate family members.

28. Conduct. Avoid any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct; use of intoxicants to excess; or drug addiction.

29. High Standards. Demonstrate the highest standards of personal and moral conduct expected of law enforcement officers and other government employees.

### **Department of Housing and Urban Development**

#### *Conduct and Responsibilities of Employees*

§0.735-201 Proscribed actions. An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in or create the appearance of. . .

- (d) Losing independence or impartiality. . . .
- (f) Adversely affecting the confidence of the public in the integrity of the Government  
. . . .
- (i) Knowingly participating in, or attending while on official business, any segregated meetings, or meetings held in segregated facilities, from which persons are excluded because of race, color, religion, national origin, sex, age, or handicap.

### **Department of Health and Human Services**

#### *Standards of Conduct*

#### Appendix A -- List of Some Offenses for which Disciplinary Action May Be Taken.

Following is a list of some offenses for which disciplinary action may be taken under this Part. . .  
Neither the list of offenses nor the statutory citations are all-inclusive. . . .

- 4. Disruptive behavior such as:
  - b. Discourtesy, disreputable conduct, or use of insulting, abusive or obscene language to or about other individuals while on the job.
- 5. Sexual harassment of employees or members of the public.



## **Appendix C**

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## APPENDIX C

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# PUBLIC DEBT NEWS



Department of the Treasury • Bureau of the Public Debt • Washington, DC 20239

FOR IMMEDIATE RELEASE  
April 2, 1996

CONTACT: Office of Financing  
202-219-3350

## RESULTS OF TREASURY'S AUCTION OF 15-DAY BILLS

Tenders for \$14,008 million of 15-day bills to be issued April 3, 1996 and to mature April 18, 1996 were accepted today (CUSIP: 912794Y32).

### RANGE OF ACCEPTED COMPETITIVE BIDS:

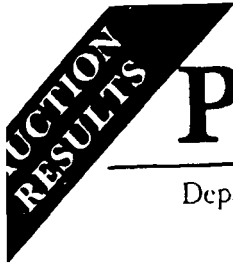
	<u>Discount Rate</u>	<u>Investment Rate</u>	<u>Price</u>
Low	5.27%	5.37%	99.780
High	5.31%	5.39%	99.779
Average	5.29%	5.37%	99.780

Tenders at the high discount rate were allotted 69%.  
The investment rate is the equivalent coupon-issue yield.

### TENDERS RECEIVED AND ACCEPTED (in thousands)

	<u>Received</u>	<u>Accepted</u>
TOTALS	\$41,567,200	\$14,008,000
Type		
Competitive	\$41,567,200	\$14,008,000
Noncompetitive	<u>0</u>	<u>0</u>
Subtotal, Public	\$41,567,200	\$14,008,000
Federal Reserve	0	0
Foreign Official		
Institutions	<u>0</u>	<u>0</u>
TOTALS	\$41,567,200	\$14,008,000

5.28 -- 99.780    5.30 -- 99.779



# PUBLIC DEBT NEWS



Department of the Treasury • Bureau of the Public Debt • Washington, DC 20239

FOR IMMEDIATE RELEASE  
April 2, 1996

CONTACT: Office of Financing  
202-219-3350

## RESULTS OF TREASURY'S AUCTION OF 22-DAY BILLS

Tenders for \$11,062 million of 22-day bills to be issued April 3, 1996 and to mature April 25, 1996 were accepted today (CUSIP: 912794Y40).

### RANGE OF ACCEPTED COMPETITIVE BIDS:

	<u>Discount</u> <u>Rate</u>	<u>Investment</u> <u>Rate</u>	<u>Price</u>
Low	5.23%	5.33%	99.680
High	5.25%	5.34%	99.679
Average	5.25%	5.34%	99.679

Tenders at the high discount rate were allotted 97%.  
The investment rate is the equivalent coupon-issue yield.

### TENDERS RECEIVED AND ACCEPTED (in thousands)

	<u>Received</u>	<u>Accepted</u>
TOTALS	\$39,871,500	\$11,062,155
Type		
Competitive	\$39,871,500	\$11,062,155
Noncompetitive	<u>0</u>	<u>0</u>
Subtotal, Public	\$39,871,500	\$11,062,155
Federal Reserve	0	0
Foreign Official		
Institutions	<u>0</u>	<u>0</u>
TOTALS	\$39,871,500	\$11,062,155

5.24 -- 99.680

## PUBLIC DEBT NEWS



Department of the Treasury • Bureau of the Public Debt • Washington, DC 20239

FOR IMMEDIATE RELEASE  
April 2, 1996

CONTACT: Office of Financing  
202-219-3350

## RESULTS OF TREASURY'S AUCTION OF 52-WEEK BILLS

Tenders for \$18,937 million of 52-week bills to be issued April 4, 1996 and to mature April 3, 1997 were accepted today (CUSIP: 9127942N3).

RANGE OF ACCEPTED  
COMPETITIVE BIDS:

	<u>Discount Rate</u>	<u>Investment Rate</u>	<u>Price</u>
Low	5.15%	5.43%	94.793
High	5.17%	5.46%	94.773
Average	5.17%	5.46%	94.773

Tenders at the high discount rate were allotted 46%.  
The investment rate is the equivalent coupon-issue yield.

## TENDERS RECEIVED AND ACCEPTED (in thousands)

	<u>Received</u>	<u>Accepted</u>
TOTALS	\$56,035,579	\$18,937,179
Type		
Competitive	\$48,856,750	\$11,758,350
Noncompetitive	<u>1,142,429</u>	<u>1,142,429</u>
Subtotal, Public	\$49,999,179	\$12,900,779
Federal Reserve	4,750,000	4,750,000
Foreign Official Institutions	<u>1,286,400</u>	<u>1,286,400</u>
TOTALS	\$56,035,579	\$18,937,179

5.16 -- 94.783

DEPARTMENT OF THE TREASURY

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

FOR RELEASE AT 2:30 P.M.  
April 2, 1996

CONTACT: Office of Financing  
202/219-3350

TREASURY'S WEEKLY BILL OFFERING

The Treasury will auction two series of Treasury bills totaling approximately \$27,000 million, to be issued April 11, 1996. This offering will result in a paydown for the Treasury of about \$325 million, as the maturing weekly bills are outstanding in the amount of \$27,324 million.

Federal Reserve Banks hold \$6,607 million of the maturing bills for their own accounts, which may be refunded within the offering amount at the weighted average discount rate of accepted competitive tenders.

Federal Reserve Banks hold \$3,612 million as agents for foreign and international monetary authorities, which may be refunded within the offering amount at the weighted average discount rate of accepted competitive tenders. Additional amounts may be issued for such accounts if the aggregate amount of new bids exceeds the aggregate amount of maturing bills.

Tenders for the bills will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D. C. This offering of Treasury securities is governed by the terms and conditions set forth in the Uniform Offering Circular (31 CFR Part 356) for the sale and issue by the Treasury to the public of marketable Treasury bills, notes, and bonds.

Details about each of the new securities are given in the attached offering highlights.

oOo

Attachment

RR-987

*For press releases, speeches, public schedules and official biographies, call our 24-hour fax line at (202) 622-2040*



**HIGHLIGHTS OF TREASURY OFFERINGS OF WEEKLY BILLS  
TO BE ISSUED APRIL 11, 1996**

April 2, 1996

**Offering Amount** . . . . . \$13,500 million \$13,500 million

**Description of Offering:**

Term and type of security . . . . .	91-day bill	182-day bill
CUSIP number . . . . .	912794 2Z 6	912794 3K 8
Auction date . . . . .	April 8, 1996	April 8, 1996
Issue date . . . . .	April 11, 1996	April 11, 1996
Maturity date . . . . .	July 11, 1996	October 10, 1996
Original issue date . . . . .	January 11, 1996	April 11, 1996
Currently outstanding . . . . .	\$14,100 million	- - -
Minimum bid amount . . . . .	\$10,000	\$10,000
Multiples . . . . .	\$ 1,000	\$ 1,000

**The following rules apply to all securities mentioned above:**

**Submission of Bids:**

Noncompetitive bids . . . . . Accepted in full up to \$1,000,000 at the average discount rate of accepted competitive bids

Competitive bids . . . . .

- (1) Must be expressed as a discount rate with two decimals, e.g., 7.10%.
- (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all discount rates, and the net long position is \$2 billion or greater.
- (3) Net long position must be determined as of one half-hour prior to the closing time for receipt of competitive tenders.

**Maximum Recognized Bid**

at a Single Yield . . . . . 35% of public offering

**Maximum Award** . . . . . 35% of public offering

**Receipt of Tenders:**

Noncompetitive tenders . . . . . Prior to 12:00 noon Eastern Daylight Saving time on auction day

Competitive tenders . . . . . Prior to 1:00 p.m. Eastern Daylight Saving time on auction day

**Payment Terms** . . . . . Full payment with tender or by charge to a funds account at a Federal Reserve Bank on issue date

TREASURY



NEWS

OFFICE OF PUBLIC AFFAIRS • 1500 PENNSYLVANIA AVENUE, N.W. • WASHINGTON, D.C. • 20220 • (202) 622-2960

For Immediate Release  
April 3, 1996

Contact: Calvin Mitchell  
(202) 622-2920

### UNITED STATES AND LUXEMBOURG SIGN NEW INCOME TAX CONVENTION

The Treasury Department announced that a new income tax Convention with Luxembourg was signed today in Luxembourg City. Diplomatic notes were exchanged at the time of the signing giving effect to a Memorandum of Understanding interpreting a number of provisions of the new Convention. The new Convention will replace the existing Convention between the United States and Luxembourg, which was signed in 1962 and has been in effect, unamended, since then. The new Convention will enter into force after the countries have exchanged instruments of ratification.

The new Convention generally follows the pattern of the Organization for Economic Cooperation and Development (OECD) Model Convention and of recent U.S. treaties with other developed countries. The withholding rates on investment income in the proposed Convention are generally the same as those in the present U.S.-Luxembourg treaty. All U.S.-source and most Luxembourg-source direct investment dividends are subject to taxation at source at a rate of 5 percent. However, Luxembourg-source dividends will be exempt from source taxation if derived by a 10-percent shareholder from a company engaged in the active conduct of a trade or business in Luxembourg.

The Convention provides anti-abuse rules for certain classes of investment income, including dividends paid by non-taxable conduit entities, such as U.S. RICs and REITs. The proposed Convention preserves the U.S. right to impose its branch tax on U.S. branches of Luxembourg corporations, which is not preserved under the present treaty. In other respects, the taxation of business income and various forms of personal services income under the proposed Convention substantially follows the pattern of recent U.S. treaties and the OECD Model.

RR-988





Like other recently concluded U.S. treaties, the new Convention contains detailed rules, known as the "Limitation on Benefits" Article, intended to prevent third-country residents from benefitting inappropriately from the Convention. The Limitation on Benefits article lists a series of attributes, *e.g.*, the ownership and base erosion test, the publicly-traded test, and the active trade or business and substantiality test, that entitle residents of the Contracting States to obtain some or all of the benefits of the Convention. The new Convention contains a variation on certain derivative benefits provisions contained in recent treaties between the United States and member States of the European Union (EU). Subject to certain conditions, companies resident in one of the Contracting States may be entitled to benefits if certain specified owners of the companies reside in the EU or in a NAFTA country. The Article also contains a provision allowing the competent authorities certain discretionary powers to grant benefits and to develop agreed applications and to exchange information necessary for carrying out the provisions of the Article. The present Convention does not contain a comprehensive limitation on benefits provision.

The new Convention contains standard mutual agreement rules. These rules provide for cooperation between the competent authorities to resolve disputes that may arise under the Convention and cases of double taxation not provided for in the Convention.

The new Convention contains rules for the exchange of information that make clear that each Contracting State will provide to the other State the broadest possible measure of assistance with respect to matters covered by the Convention. The Memorandum of Understanding clarifies that certain information of financial institutions may be obtained and provided to certain U.S. authorities only in accordance with the terms of the proposed treaty between the U.S. and Luxembourg on Mutual Legal Assistance in Criminal Matters. For exchange of information purposes, the Convention applies to taxes of every kind imposed by a Contracting State.

The new Convention will be sent to the Senate for its advice and consent to ratification when the Mutual Legal Assistance treaty is signed by the two governments. The new Convention will enter into force on the day of the exchange of instruments of ratification. The Convention will have effect with respect to taxes withheld at source for payments made or credited on or after the first day of January following entry into force. In respect of taxes on other income and on capital it will take effect with respect to taxable years beginning on or after the first day of January following entry into force. Where the present Convention affords a more favorable result for a taxpayer than the new Convention, the taxpayer may elect to continue to apply the provisions of the present Convention, in its entirety, for one additional year.

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Copies of the new Convention, along with the notes and Memorandum of Understanding, are available from the Office of Public Affairs, Room 2315, U.S. Treasury Department, Washington, D.C. 20220.

-30-

4/3/96

CONVENTION BETWEEN THE GOVERNMENT OF THE  
GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT  
OF THE UNITED STATES OF AMERICA  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE  
PREVENTION OF FISCAL EVASION WITH RESPECT TO  
TAXES ON INCOME AND CAPITAL

The Government of the Grand Duchy of Luxembourg and the  
Government of the United States of America, desiring to  
conclude a convention for the avoidance of double taxation  
and the prevention of fiscal evasion with respect to taxes  
on income and capital have agreed as follows:

ARTICLE 1

GENERAL SCOPE

1. This Convention shall apply only to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. The Convention shall not restrict in any manner any benefit now or hereafter accorded:

a) by the laws of either Contracting State; or

b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of the Convention except paragraph 4 of this Article, the United States may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if the Convention had not come into effect. For this purpose, the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax, but only for a period of 10 years following such loss.

4. The provisions of paragraph 3 shall not affect:

a) the benefits conferred by the United States under paragraph 2 of Article 9 (Associated Enterprises), under subparagraph 1(b) of Article 19 (Pensions, Social Security, and Annuities), and under Articles 25 (Relief From Double Taxation), 26 (Non-Discrimination), and 27 (Mutual Agreement

Procedure); and

b) the benefits conferred by the United States under Articles 20 (Government Service), 21 (Students, Trainees, Teachers, and Researchers), and 29 (Diplomatic Agents and Consular Officers), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, the United States.

5. a) Notwithstanding any other agreement to which the Contracting States may be parties, a dispute concerning whether a measure is within the scope of this Convention shall be considered only by the competent authorities of the Contracting States, as defined in subparagraph 1(e) of Article 3 (General Definitions) of this Convention, and the procedures under this Convention exclusively shall apply to the dispute.

b) Unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention shall apply with respect to that measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade. No national treatment or most-favored-nation obligation under any other agreement shall apply with respect to that measure.

c) For the purposes of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any other form of measure.

## ARTICLE 2

### TAXES COVERED

1. The existing taxes to which this Convention shall apply are:

a) in the United States:

(i) the Federal income taxes imposed by the Internal Revenue Code (but excluding social security taxes), and

(ii) the Federal excise taxes imposed on insurance premiums paid to foreign insurers. The Convention shall, however, not apply to the excise taxes imposed on premiums paid to foreign insurers for reinsurance. The Convention shall apply to the excise taxes imposed on premiums paid to foreign insurers for insurance other than reinsurance only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to exemption from such taxes under an income tax convention that applies to such taxes;

b) in Luxembourg:

(i) the income tax on individuals, including the surcharge thereon for the benefit of the employment fund (l'impôt sur le revenu des personnes physiques, y compris la contribution au fonds pour l'emploi);

(ii) the corporation tax, including the surcharge thereon for the benefit of the employment fund (l'impôt sur le revenu des collectivités, y compris la contribution au fonds pour l'emploi);

(iii) the tax on fees of directors of companies (l'impôt spécial sur les tantièmes);

(iv) the capital tax (l'impôt sur la fortune); and

(v) the communal trade tax (l'impôt commercial communal).

2. The Convention shall also apply to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws and of any official published material concerning the application of the Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term "person" includes an individual, an estate, a trust, a partnership, a company, and any other body of persons;

b) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

d) the term "international traffic" means any transport by a ship or aircraft, except when such transport is operated solely between places in a Contracting State;

e) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate; and

(ii) in Luxembourg: the Minister of Finance or his authorized representative;

f) the term "United States" means the United States of America, but does not include Puerto Rico,



the Virgin Islands, Guam, or any other United States possession or territory;

g) the term "Luxembourg" means the Grand Duchy of Luxembourg;

h) the term "national," in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

i) the term "beneficial owner" means in the case of a company that is treated as a partnership, or that is otherwise not subject to tax as a body corporate, under the laws of the other Contracting State, the persons that are subject to tax on the income of the company under the laws of the other Contracting State.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 27 (Mutual Agreement Procedure), have the meaning that it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4

RESIDENCE

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that

a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein;

b) in the case of income derived by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners, beneficiaries or grantor;

c) an individual who is a U.S. citizen or an alien admitted to the United States for permanent residence (a "green card" holder) and who is not a resident of Luxembourg under this paragraph is to be treated as a resident of the United States for purposes of this paragraph, only if the individual has a substantial presence, permanent home or habitual abode in the United States;

d) the Government of a Contracting State or a

political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority is, for purposes of this paragraph, to be treated as a resident of that Contracting State; and

e) a person that under the laws of a Contracting State is a resident of that State and that is wholly or partially exempt from tax in that State by virtue of the fact that it is organized and operated exclusively either:

(i) for a religious, charitable, educational, scientific, or other public purpose; or

(ii) to provide pensions or other benefits to employees pursuant to a plan

is to be treated for purposes of this paragraph as a resident of that Contracting State.

2. Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

b) if the State in which he has his center of

vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national; or

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities shall endeavor to settle the question by mutual agreement, having regard to the person's place of effective management, the place where it is incorporated or constituted, and any other relevant factors. In the absence of such agreement, such person shall not be considered to be a resident of either Contracting State for purposes of enjoying benefits under this Convention.

## ARTICLE 5

### PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business

through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially

a) a place of management;

b) a branch;

c) an office;

d) a factory;

e) a workshop; and

f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of natural resources, constitutes a permanent establishment only if it lasts more than twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

c) the maintenance of a stock of goods or

merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and

f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to e).

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to which paragraph 6 applies, is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business as independent agents.

7. The fact that a company that is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State, or that carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

#### ARTICLE 6

##### INCOME FROM REAL PROPERTY (IMMOVABLE PROPERTY)

1. Income derived by a resident of a Contracting State from real property (immovable property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term "real property (immovable property)" shall have the meaning that it has under the laws of the Contracting State in which the property in question is situated.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other

form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

5. A resident of a Contracting State who is liable to tax in the other Contracting State on income from real property situated in the other Contracting State may elect to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in such other State.

#### ARTICLE 7

##### BUSINESS PROFITS

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as are attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be



attributed to that permanent establishment the business profits that it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses that are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of this Convention, the business profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment and shall be determined by the same method of accounting year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income that are dealt with separately in other Articles of the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. In applying paragraphs 1 and 2 of Article 7 (Business Profits), paragraph 4 of Article 10 (Dividends), paragraph 3 of Article 12 (Interest), paragraph 3 of Article 13 (Royalties), paragraph 3 of Article 14 (Gains), Article 15 (Independent Personal Services) and paragraph 2 of Article 22 (Other Income), any income or gain attributable to a permanent establishment or fixed base during its existence is taxable in the Contracting State where such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.

## ARTICLE 8

### SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits derived from the rental of ships or aircraft on a full basis. They also include profits from the rental of ships or aircraft on a bareboat (time or voyage) basis if

such ships or aircraft are operated in international traffic by the lessee, or if the rental income is incidental to profits from the operation of ships or aircraft in international traffic. Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State, shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international traffic by the enterprise.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used in international traffic shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a pool, a joint business, or an international operating agency.

## ARTICLE 9

### ASSOCIATED ENTERPRISES

1. Where:

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

b) the same persons participate directly or

indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations that differ from those that would be made between independent enterprises, then, any profits that, but for those conditions, would have accrued to one of the enterprises, but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the other Contracting State agrees that the profits so included are profits that would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those that would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. a) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, except as otherwise provided in paragraph 6, the tax so charged shall not exceed:

(i) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 percent of the voting stock of the company paying the dividends;  
or

(ii) 15 percent of the gross amount of the dividends in all other cases.

b) Notwithstanding the provisions of subparagraph a)(i), dividends paid by a company that is a resident of Luxembourg shall not be taxable in Luxembourg if the beneficial owner of the dividends is a company that is a resident of the United States and that has had, during an uninterrupted period of two years preceding the date of payment of the dividends, a direct

shareholding of at least 25 percent of the voting stock of the company paying the dividends. This provision only applies to dividends attributable to that part of the shareholding that has been owned without interruption by the beneficial owner during such two-year period. Furthermore, the provisions of this subparagraph shall only apply if the Luxembourg company that distributed the dividend is engaged in the active conduct of a trade or business in Luxembourg (other than the business of making or managing investments, unless such business is conducted by a banking or insurance company).

c) This paragraph 2 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. a) The term "dividends" means income from shares, "jouissance" shares, or "jouissance" rights, mining shares, founders' shares, or other rights, not being debt-claims participating in profits, as well as income treated as a distribution by the taxation laws of the State of which the company making the distribution is a resident; and income from arrangements, including debt obligations, that carry the right to participate in, or are determined with reference to, profits of the issuer or one of its associated enterprises, to the extent that such income is characterized as a dividend under

the laws of the Contracting State in which the income arises.

b) The provisions of this Article shall apply where a beneficial owner of dividends holds depository receipts evidencing ownership of the shares in respect of which the dividends are paid, in lieu of the shares themselves.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

5. Where a company that is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid forms part of the business property of a permanent establishment or pertains

to a fixed base situated in that other State, nor, except as provided in Article 11 (Branch Tax), subject the company's undistributed profits to a tax, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Subparagraph a)(i) of paragraph 2 shall not apply in the case of dividends paid by a United States person that is a Regulated Investment Company or a Real Estate Investment Trust (REIT). In the case of a United States person that is a REIT, subparagraph a)(ii) of paragraph 2 also shall not apply, unless the dividend is beneficially owned by an individual holding a less than 10 percent interest in the REIT.

## ARTICLE 11

### BRANCH TAX

Notwithstanding any other provision of this Convention, a company that is a resident of Luxembourg may be subject in the United States to a tax in addition to the tax on profits. Such additional tax, however, may not exceed 5 percent of the "dividend equivalent amount" of the business profits of the company that are either attributable to a permanent establishment in the United States or are subject to tax on a net basis in the United States under Article 6 (Income from Real Property (Immovable Property)) or paragraph 1 of Article 14 (Gains).



ARTICLE 12

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.

2. The term "interest" as used in this Convention means income from debt claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, unless described in paragraph 3 of Article 10 (Dividends), and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds, or debentures, and all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purposes of this Convention.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the interest is attributable to such permanent establishment or fixed base. In such case

the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

4. Interest shall be deemed to arise in a Contracting State when:

- a) the payer is a resident of that State; or
- b) the payer, whether a resident of a Contracting State or not, has in that Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest paid was incurred and such interest is borne by such permanent establishment or fixed base.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt claim for which it is paid, exceeds the amount that would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the taxation law of each State, due regard being had to the other provisions of this Convention.

6. Notwithstanding the provisions of paragraph 1:

- a) interest arising in a Contracting State that is determined with reference to the profits of the

issuer or of one of its associated enterprises, and paid to a resident of the other Contracting State, may be taxed in that other State;

b) however, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph 2(a)(ii) of Article 10 (Dividends).

c) Interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law.

## ARTICLE 13

### ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.

2. The term "royalties" as used in this Convention means:

a) payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work (including

cinematographic films, and audio and video tapes and disks and other means of reproduction), any patent, trademark, design or model, plan, secret formula or process, or other like right or property, for information concerning industrial, commercial, or scientific experience;

b) gain derived from the alienation of any property described in subparagraph a), provided that such gain is contingent on the productivity, use, or disposition of the property.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the royalties are attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

4. Royalties shall be deemed to arise in a Contracting State when they are in consideration of the use of, or the right to use, property, information or experience in that State.

5. Where, by reason of a special relationship between

the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

#### ARTICLE 14

##### GAINS

1. Gains derived by a resident of a Contracting State that are attributable to the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Article the term "real property situated in the other Contracting State" shall include:

a) real property referred to in Article 6 (Income from Real Property);

b) a United States real property interest, as defined in the Internal Revenue Code on the date of signature of this Convention, and as amended from time

to time without changing the general principles in this paragraph; and

c) shares or comparable corporate rights in a company that is a resident of Luxembourg, the assets of which company consist for the greater part of real property situated in Luxembourg.

3. Gains from the alienation of personal property (movable property) that are attributable to a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or that are attributable to a fixed base that is available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, and gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or such a fixed base, may be taxed in that other State.

4. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft, or containers operated or used in international traffic or personal property (movable property) pertaining to the operation or use of such ships aircraft or containers shall be taxable only in that State.

5. Gains from the alienation of any property other than property referred to in paragraphs 1 through 4 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by an individual who is a resident of a Contracting State from personal services in an independent capacity shall be taxable only in that State unless the individual has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State, but only so much of it as is attributable to that fixed base.

2. The term "personal services in an independent capacity" includes especially independent scientific, literary, artistic, educational, or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

3. In determining the income described in paragraph 1 that is taxable in the other Contracting State, the principles of paragraph 3 of Article 7 (Business Profits) shall apply.

ARTICLE 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 17 (Directors' Fees), 19 (Pensions, Social Security, and Annuities) and 20 (Government Service), salaries, wages, and other similar remuneration derived by a resident of a

Contracting State in respect of an employment shall be taxable only in that State, unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable year concerned;

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c) the remuneration is not borne by a permanent establishment or a fixed base that the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised continuously or predominantly aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State. If that State fails to tax the income derived from such employment, such



income shall be taxable in the State of which the employee is a resident.

ARTICLE 17

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State for services rendered in the other Contracting State in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State may be taxed in that other Contracting State.

ARTICLE 18

ARTISTES AND SPORTSMEN

1. Notwithstanding Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio, or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed ten thousand United States dollars (\$10,000), or its

equivalent in Luxembourg francs, for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income of that other person, notwithstanding the provisions of Articles 7 (Business Profits) and 15 (Independent Personal Services), may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related thereto (whether or not residents of that State) participate directly or indirectly in the receipts or profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

#### ARTICLE 19

##### PENSIONS, SOCIAL SECURITY, AND ANNUITIES

1. Subject to the provisions of Article 20 (Government Service):

a) pensions and other similar remuneration derived and beneficially owned by a resident of a Contracting State in consideration of past employment shall be taxable only in that State; and

b) notwithstanding the provisions of subparagraph

a), payments made by a Contracting State, or a statutory body thereof, under provisions of the social security or similar legislation of a Contracting State to a resident of the other Contracting State or to a citizen of the United States shall be taxable only in the first mentioned State.

2. Annuities derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during a specified number of years under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

## ARTICLE 20

### GOVERNMENT SERVICE

1. Notwithstanding the provisions of Articles 15 (Independent Personal Services), 16 (Dependent Personal Services), and 18 (Artistes and Sportsmen):

a) remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall, subject to the provisions of subparagraph b), be taxable only in that State;

b) such remuneration, however, shall be taxable

only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. Notwithstanding the provisions of Article 19 (Pensions, Social Security, and Annuities):

a) any pension paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall, subject to the provisions of subparagraph b), be taxable only in that State;

b) such pension, however, shall be taxable only in the other Contracting State if the individual is a resident and a national of that State.

3. The provisions of Articles 16 (Dependent Personal Services), 17 (Directors' Fees), and 19 (Pensions, Social Security, and Annuities) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

STUDENTS, TRAINEES, TEACHERS, AND RESEARCHERS

1. Payments received by a student, apprentice, or business trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of full-time education at a recognized educational institution, or for full-time training, shall not be taxed in that State, provided that such payments are for the purpose of his maintenance, education, or training. The exemption from tax provided by this Article shall apply to an apprentice or business trainee only for a period of time not exceeding two years from the date he first arrives in the first-mentioned Contracting State for the purpose of his training. If the visit exceeds two years, the first-mentioned State may tax the individual under its national law for the entire period of the visit, unless in a particular case the competent authorities of the States agree otherwise.

2. A resident of one of the Contracting States who, at the invitation of a university, college, school, or other recognized educational institutions situated in the other Contracting State, is temporarily present in the other State solely for the purpose of teaching, or engaging in research, or both, at that educational institution shall, for a period not exceeding two years from the date he first arrives in

the other State, be exempt from tax by the other State on his remuneration for such teaching or research. If the visit exceeds two years, the other State may tax the individual under its national law for the entire period of the visit, unless in a particular case the competent authorities of the States agree otherwise.

3. No exemption shall be granted under paragraph 2 with respect to any remuneration for research carried on for the benefit of any person other than the educational institution that extended the invitation referred to in paragraph 2.

## ARTICLE 22

### OTHER INCOME

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 (Income from Real Property (Immovable Property)), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base

situated therein, and the income is attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services), as the case may be, shall apply.

## ARTICLE 23

### CAPITAL

1. Capital represented by real property (immovable property) referred to in Article 6 (Income from Real Property), owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital of an enterprise of a Contracting State operating in international traffic as referred to in Article 8 (Shipping and Air Transport) represented by ships, aircraft or containers and movable property pertaining to

the operation of such ships, aircraft or containers, shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

#### ARTICLE 24

##### LIMITATION ON BENEFITS

1. A resident of a Contracting State shall be entitled to all the benefits of this Convention only if it is a "qualified resident" as defined in this Article. A person that is not a qualified resident may be entitled to benefits of this Convention with respect to certain items of income under paragraphs 3, 4 and 6.

2. A resident of a Contracting State is a qualified resident for a taxable year only if:

a) that person is an individual;

b) that person is a Contracting State, a political subdivision or a local authority thereof or any agency or instrumentality of any such government, subdivision or authority;

c) that person is a company, if:

(i) at least 50 percent of the principal class of shares in the company is ultimately owned by persons that are qualified residents or U.S. citizens pursuant to this paragraph; and

(ii) amounts paid or accrued by the company



during its taxable year

A) to persons that are neither qualified residents nor U.S. citizens, and

B) that are deductible for income tax purposes in the company's state of residence (but not including arm's length payments in the ordinary course of business for services or purchases or rentals of tangible property including immovable property),

do not exceed 50 percent of the gross income of the company for that year;

d) that person is a company whose principal class of shares is substantially and regularly traded on one or more recognized stock exchanges; the shares in a class of shares are considered to be substantially and regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded in such stock exchange or exchanges during the previous taxable year is at least 6 percent of the average number of shares outstanding in that class during that taxable year;

e) that person is a company that is controlled, directly or indirectly, by publicly-traded corporations described in subparagraph d), provided its payments to persons who are not qualified residents satisfy the requirements of subparagraph c)(ii); or

f) that person is a not-for-profit organization that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are qualified residents.

3. a) A resident of a Contracting State that is not a qualified resident shall be entitled to the benefits of this Convention with respect to an item of income derived from the other State, if such resident is directly (or indirectly through an associated enterprise) engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments, unless such business is conducted by a banking or insurance company), and:

(i) the item of income is derived in connection with the trade or business in the first-mentioned State, and such trade or business is substantial in relation to the resident's proportionate interest in the activity in the other State that generated the income; or

(ii) the item of income derived from the other State is incidental to that trade or business in the first-mentioned State.

b) The item of income is derived in connection with a trade or business if:

(i) such item of income accrues in the ordinary course of such trade or business and the beneficial owner owns, directly or indirectly, less than 5 percent of the shares (or other comparable rights) in the payer of the item of income; or

(ii) the activity in the other State that generated the item of income is a line of business that forms a part of or is complementary to the trade or business conducted in the first-mentioned State by the income recipient.

c) Whether a trade or business is substantial for purposes of this paragraph will be determined based on all the facts and circumstances. In any case, however, a trade or business will be considered to be substantial if, for the preceding taxable year, each of the following three ratios for factors that are related to the trade or business within the first-mentioned State equals at least 7.5 percent and the average equals at least 10 percent:

- (i) the asset value;
- (ii) gross income; and
- (iii) payroll expense

in relation to the proportionate share of the asset value, the gross income and the payroll expense, respectively, that are related to the

activity that generated the income in the other State. If any separate factor does not meet the 7.5 percent test in the first preceding taxable year, the average of the ratios for that factor for the three preceding taxable years may be substituted. If the resident owns, directly or indirectly, less than 100 percent of an activity conducted in either State, only the resident's proportionate interest in such activity will be taken into account for purposes of the test described in this subparagraph c).

d) The item of income derived from the other State is incidental to a trade or business conducted in the first-mentioned State if the income is not described in subparagraph b) and the production of such item of income facilitates the conduct of the trade or business in the first-mentioned State (for example, the investment of working capital of such trade or business).

4. Except as provided in subparagraph c), a company that is a resident of a Contracting State shall also be entitled to all the benefits of this Convention if:

a) 95 percent of the company's shares is ultimately owned by seven or fewer residents of a state that is a party to NAFTA or that is a member State of the European Union and with which the other State has a

comprehensive income tax convention; and

b) amounts paid or accrued by the company during its taxable year

(i) to persons that are not residents of a state that is a party to NAFTA, residents of a member State of the European Union, or U.S. citizens, and

(ii) that are deductible for income tax purposes in the company's state of residence (but not including arm's length payments in the ordinary course of business for services or purchases or rentals of tangible property), do not exceed 50 percent of the gross income of the company for that year.

c) Notwithstanding the other provisions of this paragraph 4, a resident described in this paragraph will be entitled to the benefits of Articles 10 (Dividends), 11 (Branch Tax), 12 (Interest), and 13 (Royalties) with respect to an item of income described in one of such articles only if the comprehensive income tax convention referred to in subparagraph a) between one of the States and a third state provides a rate of tax equal to or less than the rate provided under this Convention with respect to the item of income derived from the other State.

d) (i) The term "resident of a member State of

the European Union" means a person that would be entitled to the benefits of a comprehensive income tax convention in force between any member State of the European Union and the Contracting State from which the benefits of this Convention are claimed, provided that if such convention does not contain a comprehensive Limitation on Benefits article (including provisions similar to those of subparagraphs 2(c) and 2(d) and paragraph 3), the person would be entitled to the benefits of this Convention under the principles of paragraphs 2 or 3 if such person were a resident of one of the Contracting States under Article 4 (Resident) of this Convention.

(ii) The term "resident of a state that is a party to NAFTA" means a person that would be entitled to the benefits of a comprehensive income tax convention in force between any member State of the North American Free Trade Agreement and the Contracting State from which the benefits of this Convention are claimed, provided that if such convention does not contain a comprehensive Limitation on Benefits article (including provisions similar to those of subparagraphs 2(c) and 2(d) and paragraph 3), the person would be entitled to the benefits of this Convention under

the principles of paragraphs 2 or 3 if such person were a resident of one of the Contracting States under Article 4 (Resident) of this Convention.

(iii) When applying the principles of paragraph 3, an item of income derived from one of the Contracting States with respect to which treaty benefits are claimed must be derived in connection with an active trade or business conducted by the resident of the third state in that state.

5. Notwithstanding the other provisions of this Convention, where:

a) an enterprise of a Contracting State derives income from the other Contracting State,

b) that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, and

c) the enterprise is exempt from tax in the first-mentioned State on the profits attributable to the permanent establishment,

the tax benefits that otherwise would apply under the Convention will not apply to any item of income on which the combined tax in the first-mentioned State and in the third jurisdiction is less than 50 percent of the tax that would be imposed in the first-mentioned State if the income were earned in that State by the enterprise and were not

attributable to the permanent establishment. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax in the other State at a rate not exceeding 15 percent of the gross amount thereof. Any other income to which the provisions of this paragraph apply shall be subject to tax under the provisions of the domestic law of the other Contracting State. The provisions of this paragraph shall not apply if the income derived from the other Contracting State is in connection with or incidental to the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making or managing investments unless these activities are banking or insurance activities carried on by a bank or insurance company).

6. Notwithstanding the other provisions of this Article, the benefits of this Convention shall not apply to the disproportionate part of the income (i.e., that part of the income exceeding the income that would have been received absent the terms or arrangements mentioned in subparagraph a) of this paragraph) derived from a Contracting State by a company that is resident of the other Contracting State if that company, or a company that controls that company, has outstanding a class of shares:

a) the terms of which, or which is subject to other arrangements that, entitle its holders to a portion of the



income of the company derived from the first-mentioned State that is larger than the portion such holders would receive absent such terms or arrangements; and

b) 50 percent or more of the vote and value of which is owned by persons who are not qualified residents of either a Contracting State or of a State that is a party to NAFTA or that is a member State of the European Union.

7. A resident of a Contracting State that is not entitled to the benefits of the Convention under the preceding paragraphs of this Article shall, nevertheless, be granted the benefits of the Convention if the competent authority of the other Contracting State so determines.

8. The following provisions apply for purposes of this Article:

a) The term "a recognized stock exchange" means:

(i) Any stock exchange registered with the U.S. Securities and Exchange Commission as a national securities exchange for purposes of the U.S. Securities Exchange Act of 1934;

(ii) the Luxembourg stock exchange;

(iii) the NASDAQ System owned by the National Association of Securities Dealers; and

(iv) any other stock exchange agreed upon by the competent authorities.

With respect to closely-held companies, the term "recognized stock exchange" shall not include the stock exchanges

mentioned under subparagraphs (ii) and (iii), and if so indicated in mutual agreement between the competent authorities, under subparagraph (iv).

b) The term "closely-held company" means a company of which 50 percent or more of the principal class of shares is owned by persons, other than qualified residents, residents of a member State of the European Union, or residents of a State that is a party to NAFTA, each of whom beneficially owns, directly or indirectly, alone or together with related persons, more than 5 percent of such shares for more than 30 days during a taxable year.

9. The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Article, including the publication of regulations or other public guidance. The competent authorities shall, in accordance with the provisions of Article 28 (Exchange of Information), exchange such information as is necessary for carrying out the provisions of this Article.

10. Notwithstanding the other provisions of this Article, Luxembourg holding companies, within the meaning of the Act (loi) of July 31, 1929 and the Decree (arrêté grand-ducal) of December 17, 1938, or any subsequent revision thereof, or such other companies that enjoy a similar

special fiscal treatment by virtue of the laws of Luxembourg, are not residents.

ARTICLE 25

RELIEF FROM DOUBLE TAXATION

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States income tax:

a) the income tax paid to Luxembourg by or on behalf of such citizen or resident; and

b) in the case of a United States company owning at least 10 percent of the voting power of a company which is a resident of Luxembourg and from which the United States company receives dividends, the income tax paid to Luxembourg by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

For the purposes of this paragraph, the taxes referred to in subparagraph 1(b) and paragraph 2 of Article 2 (Taxes Covered), other than the capital tax and that portion of the communal trade tax computed on a basis other than profits, shall be considered income taxes.

2. In Luxembourg double taxation shall be eliminated

as follows:

a) where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the United States, Luxembourg shall, subject to the provisions of subparagraphs b) and c), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted;

b) where a resident of Luxembourg derives income which, in accordance with the provisions of Article 10 (Dividends) and subparagraph 6(b) of Article 12 (Interest) may be taxed in the United States, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the United States. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the United States; and

c) where a company that is a resident of Luxembourg derives dividends from United States sources, Luxembourg shall exempt such dividends from tax, provided that the company that is a resident of Luxembourg has held directly since the beginning of its

accounting year at least 10 percent of the capital of the company paying the dividends, and if this company is subject in the United States to an income tax corresponding to the Luxembourg corporation tax. The above-mentioned shares in the United States company are, under the same conditions, exempt from the Luxembourg capital tax.

3. Where a United States citizen is a resident of Luxembourg:

a) with respect to items of income not exempt from Luxembourg tax under paragraph 2 and that under the provisions of this Convention are exempt from United States tax or that are subject to a reduced rate of United States tax when derived by a resident of Luxembourg who is not a United States citizen, Luxembourg shall allow as a credit against Luxembourg tax, only the tax paid, if any, that the United States may impose under the provisions of this Convention, other than taxes that may be imposed solely by reason of citizenship under the saving clause of paragraph 3 of Article 1 (General Scope);

b) for purposes of computing United States tax on those items of income referred to in subparagraph a), the United States shall allow as a credit against United States tax the income tax paid to Luxembourg determined after reduction by the credit referred to in

subparagraph a); the credit so allowed shall not reduce the portion of the United States tax that is creditable against Luxembourg tax in accordance with subparagraph a); and

c) for the exclusive purpose of relieving double taxation in the United States under subparagraph b), items of income referred to in subparagraph a) shall be deemed to arise in Luxembourg to the extent necessary to avoid double taxation of such income under subparagraph b).

4. Except as provided in subparagraph c) of paragraph 3, for the purposes of allowing relief from double taxation pursuant to this Article, and subject to such source rules in the domestic laws of the Contracting States as apply for purposes of limiting the foreign tax credit, income derived by a resident of a Contracting State that may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 3 of Article 1 (General Scope)) shall be deemed to arise in that other State.

## ARTICLE 26

### NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more

burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall also apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States tax, a United States national who is not a resident of the United States and a Luxembourg national who is not a resident of the United States are not in the same circumstances.

2. The taxation on a permanent establishment that an enterprise of a Contracting State has in the other Contracting State, or of remuneration of an individual resident of a Contracting State attributable to a fixed base in the other Contracting State regularly available to that resident, shall not be less favorably levied in that other State than the taxation levied on enterprises or residents of that other State carrying on the same activities. The provisions of this paragraph shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 5 of Article 12 (Interest), or paragraph 5 of Article 13 (Royalties)

apply, interest, royalties, and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this Article shall be construed as preventing the United States from imposing a tax as described in Article 11 (Branch Tax).

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered),



apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 27

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authorities of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent

authorities of the Contracting States may agree:

a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

b) to the same allocation of income, deductions, credits, or allowances between persons;

c) to the same characterization of particular items of income;

d) to a common determination of the State in which an item of income arises; and

e) to a common meaning of a term.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Convention, including the provisions of Article 24 (Limitation on Benefits). The competent authorities of the Contracting States may each prescribe regulations to carry out the purposes of this Convention.

ARTICLE 28

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1 (General Scope). Any information received by the competent authority of a Contracting State from the competent authority of the other Contracting State shall be treated as secret in the same manner as information obtained under the domestic law of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at

variance with the laws and administrative practice of that State or of the other Contracting State;

b) to supply information which is not obtainable under the laws or in the normal course of the administration of that State or of the other Contracting State;

c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

3. Where information is requested by a Contracting State through competent authorities, the competent authority of the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writing) to the same extent that the competent authority of the other Contracting State can obtain such depositions and

documents for an investigation or proceeding under its laws and administrative practice.

4. The Contracting States undertake to lend each other support and assistance in the collection of taxes to the extent necessary to ensure that relief granted by the present Convention from taxation imposed by a Contracting State does not inure to the benefit of persons not entitled thereto. With respect to a specific request for collection assistance:

a) the requesting State must produce a copy of a document certified by its competent authority specifying that the sums referred to it for the collection of which it is requesting the intervention of the other State, are finally due and enforceable;

b) a document produced in accordance with the provisions of this paragraph shall be rendered enforceable in accordance with the laws of the requested State;

c) the requested State shall effect recovery in accordance with the rules governing the recovery of similar tax debts of its own; however, tax debts to be recovered shall not be regarded as privileged debts in the requested State; and

d) appeals concerning the existence or amount of the debt shall lie only to the competent tribunal of the requesting State.

The provisions of this paragraph shall not impose upon either Contracting State the obligation to carry out administrative measures that would be contrary to its sovereignty, security, public policy or its essential interests.

ARTICLE 29

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 30

ENTRY INTO FORCE

1. This Convention shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible.

2. The Convention shall enter into force on the day of the exchange of instruments of ratification. Its provisions allocating taxation rights shall have effect, in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January next following, and in respect of taxes on other income and on capital, for fiscal periods beginning on or after the first day of January next

following, the date on which the Convention enters into force.

3. Where any greater relief from tax would have been afforded to a person entitled to the benefits of the Convention between the United States of America and the Grand Duchy of Luxembourg with respect to taxes on income and property, signed in Washington on December 18, 1962 (hereinafter referred to as "the 1962 Convention"), under that Convention than under this Convention, the 1962 Convention shall, at the election of such person, continue to have effect in its entirety for the first assessment period or taxable year following the date on which this Convention would otherwise have effect under the provisions of paragraph 2.

4. The 1962 Convention shall cease to have effect in respect of income and capital to which this Convention applies in accordance with paragraphs 2 or 3 of this Article. The 1962 Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

#### ARTICLE 31

##### TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by

giving notice of termination at least six months before the end of any calendar year after the year of entry into force. In such event, the Convention shall cease to have effect in respect of tax withheld at the source, for amounts paid or credited on or after, and in respect of other taxes, to fiscal periods beginning on or after, the first day of January next following the expiration of the six month period.

IN WITNESS THEREOF the undersigned, being duly authorized thereto, have signed the present Convention.

DONE at \_\_\_\_\_ in duplicate, in the French and English languages, the two texts having equal authenticity, this \_\_\_\_\_ day of 1996.

FOR THE GOVERNMENT OF THE  
GRAND DUCHY OF LUXEMBOURG:

FOR THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA:



Excellency,

I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital (the "Convention") and to propose on behalf of the Government of the United States the following:

In the course of the negotiations leading to the conclusion of the Convention, the negotiators developed and agreed upon a common understanding and interpretation of the following provisions. These understandings and interpretations are intended to give guidance both to the taxpayers and the authorities of our two countries in interpreting various provisions contained in the Convention.

I. With reference to Article 11 (Branch Tax):

The term "dividend equivalent amount" shall have the meaning it has under the law of the United States, as it may be amended from time to time without changing the general principle thereof.

II. With reference to Article 19 (Pensions, Social Security, and Annuities)

It is understood that the term "other similar legislation" as used in Article 19 (Pensions, Social Security, and Annuities) is intended to refer to United States tier 1 Railroad Retirement benefits.

III. With reference to Article 24 (Limitation on Benefits)

A. It is understood that the term "any other securities exchange" includes the principal stock exchanges of Amsterdam, Brussels, Frankfurt, Hamburg, London, Madrid, Milan, Paris, Sydney, Tokyo and Toronto.

B. It is understood that the term "such other companies which enjoy a similar special fiscal treatment by virtue of the laws of Luxembourg" includes investment companies within the meaning of the Act dated March 30, 1988.

C. For purposes of determining under subparagraph 4(c) if a comprehensive income tax Convention between one of the Contracting States and a third State provides with respect to dividends a rate of tax that is equal to or less than the

rate of tax provided under the Convention, it is understood that the following two tax rates must be compared:

- a) the rate of tax to which each of the persons described in subparagraph 4 a) would be entitled if they directly held their proportionate share of the shares that gave rise to the dividends; and
- b) the rate of tax to which the same persons, if they would be residents of the Contracting State of which the recipient is a resident, would be entitled if they directly held their proportionate share of the shares that gave rise to the dividends.

D. With respect to subparagraphs 2(c) and 2(d) and paragraph 4, it is understood that a Contracting State may consider a person not to be a qualified resident, unless such person demonstrates that a percentage of its shares (including shares not issued in registered form) necessary to satisfy the ownership threshold specified in subparagraphs 2(c) and 2(d) or paragraph 4 is beneficially owned by qualified residents, or, where relevant, residents of a member State of the European Union or a State that is a party to NAFTA.

#### IV. With reference to Article 28 (Exchange of Information)

Paragraph 1 of Article 28 requires that each Contracting State provide to the other the broadest possible measure of assistance with respect to matters covered by the Convention. The Contracting States expect that the authorities in each State, including judicial authorities to the extent that they become involved in executing a request, will use their best efforts to provide the assistance requested.

Also, under paragraph 3, upon request the competent authority of a Contracting State will obtain and provide information, other than information of financial institutions, for any matter relating to the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention, but only in the same manner and to the same extent as if the competent authority of the requested State were obtaining the information for an investigation or a public court proceeding under its laws and practices. Thus, upon request the competent authority of the requested State shall obtain and provide authenticated copies of third-party books and records located in the requested State for any tax investigation or proceeding in the requesting State, so long as the laws and practices of the requested State would allow

its tax authorities to obtain such information for an investigation or a public court proceeding under its laws.

Finally, it is understood that certain information of financial institutions may be obtained and provided to certain U.S. authorities only in accordance with the terms of the Treaty between the United States of America and the Grand Duchy of Luxembourg on Mutual Legal Assistance in Criminal Matters. The scope of this obligation is set forth in that agreement.

Further, if the laws and practices in Luxembourg change in a way that permits the Luxembourg competent authority to obtain such information for purposes of enforcing and administering its tax laws or the tax laws of member States of the European Union, it is understood that such information will be obtained and provided to the U.S. competent authority to the same extent that it is obtained and provided for the enforcement and administration of such tax laws.

If the foregoing understandings and interpretations of the various provisions meet with the approval of the Government of the Grand Duchy of Luxembourg, this Note and your Note in reply thereto will constitute a common and binding understanding by our Governments of the Convention.

Accept, Your Excellency, the expression of my highest considerations.

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