

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

REPORT OF INVESTIGATION

SUBJECT		CASE NUMBER	
[REDACTED] United States Marshal (former) [REDACTED]		[REDACTED]	
OFFICE CONDUCTING INVESTIGATION		DOJ COMPONENT	
Detroit Area Office		United States Marshals Service	
DISTRIBUTION		STATUS	
<input checked="" type="checkbox"/> Field Office CFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component USMS <input type="checkbox"/> USA <input type="checkbox"/> Other		<input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

SYNOPSIS

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the United States Marshals Service (USMS) Office of Professional Responsibility (OPR) alleging that on [REDACTED], during a USMS firearms use of force briefing, the United States Marshal (USM) [REDACTED], made an inappropriate comment to a range instructor about shooting a judge.

The OIG investigation substantiated the allegation that [REDACTED] made a highly inappropriate comment about shooting a judge during the use of force briefing. In doing so, [REDACTED] violated USMS administrative policy and displayed a lack of professionalism and conduct unbecoming of a federal officer. Multiple witnesses confirmed hearing [REDACTED] make a comment about shooting a judge, although recollections as to the precise wording of the comment varied widely. The OIG did not find any evidence that [REDACTED] actually intended his comment as a threat, or that he planned to harm a judge. None of the 11 USMS witnesses to [REDACTED] comment believed that [REDACTED] was serious or that his statement presented a credible threat to the judiciary. Further, a search of [REDACTED] government email, government text messages, and associated social media sites (i.e., Instagram, Google+, Linked In, and Facebook) revealed no evidence that [REDACTED] had planned to harm a judge. [REDACTED] acknowledged to the OIG that when the firearms instructor noted that there was a new use of force policy coming out, he ([REDACTED]) said, "I guess that means that you can't shoot a judge." [REDACTED] stated that he intended the comment as a joke, but he agreed it was inappropriate.

During the course of the OIG's investigation, the OIG was advised of another inappropriate comment that [REDACTED] had made to United States District Court (USDC) Chief Judge [REDACTED] and [REDACTED], in [REDACTED], the month prior to the shooting comment. Chief Judge [REDACTED] and [REDACTED] both stated that they personally heard [REDACTED] refer to USDC Judge [REDACTED] as a

DATE	May 13, 2019	SIGNATURE	[REDACTED]
PREPARED BY SPECIAL AGENT	[REDACTED]		
DATE	May 13, 2019	SIGNATURE	<i>William Hannah</i>
APPROVED BY SPECIAL AGENT IN CHARGE	William J. Hannah		

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“squeaky wheel” based on her complaints about security issues, including most recently, a loaded firearm being allowed into her courtroom. The OIG investigation found that [REDACTED] lacked candor in denying his “squeaky wheel” comment during his OIG interview, based on the consistent and credible statements of the witnesses who personally heard [REDACTED] make the comment, as well as other witnesses who observed [REDACTED] silence when [REDACTED] confronted [REDACTED] about the comment during a subsequent meeting.

Finally, during the course of the investigation, USDC Chief Justice [REDACTED] expressed concerns to the OIG about the USMS’s failure to notify the judiciary of [REDACTED] comment about shooting a judge. The OIG found that one of the 11 USMS witnesses to [REDACTED] comment reported it to a USMS supervisor later that same day, and that the USMS supervisor reported it the next day to USMS Headquarters officials and to the USMS OPR. However, no one from the USMS ever informed the judges of [REDACTED] comment, and the judges only learned of it the following week when a former USM [REDACTED], who had been told about it by the USMS supervisor, reported it to an [REDACTED] judge with whom the former USM was friends. The OIG found that USMS policy did not require judicial notification because there was no evidence that [REDACTED] meant the comment as a credible threat against a particular judge. Nevertheless, despite this absence of a specific USMS policy requiring notification, the OIG found it concerning that no one at the USMS who had heard or learned about [REDACTED] highly inappropriate comment believed it warranted immediate notification to the Court’s Chief Judge. The OIG believes the USMS should review its policy directives to consider when and how the judiciary is notified of threat allegations against judges regardless of whether those threats are deemed credible at the time.

The United States Attorney’s Office (USAO) [REDACTED] declined criminal prosecution of [REDACTED].

Prior to the OIG investigation, [REDACTED] retired from his position at the USMS, [REDACTED].

The OIG has completed its investigation, and all criminal and administrative actions are complete. The OIG is providing this report to the USMS for its information.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency’s decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

DETAILS OF INVESTIGATION

Predication

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the United States Marshals Service (USMS) Office of Professional Responsibility (OPR) alleging that on [REDACTED] during a USMS firearms use of force briefing, United States Marshal (USM) [REDACTED] made an inappropriate comment to a range instructor about shooting a judge. During the course of the investigation, the OIG learned of allegations that the USMS did not notify the judiciary of [REDACTED] potentially threatening comment. The OIG was also informed of allegations that in the month preceding the shooting comment, during a conversation with United States District Court (USDC) Chief Judge [REDACTED], USM [REDACTED] inappropriately referred to USDC Judge [REDACTED] as a “squeaky wheel,” based on security concerns which she had raised, including a recent incident in which a loaded firearm was allowed into her courtroom.

Investigative Process

The OIG’s investigative efforts consisted of the following:

Interviews of the following USDC [REDACTED] personnel:

[REDACTED]

Interviews of the following USMS- [REDACTED] personnel:
[REDACTED] retired USM

[REDACTED]

Interview of the following personnel:

[REDACTED]

Review of the following:

- [REDACTED] government cell phone text messages
- [REDACTED] government e-mail
- [REDACTED] documents saved to his government laptop hard drive
- Social media sites associated with [REDACTED]
- USMS OPR report, dated July 18, 2011
- Drug Enforcement Administration (DEA) OPR report, dated February 22, 2018

Background Events

[REDACTED]

Judge [REDACTED] and [REDACTED] told the OIG that [REDACTED], an [REDACTED] Probation Officer bypassed court security and brought a loaded firearm into Judge [REDACTED] courtroom. Judge [REDACTED] stated that she noticed the weapon when she had the officer raise her right hand to be sworn in. Judge [REDACTED] sent an email to [REDACTED], asking him to determine how the witness was allowed into her courtroom with a weapon, in violation of security policies. [REDACTED] told the OIG that as a result, he placed two telephone calls to [REDACTED] that evening which were not returned. Judge [REDACTED] told the OIG that the next day, [REDACTED], she and [REDACTED] engaged in a 3-way telephone call with [REDACTED] about the incident. Judge [REDACTED] also stated to the OIG that during the call, [REDACTED] made excuses about why he had not been available sooner, and opined that there was a simple fix for the problem. Judge [REDACTED] said that [REDACTED] told her that he had looked for her in her chambers that morning, and asked where she was. Judge [REDACTED] advised the OIG that during the call, [REDACTED] seemed dismissive and somewhat angry with her for making an ordeal of the firearm incident in her courtroom. [REDACTED] told the OIG that he felt that [REDACTED] talked down to Judge [REDACTED] during the call.

Judge [REDACTED] told the OIG that [REDACTED], overheard the phone call and was so upset by [REDACTED] lackadaisical response to the serious security concern in Judge [REDACTED] courtroom, that he sent a detailed 2-page email to Chief Judge [REDACTED] the same evening. In the email, [REDACTED] conveyed that he was disappointed with the actions of the USMS and their failure to protect members of the judiciary. [REDACTED] stated that during the call with Judge [REDACTED], [REDACTED] appeared to treat the incident as if it were “commonplace,” an “everyday occurrence,” and that he did not appear to understand the significance of the incident. [REDACTED] further stated that during the call, rather than acknowledging his responsibility for the security breach, [REDACTED] blamed his staff for failing to inform him; blamed Judge [REDACTED] for failing to call him directly; and suggested that Judge [REDACTED] was remiss for not being in the courthouse when he came by to talk to her the next day, when the courthouse was closed due to the weather. [REDACTED] described [REDACTED] as “unprofessional”, and demanded an inquiry into the matter, and the resignation of [REDACTED].

In addition to the above security concerns expressed by Judge [REDACTED] and [REDACTED], Chief Judge [REDACTED] told the OIG of his own additional concerns regarding [REDACTED] decision-making and discernment. These issues included: [REDACTED] taking parking spaces away from the Court Security Officers and refusing to give them back; [REDACTED] failure to ensure that a magnetometer was set up outside of a courtroom for a sensitive trial in which a weapon was eventually confiscated; and an incident in which a man attempted to bring a loaded weapon into the courthouse, and the USMS simply gave the person a citation and provided very limited details to Chief Judge [REDACTED] until Chief Judge [REDACTED] posed more questions about the incident.

Chief Judge [REDACTED] told the OIG that three days after the call between [REDACTED] and Judge [REDACTED], on [REDACTED] he held a meeting with [REDACTED], which [REDACTED] attended and during which Chief Judge [REDACTED] asked [REDACTED] about the security incident. Chief Judge [REDACTED] told the OIG that he explained to [REDACTED] how upset Judge [REDACTED] was by his ([REDACTED]) reaction to a very serious incident and for his behavior during the phone call. Chief Judge [REDACTED] said that he told [REDACTED] that he would have to apologize to Judge [REDACTED] or he (Chief Judge [REDACTED]) would be forced to file a complaint against him with the USMS; he said that, in response, [REDACTED] agreed to meet with Judge [REDACTED] to apologize to her. Chief Judge [REDACTED] also said that during the meeting, he commented to [REDACTED], "I think it's time you move on" (meaning leave his USM position). [REDACTED] said that [REDACTED] responded by saying that it was "all because she (Judge [REDACTED]) is a 'squeaky wheel.'" Chief Judge [REDACTED] conveyed to the OIG that he thought [REDACTED] was referring to Judge [REDACTED] as a "squeaky wheel" because she had several past complaints and [REDACTED] apparently did not appear to consider the issues that she raised to be important.

After the meeting, Chief Judge [REDACTED] said that he recalled [REDACTED] commenting to him (Chief Judge [REDACTED]) that he could not believe that [REDACTED] had just referred to Judge [REDACTED] as a "squeaky wheel." Chief Judge [REDACTED] subsequently advised Judge [REDACTED] of [REDACTED] "squeaky wheel" comment.

[REDACTED], [REDACTED] went to Judge [REDACTED] chambers and offered an apology for his telephone conversation with her on [REDACTED]. This meeting in Judge [REDACTED] chambers was also attended by [REDACTED] and [REDACTED]. Judge [REDACTED], [REDACTED], and [REDACTED] all told the OIG that when Judge [REDACTED] asked [REDACTED] about the "squeaky wheel" comment, [REDACTED] denied making the statement. [REDACTED] stated that she did not recall [REDACTED] response. [REDACTED] further stated that he confronted [REDACTED] at the meeting about his denial, since [REDACTED] had personally heard [REDACTED] make the comment in the meeting with [REDACTED]. [REDACTED] stated that [REDACTED] only stared back at him and said nothing in reply. [REDACTED] confirmed [REDACTED] account.

About 6 weeks later, [REDACTED], at the conclusion of the use of force briefing, [REDACTED] made the shooting comment which precipitated the OIG investigation. As discussed below, USMS supervisors in the [REDACTED] reported the comments to USMS Headquarters management and to USMS OPR, but not to the judiciary.

[REDACTED] Comment regarding Shooting a Judge

18 U.S.C. § 115 (Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member) states in part:

(a) (1) Whoever-

(B) threatens to assault, kidnap, or murder, a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under such section,

intimidated by [REDACTED] comment, without knowing whether [REDACTED] was angry or upset when he made the comment, whether he was serious when he made the comment, and whether the comment was directed at Chief Judge [REDACTED]. While Chief Judge [REDACTED] opined that [REDACTED] comment was contrary to his position and responsibilities as the USM, he said that based on all that he knew, he did not believe that the comment violated a criminal statute.

The U.S. Attorney's Office [REDACTED] declined criminal prosecution of [REDACTED].

OIG's Conclusion

The OIG's investigation concluded that [REDACTED] shooting comment constituted administrative misconduct in violation of USMS Policy Directive, General Management, Code of Professional Responsibility Sec. 1.7(E), in that it had the potential to "adversely affect the reputation of the DOJ." In addition, this comment clearly did not reflect "high standards of personal and moral conduct expected of law enforcement officers and other government employees." The OIG's investigation concluded that [REDACTED] shooting comment did not violate 18 U.S.C. § 115 because there was insufficient evidence of [REDACTED] intent to commit the offense in light of statements by witnesses who were present when the comment was made that they did not perceive the comment to be intended as a threat to harm anyone, as well as the absence of any additional evidence on [REDACTED] electronic devices or social media accounts.

USMS Failure to Notify the Judiciary

In his interview with the OIG, Chief Judge [REDACTED] said he was upset with the USMS for not promptly reporting [REDACTED] comment either to him or the other USDC-[REDACTED] judges.

USMS Service Policy Directive, General Operations Sec. 2.7, Warning Persons/Threats to Life, states in part, the following:

C. Policy:

1. **Expeditious Warnings to Identifiable Persons:** Except as provided, when a district/office has information that a person is subject to a credible threat to life or serious bodily injury, appropriate action must be taken expeditiously to attempt to warn him or her of the threat.

D. Procedures

3. **Documentation:** The reasons for the USMS's decision not to provide a warning, must be documented for the district/office files.

USMS Policy Directive, Judicial Security Sec. 10.7, Protective Investigations, states in part the following:

D. Policy:

2. An evaluation should begin immediately upon receipt of any threat, inappropriate communication, incident, or suspicious activity to determine if a protective investigation is appropriate. All available district resources should be considered to conduct an appropriate protective investigation. Collateral leads received should also be given the highest priority.

5. USMS protect persons may include but are not limited to the following officials and their staff:

- b. Federal judges (circuit, district, bankruptcy, and magistrate);

Of the 11 USMS employees who were at the shooting range with [REDACTED] when he made the shooting comment, the only individual to report the comment to USMS supervision was [REDACTED]. [REDACTED] told the OIG that he did not think that [REDACTED] comment was serious or that it ever put the court at a security risk. Nonetheless, a few hours later [REDACTED] called [REDACTED] to report the comment because of how inappropriate it was, and how it could impact the impressionable newer DUSMs to hear such comments. [REDACTED] told the OIG that [REDACTED] reported the comment to him as: "can I get in trouble for shooting a judge?" [REDACTED] said that he did not think he [REDACTED] was responsible for notifying the judiciary because that was the responsibility of his supervisors if they deemed it necessary. [REDACTED] said that he was generally familiar with the policy directives pertaining to the security of the courts.

None of the remaining 10 DUSMs who were present at the shooting range that day -- [REDACTED] reported [REDACTED] comment to their supervisors or to the judiciary. [REDACTED] stated that they did not personally hear the comments. [REDACTED] said he did not report [REDACTED] comment because he knew [REDACTED] had already reported it to district supervisors. All of these witnesses stated that they would have notified their supervisors if they had believed the comment was a credible threat.

[REDACTED] told the OIG that although he had been recently assigned to [REDACTED], he had slowly become aware of a strained relationship between [REDACTED] and the judiciary, which had developed prior to [REDACTED] arrival. [REDACTED] told the OIG that the day after [REDACTED] made the shooting comment he interviewed two [REDACTED] and [REDACTED] who were present during the incident. Both confirmed that [REDACTED] had made the inappropriate comment, but both said that they believed it was said in jest. Based on his discussion with [REDACTED] determined that [REDACTED] comment was not directed at a particular judge, was said in jest, and was not a credible threat.

[REDACTED] told the OIG that he reviewed USMS Policy Directive, General Operations, 2.7, Warning Persons/Threats to Life, and that he determined that he would comply with that policy by reporting [REDACTED] comment to USMS OPR and USMS Headquarters. [REDACTED] stated that he believed [REDACTED] comment was a code of conduct issue, and that he believed the appropriate avenue of reporting the matter was to USMS OPR and USMS Headquarters, and not to the judiciary.

That same day, [REDACTED] made a telephone call to the [REDACTED] to inform him of the allegation. [REDACTED] and [REDACTED] agreed that [REDACTED] would report the allegation to USMS OPR and also discuss the inappropriateness of the comment with [REDACTED]. Later that day, [REDACTED] sent a detailed 2-page email to USMS OPR explaining in part that:

The reporting DUSM found the comment unacceptable suggesting it was clear most of those in attendance found it to be awkward and inappropriate, particularly given the strained relationship in the district between the court family and the USMS. [REDACTED]

The following day, [REDACTED], [REDACTED] admitted to [REDACTED] that he made an inappropriate comment, which he described as a “fatal gaffe”, and asked [REDACTED] when he should retire.

[REDACTED] told the OIG that a DUSM, whom she could not recall, informed her that [REDACTED] made a comment at the shooting range to the effect of “can we shoot a judge.” [REDACTED] was unsure of the precise words. Based on [REDACTED] extensive interactions with [REDACTED] and her knowledge of his personality, [REDACTED] stated that she knew that [REDACTED] would not make a serious threat against a judge, and that he must have made the comment in a joking manner. Because [REDACTED] did not think that the comment represented a credible threat against a judge, she did not report the comment to anyone. [REDACTED] stated that she later had a conversation with [REDACTED] about the comment, and that he expressed that he was upset at himself for making the comment, and that he had made a mistake.

[REDACTED], told the OIG that on [REDACTED], one week after [REDACTED] shooting comment, [REDACTED] contacted him, seeking [REDACTED] advice on other issues, and that during the course of their discussions, [REDACTED] mentioned [REDACTED] shooting comment. [REDACTED] said he realized from their conversation that [REDACTED] comment had not yet been reported to the judiciary. [REDACTED] stated that he was concerned that [REDACTED] report to USMS would run into obstacles with USMS Headquarters and get caught up in the bureaucracy of the agency. [REDACTED] told the OIG that as a result, he decided to notify the judiciary of [REDACTED] comment. Accordingly, that same day, [REDACTED] contacted [REDACTED] who was a close friend, and apprised her of [REDACTED] comment. [REDACTED] stated that he did this out of concern for [REDACTED] best interests, as he thought that the FBI or the OIG would end up addressing the allegations.

[REDACTED] told the OIG that [REDACTED] comment caused her concern, because she was generally aware of the ongoing tension between [REDACTED] and Chief Judge [REDACTED]. [REDACTED] said she told Chief Judge [REDACTED] about [REDACTED] comment.

Chief Judge [REDACTED] informed the OIG he was concerned that the judiciary only found out about [REDACTED] comment from former [REDACTED] about a week after it was made, and he felt that it was important to know why none of the DUSMs who heard the comment reported it to the judiciary. Accordingly, upon learning of [REDACTED] comment, Chief Judge [REDACTED] asked [REDACTED] to contact [REDACTED] to inform him of the incident. [REDACTED] then contacted [REDACTED] and suggested he have the USMS Headquarters personnel contact Chief Judge [REDACTED] about [REDACTED] comments. [REDACTED] then contacted Chief Judge [REDACTED]. When they spoke, Chief Judge [REDACTED] expressed his displeasure regarding the USMS’s lack of communication with the judiciary about the issue. That same day, USMS Headquarters officials communicated with [REDACTED] about the shooting comment, and [REDACTED] decided to resign his position.

OIG’s Conclusion

The OIG determined that the USMS personnel involved in this process did not violate USMS Policy

Directives, General Operations, 2.7 Warning Persons/Threats to Life, and Judicial Security, 10.7, Protective Investigations. USMS Policy Directives, General Operations, 2.7 only requires notification to an individual when “the person is subject to a credible threat to life or serious bodily injury.” In this instance, none of the 11 witnesses to [REDACTED] comment believed it represented a credible threat against any particular judge. Moreover, while USMS Policy Directives, Judicial Security, 10.7 requires that the USMS being an immediate evaluation of any “inappropriate communication” involving a judge – which [REDACTED] comment clearly was – the Directive does not require notification to the judge or to the judiciary.

Nevertheless, despite the absence of a specific USMS policy requiring notification, the OIG found it concerning that no one at the USMS who heard or learned about [REDACTED] highly inappropriate comment believed it warranted immediate notification to the Court’s Chief Judge. Whether or not the comment was directed at a specific judge, or represented a serious threat, it was made by the U.S. Marshal himself and therefore impacted and undermined the ability of the leader of that USMS judicial district to continue to perform his important and significant responsibilities to the judges in the courthouse. Under those circumstances, the OIG was particularly surprised that USMS Headquarters failed to inform the judiciary of [REDACTED] statement, especially since the comment was reported to USMS Headquarters as either “will I get in trouble if I shoot a judge?” (which is how [REDACTED] described it to the OIG) or “can I get in trouble for shooting a judge?” (which is how [REDACTED] told us it was reported to him by [REDACTED]). Indeed, despite this information, USMS Headquarters apparently instructed [REDACTED] to not immediately report the comment to the judiciary, seemingly because it was treating it as a personnel matter. The OIG believes the USMS should review its policy directives to consider when and how the judiciary is notified of threat allegations against judges even when those threats are not deemed credible.

[REDACTED] Lack of Candor

During the course of the investigation, the OIG found indications that [REDACTED] lacked candor in his interview with the OIG.

USMS Policy Directive, General Management, 1.7 Code of Professional Responsibility, states in part the following:

E. Code of Professional Responsibility

23. Statement of Fact: Do not knowingly give false or misleading statements or conceal material facts in connection with employment, promotion, travel voucher, any record, investigation or other proper proceeding.

Both Chief Judge [REDACTED] and [REDACTED] told the OIG that [REDACTED] Chief Judge [REDACTED] had a meeting with [REDACTED] about the gun incident in Judge [REDACTED] courtroom and Judge [REDACTED] displeasure with [REDACTED] attitude in their subsequent telephone call. Chief Judge [REDACTED] and [REDACTED] stated that when Chief Judge [REDACTED] said that it might be time for [REDACTED] to move on, [REDACTED] blamed Judge [REDACTED] for being a “squeaky wheel” (because of her security-related complaints). [REDACTED] subsequently denied making this comment in a meeting with Judge [REDACTED]

When the OIG asked [REDACTED] about whether he made the “squeaky wheel” comment, [REDACTED] initially denied calling Judge [REDACTED] a “squeaky wheel.” [REDACTED] then told the OIG that he could not recall making the comment; he did not feel that he had made the comment; and he could not imagine himself making that comment about one federal judge to another federal judge. Finally, [REDACTED] asked the OIG, “Why would I say that?” [REDACTED] declined to take an OIG-administered polygraph examination regarding his truthfulness in referring to Judge [REDACTED] in an unfavorable manner, stating that he did not trust the polygraph. [REDACTED]

told the OIG he felt he was in a no win situation because even if he passed the polygraph examination, it would result in members of the judiciary being wrong.

The U.S. Attorney's Office [REDACTED] declined criminal prosecution of [REDACTED].

OIG's Conclusion

The OIG concluded that [REDACTED] lacked candor in his interview with the OIG. Based on the consistent recollections of Chief Judge [REDACTED] and [REDACTED] about [REDACTED] "squeaky wheel" comment, as well as the [REDACTED] silence when [REDACTED] confronted [REDACTED] about the comment in [REDACTED] subsequent meeting with Judge [REDACTED], the OIG found that [REDACTED] initial denial and obfuscation about making that comment lacked candor, in violation of USMS Policy Directive, General Management, 1.7 Code of Professional Responsibility.