

U.S. Department of Justice

Office of the Inspector General

REPORT OF INVESTIGATION

SUBJECT							CASE NUMBER			
United States Marshal (former)										
OFFICE CONDUCTING INVESTIGATION				DOJ COMPONENT						
Detroit Area Office				United States Marshals Service						
DISTRIBUTION STATUS										
	Field Office	CFO		OPEN		OPEN PENDING	PROSEC	UTION	\boxtimes	CLOSED
\boxtimes	AIGINV		PREVIOUS REPORT SU			ITTED:		YES	\boxtimes	NO
\boxtimes	Component	USMS			Date o	f Previous Report:				
	USA									
	Other									

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 the United States Marshal (USM), during a USMS firearms use of force briefing, the United States Marshal (USM), made an inappropriate comment to a range instructor about shooting a judge.

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

During the course of the OIG's investigation, the OIG was advised of another inappropriate comment that had made to United States District Court (USDC) Chief Judge and and a statement of the shooting comment. Chief Judge , in the month prior to the shooting comment. Chief Judge as a statement of the shooting comment.

DATE	May 13, 2019	SIGNATURE				
PREPAR	ED BY SPECIAL AGENT					
DATE	May 13, 2019	SIGNATURE	William Hannah	Digitally signed by WILLIAM HANNAH Date: 2019.05.13 11:23:04 -05'00'		
APPROVED BY SPECIAL AGENT IN CHARGE William J. Hannah						

OIG Form III-210/1 (Superseding OIG Form III-207/4) (04/23/2007)

Portions of the Report of Investigation may not be exempt under the Freedom of Information Act (5 USC 552) and the Privacy Act (5 USC 552a).



"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 the 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 the make the comment, as well as other witnesses who observed silence when the confronted the make the comment during a subsequent meeting.

Finally, during the course of the investigation, USDC Chief Justice expressed concerns to the OIG about the USMS's failure to notify the judiciary of comment about shooting a judge. comment reported it to a USMS supervisor The OIG found that one of the 11 USMS witnesses to 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 comment. , who had been told and the judges only learned of it the following week when a former USM about it by the USMS supervisor, reported it to an 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 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 highly inappropriate comment believed it warranted USMS who had heard or learned about 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)

declined criminal prosecution of

Prior to the OIG investigation, retired from his position at the USMS,

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

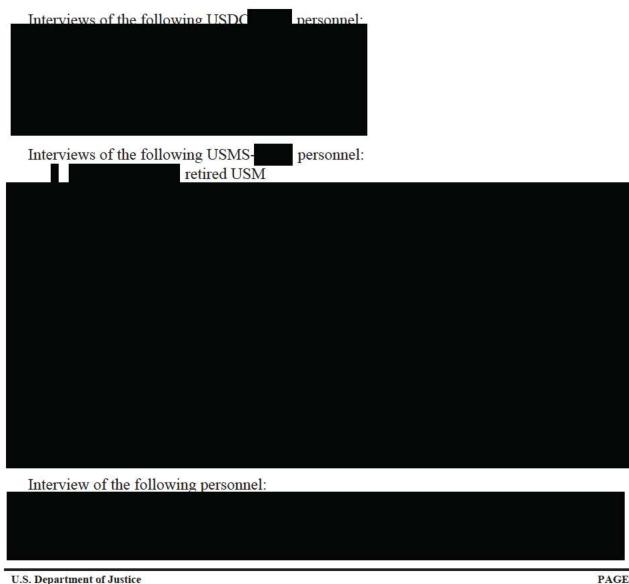
Predication

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 during a USMS firearms use of force briefing. United States Marshal (USM) 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 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 inappropriately referred to USDC Judge as a "squeaky wheel," based on USM security concerns which she had raised, including a recent incident in which a loaded firearm was allowed into her courtroom.

Investigative Process

Office of the Inspector General

The OIG's investigative efforts consisted of the following:



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Review of the following:

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

Background Events

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

Judge told the OIG that , overheard the phone call and was so upset by lackadaisical response to the serious security concern in Judge courtroom, that he sent a detailed 2-page email to Chief Judge the same evening. In the email, conveyed that he was disappointed with the actions of the USMS and their failure to protect members of the judiciary. stated that during the call with Judge 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 further stated that during the call, rather than acknowledging his responsibility for the incident. security breach, blamed his staff for failing to inform him; blamed Judge for failing to call him directly; and suggested that Judge 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. described as "unprofessional", and demanded an inquiry into the matter, and the resignation of



In addition to the above security concerns expressed by Judge and and a construction, Chief Judge and told the OIG of his own additional concerns regarding and decision-making and discernment. These issues included: The taking parking spaces away from the Court Security Officers and refusing to give them back; and the use 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 and until Chief Judge and posed more questions about the incident.

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

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

, went to J	udge chambers and of	ffered an apology for his telephone
conversation with her on	. This meeting in Judge	chambers was also attended by
. Judge asked about the "squeaky wheel" that she did not recall response about his denial, since had person . stated that confirmed account.	comment, denied mak further stated that he c	mment in the meeting with

About 6 weeks later, **and the shooting comment which precipitated the OIG investigation**. As discussed below, USMS supervisors in the reported the comments to USMS Headquarters management and to USMS OPR, but not to the judiciary.

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,



with the intent to impede, intimidate, or interfere with such official, judge, or law enforcement officer while engaged in the performance of official duties, or with intent to retaliate against such official, judge, or law enforcement officer on account of the performance of official duties, shall be punished [by fine or imprisonment, or both].

USMS Policy Directive, General Management, 1.7, Code of Professional Responsibility, E., Code of Professional Responsibility, states in part:

(1.) Courtesy: Be courteous and demonstrate good manners toward the general public, members of Congress and employees. Maintain a respectful and helpful attitude in all endeavors.

(26.) Personal Activities: Refrain from any activity that would adversely affect the reputation of the DOJ.

(29.) High Standards: Demonstrate the highest standards of personal and moral conduct expected of law enforcement officers and other government employees.

In a voluntary interview, told the OIG that at the end of a long day at the firing range, when the firearms instructor noted that there was a new use of force policy coming out, he said, "I guess that means that you can't shoot a judge." explained to the OIG that he was joking, and that he was not directing the comment at one particular judge. said that he realized his comment was inappropriate, that he did not intend to cause anyone to feel threatened, and that he would apologize to the judiciary if he had the opportunity. speculated to the OIG that Chief Judge probably thought that the comment was directed at him, because Judge had recently criticized for a number of issues, and Chief Judge had suggested that it might be time for to "move on."

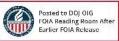
The OIG interviewed all of the USMS personnel who were at the firing range with on the day of his comment including:

All but two of these

individuals stated that they heard make a comment about shooting a judge, although there were differing accounts about the precise wording of the comment. For example, recalled the comment as "can I shoot a judge?" thought the comment may have concerned "handling a judge" or "taking care of a judge." recalled the comment as "if a federal judge pisses you off, can you shoot them?" recalled hearing say "will I get in trouble if I shoot a judge?" Several other witnesses recalled a reference to shooting a judge but did not recall the exact words. told the OIG they also attended the briefing, but they did not hear make a comment about shooting a judge. However, they later learned about the incident through other USMS personnel. All of these witnesses stated that they believed comment was made in a joking manner and, while they thought the comment was inappropriate, no one believed it was a credible threat.

The OIG reviewed text messages, e-mails, and documents obtained from **assigned** government electronic devices, and social media sites believed to have been associated with **assigned**, including Instagram, Google+, Linked In, and Facebook. The OIG did not find evidence of any threatening statements or comments by **assigned** on those devices or social media sites.

Chief Judge told the OIG that he could not give an opinion as to whether he felt threatened or



intimidated by **a series** comment, without knowing whether **a series** 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 **a series** opined that **a series** 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

declined criminal prosecution of



OIG's Conclusion

The OIG's investigation concluded that **a shooting** 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 the shooting comment did not violate 18 U.S.C. § 115 because there was insufficient evidence of the 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 the electronic devices or social media accounts.

USMS Failure to Notify the Judiciary

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

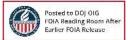
USMS Service Policy Directive, General Operations Sec. 2.7, Warning Persons/Threats to Life, states in part, the following:

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 a solution when he made the shooting comment, the only individual to report the comment to USMS supervision was a total total the OIG that he did not think that a comment was serious or that it ever put the court at a security risk. Nonetheless, a few hours later a called to report the comment because of how inappropriate it was, and how it could impact the impressionable newer DUSMs to hear such comments. The total the OIG that he did not think he was responsible for notifying the judiciary because that was the responsibility of his supervisors if they deemed it necessary. 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 reported reported comment to their supervisors or to the judiciary. If the stated that they did not personally hear the comments. If the stated head he did not report comment because he knew 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.
told the OIG that although he had been recently assigned to a strained relationship between and the judiciary, which had developed prior to arrival. It told the OIG that the day after a made the shooting comment he interviewed two and a who were present during the incident. Both confirmed that the day after the inappropriate comment, but both said that they believed it was said in jest. Based on his discussion with determined that a comment was not directed at a particular judge, was said in jest, and was not a credible threat.
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 comment to USMS OPR and USMS Headquarters. Stated that he believed 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, made a telephone call to the to inform him of the allegation. and a greed that would report the allegation to USMS OPR and also discuss the inappropriateness of the comment with the set of the day, set 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.



The following day, admitted to which he described as a "fatal gaffe", and asked

that he made an inappropriate comment, when he should retire.

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

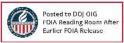
, told the OIG that on , one week after contacted him, seeking advice on other issues, and that during the shooting comment, course of their discussions, mentioned said he realized from shooting comment. their conversation that comment had not yet been reported to the judiciary. stated that he was concerned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

told the OIG that comment caused her concern, because she was generally aware of and Chief Judge about comment.

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

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 for the described it to the OIG) or "can I get in trouble for shooting a judge?" (which is how for the told us it was reported to him by for). Indeed, despite this information, USMS Headquarters apparently instructed for the origination of 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.

Lack of Candor

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

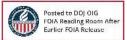
USMS Policy Directive, General Management, 1.7 Code of Professional Responsibility, states in part the following:

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	and	told the OIG that		Chief Judge	had a
meeting with	about the gu	in incident in Judge	courtroon	n and Judge	displeasure
with attitu	ide in their sul	osequent telephone ca	ll. Chief Judge	and	stated that when
Chief Judge	said that it mi	ght be time for	to move on,	blamed Ju	dge for
being a "squeaky wl	neel" (because	of her security-related	d complaints).	subsequen	tly denied making
this comment in a m	eeting with Ju	dge			

When the OIG asked and a about whether he made the "squeaky wheel" comment, a initially denied calling Judge a "squeaky wheel." I 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, a sked the OIG, "Why would I say that?" A declined to take an OIG-administered polygraph examination regarding his truthfulness in referring to Judge a maner, stating that he did not trust the polygraph.



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

declined criminal prosecution of

OIG's Conclusion

The OIG concluded that a set of lacked candor in his interview with the OIG. Based on the consistent recollections of Chief Judge and a set of about the comment in the set of t