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LAW ENFORCEMENT PROGRAMS AT THE BUREAU OF LAND MANAGEMENT AND U.S. FOREST SERVICE, COORDINATION WITH OTHER FEDERAL, STATE AND LOCAL LAW ENFORCEMENT, AND THE EFFECTS ON RURAL COMMUNITIES

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, FORESTS, AND MINING

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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LAW ENFORCEMENT PROGRAMS AT THE BUREAU OF LAND MANAGEMENT AND U.S. FOREST SERVICE, COORDINATION WITH OTHER FEDERAL, STATE AND LOCAL LAW ENFORCEMENT, AND THE EFFECTS ON RURAL COMMUNITIES

WEDNESDAY, MAY 9, 2018

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:11 a.m. in Room SD–366, Dirksen Senate Office Building, Hon. Mike Lee, presiding.

OPENING STATEMENT OF HON. MIKE LEE, U.S. SENATOR FROM UTAH

Senator LEE [presiding]. The hearing of the Senate Energy and Natural Resources Subcommittee on Public Lands, Forests, and Mining will now come to order.

I appreciate each of you for being here.

Today we are going to hear about the law enforcement activities of agencies with jurisdiction over public lands and examine whether it is time to return law enforcement on federal lands to traditional law enforcement agencies or simply delegate those functions to local law enforcement officials, as originally envisioned under FLPMA, the Federal Land Policy Management Act.

This issue is of great concern to communities throughout the West, including many in my state and in neighboring states that have long struggled against the constraints imposed by vast federal land holdings that are especially prevalent in the Western United States.

Increasingly, the communities find themselves as targets of overly zealous, federal law enforcement operations. In a twist, these operations are not undertaken by traditional law enforcement agencies, but rather by militarized criminal law enforcement agents of the proprietary agencies tasked with managing federal public lands, namely, the Bureau of Land Management (BLM) and the United States Forest Service.

In recent decades as the number of federal laws and of federal regulations, many of which function essentially as criminal laws themselves, have been proliferating, law enforcement has become a

growth industry within these federal agencies. The BLM and Forest Service have followed this trend by expanding their criminal investigative activities, often with unsparing results for those who happen to be unfortunate enough to fall into their crosshairs.

Whatever sense this attempt might have made as an effort to enhance funding or an institution's prestige, it is incumbent on this Subcommittee to ask whether combining resource management and criminal law enforcement has resulted in a profound disservice to both.

Undeniably, our federal land management agencies have drifted far from their intended purpose. The stated mission of the Bureau of Land Management is, "to sustain the health, diversity and productivity of the public lands for the use and enjoyment of present and future generations." Similarly, the mission of the U.S. Forest Service is, "to sustain the health, diversity and productivity of the nation's forests and grasslands to meet the needs of present and future generations."

Now the authors of these mission statements could not have imagined year long, cloak and dagger investigations that use informants to capture undercover video inside private homes on private land. The authors of these mission statements would have recoiled at the very thought of BLM employees executing coordinated pre-dawn search warrants on homes in a private, residential neighborhood. The founders, surely, would have had concerns of their own. And yet, in the small town of Blanding, Utah, this is what happened during the last Presidential Administration.

To be clear, these agency's missions necessarily involve managing natural resources and nationally significant sites. But I fear the BLM and the Forest Service have expanded their operations far beyond this proprietary mission to include the exercise on private land of police powers that the founders expressly reserved to the states.

I understand these problems have been festering for a long time and that they did not start with this Administration. In fact, I am very appreciative of the work this Administration has done with the help of some of our witnesses here on the panel today, to correct some of the past problems and abuses within the BLM and within the U.S. Forest Service law enforcement agencies. I look forward to hearing more about the Administration's efforts from Mr. Steed and from Mr. Perry.

But just as these problems did not start with this Administration, they also cannot be expected to end with this Administration. Because of the nature of executive action in our government and because of human nature itself, whatever good work this Administration might do could quickly, easily be undone by a future administration, one that is, perhaps, indifferent or maybe even downright hostile toward local law enforcement, toward federalism, toward local control. To guard against this possibility, it is imperative that Congress and, particularly, this Committee, examine permanent legislative reforms to land management agency's law enforcement authorities.

Mr. Perry and Mr. Steed have already provided valuable perspectives on this issue. I hope that they will continue to work with this Subcommittee, with the Committee as a whole and with Congress

as a whole in our efforts to reform law enforcement on federal land, especially enforcement of federal law by law enforcement agencies of those land management entities.

I do want to thank all of you for being here today. We are pleased to have a great panel.

I will do some quick introductions, and then we will hear your opening statements. First, we will hear from Mr. Tracy Perry, who is the Director of Law Enforcement and Investigations at the Forest Service. Then we will hear from Mr. Brian Steed, who is the Director of Policy and Programs at the Bureau of Land Management and also a fellow Utahan, who I am glad to have here. Then we will hear from my longtime friend and Utah State Representative, the Honorable Mike Noel, member of the Utah House of Representatives, representing the 73d District. Mr. Noel just got back from a trip to China and immediately hopped on a plane in Salt Lake City to be here with us today. So welcome, and I hope you got some sleep at least on the airplane. If not, our gratitude to you is that much more profound. We appreciate your dedication, Mr. Noel. After Representative Noel, we will hear from Mr. Jackson Brossy, Executive Director of the Navajo Nation, Washington Office. Finally, we will hear from Mr. Paul Larkin, who is a Senior Research Fellow at the Heritage Foundation. Thanks to all of you, once again, for being here.

In the interest of time and to make sure that we have time to ask and answer any questions, please try to limit your remarks to five minutes and your full written testimonies will be, of course, submitted and accepted for the record.

We will start with you, Mr. Perry.

Thank you.

STATEMENT OF TRACY PERRY, DIRECTOR, LAW ENFORCEMENT AND INVESTIGATIONS, U.S. FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. PERRY. Good morning, Chairman.

Chairman Lee, thank you so much for the opportunity to speak with you this morning.

My name is Tracy Perry. I'm the Director of Law Enforcement and Investigations for the United States Forest Service.

There are two things you're going to hear from me today. One is the unique law enforcement mission of the United States Forest Service. The other is the importance of cooperation and collaboration with our federal, state, local and tribal law enforcement partners.

The Forest Service Law Enforcement and Investigations program is charged with providing a safe environment for the public and employees as well as providing the nation's resources on approximately 193 million acres of National Forest System lands.

Our program provides a highly visible, uniformed patrol presence that educates the public and enforces federal laws and regulations essential to the effective management of National Forest System lands. We also provide special agents with complex criminal and civil investigations, including investigations related to wildland fire, timber theft, resource damage, illegal marijuana cultivation and cultural resource protection.

We recognize the critical importance of maintaining strong and mutually beneficial relationships with our federal, state, local and tribal partners. Successful management of forest lands is simply not possible without effective relationships with our cooperators, communities and the public. We have been reminded of this valuable lesson in recent times as there have been occasions where these relationships were not as strong as they needed to be.

Unfortunately, there have been instances where poor relationships have led to questions concerning law enforcement actions, mission priorities and jurisdiction on Forest Service law enforcement personnel. We accept responsibility for our role in failing to maintain these critical relationships, and we have taken significant steps to change that.

The most significant of those steps was the development of an MOU with the Western States Sheriffs' Association. The MOU establishes a template for an operational agreement between Forest Service Law Enforcement and Investigations and County Sheriffs. And it can be utilized to define operational procedures and establish protocols for cooperation. Even more importantly, the collaborative process utilized to develop this MOU has vastly improved communication and trust. We currently maintain nearly 500 cooperative law enforcement agreements with our federal, state and local partners. Over $5 million in funding is provided through these agreements to our cooperators. Many of these agreements also confer state authority to our law enforcement agents and our law enforcement officers.

We have taken additional steps to improve our program. Last week, we released our Strategic Plan for 2018 through 2022. This plan will help increase efficiencies, prioritize work and ensure the LEI activities are aligned with the mission and priorities of the Forest Service and the Department of Agriculture.

A key theme of the plan is the emphasis on the natural resource law enforcement mission of our organization. Prioritizing work activities that are essential to our mission will also help focus our limited resources.

Finally, we have established an Office of Professional Responsibility to help ensure that we continue to maintain the high levels of professionalism and integrity expected of a law enforcement organization. Establishment of the Office of Professional Responsibility will increase transparency, accountability and responsiveness to elected officials, cooperators and the public we serve.

Mr. Chairman, that concludes my testimony. I am happy to answer any questions that you may have.

[The prepared statement of Mr. Perry follows:]

Statement of Tracy Perry
Director Law Enforcement and Investigations,
U.S. Forest Service, United States Department of Agriculture
Before the
Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests and Mining
Oversight Hearing on
Federal Law Enforcement policy and implementation

May 9, 2018

Chairman Lee, Ranking Member Wyden, members of the Subcommittee, I am Tracy Perry, Director of Law Enforcement and Investigations (LEI), U.S. Department of Agriculture (USDA) Forest Service. Thank you for the opportunity to speak with you today about our law enforcement program and law enforcement operations on National Forest System Lands.

The Forest Service manages national forests and national grasslands in 42 states and Puerto Rico with the mission *"to sustain the health, diversity and productivity of the Nation's forests and grasslands to meet the needs of present and future generations."* Lands in the National Forest System are among the crown jewels of the United States and North America. They produce abundant clean water, provide high quality wildlife habitat and diverse wildlife and fish populations, forest products, grazing and unsurpassed recreation opportunities. A critical component of the agency's management of the National Forest System is the law enforcement program.

FOREST SERVICE LAW ENFORCEMENT AND INVESTIGATIONS OVERVIEW

The Forest Service Law Enforcement and Investigations (LEI) program is charged with providing a safe environment for the public, our employees, and protecting the Nation's natural resources on approximately 193 million acres of National Forest System (NFS) lands. Increasing population growth in areas adjacent to NFS lands (the Wildland Urban Interface) and increasing popularity of NFS lands for motorized recreational use have significant land management impacts, and illegal occupancy of NFS lands for the production of narcotics and other unauthorized uses increase risks to public and employee health and safety. Much of what we are able to accomplish is through partnerships and cooperative agreements with local law enforcement.

Our program provides a highly visible uniformed patrol presence which conducts rapid emergency responses to incidents affecting the public and employees visiting or working on NFS lands. We conduct regular and recurring patrols to educate the public, and, when needed, enforce Federal laws and regulations governing the successful management of the Nation's forest and grasslands. The LEI staff respond to a range of crimes and conduct complex criminal and civil investigations. Crimes can include minor infractions such as environmental protests, destruction of government property, theft of archaeological resources, big game poaching, large group event violations and gang activity. Our investigations also include serious felonies such as homicide,

rape, assault, and threats against the public and employees, domestic disputes, robbery, drug production and trafficking, domestic terrorism and fire emergencies.

The LEI program maintains critical partnerships with Federal, State, and local law enforcement agencies and other programs by building strong relationships with sheriff's offices, State police agencies, and Federal agencies such as the Drug Enforcement Agency; Federal Bureau of Investigation; Bureau of Alcohol, Tobacco, Firearms and Explosives; the Office of the United States Attorney, the Federal Court System; U.S Customs and Border Protection Agency, in dealing with border issues; and other Federal land management agencies. Our network of partnerships also include numerous Indian nations across the country. In addition, we use Cooperative Law Enforcement Agreements, which utilize local county sheriffs and other local law enforcement to assist and augment patrols on NFS lands to enhance law enforcement coverage and to ensure public safety. However, in many remote areas or areas with diminished local law enforcement, we are often the only law enforcement personnel available.

Our staff also frequently responds to catastrophic natural or other manmade disasters at the local, regional, and national level, and most commonly provide immediate emergency response in support of catastrophic wildland fire incidents on public lands. We are often the first law enforcement responder in these incidents, and take responsibility for the safeguarding of firefighting personnel and equipment, the evacuation of visitors and residents, and the protection of property. The LEI program also cooperates with FEMA as a rapidly deployable national law enforcement asset under the FEMA Emergency Support Function (ESF) #13- Public Safety and Security.

The National Forest System's excellent wildlife habitat and clean water are unfortunately prized by illegal marijuana growers. The lands are remote with few visitors, the forest vegetation is dense, there is an extensive system of roads and trails (both open and closed), soils are fertile, and water for irrigation is readily available. Approximately 90 percent of marijuana grown on Federal public lands is grown on NFS lands. Forest Service LEI is the lead agency combating this threat to public lands, and a key component of the White House's Office of National Drug Control Policy strategy to address illegal cannabis production, the associated severe environmental damage, and the significant safety risk Drug Trafficking Organizations pose to the public.

All of the work I've just described is managed and implemented by a current staff of 429 uniformed Law Enforcement Officers, 98 Criminal Investigators or Special Agents, and 86 support personnel. Equally as important, this work could not be done without the help of the local law enforcement, sheriffs, and the community support.

COOPERATIVE LAW ENFORCEMENT AND COMMUNITY RELATIONS

The Forest Service Law Enforcement and Investigations program has long recognized the critical importance of maintaining strong and mutually beneficial relationships and partnerships with our federal, state, county, and local law enforcement partners. We also recognize the need to establish and maintain positive, proactive relationships with the communities where we work and live, as well as with those who utilize NFS lands for work, recreation, sustenance, or economic benefit. Successful management of NFS lands is simply not possible without effective relationships with our cooperators, communities, and the public. We have learned this valuable

lesson in recent times as there have been occasions where these relationships were not as strong as they needed to be and that led to questions concerning law enforcement actions, mission priorities, and jurisdiction of Forest Service law enforcement personnel. We recognize and accept responsibility for our role in failing to build and maintain these critical relationships and we have taken significant steps to improve them.

We have worked hard to reestablish, repair, and significantly strengthen our relationships. Much of this work began in 2013 with the help of the National Sheriff's Association (NSA) and the Western States Sheriff's Association (WSSA). The NSA helped to facilitate high level discussions between key members of WSSA and LEI leadership. These discussions eventually led to a Memorandum of Understanding (MOU) with WSSA that helped to address many of the concerns and issues. However, I believe the most important result of these discussions was the relationships established with key WSSA members. Those relationships led to additional dialogue with many other Sheriff's that resulted in a vastly improved level of communication and trust.

For the past several years, LEI leadership has routinely attended annual NSA and WSSA meetings and state level Sheriff Association meetings. The level of communication, cooperation, and trust continues to improve at all levels. Yes, there are still some problems, questions, and concerns, however, these issues are now being routinely discussed and addressed in a positive environment with a high level of mutual respect to the benefit of all involved. The MOU and our commitment to regularly meet with the WSSA have been instrumental in helping us better communicate, and have also facilitated efforts to resolve issues as they arise. Relatedly, we recognize that many law enforcement issues such as traffic enforcement and general public crimes are often best addressed by local law enforcement and local judicial processes.

We currently maintain nearly 500 Cooperative Law Enforcement Agreements with state, county, and local law enforcement partners. Over $5 million in funding is provided through these agreements to cooperators for services such as dispatch and patrol operations. Many of these agreements also confer state law enforcement authority to our officers and agents. This authority greatly enhances our ability to assist state, county, and local partners. We recognize that local, State, and Federal law enforcement agencies often have limited resources to cover vast, undeveloped territories. Public safety and protection of public and private property often hinge on the ability to respond quickly with available resources, which means taking full advantage of any and all trained, professional law enforcement personnel who are in the best position to respond promptly to an incident.

This LEI cooperative and coordinated approach reflects Secretary Perdue's desire to be good neighbors and to share the stewardship of our natural resources with state and local governments for the benefit of the public.

Developing this USDA LEI program to protect the public and its resources and further improving so that it can continue to be part of a well-coordinated network of professional officers across the country and across jurisdictions is possible due to Congressional authorizations.

FOREST SERVICE LAW ENFORCEMENT AUTHORITY

The Forest Service's law enforcement authority stems from the Property Clause of the United States Constitution. The Property Clause, in broad terms, empowers Congress to make all "needful" rules "respecting" federal lands. U.S. const., art. IV, sec. 3, cl. 2. Developing the LEI program into a well-coordinated network of professionals is made possible in part by this constitutional authority along with Congressional authorities.

For example one of the many laws enacted to protect federal lands, The National Forest System Drug Control Act of 1986, as amended (16 U.S.C. 559b-g), authorizes the Secretary of Agriculture to "take actions necessary, in connection with the administration and use of the National Forest System, to prevent the manufacture, distribution, or dispensing of…controlled substances." These amendments expressly provide authority for Forest Service agents to carry firearms, conduct investigations, make arrests, serve warrants and other process, and conduct searches and seizures (16 U.S.C. §559c). This Act provides the necessary authority for LEI to eradicate numerous illegal marijuana grows. It is clear that stopping these operations and removing the illegal marijuana removes a dangerous health and safety risk. However, possibly lesser known is the significant natural resource damage that marijuana grows cause. Water is diverted and highly polluted, highly toxic poisons are introduced into the environment that – through research – has been detected in dead birds who have fed on animals killed by those poisons. And finally, between 2008 and 2014, the City of Palm Springs, California lost the use of its primary water source that originates on NFS land in the San Bernardino National Forest intermittently on several occasions due to water contamination directly attributed to marijuana cultivation upstream from their catchment. Examples such as these highlight how these laws play a critical role in the overall administration of the National Forest System and the safety of our visitors and employees.

STRATEGIC PLANNING

We are also taking several other positive steps to help strengthen our mission capabilities, define our mission, and improve our workforce. We have recently developed and released on 5/3/2018, a Strategic Plan that will help to increase efficiencies, prioritize work, and more closely align LEI activities with the mission and priorities of the Forest Service and the Department of Agriculture. A key theme of the Strategic Plan is the emphasis on prioritizing the traditional natural resource law enforcement mission tasks and skills unique to LEI staff. These niche skills and tasks such as fire investigation, timber investigations, resource damage, public land marijuana eradication, and cultural/historical site protection are essential to the management of NFS lands. Prioritizing work activities to conform to these essential mission areas will also help to focus our limited resources. Our Strategic Plan will also serve to help us continue to share information with our workforce, other Forest Service employees, and the public on what we do and why we are an essential component of the management of the National Forests.

Finally, LEI has also established a new Office of Professional Responsibility (OPR) to help ensure that we continue to maintain the high levels of professionalism and integrity expected of a law enforcement agency. We are also improving our internal and public complaint system by leveraging technology and refining internal controls. These new processes will serve to increase

transparency, accountability, and responsiveness to the agency, elected officials, cooperators, and the public.

By drawing on the authorities given by Congress, investing in relationships with our cooperators and local communities, and focusing our efforts on education as well as enforcement, we have grown into a highly trained law enforcement organization that continues to listen, learn and protect our national forests and the public we serve.

CONCLUSION

Mr. Chairman and Mr. Co-Chairman, this concludes my testimony. I am happy to answer any questions that you may have.

Senator LEE. Thank you, Mr. Perry.
Mr. Steed.

STATEMENT OF BRIAN STEED, DEPUTY DIRECTOR FOR POLICY AND PROGRAMS, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. STEED. Good morning, Mr. Chairman. I, like you, am happy to be seated here with my Utah friends today. And it's always nice to be seated next to Representative Noel.

I'm Brian Steed, the Bureau of Land Management's Deputy Director for Policy and Programs. Thank you for the opportunity to discuss BLM's law enforcement program today. The dedicated men and women who make up the program play an integral role in ensuring public safety and fulfilling the BLM's multiple use mission.

Nationally, the BLM manages a wide variety of resources spread over 245 million acres of public lands and over 700 million acres of subsurface mineral estate. These public lands and resources include timber, forage, energy and minerals, recreation areas, archeological sites and many others. Under the Federal Land Policy Management Act (FLPMA) of 1976, the Secretary of the Interior is authorized to stand up a law enforcement body to enforce federal laws and regulations with respect to public lands and their resources. As a result, BLM has been given specific resource protection and law enforcement responsibilities that further its multiple use mission.

While the BLM law enforcement rangers and agents have accomplished important work protecting public lands and resources, the law enforcement program itself has experienced a number of challenges in the recent past. These challenges include very serious allegations of employee misconduct, including destruction of records requested by members of Congress, mishandling of evidence in criminal investigations and misappropriation of government funds, among others. This behavior shocks the conscience and is entirely unacceptable. Moreover, these actions—in some cases perpetrated by a small number of individuals—have prevented the BLM from living up to the expectations of the American people.

In the short time I've been in my position, the BLM has taken a series of actions to begin addressing these problems. Over the past several months, for example, the BLM law enforcement program has directed officers to focus on case work with direct ties to public lands such as curbing the resource and public safety impacts generated by cross-border smuggling activities and reducing theft of mineral materials, archeological and historical objects, timber and forest products and other resources. BLM law enforcement has also made a concerted effort to improve working relationships with partner organizations including the Western States Sheriffs' Association which is composed of sheriffs and their command staff from 16 Western states. As part of this process the BLM is also analyzing the benefits of moving our law enforcement program to a location in the West and is evaluating whether it should be restructured to better fit organizational needs. These measures could potentially enhance interaction and communication with sheriffs on public safety and enforcement of natural resource rules and regulations. They could also better position BLM law enforcement officers

for interaction with external user groups and other BLM staff, the vast majority of which are stationed in the Western United States.

Finally, over the past several months, the BLM has reinforced the need for accountability and professional ethics within the law enforcement program and has been diligent in taking administrative, civil or criminal action in relation to conduct issues. For example, the BLM has significantly increased staffing of the Office of Professional Responsibility to help ensure the thorough investigation of complaints of serious misconduct involving BLM employees, including law enforcement officers and managers.

As stated earlier, the BLM takes allegations of employee misconduct, particularly those associated with its law enforcement officers, extremely seriously. We are committed to maintaining a professional program with only the highest ethical standards. Restoring the public's trust in the BLM's law enforcement program is a top priority of Secretary Zinke and this Administration. The BLM is taking significant steps to make this goal a reality and will continue to do so in the months ahead.

Thank you again for the opportunity to provide testimony today, and I would gladly answer any questions that you may have.

[The prepared statement of Mr. Steed follows:]

Statement of
Brian Steed
Deputy Director for Policy & Programs
Bureau of Land Management
U.S. Department of the Interior

Senate Committee on Energy & Natural Resources
Subcommittee on Public Lands, Forests, & Mining

Oversight Hearing

"To Examine the Law Enforcement Programs at the BLM and USFS, Coordination with Other Federal, State and Local Law Enforcement, and the Effects on Rural Communities"

May 9, 2018

Thank you for the opportunity to discuss the Bureau of Land Management's (BLM) law enforcement program. The dedicated men and women who make up this program play an integral role in ensuring public safety and fulfilling the BLM's multiple use mission. Every day, our officers put themselves in harm's way to investigate vandalism and looting, support emergency response, and provide a safe environment for employees and visitors to the public lands.

While the BLM's law enforcement program has had a number of challenges recently, we are proud of the work our officers and local and State partners accomplish on behalf of the American people. Consistent with Secretary Zinke's priority of restoring full collaboration and coordination with local communities and making the Department of the Interior a better neighbor, the BLM is committed to making significant improvements to investigative procedure and program operations, to strengthening our law enforcement partnerships throughout the West, and to working with State, county, and local officials in the most productive ways possible. In addition, the BLM is fully committed to supporting Secretary Zinke's priority of combating the opioid epidemic ravaging local communities, area Tribes, and Alaska Natives across the West.

Background

Nationally, the BLM manages a wide variety of resources spread over 245 million acres of public lands and 700 million acres of subsurface mineral estate. These public land resources include timber, forage, energy and minerals, recreation areas, wild horse and burro herds, fish and wildlife habitat, wilderness areas and national monuments, and archaeological and paleontological sites. Under the Federal Land Policy and Management Act of 1976 (FLPMA), the Secretary of the Interior is authorized to stand up a law enforcement body to enforce Federal laws and regulations with respect to public lands and their resources. As a result, the BLM has been given specific resource protection and law enforcement responsibilities that further its multiple use mission.

The public lands managed by the BLM are predominantly located in the western U.S., including Alaska, and consist of extensive grassland, forest, high mountain, arctic tundra, and desert

landscapes. Each of these landscapes has a diversity of resources. As a result, the specific duties of each BLM law enforcement officer can vary considerably. For example, in the southwestern desert, officers may spend a considerable amount of time dealing with large numbers of recreational off-highway vehicle users as well as archaeological resources crimes; officers along the southern border frequently contend with the effects of illegal border crossings and drug smuggling; officers in urban interface areas encounter a variety of trespass crimes that include arson and hazardous materials dumping; and officers in the northern states regularly deal with illegal marijuana cultivation activities. In all areas, BLM law enforcement officers work in cooperation with local sheriff's offices, State agencies, and other Federal law enforcement agencies.

Protecting Public Land Resources, People, & the International Border

The BLM has approximately 200 law enforcement rangers (uniformed officers) and approximately 70 special agents (criminal investigators) on staff who promote safety, security, and environmental protection of public lands, public land users, and employees. For example, BLM law enforcement rangers and agents regularly engage with their State and local counterparts to investigate wildland arson, mineral resource theft, hazardous materials dumping, archaeological and historical artifact and paleontological theft, and illegal marijuana cultivation. Good working relationships with local law enforcement and other stakeholders are essential for the BLM to successfully resolve these crimes.

BLM law enforcement officers also work closely with State agencies and county law enforcement offices to protect public safety for large-scale recreational events, including the King of the Hammers off-road race in southern California, Burning Man festival in Nevada, and a variety of off-highway vehicle races in California's Imperial Sand Dunes and Utah's Little Sahara Sand Dunes.

Finally, BLM-managed public lands include nearly 200 miles directly along the international boundary in New Mexico, Arizona, and California. Along international boundaries, the BLM helps protect the public lands along the border through innovative initiatives and partnerships with Federal, State, and county agencies. These efforts are producing tangible results in the areas of illegal smuggling, resource protection, and identifying transnational threats. In Arizona, for example, off-road travel, littering, and vandalism associated with illegal border crossings threatens fragile desert ecosystems and poses risks to visitor safety. In response, the BLM has launched a coordinated strategy – known as Operation SABR – to enhance law enforcement operations and communications, place barriers to deter unauthorized traffic, and remove trash.

Recent Challenges & Looking to the Future

While the BLM's law enforcement rangers and agents have accomplished important work preventing damage to public land resources, the law enforcement program itself has experienced a number of challenges in the recent past. These challenges include very serious allegations of employee misconduct, including destruction of records requested by members of Congress, mishandling of evidence in criminal investigations, and misappropriation of government funds, among others. Such behavior shocks the conscience, and we cannot stress enough how entirely unacceptable it is. Moreover, these actions – in some cases perpetrated by a small number of

individuals – have prevented the BLM from living up to the expectations of the American people.

In the short time that the new BLM leadership has been in place, we have taken a series of actions to begin addressing these problems. Over the past several months, for example, the BLM law enforcement program has directed officers to focus on casework with direct ties to public lands, such as curbing the resource and public safety impacts generated by cross-border smuggling activities and reducing the theft of public land resources, including mineral materials, archeological, paleontological, and historic objects, or timber and forest products.

BLM law enforcement has also made a concerted effort to improve working relationships with internal and external partners, including the Western States Sheriffs' Association (WSSA), which is composed of sheriffs and their command staff from 16 western states. As part of this process, the BLM is also analyzing the benefits of moving the law enforcement program to a location in the West and is evaluating whether the program should be restructured to better fit organizational needs. These measures could potentially enhance interaction and communication with the sheriffs on public safety and enforcement of natural resource rules and regulations. It could also better position BLM law enforcement for interaction with external user groups and other BLM staff, the vast majority of which are stationed in the western United States.

Finally, over the past several months, the BLM has reinforced the need for accountability and professional ethics within the law enforcement program and has been diligent in taking administrative, civil, or criminal action in relation to conduct issues. In addition, the BLM has significantly increased staffing for the Office of Professional Responsibility to help ensure the thorough investigation of complaints of serious misconduct involving BLM employees, including law enforcement officers and managers.

As stated above, the BLM takes allegations of employee misconduct, particularly those associated with its law enforcement officers, extremely seriously. We are committed to maintaining a professional program with only the highest ethical standards. Restoring the public's trust in the BLM's law enforcement program is a top priority of Secretary Zinke and this Administration. The BLM is taking significant steps to make this goal a reality, and will continue to do so in the months ahead.

Conclusion

The BLM's diverse mission creates unique challenges for our agency's law enforcement personnel, who work diligently to provide a safe environment for the public and employees and who deter, detect, and investigate illegal activities on our Nation's public lands. We look forward to working with the Subcommittee on this important issue. Thank you for the opportunity to present this testimony, and I would be glad to answer any questions you may have.

Senator LEE. Thank you, Mr. Steed.
Mr. Noel.

STATEMENT OF HON. MIKE NOEL, MEMBER, UTAH HOUSE OF REPRESENTATIVES

Mr. NOEL. Thank you, Mr. Chairman. It's a pleasure to be here.

I've given extensive testimony in my written testimony which you can read. It outlines the event that you mentioned with Dr. Redd's family and what happened in Blanding, Utah, in 2009.

One individual that I key my testimony on is apparently no longer working for the agency. I don't know the full status of his employment right now, but we're very happy to see that.

The problem that I see though, and you mentioned it in your initial statement, is the concept of federalism and where my District, the largest legislative House District in the State of Utah comprising seven rural counties made up of over 90 percent of federal land in a little, small portion, 9 to 10 percent of private property. That area contains tremendous amounts of public land. Public land that is dotted with also state land and also private property.

Having law enforcement be the local law enforcement is what my testimony is about today. It's imperative. It's important. It's critical that we go back to the concept of the county sheriff.

I was happy to hear that Mr. Perry and also Mr. Steed have interfaced with the Western County Sheriffs' Association. Mr. Perry, in fact, has worked directly with my son, who is the Past President of the Utah Sheriffs' Association, so we appreciate that.

However, in looking at what happened with this particular officer, the Special Agent-in-Charge for Utah and Nevada and Idaho, that should never have happened. It would not have happened under traditional law enforcement with an elected sheriff, accountable to the people in his community with oversight by the State Attorney General's Office. With oversight by the State Legislature, that would never have happened. Time after time, since this employee has been in place, we went back to DC. We talked to his superiors. We talked to the Head Director of the Bureau of Land Management, told him of these egregious actions by this individual, and we got nothing out of it, zero out of it.

Now, as you go back and you read the record and you see some of the things that he's done, particularly one family that resulted in the suicide death of a well-known physician, a good friend, Dr. James Redd. It's very, very tragic.

My good friend, Phil Lyman, who will now take my place in the legislature, we believe, because he is the Republican nominee for that position, was also subjected to this law enforcement action.

I would like to see further investigations into this, into the BLM law enforcement and the actions that resulted. I would like to see those cases where people were prosecuted, illegally, be reviewed again because in fact, if the evidence that was presented was done in a corrupt manner, if it was collected illegally, if it was done improperly, which we can see from the Wooten letter, from his associate, then we should have an opportunity for them to go back to court.

And therein lies one of the main problems that we have. When you break a federal regulation under the Federal Land Policy Act

of 1976, you don't get a jury of your peers. You get a federal magistrate. You don't have an opportunity to defend yourself. And going to federal court and trying to defend yourself in federal court is a no-win situation. It costs hundreds and hundreds of thousands of dollars, and most people are willing to take a plea bargain with lesser charges just to get out of this system that's broken.

And so, I hope my testimony today and I hope my testimony in the record highlights the fact that the most important thing we can do is to go back to the concept that the county sheriff is the one that's in charge. If these law enforcement officers have proprietary jurisdiction, they do not have concurrent jurisdiction and the state legislature has never given them exclusive jurisdiction for law enforcement on the public lands in the State of Utah. They should confine their law enforcement activities to the resources on those public lands. They should deal specifically with those. If it gets into an area or an arena where it involves state laws, they should not be able to assimilate our state laws and stop my citizens and my constituents on state highways. They should not be able to arrest them for not having their tail lights on their cars functional. They should not be allowed to do anything that a state law enforcement officer, a duly elected sheriff by the people of that county, can do adequately.

So I would appreciate further investigation, and I could provide additional information about how the FBI was involved with this too. We need some more investigation into that arena with Mr. Love and an FBI agent.

Thank you.

[The prepared statement of Mr. Noel follows:]

MAY 9, 2018

TESTIMONY OF MIKE NOEL
MEMBER
UTAH HOUSE OF REPRESENTATIVES

BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS AND MINING

HEARING TO EXAMINE LAW ENFORCEMENT PROGRAMS AT THE BUREAU OF LAND MANAGEMENT AND U.S. FOREST SERVICE, COORDINATION WITH OTHER FEDERAL, STATE AND LOCAL LAW ENFORCEMENT, AND THE EFFECTS ON RURAL COMMUNITIES

One community's tragic loss at the hands of BLM law enforcement.
A call for BLM to obey FLPMA and rely first on local law enforcement before deploying their own.

I.

Chairman Lee, Ranking Member Wyden, and members of the Subcommittee, thank you for this opportunity to testify today. As a sixteen-year member of Utah's House of Representatives representing a large rural legislative district in southern Utah (Utah's geographically largest legislative district), as a longtime rancher, and as a former BLM employee of twenty-two years, I regret having to describe today a terrible tragedy that befell a family and small-town community due to the heavy-handed tactics of an unaccountable cadre of BLM law enforcement personnel. The tragedy I will relate would have never happened had the BLM followed a simple requirement of the Federal Land Policy Management Act (FLPMA), which is: Instead of needlessly building up and deploying its own police force, the BLM should first rely to the maximum extent feasible on local County Sheriffs and sheriff deputies to enforce federal public land and resource related laws and regulations. I speak specifically of the FLPMA requirement found 43 U.S. Code Section 1733(c)(1):

> When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions *with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations.* (Emphasis added.)

When Congress debated and enacted FLPMA in the 1970s, many States did not feel good about entrusting a remote and locally unaccountable Federal bureaucracy to wield law enforcement power in Western rural America. They wanted the BLM to rely instead on local County Sheriffs for its law enforcement needs even when it came to enforcing federal land and resource laws and regulations. Why this preference for County Sheriffs? Because County Sheriffs were and are accountable to local citizens. They are trusted and time honored institutions dating back to our founding and beyond and counted among our Nation's many hallmarks of liberty and protection from centralized governmental abuse. In rural America, County Sheriffs serve as the anchors of law and order and Americans' liberty in that law and order. For these reasons and others, the institution of the County Sheriff is entrenched in the Anglo-American jurisprudence and system of government.

BLM law enforcement officers by contrast bring none of these protections to the table. Creatures of remote, disinterested bureaucracies, they answer to no one but those remote authorities centralized in Washington, D.C. They arbitrarily rotate in and out of Utah posts and positions. Their Utah chain of command runs up a silo straight to a central D.C. command structure. They have become in every sense of the word, an untrusted centralized paramilitary force, the likes of which would frighten and alarm the original framers of FLPMA and all who once thought such forces were limited to county law enforcement, State national guards, and traditional branches of the armed forces. And as will be related below, their judgment and professionalism are too often compromised by anti-local prejudices and misunderstandings that too many of them carry simmering beneath the surface, which erupt under emergent law enforcement situations to the harm of local citizens.

Moreover, the geographic authority and jurisdiction of the BLM itself is only proprietary in nature for virtually all BLM and Forest Service lands in Utah. Numerous studies commissioned by various Federal agencies including the United States Attorney General dating back to 1957, and still expressly taught today in Department of Justice law enforcement training manuals, confirm that the Congress's exercise of its Constitutional Article IV, Section 3 powers have together resulted in three classifications of Federal land-based jurisdiction:

(a) the right of exclusive legislation conferred by Art. I, Sec 8, Clause 17 over the District of Columbia and, upon the written consent of State Legislatures, military installations and other needful buildings,

(b) concurrent jurisdiction over limited federal enclaves, and

(c) proprietary jurisdiction deriving from the term proprietor and being a type of authority belonging to a property or landowner.

In Utah and all other Western states, virtually all BLM and Forest Service lands are proprietary jurisdiction lands as the U.S. Attorney General, Department of Justice and other authorities have repeatedly affirmed since 1957.

In other words, the BLM is a large proprietor, and its authority is that of a large proprietor.

If a shoplifting crime or assault occurs at a local Walmart Store or Disneyland resort, the *proprietors* Walmart or Disneyland may temporarily detain the offender in the interest of immediate security. But they must immediately turn the offender over to the local police or county sheriff for further handling. Walmart and Disneyland have no authority to arrest, jail, prosecute nor punish the offender. As a matter of principle, BLM law enforcement officers are or should be to the BLM, what Walmart and Disneyland security guards are to Walmart and Disneyland. This is so, because again the BLM is a proprietor and has only *proprietary jurisdiction*, i.e., the incidents of authority like that of a property owner's (the term "property" deriving from the same root as does the term "proprietary"), not the legislative and general law enforcement authority of a State or one its political subdivisions.

For all these reasons - from the bureaucratic and centralized remoteness and unaccountability of BLM law enforcement officers, to the BLM's limited proprietary authority, to the time-honored institution of the local County Sheriff, the following is a basic fact of life in rural Utah and really all of the rural West: When it comes to entrusting individuals with the ability to wield police power to enforce public land and resource laws, most regard County Sheriffs as symbols of local, competent and legitimate accountability, while most regard BLM law enforcement officers as symbols of remote, incompetent and illegitimate unaccountability.

Hence, the wisdom of FLPMA's requirement that the Secretary shall contract for the services of local law enforcement when needed "with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing [federal public lands related] laws and regulations." This FLPMA provision is a conscious balance in federalism: Require maximum feasible reliance on *local* law enforcement to wield police power to enforce *federal* land and resource laws and regulations in rural western America. As a former BLM official for twenty-two years, I remember there was once a time when the BLM took this requirement seriously and relied exclusively on local County Sheriffs and sheriff deputies to serve the BLM's law enforcement needs. But the BLM has seriously strayed from this balance. The BLM has turned its back on the Sheriffs, not the other way around. Most everyone in my legislative district know this.

The result: a series of mishaps in Utah including the following tragedy in southeastern Utah's San Juan County. These mishaps demonstrate the need for huge layoffs of BLM law enforcement officers and a major attitude adjustment that restores reliance on County Sheriffs to exclusively serve the BLM's law enforcement needs. Nothing less will suffice to comply with the letter and spirit of FLPMA, restore the institution of the local County Sheriff as the time-honored hallmark of law and liberty in the rural West, and redress if only symbolically the following tragedy that weighs heavily on the hearts and minds of my constituents to this very day.

II.

In the early pre-dawn hours of June 10, 2009 BLM Special Agent in Charge (SAC) Daniel P. Love lead a raid for artifacts in the Blanding, Utah home of Dr. James Redd. Dr. Redd had already left the home to do personal errands and possibly morning rounds on his patients. Dr. Redd was a family practice physician for over 30 years in Blanding, Utah and served the Native American people and all others he could help. He was a father of 5 children and grandfather to 10 grandchildren.

The purpose of the BLM law enforcement raid was to look for evidence on which to hopefully make Dr. Redd and his wife Jeanne Redd look as if they were part of a black market ring trafficking in artifacts, and then prosecute them for such. Dr. Redd's daughter Jericca said Dan Love boasted to her that he had 80 agents at Dr. Redd's house at one time, and throughout the day he said there were a total of 140 agents that visited the house. Jericca heard Dan Love on the phone throughout the morning of June 10th tell other agents to "come on down to the Redd's house." Dan Love told reportedly told Jerrica he personally handpicked the agents that went to Dr. Redd's house.

Dr. Redd's wife Jeanne said when agents first filed in the front door during the predawn hours, they handcuffed her and asked over and over again, "Where's the white bird? Where's the white bird?" Jeanne did not have a "white bird" and believed they had the wrong house. She did not know they wanted a tiny bead. As multiple agents with their firearms mulled around 5'3" 110 lb. Jeanne Redd in handcuffs one agent kept repeating to her, "Do you know how much trouble you are in? Your life is over as you know it. This is the worst day of your life. This is like a death in your family." Another agent said to her three times, "Are you suicidal?"[1]

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[1] According to Jeanne they took from the home 80-year-old Pima baskets, a very nice collection of artifacts from Central America, and they destroyed a 10-year-old handmade bow and arrow because they said it had bugs on it, telling Dr. Redd's wife Jeanne they did her a favor. The bow and arrow was a decoration piece hanging in Dr. Redd's living room. None of these items had anything to do with the raid.

Dr. Redd arrived back at the house around 6:45 am the morning of June 10th. As he pulled up to his house, swarms of federal agents were in and around his home. One of the FBI agents drew his gun, pointed it at Dr. Redd, ripped him out of his vehicle, handcuffed him and sat him down in the garage with the doors shut to begin their interrogation. They searched Dr. Redd's house for 11 1/2 hours. Dr. Redd was personally interrogated in handcuffs for about 3 1/2 hours that day. Federal agents called Dr. Redd a liar over and over, asked him what shovel he liked to dig bodies with, and that he would never practice medicine again. Dr. Redd of course never dug any bodies. After a while Dr. Redd had to go to the bathroom, so at least two agents took him to the bathroom. One agent stood 6 inches from Dr. Redd's right knee and another agent stood 6 inches from his left knee as he used the bathroom. When he was done they did not remove his handcuffs for him to clean himself. They put Dr. Redd in a vehicle and transported him off to the BLM office in Monticello. There they shackled him to other arrested Blanding residents and drove them to Moab to stand before the federal judge to hear their charges and enter a plea.[2]

The BLM law enforcement's decision to raid Dr. Redd's home on June 10th was based on information received from a hired and paid informant by the name of Ted Gardiner, himself a known artifact dealer, drug addict and alcoholic who is deceased. In December 2015 an agent who took part in the 2009 raid confessed in a phone call to the Redds' son Jay Redd, that his parents were not part of a "black market ring" in artifact trafficking and that the whole operation did not tap into any "black market" ring at all. Indeed, despite a two-and-a-half-year undercover investigation and the raid, the Federal Government was only able to charge Dr. Redd with one felony count of knowingly and fraudulently with intent to deceive receiving and possessing a tiny bead *less than half the size of a dime*, which he allegedly "knew to be stolen or embezzled from an Indian tribal organization." Dr. Redd had picked the bead up off the ground and brought it home. He did not try to sell it or trade it or any other artifact ever, not to informant Ted

[2] According to Dan Love, he sent 7 snipers onto the roof of Dr. Redd's house the day of the raid. He said they were waiting for Dr. Redd's son Javalan to drive down to the house. Dan Love said they had a description of Jav's car and knew what he looked like. According to Dan Love, the reason they did this was because Jav called the house when the feds were there and said "don't touch my animals, I'm coming down to get them. Be ready." Dan Love said they (Federal agents) took this as a threat to their lives and therefore were waiting for him. The next day, Mr. Shumway from Blanding went down to the house and said he was watching the Redd house with binoculars most of the day. He said he saw a number of people on Dr. Redd's roof resting next to the chimneys and other things on the roof for hours and hours, not moving. At the time, it was unknown why they would be on the roof. Later Dan Love clarified that he sent them on the roof to wait for Jav.

Gardiner or anyone else. He just showed it to the informant. Dr. Redd never sold, purchased or exchanged any artifact, ever in his life.[3]

After his release that evening (June 10th), and after checking on his patients at the local nursing home, Dr. James Redd Redd left his family a recorded message about 40 minutes long to describe how much he loved his family and religion, and to speak in the message to each family member individually. Dr. Redd also mentioned among other things that with him gone "there will be one less charge to contend with." One of the last things he said in the recorded message is he apologizes to his office manager because he didn't get all the dictation done on his patients he had seen the day before.

Approximately 24 hours after BLM agent Dan Love and 80 to 140 Federal agents including snipers swarmed the home of this beloved community physician and family man, traumatized his wife repeatedly, and interrogated and humiliated him for three and a half hours *over a bead less than half the size of a dime he once picked off the ground*, Dr. James Redd the next morning drove to be alone near a pond on his property, rigged a hose from his vehicle tailpipe to the car window, and tragically took his life by asphyxiation in his Jeep.

Dr. Redd's death greatly impacted the community of Blanding and all of San Juan County. The CEO of the San Juan County Health Service District, Phil Lowe, would later write of Dr. Redd in a letter Dr. Redd's son Jay:

> *Just wanted to write a short note to tell you and your family how much we miss your father known to us as Dr. Redd. He has been sorely missed on a personal level as well as on a professional level. Our patients miss him dearly. We have placed a large photograph of Dr. redd in our front hospital lobby as a memorial to our friend.*
>
> *His medical practice contributed significantly to the success and viability of san juan hospital in monticello. In fact, I have included some financials from our health district audited financial statements to help you see the negative impact his loss had on the health care in this area. The health district incurred some large decreases in revenue and losses from operations comparing 2009 to 2010. When*

[3] The Redd family maintains steadfastly that the value of the bead on which he was charged with felony possession was intentionally inflated by BLM law enforcement more than tenfold to reach the $1,000 felony threshold and thus achieve a felony count. Indeed a later sworn affidavit of artifact expert Dace Hyatt maintained the bead Dr. Redd found was worth $75.

> *he left us in the summer of 2009, the losses we incurred from hospital and clinic operations were very hurtful to our financial viability. He was definitely a strong advocate for the health district and contributed significantly to its success. We thought you would be interested in the impact his life and his death have had on the health care in this area. Hope your family are all doing as well as can be expected.*[4]

Wrote Dr. Paul Reay, DO, Chief of Medical Staff, San Juan County Hospital:

> *Dr. Redd's patients suffered as much direct personal loss as anyone. Many of them had medical histories that existed only in Dr. Redd's memory. His time with them stretched back so far that records had long been lost or destroyed, and he alone carried full knowledge of their past medical care and needs. Many of them were on medical care and regimens with which only he was familiar. Many had never seen another physician. He was especially favored by the Native Americans who saw him with fervent dedication, often at significant personal sacrifice (relinquishing completely financially subsidized care to see him).*

Not too many people know this, but according to Dr. Redd's son Jay, in the past Dr. Redd gave even paid BLM informant Ted Gardiner medical advice on his ankle injury, encouraged him a few times to quit smoking to improve his health, and invited him to a local church function.

As far as many in the community of Blanding and throughout San Juan County are concerned, Federal agents lead by BLM SAC Dan Love are responsible for Dr. Redd's death for the way they treated, humiliated and threatened him and his family, over a $75 artifact he picked up off the ground and never even thought to traffic in.

At a Senate Judiciary Committee Meeting On June 17, 2009 (the day of Dr. James Redd's funeral), Senator Orrin Hatch questioned Attorney General Eric Holder about the June 10th artifact raids and focused exclusively on the over-the-top treatment and heavy handedness of Federal agents in Dr. James Redd's arrest and suicide. At that time Senator Hatch had no idea the only charge on Dr. Redd was for a tiny bead that he only possessed and never trafficked in.

According to Dr. Redd's wife Jeanne and daughter Jerrica, about a month after Dr. Redd's death BLM SAC Dan Love and two other Federal agents went back at the Redd home. While there Dan noticed a picture of LDS Prophet Joseph Smith on the kitchen table and told Jeanne and

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[4] In fact there was about a $1.5 million dollar loss incurred by the Health Service District the year after Dr. Redd was gone, according to his son Jay after reviewing Service District records.

Jericca, "It's good you have his picture there, keep praying to him," meaning Joseph Smith. Dan Love received a phone call while at the Redd house and after hanging up made the comment to Jericca that he had just spoken to the "secret informant" Ted Gardiner and complained that Ted continues to ask for more money. Jerrica could not believe that SAC Dan Love and his informant were haggling over money in Jeanne and Jerrica's presence to pay for actions that resulted in her father's death.

As the Federal agents were leaving, while standing in the garage Jerrica witnessed Dan Love give Dr. Redd's 3-year old grandson Sebastian a child's BLM badge and said he could call him "Uncle Dan." Jerrica thought, here Sebastian who had idolized his grandfather and was being told by the agent whom the family held responsible for the suicide, that he could call him "Uncle Dan."

Further according to Dr. Redd's daughter Jerrica, a few months after Dr. Redd's death during a meeting at the Old Timer Restaurant in Blanding set up on the pretense of discussing an email by Jeanne Redd (it turned out the email was never discussed), BLM SAC Dan Love in the presence of another BLM agent said to Jerrica, "I know why your mom hates me, I'm the reason your dad is gone."

This is not inconsistent with what BLM special agent Larry C. Wooten out of Boise, Idaho would later declare in a November 27, 2017 official whistleblower letter regarding BLM law enforcement misconduct, wherein Wooten declared that he was told by BLM Law Enforcement Supervisors that Special Agent Dan Love kept a "Kill Book" as a trophy, in which he essentially bragged about getting three individuals in Utah, including Dr. Redd, to commit suicide.

At this same restaurant meeting, Dan Love told Jerrica not to "give into the hate like the town of Blanding has done." Yet in Jerrica's presence he also made several inappropriate comments to his fellow BLM agent about the teenage girls waitressing there.

According to another daughter of Dr. Redd, Jamaica Redd Lyman, she asked BLM SAC Dan Love during his and another agent's visit at her apartment in Provo, Utah why he thought Dr. Redd did what he did. Dan Love said, "I think he took one for the team." Love then related all he had learned from reading all of Dr. Redd's private journals,[5] detailing many private thoughts and concerns Dr. Redd had for each of his children and his wife. Love let them know his

[5] Journals which to this day have not been given back to the Redd Family by Federal agents. There are many items taken from the Redd home during the raid that have nothing to do with the reason for the raid, which have never been returned.

opinion about the so called poor penmanship of Dr. Redd, not knowing Dr. Redd used shorthand and medical abbreviations for much of his writing. Inexplicably he also boasted that he did not need to follow the posted speed limit because due to his status as a federal agent to whom these laws did not apply.
During a two day discussion involving Jerrica and her attorney with Dan Love and others at the BLM office in Salt Lake City, Jericca noticed a photo on the floor of her father Dr. Redd and asked Love why it was there on the floor. He shrugged his shoulders and said yeah we need to get rid of that.[6] At the end of this emotional two-day meeting for Jeanne and Jericca, BLM SAC Dan Love and Brent Range proceeded to throw tennis balls at each other while everyone was still in the room including Jeanne Redd, Jericca and their attorney. One of the tennis balls actually hit their attorney.

According to an April 2010 story run on a KSL News website, paid informant Ted Gardiner told a friend " he felt guilty for killing two people," and that a few days Gardiner died in a shootout with local police. See "Report: Artifacts source blames self for suicides" by Paul Foy April 1, 2010 on the KSL.com website (based in part on a police report containing a quote from Gardiner's friend that Ted said he felt guilty for killing two people).

Meanwhile the BLM saw fit to give Dan Love the BLM "special agent of the year 2009" award.

According to Dr. Redd's son Jay Redd who is a dentist in St. George, Utah, BLM SAC Dan Love and BLM agent Dan Barnes presented in the Summer of 2010 at a meeting of the Dixie Archaeology Society in St. George. There Love and Barnes said "stealing artifacts" was a way of life for the people involved and was a family affair in one case as they showed a picture of the Redd family outdoors (confiscated during the June 10, 2009 raid) and claimed the family were out "pot hunting." Less than one hour after Jay Redd found this information on the internet (the information was on a blog) the blog was changed, the names of Dan Love and Dan Barnes were removed and the information about Dan Love showing the photos of the Redd family to the group was also removed.

Further according to Jay Redd, on October 21, 2010 BLM special agent Dan Barnes[7] and a local St. George police officer paid an unannounced visit to Jay at his busy dental office (Jay was in the middle of a patient's root canal). BLM agent Barnes abruptly demanded of the receptionist to get Jay, and then angrily told Jay in his office not to threaten Federal employees. Then they left. Twenty minutes later the attorney of Jay's mother Jeanne (Dr. Redd's widow) (not Jay's

[6] Yet according to Jerrica the photo of her father was there on the floor the next day.
[7] BLM Agent Dan Barnes was one of the agents picked by Dan Love to interrogate Dr. Redd in his garage for three and a half hours the day of the raid.

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attorney but his mother's) received an email from BLM SAC Dan Love that referenced BLM agent Barnes' visit to Jay's dental office. Love's email said Jay is getting "very close to the line" regarding statements about investigators assigned to investigate his family, and that Love will consider the matter closed unless Jay continues with such statements. This sophomoric attempt at coordinated intimidation was inexplicable to Jay, as BLM agent Barnes himself acknowledged in his discussion with Jay that day that the only thing Jay said to others is he felt the agents involved in his father's death will have to pay *in the next life* for what they did. Here BLM agents Love and Barnes had worked in concert to intimidate Jay for stated wishes about *the next life*. As if Love and Barnes believed in and presumed to have jurisdiction over, the next life.

III.

I refer finally to three documents, which indicate that the unprofessional actions of BLM Special Agent Dan Love and other BLM agents are not limited to the heavy-handed January 10, 2009 raid of the Redd residence and its aftermath of misconduct. The three items are:

a. A November 27, 2017 official whistleblower report by a BLM Special by the name of Larry C. Wooten;

b. An official report of the Department of Interior's own Office of Inspector General (DOI OIG) dated January 30, 2017 entitled *Investigative Report of Ethical Violations and Misconduct by Bureau of Land Management Officials*

c. Another official DOI OIG report dated August 24, 2017 entitled *Investigative Report of Misconduct by a Senior BLM Law Enforcement Manager.*

a.

Special Agent Dan Love and other BLM special agents are the subject of an extensive November 27, 2017 whistleblower report, currently under review, submitted by BLM Special Agent Larry C. Wooten. The whistleblower report soberly describes conduct so indecent, bigoted, vile and disgusting, not to mention completely unprofessional and unbecoming of a law enforcement agency, as to shock the public conscience and put the BLM's law enforcement operations under a huge cloud of public mistrust. The whistleblower report describes among other things Special Agent Love's disdain for Mormons, his vile actions toward his staff, his taking pictures of his feces and his girlfriend's vagina and sending them to others on the internet, and his staff's mashing of an arrestee's face in the dirt until rocks stuck to his face, among other things.

Special Agent Wooten describes the following among other things, in his eighteen-page whistleblower report, which is public information:

> *I routinely observed, and the investigation revealed a '"widespread pattern of bad judgment, lack of discipline, incredible bias, unprofessionalism and misconduct, as well as likely policy, ethical and legal violations among senior and supervisory staff at the BLM's Office of Law Enforcement and Security. The investigation indicated that these issue issues amongst law enforcement supervisors in our agency made a mockery of our pclsition of special trust and confidence, portrayed unprofessional bias, [and] adversely affected our agency's mission[.]*

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> *The longer the investigation went on, the more extremely unprofessional, familiar, racy, vulgar and bias filled actions, open comments, and inappropriate electronic communications I was made aware of, or I personally witnessed. In my opinion, these issues would likely undermine the investigation, cast considerable doubt on the professionalism of our agency and be possibly used to claim investigator bias/unprofessionalism and to impeach and undermine key witness credibility. The ridiculousness of the conduct, unprofessional amateurish carnival atmosphere, openly made statements, and electronic communications tended to mitigate the defendant's culpability and cast a shadow of doubt of inexcusable bias, unprofessionalism and embarrassment on our agency. These actions and comments were in my opinion offensive in a professional federal law enforcement work environment and were a clear violation of professional workplace norms, our code of conduct, policy, and possibly even law. The misconduct caused considerable disruption in workplace, was discriminatory, harassing and showed showed clear prejudice against the defendants, supporters and Mormons. Often times this misconduct centered on being sexually inappropriate, profanity, appearance/body shaming and likely violated privacy and and civil rights.*

Pages 3-4

> *Many times. these open unprofessional and disrespectful comments and name calling (often by law enforcement supervisors who are potential witnesses and investigative team supervisors) reminded me of middle school. At any given time, you could hear subjects of this investigation openly referenced as "retards," "rednecks," overweight woman with big jowls," "douchebags," tractor-face," "idiots," "inbred,", etc., etc., etc.*

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Additionally, this investigation also indicated that former BLM SAC Dan Love sent photographs of his own feces and his girl-fiiend's vaglna to coworkers and suborclinates' It was also reported by another BLM SAC BLM SAC Dan Love told him that there is no way he gets more pu$$y than him.

Page 4

Furthermore I became aware of potentially captured comments in which our own law enforcement officers allegedly bragged about roughing up [an arrestee] grinding his face into the ground, and [the arrestee] having little bits of gravel stuck in his face.

Page 4

My supervisor even instigated the unprofessional monitoring of jail calls between defendants and their wives, without prosecutor or FBI consent, for the apparent purpose of making fun of post arrest telephone calls between [defendants and FBI targets] (not subjects of BLM's investigation). Thankfully, AUSA Steven Myhre stopped this issue.

Page 4

This carnival, inappropriate and childish behavior didn't stop with the directed bias and degradation of subjects of investigations. The childish misconduct extended to citizens, cooperators from other agencies and even our own employees. BLM Law Enforcement Supervisors also openly talked about and gossiped about private employee personnel matters such as medical conditions (to include mental illness), work performance, marriage issues, religion, punishments, internal investigations and derogatory opinions of high level BLM supervisors. Some of these open comments centered on Blow J0bs, Ma$terbation in the oflice closet, Addiction to P0rn, a Disgusting Butt Crack, a "Weak Sister," high self-opinions, crying and scared women, "Leather Face," "Mormons (little Mormon Girl)," "he has mental problems and that he had some sort of mental breakdown," "PTSD," etc., etc., etc.

Page 5

Time after time, I was told former DLM SAC Love's misconduct. I was told by BLM Law Enforcement Supervisors that he had a ["]Kill Book" as a trophy and in essence bragged about getting three individuals in Utah to commit suicide (see Operation Cerberus Action out of Blanding, Utah and the death Dr. Redd)[.]

Page 8

These are not the idle accusations of a disgruntled arrestee, nor of an angry and upset target of a law enforcement investigation, nor a garden variety "hater" of the Federal government. These are the sober descriptions *of a fellow BLM Special Agent,* a peer, a respected former lead investigator and holder of BLM law enforcement supervisory positions.

b.

Here is the synopsis of the January 30, 2017 DOI OIG report entitled *Investigative Report of Ethical Violations and Misconduct by Bureau of Land Management Officials*:

Synopsis

We initiated an investigation in October 2015, after receiving two anonymous complaints concerning a Supervisory Agent, Bureau of Land Management (BLM) Office of Law Enforcement and Security (OLES), Salt Lake City, UT.
The first complaint, received in September 2015, concerned the 2015 Burning Man event held annually in northwestern Nevada. The complaint alleged that—

- *the Supervisory Agent used his official position to provide preferential treatment to his family members while attending the event;*

- *the Supervisory Agent directed five on-duty BLM law enforcement officers to escort his family and provide security for them at the event;*

- *the Supervisory Agent's family received unauthorized access to the Incident Command Post (ICP); and*

- *the Supervisory Agent's family received overnight lodging in BLM-leased facilities.*

The second complaint, also received in September 2015, alleged that the Supervisory Agent improperly intervened in the April 2015 hiring process for a BLM special agent position after he learned that a friend did not make the initial list of candidates to be interviewed.

During our investigation, we received an additional complaint in September 2016, alleging that the Supervisory Agent drove around with his girlfriend in his BLM vehicle while working at the 2015 Burning Man event. The employees who provided details of the misuse stated that they had not fully disclosed this in prior interviews because they feared reprisal from the Supervisory Agent.
We substantiated all but one of the allegations associated with the 2015 Burning Man event.

We found that the Supervisory Agent violated Federal ethics rules when he used his influence with Burning Man officials to obtain three sold-out tickets and special passes for his father, girlfriend, and a family friend. In addition, we confirmed that he directed on-duty BLM law enforcement employees to drive and escort his family during the event with BLM-procured, all-terrain and utility type vehicles (ATVs/UTVs). Regarding the allegation of improper access to ICP by the Supervisory Agent's family, we found that was not against BLM policy. We confirmed that the Supervisory Agent's girlfriend stayed overnight with him in his BLM assigned trailer, contrary to restrictions in the operations plan for the event. The Supervisory Agent also violated Federal ethics regulations by having a subordinate employee make a hotel reservation for his guests. On at least one occasion, he misused his BLM official vehicle when he transported his girlfriend while at the event.

We interviewed BLM OLES Director Salvatore Lauro who stated that he took no action when he saw the Supervisory Agent use ATVs and BLM personnel to transport his (the Supervisory Agent's) family. In addition, Lauro knew the Supervisory Agent allowed his girlfriend to share his BLM overnight lodging accommodations during the event.

We also confirmed that the Supervisory Agent intervened in the hiring process by increasing the number of candidates that would be interviewed. As a result, the Supervisory Agent's friend, who had worked with the Supervisory Agent as a Federal air marshal received an interview and was ultimately hired as a BLM special agent.

During our investigation, the Supervisory Agent displayed a lack of candor when interviewed and tried to influence an employee's comments prior to an interview.

c.

Here is the synopsis of the August 24, 2017 DOI OIG report entitled *Investigative Report of Misconduct by a Senior BLM Law Enforcement Manager*:

Synopsis

We initiated an investigation in November 2016 into allegations concerning a senior law enforcement manager with the Office of Law Enforcement and Security (OLES), Bureau of Land Management (BLM). An OLES official forwarded allegations to us that the senior manager had mishandled evidence from a criminal case by having a subordinate improperly remove several moqui marbles from the OLES evidence room and give them to the senior manager. The senior manager also allegedly gave marbles as gifts to several people. In addition, the OLES official alleged that after the BLM received requests for emails concerning various matters under official inquiry, the senior manager directed his subordinate to review the senior manager's BLM emails and delete any that depicted him unfavorably.

During our investigation, we received an additional allegation that in February 2016, OLES documents related to a congressional request were intentionally deleted from a BLM shared Google drive the day before the request for the documents was received.

We substantiated all but one of the allegations. We found that the senior law enforcement manager instructed his subordinate to remove four moqui marbles from the evidence room and give them to him, which violated BLM and U.S. Department of the Interior (DOI) evidence policy. We also confirmed that the senior manager had his subordinate use the senior manager's computer, personal identity verification (PIV) card, and personal identification number (PIN) to search the senior manager's emails for messages related to the official requests, and to "scrub" any messages that could harm the senior manager or any in which he used demeaning or derogatory language. The senior manager's actions violated Federal security and records management policy as well as various regulations and guidance related to the conduct of Federal employees.

> *Regarding the final allegation, an OLES budget analyst told us she deleted documents from the Google drive the day before the congressional request, but we did not find that she had intended to obstruct the inquiry. We also did not find that the senior manager or anyone from BLM leadership ordered the documents deleted.*
>
> *The senior manager declined to be interviewed for this investigation.*
>
> *We provided this report to the Acting Assistant Secretary for Land and Minerals Management for any action deemed appropriate.*

The foregoing information laid bare an unseemly case of "bad cop" un-professionalism and criminality that reverberated throughout Utah, misconduct made all the more disconcerting because it was perceived to be that of a remote, unaccountable law enforcement agency of a distant, unfriendly Federal bureaucracy. See, e.g., newspaper article entitled *"Report: BLM agent handed out confiscated Moqui marbles 'like candy,'"* Deseret News, Salt Lake City UT, published August 24 2017.

Conclusion

The heavy-handed raid of the Redd residence and resulting passing Dr. Redd would not have happened had the BLM respected its proper place and obeyed FLPMA's requirement to first rely to the maximum feasible extent on the local County Sheriff to carry out the BLM's law enforcement needs. Furthermore the Wooten whistleblower letter and DOI OIG reports lay bare serious systemic problems in BLM law enforcement. On behalf of my district and all citizens in Utah and throughout the West, I respectfully call upon the honorable members of this Subcommittee, in coordination with the full Senate and House, to wield the necessary authority to force the BLM to lay off virtually all BLM Special Agents and instead enter into and/or strengthen existing contracts with County Sheriffs, to carry out BLM law enforcement needs.

Thank you for the opportunity to testify. My constituents and I look forward to serious and extensive changes in the BLM when it comes to law enforcement. They are long overdue.

Senator LEE. Thank you, Mr. Noel.

Mr. Brossy.

STATEMENT OF JACKSON BROSSY, DIRECTOR, NAVAJO NATION, WASHINGTON OFFICE

Mr. BROSSY. [Speaking Native Navajo language.]

Chairman Lee, thank you for the opportunity to present today on the law enforcement programs at the Bureau of Land Management and the U.S Forest Service.

My name is Jackson Brossy. I'm the Director of the Navajo Nation Washington Office, and I'm from the community of Red Mesa which straddles the Utah and Arizona border. President Russell Begaye regrets he cannot be here and has asked that I stand in his place.

The Navajo Nation spans across 27,000 square miles in Arizona, New Mexico and Utah. Our ancestral territory, however, is much larger, ranging from southern Colorado and radiating through the current boundaries throughout the Four Corners region, including the Chaco Canyon region and the Bears Ears region. These places are rich with the Navajo people's cultural resources.

Accordingly, much of our ancestral land is now managed by the BLM and the U.S. Forest Service. In fact, three of our four sacred mountains are managed by the National Forest Service. The Navajo Nation, therefore, has a significant interest in how law enforcement is conducted on these lands.

I'm here to discuss the importance of federal law enforcement and the protection of tribal resources in the Bears Ears region of southern Utah.

Tribal artifacts have been looted in southeast Utah, indiscriminately, for decades. In 2009, after years of undercover work and coordination between the BLM and FBI agents, a sting operation on a multimillion-dollar black market tribal antiquities trade led to 19 arrests. The arrests were possible because of the work of BLM agents who curbed decades of unchecked stealing of resources in direct violation of federal laws such as NAGPRA, the Archeological Resources Protection Act and the National Historic Protection Act.

Despite the federal crackdown in 2009, looting, grave robbing and blatant lawbreaking has continued and is a problem today. Between 2011 and 2015, the BLM documented 26 incidents of cultural resource damage in San Juan County, Utah. And there were likely much more. During this time, the BLM has had only one law enforcement agent assigned to the Bears Ears area.

I noted there were several instances. I want to provide some examples of the instances that have happened since 2011. In 2012, campers tore down a 19th-century Navajo hogan and used it for firewood. In 2013, looters desecrated a burial site in Butler Wash, and in 2014, a 2,000-year-old pictograph in Grand Gulch was vandalized. We've had reports of petroglyphs being removed from rock walls with chisels and saws. We've had reports of rock art being vandalized with people's names etched into the walls; 2,000-year-old to 3,000-year-old materials being used to build fires; and we've even had reports of people using guns to shoot rock art off of canyon walls.

We'd hoped the establishment of the Bears Ears National Monument would provide additional law enforcement personnel to the region. However, while we may not be able to stop completely the desecration of tribal cultural resources and antiquities, we will make active efforts to protect them to the best of our abilities.

In summary, it is critical for federal law enforcement personnel to patrol and enforce federal law on BLM and U.S. Forest Service land.

In America we value the rule of law; therefore, we should engage in as much deterrence and there should be consequences for crimes. As our trustee, we expect the Federal Government to work with the Navajo Nation and the other tribes in the region to protect tribal cultural resources on the nation's public lands. It's unacceptable that in 2018 federal laws continue to be broken with such disregard at such a high rate.

We look forward to working with Congress on this very important issue.

[Speaks Navajo Native language.]

[The prepared statement of Mr. Begaye follows:]

Testimony of the Navajo Nation

Submitted by President Russell Begaye

Before the U.S. Senate

Committee on Energy & Natural Resources

Subcommittee on Public Lands, Forests, and Mining

May 9, 2018

Chairman Lee, Ranking Member Wyden, thank you for the opportunity to present testimony today on the law enforcement programs at the Bureau of Land Management (BLM) and United States Forest Service (USFS). My name is Russell Begaye, and I am the President of the Navajo Nation.

The Navajo Nation spans over 27,000 square miles within Arizona, New Mexico, and Utah. The Navajo ancestral territory is much larger, however, ranging through southern Colorado and radiating further into the other three Four Corners states than our current reservation boundaries. Accordingly, much of our ancestral land is now managed by the federal government through the Bureau of Land Management (BLM) and the United States Forest Service (USFS). In fact, three of our four sacred mountains are within national forest land. Blanca Peak, Sisnaajiní, "white shell mountain," the sacred mountain of the east, lies partially within the Rio Grande National Forest in Colorado; Hesperus Mountain, Dibé Nitsaa, "big sheep," the sacred mountain of the north, lies within the San Juan National Forest in Colorado, and; the San Francisco Peaks, Dook'o'ooshííd, "abalone shell mountain," the sacred mountain of the west, is located

within the Coconino National Forest in Arizona. We have fought to protect these sacred mountains from destructive development and will continue to do so.

Our ancestral territory also extends into BLM lands in the southeastern Utah canyon country and to lands within the San Juan Basin in New Mexico. These sites include the greater Chaco Canyon region and the Bears Ears region, places rich with cultural resources of the Navajo Nation and other tribes. The Navajo Nation, therefore, has a significant interest in the availability and ability of law enforcement personnel to protect Navajo, tribal, and public resources on BLM and USFS lands.

Today, I would like to discuss the importance of federal law enforcement to the protection of tribal resources on the lands in the Bears Ears region in southeast Utah. As this Subcommittee knows, tribal artifacts have been looted off federal lands in southeast Utah for decades. In 2009, after years of undercover work and coordination between the BLM and FBI agents, a sting operation on a multi-million dollar black market tribal antiquities trade led to 19 arrests.[1] The arrests were possible because of the work of BLM agents, who curbed decades of unchecked stealing of resources in violation of federal laws such as the Native American Graves Protection and Rehabilitation Act, Archeological Resources Protection Act, and the National Historic Preservation Act.

The Bears Ears region is home to hundreds of thousands of tribal antiquities and paleontological resources. With more than 100,000 archaeological sites—and up to 250,000 per square mile—the Bears Ears region had been called "America's most significant unprotected cultural landscape."[2] The area has been called out for additional protections since 1903, before the Antiquities Act was enacted in 1906.

Despite the federal crackdown on the antiquities trade in 2009, looting and grave robbing remain a problem. Between 2011 and 2015, the BLM documented 26 incidents of serious cultural resource damage in San Juan County. It is likely there were more. During this time, the BLM had only one law enforcement officer assigned to patrol the Bears Ears area. Although BLM added an additional law enforcement officer in late 2016, the increased visitation in the region makes accidental and purposeful damage to resources more likely, and a corresponding increased law enforcement presence more necessary.

Reports show that over fifty incidents of archeological crimes have occurred since 2011 in the Bears Ears region. These incidents include:

- 2012: Campers tore down a 19th-century Navajo hogan for use as firewood.
- 2013: Looters desecrated a burial site in Butler Wash.

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[1] See Joe Mozingo, *A Sting in the Desert*, LA Times (Sept. 21, 2014), available at http://graphics.latimes.com/utah-sting/ (last visited May 7, 2018).
[2] Crow Canyon Archeological Center, *Archeologists Push for Bears Ears National Monument*, (2016) available at http://www.crowcanyon.org/e-newsletter/2016/June/2016_June_Bears_Ears.html (last visited May 7, 2018).

- 2014: A 2,000-year-old pictograph site in Grand Gulch was vandalized.
- 2015: Three remote burial sites in Cedar Mesa were dug up and looted, and a separate burial site was dug up in Reef Basin.
- 2015: Prehistoric walls were torn down at the Monarch Cave and Double Stack Ruins on Comb Ridge.
- 2016: a petroglyph was partially removed from a wall with a rock saw and chisel, badly damaging the ancient rock art; rock art in a cave was vandalized with names scratched into the art; a fire ring on Muley Point was constructed out of materials from a 2,000-year-old to 3,000-year-old site; ATV riders intentionally left the trail to drive through two archaeological sites in the lower Fish Creek Canyon Wilderness Study Area.[3]

We hoped that the establishment of the Bears Ears National Monument would provide additional law enforcement personnel to the region, which we desperately need. While we may not be able to stop completely the desecration of tribal cultural resources and antiquities, we are able to show that we value them and will make active efforts to protect them to the best of our abilities.

The Navajo Nation thanks the Subcommittee for allowing me to speak at this hearing. It is critical for federal law enforcement personnel to patrol and enforce federal law on BLM and USFS lands. As our trustee, we expect the federal government to work with the Navajo Nation and other tribes to protect tribal cultural resources on the nation's public lands. We hope that we can work together with Congress to accomplish this, and I welcome the opportunity to work with you to do so. Thank you.

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[3] Jenny Rowland, *Bears Ears Cultural Area: The Most Vulnerable U.S. Site for Looting, Vandalism, and Grave Robbing*, Center for American Progress (June 13, 2016), available at https://www.americanprogress.org/issues/green/news/2016/06/13/139344/bears-ears-cultural-area-the-most-vulnerable-u-s-site-for-looting-vandalism-and-grave-robbing/ (last visited May 7, 2018).

Senator LEE. Thank you, Mr. Brossy.
Mr. Larkin.

STATEMENT OF PAUL J. LARKIN, JR., JOHN, BARBARA, AND VICTORIA RUMPEL SENIOR LEGAL RESEARCH FELLOW, THE HERITAGE FOUNDATION

Mr. LARKIN. Thank you, Mr. Chairman.

The Los Angeles Times and my colleague, Representative Noel, have described what happened in Blanding, Utah. And based on what I have read, it seems to me that the tragedy that occurred there had at least three causes.

One was the mistaken decision by a BLM Special Agent to treat Dr. James Redd as if he were Pablo Escobar and to conduct an assault and takeover of the Redd's home as if they were members of a biker gang cooking meth.

Now that problem is not something Congress can fix. Congress can neither appoint nor train federal agents, but there are two other causes of that tragedy that Congress can fix.

One is overcriminalization. It's a neologism that describes the phenomenon of the overuse, the abuse and the misuse of the criminal law. One form that it takes is the use of the criminal law rather than the civil or administrative law as a predominately regulatory tool.

Now the focus of this particular hearing may not be on overcriminalization, but it is at the heart of the problem here. I've written a great deal about this in my position at the Heritage Foundation. And what happened is a classic example that is, what happened in Blanding, is a classic example of what happens when we overcriminalize the Federal Code.

The second factor is the government's decision to create criminal investigative divisions in proprietary and regulatory agencies. The problem with that is similar to the problem with the now expired, Ethics and Government Act of 1978, a loss of perspective. General law enforcement agencies, like the New York Police Department in the city where I grew up, see the full range of conduct and can put in better perspective individual instances of misfeasance, malfeasance and wrongdoing than agents can when they only have a narrow specialty to investigate.

Why is that? Because federal law enforcement operates on the same type of body count method that we used during the Vietnam War to measure success. Federal law enforcement considers, particularly during the budget and appropriations processes, the number of cases opened, cases closed, cases referred for prosecution, arrests, charges, indictments, convictions, length of sentences, total amount of fines and total amount of money that is forfeited to the United States. That is the standard measure of success. You know it better than I because you have to vote on the budget of federal law enforcement agencies.

The problem with that is we are measuring outputs not outcomes. We are measuring what is used with the dollars Congress gives to the agency and what the agents actually do with that, but we are not measuring what effect it has had on the communities or on the rate of commission of crimes in any particular area or in any particular field.

That creates a problem. Agencies need to justify past budget appropriations and certainly have to justify even more future ones. Unless they can use statistics to make that case out, what you will see, unfortunately, are tragedies like this happen because a statistic in an important case on a sheet of paper shows up to be just as big a case as a small case which means you can make three small cases and get three credits for it even though the cases are, in fact, quite trivial.

Using the criminal law to enforce regulatory procedures, to enforce regulatory schemes, inevitably leads to that, sort of, problem. In part, because the average person doesn't know what every regulation is out there. Most people don't know what the Code of Federal Regulations is or the Federal Register or where to find it.

And that's just not me talking, that's what former Supreme Court Justice Lewis Powell said in an opinion for the court. If they don't know what the law is, they can't comply with it. And even if they make a mistake, it is oftentimes far better to use civil or administrative mechanisms then criminal to go after someone who has broken such a rule.

The criminal justice system has a powerful effect on the society. I've been involved in the criminal justice system for most of my career and getting arrested, getting charged, going through trial, has an enormous effect. It should be reserved for the most serious crimes people can commit, not the sort of ones that were issued in the Blanding tragedy.

[The prepared statement of Mr. Larkin follows:]

Paul J. Larkin, Jr.
John, Barbara, and Victoria Rumpel
Senior Legal Research Fellow
The Heritage Foundation

OVERSIGHT HEARING:
FEDERAL LAW ENFORCEMENT PROGRAMS AT THE
BUREAU OF LAND MANAGEMENT AND THE U.S. FOREST SERVICE
BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES'
SUBCOMMITTEE ON PUBLIC LANDS, FORESTS, AND MINING
WRITTEN STATEMENT OF PAUL J. LARKIN, JR.
MAY 9, 2018

Mr. Chairman, Mr. Ranking Member, Members of the Subcommittee:

My name is Paul J. Larkin, Jr. I am the John, Barbara, and Victoria Rumpel Senior Legal Research Fellow at The Heritage Foundation.[1] Most of my career has involved working in the criminal justice system in one capacity or another. For example, I worked at the Department of Justice in the Organized Crime and Racketeering Section of the Criminal Division and in the Office of the Solicitor General. Later, I was Counsel to the Senate Judiciary Committee when Senator Orrin Hatch was the Chairman. Finally, I was a Special Agent-in-Charge in the EPA Criminal Investigation Division. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Thank you for the opportunity to testify about the organization of federal law enforcement at proprietary or regulatory agencies. Although I did not work for the Bureau of Land Management or the U.S. Forest Service, I believe (and hope) that my experience and opinions will prove helpful to you.[2]

INTRODUCTION

The federal government has what has been described as "a dizzying array" of federal investigative agencies, some of which have limited, specialized investigative authority.[3] More than 30 federal agencies are authorized to investigate crimes, execute search warrants, serve subpoenas, make arrests, and carry firearms.[4] Some of those agencies—such as the Federal Bureau of Investigation (FBI), the U.S. Secret Service (Secret Service or USSS), and the U.S. Marshal's Service

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[1] The Heritage Foundation is a non-partisan public policy, research, and educational organization recognized as tax exempt under the United States Code, 26 U.S.C. § 501(c)(3). It is privately supported and receives no funds from government at any level; nor does it perform any government or other contract work. The Heritage Foundation is the most broadly supported think tank in the United States. During 2014, it had hundreds of thousands of supporters representing every state. Contributions came from the following sources: individuals (75%), foundations (12%), corporations (3%), and program revenue and other income (10%). The views expressed here are my own, and do not reflect an institutional position for The Heritage Foundation or its board of trustees.

[2] I have written about this subject in my work at the Heritage Foundation. *See* Paul J. Larkin, Jr., *Reorganizing the Federal Administrative State: The Disutility of Criminal Investigative Programs at Federal Regulatory Agencies*, THE HERITAGE FOUNDATION, LEGAL MEMORANDUM No. 208 (July 12, 2017), http://www.heritage.org/sites/default/files/2017-07/LM-208.pdf (hereafter Larkin, *Reorganizing the Federal Administrative State*).

[3] Louise Radnofsky, Gary Fields & John R. Emshwiller, *Federal Police Ranks Swell to Enforce a Widening Array of Criminal Laws*, WALL ST. J., Dec. 17, 2011, at A1.

[4] *See, e.g.*, GOVERNMENT ACCOUNTABILITY OFFICE, FEDERAL LAW ENFORCEMENT: SURVEY OF FEDERAL CIVILIAN LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES (Dec. 19, 2006), http://www.gao.gov/new.items/d07121.pdf (last accessed Apr. 19, 2017). The Appendix in Larkin, *Reorganizing the Federal Administrative State* contains a list of such agencies. The powers noted in the text are the traditional ones vested in federal law enforcement officers. *See*,

(USMS)—are well known.[5] A few—such as the criminal investigative programs at the National Park Service, the U.S. Forest Service, and the U.S. Postal Service—are fairly well known, especially by people who live in western states, because those states have a large number of sizeable federal parks and forestlands.[6] Other similar programs—such as the Environmental Protection Agency (EPA) Office of Criminal Enforcement, Forensics, and Training (OCEFT)—are largely unknown.[7]

The current assortment of federal law enforcement agencies has come to exist over time in a random manner. There has been no recent systematic congressional or presidential analysis of their overlapping responsibilities, their comparative advantages and disadvantages, and their authority under statutes, rules, tradition, and practice. Even the best-known federal law enforcement agencies—the FBI and Secret Service—are known today for missions that differ greatly from the ones they had at their birth. The FBI has the broadest range of responsibilities, such as counterterrorism, counterespionage, and complex white-collar crime.[8] Yet, today's FBI began as the Bureau of Investigation, which had no law enforcement function and was limited to conducting background investigations of potential federal employees. The Secret Service was created to investigate the rampant counterfeiting seen after the Civil War. It became responsible for protecting the President, Vice President, their families, and visiting heads of state only after the assassination of President William McKinley in 1901.[9] To my knowledge, no one has ever inquired whether the responsibilities that each of those agencies has, as well as the ones that other federal law enforcement agencies possess, might be better accomplished by combining different agencies or by transferring authority from one agency to another.

Numerous nontraditional or regulatory agencies have a criminal investigative division with sworn federal law enforcement officers even though the parent agency's principal function is to manage federal property or regulate some aspect of the economy or contemporary life. That assignment creates a problem. The law enforcement and regulatory cultures are markedly different, and attempting to cram the former into the latter is likely to hamper effective law enforcement. In particular, it dilutes the ability of a law enforcement division to accomplish its mission by housing it in an organization that is not designed to support the specialized mission of federal criminal investigators. Accordingly, Congress and the President should reexamine the placement of federal criminal investigative units within proprietary and regulatory agencies.

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e.g., 18 U.S.C. § 3052 (2012) (FBI agents); *id.* § 3053 & 28 U.S.C. §§ 564, 566(c)–(d) (2012) (United States Marshals and deputy marshals); 18 U.S.C. § 3056 (2012) (Secret Service agents).

[5] *See*, *e.g.*, 6 U.S.C. 381 (2012) (U.S. Secret Service); 28 U.S.C. § 3053 (2012) (U.S. Marshals Service); *id.* § 3052 (FBI).

[6] *See* 16 U.S.C. 559c (2012) (identifying law enforcement authority of U.S. Forest Service officers); 18 U.S.C. 3061 (2012) (identifying powers of Postal Inspection Service officers); 54 U.S.C. § 102701(a) (2012) (empowering the Secretary of the Interior to designate law enforcement officers).

[7] *See* 18 U.S.C. 3063 (2012) (identifying authority of EPA law enforcement officers); EPA, CRIMINAL ENFORCEMENT, https://www.epa.gov/enforcement/criminal-enforcement (last accessed Apr. 29, 2017).

[8] *See*, *e.g.*, 18 U.S.C. §§ 351(g), 3052, 3107 (2012); 28 U.S.C. §§ 533, 540, 540A, 540B (2012); 50 U.S.C. §§ 402–404, §§ 1801–1812 (2012).

[9] *See*, *e.g.*, 18 U.S.C. § 3056 (2012).

I. CRIMINAL INVESTIGATIVE PROGRAMS AT PROPRIETARY OR REGULATORY AGENCIES[10]

Congress could have tasked traditional law enforcement agencies with the responsibility to investigate all crimes committed on federal property and federal regulatory offenses. By and large, however, that is not how federal law enforcement has worked out.[11] Instead, Congress created numerous investigative agencies as components of the agencies that are responsible for managing federal lands or promulgating rules that carry criminal penalties. According to a 2006 report by the Government Accountability Office, approximately 25,000 sworn officers are spread over numerous administrative agencies, commissions, or special-purpose entities. Some of those components consist of relatively unknown investigative divisions, such as the National Gallery of Art. Over time, the size of some of those criminal investigative divisions has increased. For example, the EPA had two criminal investigators in 1977; it now has more than 200.[12] But the number of investigators at any one of the traditional federal investigative agencies (e.g., the FBI) is considerably larger than the number at any one regulatory criminal program.

II. THE BENEFITS OF ESTABLISHING CRIMINAL INVESTIGATIVE PROGRAMS AT PROPRIETARY OR REGULATORY AGENCIES

There are various reasons why Congress may decide to create a separate, specialized criminal investigative division within an agency rather than direct the agency to call on one of the traditional federal law enforcement units when it believes that a crime has occurred.

First, the agency might have particularized, technical, or scientific knowledge that is necessary to understand what is and is not an offense and therefore also possess a peculiar ability to know how an offense can and should be investigated. Unlike the conduct made an offense by common law and state criminal codes (murder, rape, robbery, fraud, and so forth), regulatory

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[10] The threshold question in this regard is whether, and, if so, to what extent and how, the federal criminal law should be used as a regulatory tool. The May 2, 2018, letter from Committee Chair Senator Lisa Murkowski did not identify that issue as a subject of this hearing. *See* Letter from Senator Lisa Murkowski to Paul Larkin (May 2, 2018) ("The purpose of this hearing is to examine the law enforcement programs at the Bureau of Land Management and the U.S. Forest Service, coordination with other federal, state, and local law enforcement, and the effects on rural communities."). For some of my publications on those subjects, see, for example, Paul J. Larkin, Jr. & John-Michael Seibler, Sturgeon v. Frost: *Alaska's Wild Lands and Wild Laws Prove the Need for a Mistake of Law Defense*, 73 WASH. & LEE L. REV. ONLINE 376 (2016); Paul J. Larkin, Jr., *Strict Liability Offenses, Incarceration, and the Cruel and Unusual Punishments Clause*, 37 HARV. J.L. & PUB. POL'Y 1065 (2014); Paul J. Larkin, Jr., *Prohibition, Regulation, and Overcriminalization: The Proper and Improper Uses of the Criminal Law*, 42 HOFSTRA L. REV. 745 (2014); Paul J. Larkin, Jr., *Public Choice Theory and Overcriminalization*, 36 HARV. J.L. & PUB. POL'Y 715 (2013); Edwin Meese III & Paul J. Larkin, Jr., *Reconsidering the Mistake of Law Defense*, 102 J. of Crim. L. & Criminology 725 (2012); Larkin, *Reorganizing the Federal Administrative State*, *supra* note 2.

[11] Insofar as regulatory offenses involve the same type of lying, cheating, and stealing that also falls under other federal criminal laws, such as fraud, traditional law enforcement agencies like the FBI would also have jurisdiction to investigate the wrongdoing.

[12] *See, e.g.*, GOVERNMENT ACCOUNTABILITY OFFICE, FEDERAL LAW ENFORCEMENT: SURVEY OF FEDERAL CIVILIAN LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES (Dec. 19, 2006), http://www.gao.gov/new.items/d07121.pdf (last accessed Apr. 19, 2017); GENERAL ACCOUNTING OFFICE, FEDERAL LAW ENFORCEMENT: INFORMATION ON CERTAIN AGENCIES' CRIMINAL INVESTIGATIVE PERSONNEL AND SALARY COSTS (Nov. 15, 1995), http://www.gao.gov/assets/110/106306.pdf (last accessed Apr. 19, 2017); GENERAL ACCOUNTING OFFICE, FEDERAL LAW ENFORCEMENT: INVESTIGATIVE AUTHORITY AND PERSONNEL AT 13 AGENCIES (Sept. 30, 1996), http://www.gao.gov/assets/230/223212.pdf (last accessed Apr. 19, 2017); GENERAL ACCOUNTING OFFICE, FEDERAL LAW ENFORCEMENT: INVESTIGATIVE AUTHORITY AND PERSONNEL AT 32 AGENCIES (July 22, 1997), http://www.gao.gov/assets/230/224401.pdf (last accessed Apr. 19, 2017).

crimes (e.g., the illegal disposal of "hazardous" waste) may require technical know-how beyond what the average federal agent learns during basic training. It therefore may make sense to pair agency subject matter experts with the special agents who investigate regulatory crimes. If so, it also may make sense to situate those experts and agents in the same overall agency.

Second, and closely related, is the need for specialized and focused legal training on the meaning of the various regulatory statutes and rules that undergird regulatory crimes. Here, too, the relevant offenses may use abstruse concepts that an attorney can learn only with the specialized training and experience that comes with practicing law in a specific regulatory field. Only the general counsel's office at a particular agency may have attorneys who are sufficiently versed in the relevant statutes and regulations to be able to help federal investigators identify what must be proved to establish an offense. For that reason, too, it makes sense to combine investigators with the lawyers who will advise them about the laws' meaning.

Third, proprietary or regulatory offenses might not receive the attention they deserve if they are just one type of a large category of crimes that a traditional law enforcement agency is responsible for investigating. Environmental crimes, for instance, may threaten injury to the life or health of residents who use a water supply polluted with toxic waste, even though the harmful effects may not become observable for years or even longer. By contrast, violent crimes cause obvious injury to readily identifiable victims *now*. To the extent that law enforcement agencies assign their investigative resources according to the perceived short-run reaction of legislators to reports of local crimes, regulatory offenses could wind up being shortchanged on an ongoing basis to the long-term detriment of a large number of people.

III. THE COSTS OF ESTABLISHING CRIMINAL INVESTIGATIVE PROGRAMS AT PROPRIETARY OR REGULATORY AGENCIES

At the same time, there is a powerful case to be made that federal law enforcement should be left to traditional investigative agencies, such as the FBI or the U.S. Marshals Service.

First, the public likely believes that crimes of violence (e.g., robbery) or deceit (e.g., fraud) are more serious and should be given greater attention than regulatory offenses. Members of Congress may agree with that attitude but nonetheless create regulatory crimes for other reasons. For example, adding criminal statutes to an otherwise civil regulatory scheme allows Congress to cash in on the leverage that a criminal investigation enjoys with the public and the media. To take advantage of the nimbus that law enforcement officers radiate, Congress may create a misdemeanor or minor offense[13] so that a regulatory agency can call on its criminal investigative arm to conduct an inspection and interview company officials,[14] even though Congress may believe that most regulatory offenses should not be investigated and prosecuted as crimes.

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[13] Generally, felonies are crimes punishable by death or imprisonment for more than one year, misdemeanors are crimes punishable by a fine or by confinement in jail for one year or less, and petty offenses are crimes punishable by a fine or confinement for less than six months. *See, e.g.*, WAYNE R. LAFAVE, CRIMINAL LAW § 1.6(a), at 36–38, §1.6(e), at 43–44 (5th ed. 2010); 18 U.S.C. § 19 (2012) (defining "petty offense").

[14] That rationale may explain why we see small-scale criminal penalties in regulatory bills. *See, e.g.*, the Contaminated Drywall Safety Act of 2012, H.R. 4212, 112th Cong. (2012) (creating a strict liability offense for importing contaminated drywall, punishable by 90 days in custody); the Commercial Motor Vehicle Safety Enhancement Act of 2011, S. 1950, 112th Cong. (2011) (punishing violations of the bill with up to 90 days in prison).

Second, creation of specialized law enforcement agencies raises a problem analogous to one that existed with respect to the independent counsel provisions of the now-expired Ethics in Government Act of 1978:[15] a loss of perspective.[16] Agencies with wide-ranging investigative responsibility see a broad array of human conduct and can put any one party's actions into perspective. Agencies with a narrow charter see only what they may investigate. Because the criminal division of an administrative agency might have only a limited number of criminal offenses within its jurisdiction, the division might well spend far more resources than are necessary to investigate minor infractions to obtain the "stats" necessary justify its continued existence.[17]

Of course, a focus on statistics is endemic to federal law enforcement. The reason is that federal law enforcement investigative and prosecutorial agencies measure their success by focusing on the *outputs* rather than the *outcomes* of their efforts. Federal law enforcement agencies operate under an incentive structure that forces them to play the numbers game and "focus on the statistical 'bottom line.'"[18] Statistics—the number of arrests, charges, and convictions; the total length of all terms of incarceration; and the amounts of money paid in fines or forfeited to the government—"are the Justice Department's bread and butter."[19] Just read any criminal law enforcement agency's annual report or congressional budget submission. "As George Washington University Law School Professor Jonathan Turley puts it, 'In some ways, the Justice Department continues to operate under the body count approach in Vietnam.... They feel a need to produce a body count to Congress to justify past appropriations and secure future increases.'"[20]

To be sure, even traditional federal investigative agencies like the FBI need to prove to Congress—particularly during the budget submission period—that they have made efficient use of the funds Congress appropriated for them. But the numbers problem is greatly exacerbated in the case of proprietary and regulatory agency criminal investigative divisions because they do not have a goodly number of traditional, nonregulatory offenses within their jurisdiction. They might have to pursue minor or trivial cases as the only way to generate the type of numbers that they can use to persuade congressional budget and appropriations committees that they have spent the taxpayers' money wisely.

Third, that loss of perspective generates miscarriages of justice. Perhaps the "body count" approach would not be a problem if agencies pursued only cases involving conduct that is physically harmful (like murder or assault), morally reprehensible (like fraud), or both (like rape), but regulatory agencies do not investigate those crimes. The conduct outlawed by regulatory regimes can sometime fit into one of those categories (e.g., dumping toxic waste into the water supply),

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[15] Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824 (codified as amended at 28 U.S.C. §§ 49, 591 *et seq.* (1982)).

[16] *See* Morrison v. Olson, 487 U.S. 654, 727–28 (1988) (Scalia, J., dissenting).

[17] *See, e.g.*, Anthony G. Amsterdam, *The Supreme Court and the Rights of Suspects in Criminal Cases*, 45 N.Y.U. L. REV. 785, 793 (1970) (police departments measure efficiency by arrests, not convictions); George F. Will, *Blowing the Whistle on the Federal Leviathan*, WASH. POST, July 27, 2012, http://www.washingtonpost.com/opinions/george-will-blowing-the-whistle-on-leviathan/2012/07/27/gJQAAsRnEX_story.html (last accessed Apr. 28, 2017).

[18] Gene Healy, *There Goes the Neighborhood: The Bush–Ashcroft Plan to "Help" Localities Fight Gun Crime*, in GO DIRECTLY TO JAIL: THE CRIMINALIZATION OF ALMOST EVERYTHING 105–06 (Gene Healy ed., 2004).

[19] *Id.*

[20] *Id.*

but regulatory criminal statutes cover a far broader range of conduct than is covered in the common law or state criminal codes. Environmental statutes, for example, are sometimes written quite broadly in order to afford the EPA authority to address unforeseen threats to health and safety. That is valuable from a regulatory perspective but quite troubling from a criminal enforcement perspective. Broadly written statutes embrace conduct that no one would have anticipated falling within their terms. The numbers game encourages regulatory agencies to pursue trivial criminal cases that should be treated administratively or civilly, or perhaps with no more than a warning and guidance about how to operate in the future. Morally blameless individuals get caught up in the maw of the federal criminal process for matters that would never be treated as a crime by a traditional law enforcement agency.[21]

Fifth, legislators also may see constituent benefits from giving regulatory agencies criminal enforcement tasks. Making a regulatory violation a crime adds a certain respectability to the relevant field, thereby satisfying one or more interest groups by publicly declaring that their most important concerns are also society's most important.

Sixth, Congress may believe that regulatory law enforcement divisions are a moneymaking activity. The government may negotiate a plea bargain with a defendant (particularly a corporation), requiring the latter to pay large fines, and every fine recovered by the government in a plea bargain is found money.

Seventh, criminal law enforcement is not a core function of the mission for a proprietary or regulatory agency. That creates difficulties within an agency when it must decide how to allocate emphasis and assets. As Harvard Professor James Q. Wilson once explained, every agency has a "culture" or "personality"—that is, a widespread, settled understanding of the agency's identity and manner of operations.[22] Those cultures help to implement and reinforce the agency's "mission"—that is, "a widely shared and endorsed definition of the agency's core tasks."[23] Criminal law enforcement rests uneasily within an agency characterized by a non-law enforcement culture. Law enforcement seeks to punish, not manage land or regulate an activity. The difference makes for an uneasy fit. That is particularly true if Congress assigns a law enforcement responsibility to an agency *after* it was born because it is difficult to change an agency's mission, particularly one that is deeply entrenched.[24] As Professor Wilson noted, "developing a sense of mission is easiest when an organization is first created."[25] Because "most administrators take up their duties in organizations that have long histories," they have "reduce[d]...opportunities for affective culture at all, much less making it into a strong and coherent sense of mission."[26] Put another way, a baseball

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[21] For examples, see Larkin, *Reorganizing the Federal Administrative State*.

[22] "Every organization has a culture, that is, a persistent, patterned way of thinking about the central tasks of and human relationships within an organization. Culture is to an organization what personality is to an individual. Like human culture generally, it is passed on from one generation to the next. It changes slowly, if at all." JAMES Q. WILSON, BUREAUCRACY 91 (1989).

[23] *Id.* at 99; *see also id.* at 95 ("When an organization has a culture that is widely shared and warmly endorsed by operators and managers alike, we say that the agency has a sense of *mission*. A sense of mission confers a feeling or special worth on the members, provides a basis for recruiting and socializing new members, and enables the administration to economize on the use of other incentives.") (emphasis in original; footnote omitted).

[24] *Id.* at 96.

[25] *Id.*

[26] *Id.*

team plays away games for only half of the season (before an often hostile crowd), but some agency criminal programs have been playing nothing but away games since Day One.

Eighth, federal law enforcement officers at proprietary and regulatory agencies could find themselves in a predicament. Given the realities of their job, law enforcement officers may need to use force when making an arrest, collecting samples, executing a search warrant, interviewing a suspect, or doing one of the other activities that law enforcement officers perform. The use of force is not a pleasant component of the job, but sometimes it cannot be avoided. A traditional investigative agency understands and appreciates the demands placed on its investigators, so such occurrences are not seen as unthinkable. Moreover, when a traditional law enforcement officer uses force, his parent agency and his colleagues will presume that he acted properly until an internal investigation determines otherwise. He will not automatically and immediately become a pariah.

Regulatory agencies, by contrast, do not have the same law enforcement culture or mission, let alone the corresponding esprit de corps, that is embedded in the DNA of traditional law enforcement agencies like the FBI and Marshals Service. Most agency personnel work in offices. Their principal interactions are with colleagues, members of industry and their lawyers, Members of Congress and their staffs, political superiors within the agency, and officials at OMB or the White House Office of Information and Regulatory Affairs. They are accustomed to seeing outsiders respect their authority, even when the outsiders disagree with them. They are strangers to being placed in situations in which words or numbers will not suffice to deal with a problem or in which outsiders refuse to respect their position. Their culture—whether environmental, regulatory, scientific, or social worker—does not have room for people who place their hands on others. In fact, in my opinion, it would be seen as a sign of intellectual weakness and professional failure.

Those cultures have no room for law enforcement officers. Trying to force the latter into the regulatory culture at an administrative agency puts criminal investigators in the difficult position of feeling that they are out of place in their own organization. There is even a risk that the agents in regulatory programs who use force might fear that they will be "hung out to dry" by the agency's senior political officials, particularly if there is public blowback from such an event.[27] All that is the consequence of trying to fit a square peg into a round hole.[28]

To summarize, when deciding whether it is a good idea to have a criminal investigation division in a proprietary or regulatory agency, consider the words of Professor Wilson describing the costs of that arranged marriage:

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[27] Which can happen. *See, e.g.*, Sean Doogan, *Alaska Governor Calls for Investigation of Armed, EPA-led Task Force*, ALASKA DISPATCH, Sept. 5, 2013, https://www.adn.com/alaska-news/article/governor-calls-special-counsel-investigate-actions-armed-epa-led-task-force/2013/09/05/; Valerie Richardson, *EPA Facing Fire for Armed Raid on Mine in Chicken, Alaska: Population, 7*, WASH. TIMES, Oct. 11, 2013, http://www.washingtontimes.com/news/2013/oct/11/epa-facing-fire-armed-raid-alaska-mine/.

[28] *See* WILSON, *supra* note 22, at 95 ("Since every organization has a culture, every organization will be poorly adapted to perform tasks that are not part of that culture."). As an example, Professor Wilson pointed to the Tennessee Valley Authority (TVA). "[F]or a long time [it] has had (and may still have) an engineering culture that values efficient power production and undervalues environmental protection." *Id.* For that reason, he concluded, it is unreasonable to expect that the TVA will treat environmental protection on a par with efficient power production, the mission for which Congress created it. *Id.*

> First, tasks that are not part of the culture will not be attended to with the same energy and resources as are devoted to tasks that are part of it. Second, organizations in which two or more cultures struggle for supremacy will experience serious conflict as defenders of one seek to dominate representatives of the other. Third, organizations will resist taking on new tasks that seem incompatible with the dominant culture. The stronger and more uniform the culture—that is, the more the culture approximates a sense of mission—the more obvious these consequences.[29]

IV. A REMEDY: TRANSFER FEDERAL PROPRIETARY AND REGULATORY AGENCIES' CRIMINAL INVESTIGATIVE DIVISIONS TO THE FBI OR THE U.S. MARSHALS SERVICE

One way to fix those problems is to transfer the criminal enforcement authority of regulatory agencies to a traditional law enforcement agency. The question is, which one?

A few can be eliminated at the outset. Several traditional investigative agencies have missions that do not readily accommodate proprietary or regulatory enforcement. The Secret Service (protection and counterfeiting); Drug Enforcement Administration (drug trafficking); Bureau of Alcohol, Tobacco, Firearms, and Explosives (the subjects in the agency's name); Bureau of Immigration and Customs Enforcement (same); and Border Patrol (same) are not good matches for agents who have spent their careers investigating (for example) regulatory offenses.

The FBI might be a reasonable home for criminal regulatory enforcement. It has the largest portfolio of federal offenses to investigate, including conduct underlying some regulatory crimes. It also has numerous field offices across the country, which would reduce the disruption following the transfer of agents from one agency to another. But forcing the FBI to absorb regulatory investigators would create several sizeable problems.

One is that the number of new agents could exceed the number of existing agents. That poses a risk over time of shifting the FBI's focus. Another problem is that since 9/11, the FBI has been the nation's principal federal law enforcement agency combating international and domestic terrorism. Adding regulatory responsibilities to the FBI's plate is inconsistent with the principal assignment given the Bureau by former President George W. Bush, an assignment that former President Barack Obama carried forward, and that, to my knowledge, President Donald Trump has not changed. Finally, regulatory investigators would need to undergo full-field background investigations and complete FBI agent training at Quantico, Virginia, before becoming FBI agents. That would impose a considerable delay and require an appreciable expenditure before the transferred agents would be able to come on board.[30]

An alternative that may make more sense is to transfer those agents to the U.S. Marshals Service. With an organizational bloodline that begins with the Judiciary Act of 1789,[31] U.S. marshals and their deputies have exceptionally broad law enforcement authority—the same authority

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[29] *Id.* at 101.

[30] It would be most unwise to exempt the newly added criminal investigators from the same education and training requirements demanded of FBI recruits. That would create two tiers of agents at the Bureau, which would generate a host of undesirable results such as ill will, ostracism, and so forth.

[31] Ch. 20, § 27, 1 Stat. 73, 87 (1789).

as FBI agents[32] as well as the authority possessed by their respective state law enforcement counterparts.[33] The principal mission of deputy marshals is to assist the federal courts,[34] but they also are generalists.[35] The Marshals Service has offices nationwide. It would expand the coverage that non-traditional law enforcement agencies can provide and reduce the number of necessary geographic transfers, benefiting both the agents involved and the public.

In addition, the Marshals Service would be a cost-effective option as the home for proprietary and regulatory agents. Deputy marshals and regulatory criminal investigators undergo the same basic criminal investigator training at the Federal Law Enforcement Training Center (FLETC), while former regulatory investigators already have the additional education and training needed to enforce regulatory criminal codes. On a prospective basis, the cost of adding that training to the basic training afforded deputy marshals is likely to be less than the cost of expanding the training programs at the FBI's Quantico facility because FLETC already accommodates numerous federal agencies.

In sum, transferring criminal programs and their agents from proprietary and regulatory agencies to the Marshals Service would benefit the public and the agents at a potentially lower cost than would result from giving criminal regulatory responsibilities to the FBI.

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[32] *Compare* 18 U.S.C. § 3053 (2012) ("United States marshals and their deputies may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony."), *and* 28 U.S.C. § 566(c) (2012) ("Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties."); *id.* § 566(d) ("Each United States marshal, deputy marshal, and any other official of the Service as may be designated by the Director may carry firearms and make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony."), *with* 18 U.S.C. § 3052 ("The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.").

[33] *See* 28 U.S.C. § 564 (2012) ("United States marshals, deputy marshals and such other officials of the Service as may be designated by the Director, in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof."). In *Cunningham v. Neagle*, 135 U.S. 1 (1890), the Supreme Court recognized the broad authority that U.S. marshals and their deputies enjoy under federal and state law in finding justified the decision of a deputy marshal to use deadly force to protect Justice Stephen Field from a murderous assault. *Id.* at 52–76.

[34] *See* 28 U.S.C. § 566(a) (2012) ("It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals, the Court of International Trade, and the United States Tax Court, as provided by law.").

[35] "[The Marshals] were law enforcers, but also administrators. They needed to be adept in accounting procedures and pursuing outlaws, in quelling riots and arranging court sessions. The legacy of their history was the avoidance of specialization. Even today, in this age of experts, U.S. Marshals and their Deputies are the general practitioners within the law enforcement community. As the government's generalists, they have proven invaluable in responding to rapidly changing conditions. Although other Federal agencies are restricted by legislation to specific well-defined duties and jurisdictions, the Marshals are not. Consequently, they are called upon to uphold the government's interests and policies in a wide variety of circumstances." U.S. MARSHALS SERVICE, HISTORY—GENERAL PRACTITIONERS, https://www.usmarshals.gov/history/general_practitioners.htm (last accessed May 5, 2017).

CONCLUSION

President Donald Trump has directed federal agencies and has invited the public to suggest ways to reorganize the federal government to make it more effective and efficient. One possibility is to reorganize at least part of federal law enforcement. Numerous federal regulatory agencies have criminal investigative divisions. Congress and the President should consider consolidating those programs and transferring them to a traditional federal law enforcement agency. The FBI is a possible home for those agents, but the U.S. Marshals Service may have certain advantages that the FBI does not possess, including the possibility of a less costly transition. Either agency would make a more suitable home for investigative programs currently housed in administrative agencies.

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LEGAL MEMORANDUM

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Reorganizing the Federal Administrative State: The Disutility of Criminal Investigative Programs at Federal Regulatory Agencies

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Abstract

President Donald Trump has directed federal agencies and has invited the public to suggest ways to reorganize the federal government to make it more effective and efficient. One possibility is to reorganize at least part of federal law enforcement. Numerous federal regulatory agencies have criminal investigative divisions. Congress and the President should consider consolidating those programs and transferring them to a traditional federal law enforcement agency. The FBI is a possible home for those agents, but the U.S. Marshals Service may have certain advantages that the FBI does not possess, including the possibility of a less costly transition. Either agency would make a more suitable home for investigative programs currently housed in administrative agencies.

Key Points

- Today, more than 30 federal agencies are authorized to investigate crimes, execute search warrants, serve subpoenas, make arrests, and carry firearms.
- Each agency has a criminal investigative division with sworn federal law enforcement officers even though the parent agency's principal function is to regulate some aspect of the economy or contemporary life. That assignment creates a problem.
- The law enforcement and regulatory cultures are markedly different, and attempting to cram the former into an agency characterized by the latter hampers effective law enforcement. It dilutes the ability of a law enforcement division to accomplish its mission by housing it in an organization that is not designed to support the specialized mission of federal criminal investigators.
- Accordingly, Congress and the President should reexamine the placement of federal criminal investigative units within regulatory agencies and reassign the members of those units to a traditional federal law enforcement agency.

Introduction

Large American cities—such as New York City, Chicago, and Los Angeles—have municipal police departments as their principal criminal investigative authorities. The federal government, by contrast, does not have a national police force. Instead, there is "a dizzying array" of federal investigative agencies, some of which have limited, specialized investigative authority.[1] More than 30 federal agencies are authorized to investigate crimes, execute search warrants, serve subpoenas, make arrests, and carry firearms.[2] Some of these agencies—such as the Federal Bureau of Investigation (FBI), U.S. Secret Service (Secret Service or USSS), and U.S. Marshal's Service (USMS)—are well known.[3] A few—such as the National Park Service, U.S. Coast Guard, U.S. Forest Service, and U.S. Postal Service—are fairly well known, especially by people who live in

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western states, which have a large number of sizeable federal parks and forestlands.[4] Others—such as the Environmental Protection Agency (EPA) Office of Criminal Enforcement, Forensics, and Training (OCEFT)—are largely unknown.[5]

Each agency has a criminal investigative division with sworn federal law enforcement officers even though the parent agency's principal function is to regulate some aspect of the economy or contemporary life. That assignment creates a problem. The law enforcement and regulatory cultures are markedly different, and attempting to cram the former into an agency characterized by the latter hampers effective law enforcement. It dilutes the ability of a law enforcement division to accomplish its mission by housing it in an organization that is not designed to support the specialized mission of federal criminal investigators. Accordingly, Congress and the President should reexamine the placement of federal criminal investigative units within regulatory agencies and reassign the members of those units to a traditional federal law enforcement agency.[6]

Use of the Criminal Law as a Regulatory Tool

Beginning in the mid-19th century, legislatures concluded that industrialization and urbanization had generated widespread harms that no tort system could adequately recompense. That belief led legislators to use the criminal law to enforce regulatory programs by creating what came to be known as "regulatory offenses" or "public welfare offenses." Initially, the category of those crimes was small, limited to building code offenses, traffic violations, and sundry other comparable low-level infractions.[7] But the list of strict liability offenses grew over time. Today, the corpus of regulatory offenses is considerably larger than anyone initially envisioned.[8]

The creation of administrative agencies to implement regulatory programs also added a new feature to the category of federal offenses: crimes defined by regulations. That phenomenon was not the inevitable consequence of creating administrative agencies or authorizing them to promulgate regulations. Articles I, II, and III of the Constitution strongly imply that the legislative, executive, and judicial powers can be exercised only by the particular branch to which they are assigned.[9] The law did not work out that way, however, and regulatory agencies today have considerable lawmaking authority.

Early in the 20th century, the question arose whether only Congress has the authority to define the elements of a federal offense. The Supreme Court of the United Sates could have ruled that the power to define federal crimes is a prerogative of Congress that it cannot delegate to administrative agencies. After all, in 1812, the Court held in *United States v. Hudson & Goodwin* that the federal courts lack the authority to create "common law crimes" because only Congress can define a federal offense.[10] It would have been only a small step to apply the rationale of that case to an executive branch agency and decide that the President also may not define a federal offense. Nonetheless, the Court declined the opportunity.[11] In *United States v. Grimaud*,[12] the Court held that Congress may delegate law-creating power to an agency by enabling it to promulgate regulations and that an agency may use that authority to define conduct punishable as a crime.[13]

The *Grimaud* decision was flatly inconsistent with Madisonian separation-of-powers principles. Under *Hudson & Goodwin*, Congress cannot share its power to define a federal offense with the judiciary because it is a congressional prerogative. Yet *Grimaud* ruled that Congress may empower the executive to create federal offenses. James Madison would have grimaced at the concept of a shared prerogative. He would have been particularly aghast at the notion that the executive branch, which was intentionally and textually limited to enforcing the law, could also make unlawful the very conduct that it would later enforce. Reconciling *Grimaud* with *Hudson & Goodwin* is no easy task. One decision or the other seems wrong.

Despite its analytical weaknesses, *Grimaud* remains "good law" today. The Supreme Court has shown no inclination to reconsider and overturn it. The result has been that federal agencies have taken full advantage of that new power. *Grimaud* erased any hope of building a dam that could have held back administrative criminal lawmaking, and the legislative and executive branches have combined to establish a sub-statutory criminal code. Some commentators have estimated that the Code of Federal Regulations contains hundreds of thousands of regulations that serve as a tripwire for criminal liability.[14] The result is that individuals and businesses, large or small, must be aware of not only the penal code, but also books of federal rules that can occupy multiple shelves in any law library.[15]

Criminal Investigative Programs at Federal Regulatory Agencies

Congress could have tasked the traditional law enforcement agencies with the responsibility to investigate regulatory offenses. By and large, however, it has not done so.[16] Instead, Congress created numerous investigative agencies as components of the administrative agencies that are responsible for promulgating the underlying rules that now carry criminal penalties. According to a 2006 report by the Government Accountability Office, approximately 25,000 sworn officers are spread over numerous administrative agencies, commissions, or special-purpose entitles. Some of those components consist of relatively unknown investigative divisions, such as the Fish and Wildlife Service (USFW&S), National Oceanographic and Atmospheric Administration (NOAA), and National Gallery of Art.

Over time, the size of some of those criminal investigative divisions has increased. For example, the EPA had two criminal investigators in 1977; it now has more than 200.[17] But the number of investigators at any one of the traditional federal investigative agencies (e.g., the FBI) is considerably larger than the number at any one regulatory criminal program.

The Pluses of Establishing Criminal Investigative Programs at Federal Regulatory Agencies

There are various reasons why Congress may decide to create a separate, specialized criminal investigative division within an administrative agency rather than direct a regulatory agency to call on one of the traditional federal law enforcement agencies when it believes that a regulatory crime may have occurred.

First, the agency might have scientific knowledge that is necessary to understand what is and is not an offense and therefore also possess a peculiar ability to guide how an offense can and should be investigated. Unlike the conduct made an offense by common law and the state criminal codes (murder, rape, robbery, fraud, and so forth), regulatory crimes (e.g., the illegal disposal of "hazardous" waste) may require technical know-how beyond what the average federal agent learns during basic training. It therefore may make sense to pair those experts with the agents who investigate regulatory crimes. If so, it also may make sense to situate those experts and agents in the same program.

Second, and closely related, is the need for specialized and focused legal training on the meaning of the various regulatory statutes and rules that undergird regulatory crimes. Here, too, the relevant offenses may use abstruse concepts that an attorney can learn only with the specialized training and experience that comes with practicing law in a specific regulatory field. Only the general counsel's office at a particular agency may have attorneys who are sufficiently versed in the relevant statutes and regulations to be able to help federal investigators identify what must be proved to establish an offense. For that reason, too, it therefore makes sense to combine investigators with the lawyers who will advise them about the laws' meaning.

Third, regulatory offenses might not receive the attention they deserve if they are just one type of a large category of crimes that a traditional law enforcement agency is responsible for investigating. Environmental crimes, for instance, may threaten injury to the life or health of residents who use a water supply polluted with toxic waste, even though the harmful effects may not become observable for years or even longer. By contrast, violent crimes cause obvious injury to readily identifiable victims *now.* Those victims not only enjoy media access, but also possess a powerful voice in the legislature, which may fear angering them unless violent crimes are given a priority higher than regulatory offenses.[18]

Similarly, drug offenses can produce a large number of victims both in the long term (e.g., people with substance abuse problems) and in the short term (e.g., victims of the violence that accompanies drug trafficking). By contrast, environmental crimes might not have immediate, obvious victims. They might pose only a marginally greater risk of injury (e.g., 10 percent) to only a small number of people (e.g., a local community) only in the long term (e.g., 10 years out) and result in a disease that could befall its victims who were never exposed to that toxic substance (e.g., cancer suffered by smokers), making it difficult to blame the violation for the harm. To the extent that law enforcement agencies assign their investigative resources according to the perceived short-run threat of injury to the public and short-run reaction of legislators to reports of local crimes, regulatory offenses could wind up being short-changed on an ongoing basis to the long-term detriment of a large number of people.

The Minuses of Establishing Criminal Investigative Programs at Federal Regulatory Agencies

At the same time, there is a powerful case to be made that federal law enforcement should be left to traditional investigative agencies.

First, the public likely believes that crimes of violence (e.g., robbery) or deceit (e.g., fraud) are more serious and should be given greater attention than regulatory offenses. Members of Congress may agree with that attitude but nonetheless create regulatory crimes for other reasons. For example, adding criminal statutes to an otherwise civil regulatory scheme allows Congress to cash in on the leverage that a criminal investigation enjoys with the public and the media.[19] Federal agents (think Jack Taggart in *Fire Down Below*[20]) will receive considerable respect from the public and the press; civil inspectors (think Walter Peck in *Ghostbusters*[21]) won't. That is particularly true when agents wear "raid jackets" emblazoned with the agency logo and the word "POLICE." To take advantage of the nimbus that law enforcement officers radiate, Congress may create a misdemeanor or minor offense[22] so that a regulatory agency can call on its criminal investigative arm to conduct an inspection and interview company officials[23]—all that even though Congress may believe that most regulatory offenses should not be investigated and prosecuted as crimes.

Second, creation of specialized law enforcement agencies raises a problem analogous to one that existed with respect to the independent counsel provisions of the now-expired Ethics in Government Act of 1978:[24] a loss of perspective.[25] Agencies with wide-ranging investigative responsibility see a broad array of human conduct and can put any one party's actions into perspective. Agencies with a narrow charter see only what they may investigate. Because the criminal division of an administrative agency might have only a limited number of criminal offenses within its jurisdiction, the division might well spend far more resources than are necessary to investigate minor infractions to obtain the "stats" necessary justify its continued existence.[26]

Of course, a focus on statistics is endemic to federal law enforcement. The reason is that federal law enforcement investigative and prosecutorial agencies measure their success by focusing on the *outputs* rather than the *outcomes* of their efforts. Federal law enforcement agencies operate under an incentive structure that forces them to play the numbers game and "focus on the statistical 'bottom line.'"[27] Statistics—the number of arrests, charges, and convictions; the total length of all terms of incarceration; and the amounts of money paid in fines or forfeited to the government—"are the Justice Department's bread and butter."[28] Just read any criminal law enforcement agency's annual report or congressional budget submission. "As George Washington University Law School Professor Jonathan Turley puts it, 'In some ways, the Justice Department continues to operate under the body count approach in Vietnam.... They feel a need to produce a body count to Congress to justify past appropriations and secure future increases.'"[29]

To be sure, even traditional federal investigative agencies like the FBI need to prove to Congress—particularly during the budget submission period—that they have made efficient use of the funds Congress appropriated for them. But the numbers problem is greatly exacerbated in the case of regulatory agency criminal investigative divisions because they do not have a goodly number of traditional, nonregulatory offenses within their jurisdiction. They might have to pursue minor or trivial cases as the only way to generate the type of numbers that they can use to persuade congressional budget and appropriations committees that they have spent the taxpayers' money wisely.

Third, that loss of perspective generates miscarriages of justice. Perhaps the "body count" approach would not be a problem if agencies pursued only cases involving conduct that is physically harmful like murder or assault, morally reprehensible like fraud, or both like rape, but regulatory agencies do not investigate those crimes. The conduct outlawed by regulatory regimes can sometime fit into one of those categories (e.g., dumping toxic waste into the water supply), but regulatory criminal statutes cover a far broader range of conduct than is covered in the common law or state criminal codes. Environmental statutes, for example, are sometimes written quite broadly in order to afford the EPA authority to address unforeseen threats to health and safety. That is valuable from a regulatory perspective but quite troubling from a criminal enforcement perspective. Broadly written statutes embrace conduct that no one would have anticipated falling within their terms.

Fourth, the numbers game encourages regulatory agencies to pursue trivial criminal cases that should be treated administratively or civilly, or perhaps with no more than a warning and guidance how to operate in the future. Morally blameless individuals get caught up in the maw of the federal criminal process for matters that would never be treated as a crime by a traditional law enforcement agency.[30] For example:

- Skylar Capo, an 11-year-old girl, rescued a woodpecker about to be eaten by a cat. Rather than leave the bird at home, Skylar carried it with her when she and her mother Alison went to a local home improvement store. There, an agent with the U.S. Fish and Wildlife Service stopped Skylar and told her that transporting a woodpecker was a violation of federal law. Two weeks later, the agent went to Skylar's home, delivered a $535 ticket, and informed Alison that she faced up to one year's incarceration for the offense. The USF&WS dropped the charges only after the case made headlines.[31]

- Abner Schoenwetter was a small-business owner who imported lobsters from Honduras. An anonymous tip to agents of the National Marine and Wildlife Fishery Service said that Schoenwetter intended to import Honduran lobsters that were too small to be taken under Honduran law and that would be packed in plastic rather than in boxes as required by Honduran law. The agents seized Schoenwetter's cargo, and an inspection confirmed the anonymous tip. The government charged Schoenwetter with violating the federal Lacey Act on the ground that he imported lobsters that were taken in violation of Honduran law. After he was convicted (with three other defendants), the district court sentenced him (and two of the other defendants) to *more than eight years' imprisonment for that crime* (the third co-defendant received a two-year sentence). On appeal, the Eleventh Circuit, by a two-to-one vote, upheld their convictions *even though the Honduran Attorney General had informed the court that the Honduran regulation that was the basis for the charge was invalid under Honduran law.*[32]

- USF&WS employees and the U.S. Attorney in North Dakota investigated and filed criminal charges against seven oil and gas companies for violating the Migratory Bird Treaty Act because 28 migratory birds flew into oil pits without encouragement or action by the companies.[33]

- Three-time Indianapolis 500 champion Bobby Unser and a close friend nearly died when caught in a blizzard while snowmobiling in the mountains. Forced to abandon his vehicle and seek help, Unser was later investigated by U.S. Forest Service agents for trespassing onto a protected wilderness area. The government could not prove a felony violation, but Unser was convicted of a misdemeanor.[34]

- While camping in the Idaho wilderness, Eddie Anderson and his son searched for arrowheads, which Eddie collected as a hobby. Unbeknownst to them, the Archaeological Resources Protection Act of 1979[35] regulates the taking of archaeological resources on public and Indian lands. The Andersons found no arrowheads but were nonetheless charged with the offense of attempting to obtain them in violation of that act.[36] They pleaded guilty to misdemeanors and were fined $1,500 and placed on one year's probation.[37]

- Nancy Black, a marine biologist, was charged with making a false statement as a "Thank you" for voluntarily providing an edited video of noisemaking on a whale-watching tour to federal investigators and employees of NOAA. She wound up pleading guilty to a misdemeanor to avoid the risk of a felony conviction.[38]

Fifth, legislators also may see constituent benefits from giving regulatory agencies criminal enforcement tasks. Making a regulatory violation a crime adds a certain respectability to the relevant field, thereby satisfying one or more interest groups by publicly declaring that their most important concerns are also society's most important.

Sixth, Congress may believe that regulatory law enforcement divisions are a moneymaking activity. The government may negotiate a plea bargain with a defendant requiring the latter to pay large fines rather than suffer incarceration, and every fine recovered by the government in a plea bargain is found money.[39]

An Example: The EPA's Office of Criminal Enforcement, Forensics, and Training

Consider the EPA criminal program.[40] The contemporary environmental movement was born in the last third of the 20th century, with most of the major laws being enacted in the decade from 1969 to 1979.[41] Unlike common-law crimes such as assault or theft, but consistent with other modern regulatory schemes, the early environmental laws did not assume that the primary enforcement mechanism would be criminal prosecutions brought by the government against parties who failed to comply with the new legal regimen. Instead, the environmental laws used a traditional regulatory, top-down, command-and-control approach to govern business and industrial operations that discharged pollutants into the air, water, or ground. The primary enforcement devices were to be government-initiated administrative or civil actions along with private lawsuits brought against alleged wrongdoers. There were some strict liability criminal provisions in the early federal environmental laws, but they started out as misdemeanors; Congress did not elevate them to felonies until later.[42]

By so doing, Congress significantly changed the nature of those offenses. Traditionally, imprisonment had been an optional penalty only for serious wrongdoing.[43] Now it could be used as a punishment without proving that a defendant intended to break the law or knew that his conduct was blameworthy or dangerous. The result was to make it easier to convict and imprison a defendant for regulatory crimes than would be true if those crimes were treated in the same manner as ordinary federal offenses.[44] The stiffer penalties, coupled with creation of a criminal enforcement program at the EPA, upped the ante for large companies and the individuals they employ.

The Pollution Prosecution Act of 1990[45] created a criminal investigative program at the EPA. The act required that the EPA criminal program have at least 200 federal agents as of October 1, 1995,[46] and the number has not increased greatly since then. The agents are assigned to various field offices in such cities as Boston, New York City, Philadelphia, Seattle, and Anchorage. From those offices, they investigate crimes committed in different states within their respective EPA regions.

A mere 200 agents is an insufficient number of criminal investigators. If those agents were spread out evenly across the nation, there would be only four per state. Agents not located in a particular state must travel interstate to interview witnesses, collect evidence with an agency specialist, and partner with local law enforcement. Traveling to another state is not like driving around the Manhattan South Precinct. The agent's office may be far from the site of the crime. Travelling back and forth not only takes a considerable period of time, but also eats up a sizeable portion of a field office's budget. Crimes can go uninvestigated simply because of the difficult logistics involved. That does not benefit either the public or the EPA agents.

Of course, the statutory designation of 200 agents does not take into account several factors. It does not account for the need to have some agents work in management capacities, both in the field offices and in Washington, D.C. It does not account for the need to have some agents work in an internal affairs or professional responsibility office. It does not consider the need for some agents to be assigned to the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, to arrange for the necessary basic criminal investigator training and coordinate with the FLETC officials serving as instructors. The result is that a 200-agent number does not accurately represent the number investigating environmental crimes. Even if only 10 percent of the EPA's criminal investigative personnel are involved in noninvestigative activity, the EPA has only 180 agents to investigate environmental crimes—now less than four per state.

But there is more.

Federal law enforcement agencies also have a considerable number of non-agent employees working in a variety of investigation-related activities, such as scientists, technicians, and office support personnel. The Pollution Prosecution Act of 1990 did not authorize the EPA to hire people to fill those slots. To some extent, EPA special agents can draw on evidence-collection and analytical experts at one of the agency's regional laboratories or elsewhere within the EPA.[47] Unlike the forensic service components of the FBI[48] and the Secret Service,[49] however, the EPA regional laboratories are not dedicated exclusively to supporting the criminal investigation program. Special agents need to compete with the agency's civil components for resources and the time of laboratory personnel. The point is that the Pollution Prosecution Act of 1990 did not create a full-scale EPA criminal investigation program along the lines of the FBI or the Secret Service.

There are several reasons why having a criminal program at the EPA is a problem. As noted, it forces the EPA criminal program to operate with an inadequate number of personnel and an inadequate amount of resources. This gives the public the impression that there is a robust criminal environmental investigation program when, in fact, that is not true. It also shortchanges the agents tasked with carrying out that assignment by forcing them into an agency where they do not belong and where they might not always be welcome. The reason is that criminal law enforcement is not part of the EPA's core mission.

As Harvard Professor James Q. Wilson once explained, every agency has a "culture" or "personality"—that is, a widespread, settled understanding of the agency's identity and manner of operations.[50] The EPA has four separate but related cultures: environmental, scientific, regulatory, and social worker.[51] Each of them combines with the others to implement and reinforce the agency's "mission"—that is, "a widely shared and endorsed definition of the agency's core tasks."[52] Criminal law enforcement rests uneasily within an agency characterized by these four cultures. Law enforcement seeks to punish, not discover, advise, or regulate. It focuses on an actor's immediate effect and intent, not the long-term consequences of his actions for society regardless of his state of mind. It requires mastery of what we learned in high school (reading people), not graduate school (studying ecology).[53]

Remember that unlike the FBI or the Secret Service, the EPA as an institution was not created to investigate crimes; that assignment was added two decades *after* the agency was born.[54] The EPA already had a settled mission, and it is difficult to change an agency's mission, particularly one that is so deeply entrenched.[55] As Professor Wilson noted, "developing a sense of mission is easiest when an organization is first created."[56] Because "most administrators take up their duties in organizations that have long histories," they have "reduce[d]...opportunities for affective culture at all, much less making it into a strong and coherent sense of mission."[57] Put another way, a baseball team may play away games for only half of the season (before an often hostile crowd), but the EPA criminal program has been playing nothing but away games since Day One.

As an "add-on," criminal enforcement has been and will always be subordinated to the EPA's mission and will wind up shortchanged. One way involves the budget. Agencies generally tend to give preference to their core functions when haggling with the Office of Management and Budget (OMB) or Congress over appropriations.[58] The environmental, regulatory, scientific, and social-worker cultures at the EPA will always (or nearly always) win the budget battles. As a result, the EPA's criminal program will never be the effective unit that it could be and that the agents and public deserve.

Another way the EPA criminal investigation program will be shortchanged is the reserve of goodwill that it can draw on if something goes very wrong. That requires some explanation.

The mission of a criminal investigative agency is to deal with people who break the law. As the tip of the law enforcement spear, investigating officers deal with offenders outside the niceties of a courtroom, sometimes with the worst of people but, if not, then with good people at their worst. Even the EPA criminal investigation program has that problem.

Consider this example: Hazardous waste has that name for a reason; it is dangerous, and not just for the public. Some business operations (the plating process is one example) are dangerous because the chemicals needed to create a finished product (a circuit board) are highly acidic or alkaline. The working conditions are ones in which you will need to get your hands dirty but also will need to be particularly careful how and with what. In addition, employees working in those businesses make less than what hedge fund managers earn. With that in mind, ask yourself two questions:

> *Question*: What type of person works in those jobs?
> *Answer*: Someone who cannot get a different job.
> *Question*: What type of person cannot get a different job?
> *Answer*: Often someone with a criminal record, maybe for the same type of violent crime that traditional law enforcement officers investigate (e.g., robbery).

The lesson is this: The conventional wisdom is wrong. Businessmen in suits are not the only, or often the principal, suspected perpetrators of an environmental crime. The issue is more complicated. The risk that a criminal investigation might pose a danger to the agents involved often turns more on

the nature and history of the suspects than on the elements of the offense.[59]

EPA agents could find themselves in a predicament. Given the realities of their job, law enforcement officers may need to use force when making an arrest, collecting samples, executing a search warrant, interviewing a suspect, or doing one of the other activities that law enforcement officers perform. The use of force is not a pleasant component of the job, but sometimes it cannot be avoided. A traditional investigative agency understands and appreciates the demands placed on its investigators, so such occurrences are not seen as unthinkable. Moreover, when a traditional law enforcement officer uses force, his parent agency and his colleagues will presume that he acted properly until an internal investigation determines otherwise. He will not automatically and immediately become a pariah.

Regulatory agencies, by contrast, do not have the same law enforcement culture or mission, let alone the corresponding esprit de corps, that is embedded in the DNA of traditional law enforcement agencies like the FBI and Marshals Service. Most agency personnel work in offices. Their principal interactions are with colleagues, members of industry and their lawyers, Members of Congress and their staffs, political superiors within the agency, and officials at OMB or the White House Office of Information and Regulatory Affairs. They are accustomed to seeing outsiders respect their authority, even when the outsiders disagree with them. They are strangers to being placed in situations in which words or numbers will not suffice to deal with a problem or in which outsiders refuse to defer to their position. Their culture—whether environmental, regulatory, scientific, or social worker—does not have room for people who place their hands on others. In fact, it would be seen as a sign of intellectual weakness and professional failure.

Those cultures have no room for law enforcement officers. Trying to force the latter into one of the cultures at the EPA puts criminal investigators in the difficult position of feeling that they are out of place in their own organization. There is even a risk that the agents in regulatory programs who use force might fear that they will be "hung out to dry" by the agency's senior political officials, particularly if there is public blowback from such an event.[60] All that is the consequence of trying to fit a square peg into a round hole.[61]

To summarize, when deciding whether it is a good idea to have a criminal investigation division in a regulatory agency, consider the words of Professor Wilson describing the costs of that arranged marriage:

> First, tasks that are not part of the culture will not be attended to with the same energy and resources as are devoted to tasks that are part of it. Second, organizations in which two or more cultures struggle for supremacy will experience serious conflict as defenders of one seek to dominate representatives of the other. Third, organizations will resist taking on new tasks that seem incompatible with the dominant culture. The stronger and more uniform the culture—that is, the more the culture approximates a sense of mission—the more obvious these consequences.[62]

A Potential Remedy: Transfer Federal Regulatory Agencies' Criminal Investigative Divisions to the FBI or Marshals Service

The way to fix these problems is to transfer the criminal enforcement authority of regulatory agencies such as the EPA to a traditional law enforcement agency. The question is, which one?

A few can be eliminated at the outset. Several traditional investigative agencies have missions that do not readily accommodate regulatory enforcement. The Secret Service (protection and counterfeiting); Drug Enforcement Administration (drug trafficking); Bureau of Alcohol, Tobacco, Firearms, and Explosives (the subjects in the agency's name); Bureau of Immigration and Customs Enforcement (same); and Border Patrol (same) are not good matches for agents who have spent their careers investigating (for example) environmental crimes.

The FBI might be a reasonable home for criminal regulatory enforcement. It has the largest portfolio of federal offenses to investigate, including conduct underlying some regulatory crimes. It also has numerous field offices across the country, which would reduce the disruption following the transfer of agents from one agency to another. But forcing the FBI to absorb regulatory investigators would create several sizeable problems. One is that the number of new agents could exceed the number of existing agents. That poses a risk over time of shifting the FBI's focus. Another problem is that since 9/11, the FBI has been the nation's principal federal

investigative agency combating domestic terrorism. Adding regulatory responsibilities to the FBI's plate is inconsistent with the principal assignment given the Bureau by former President George W. Bush. Finally, regulatory investigators would need to undergo full-field background investigations and complete FBI agent training at Quantico, Virginia, before becoming FBI agents. That would impose a considerable delay and require an appreciable expenditure before the transferred agents would be able to come on board.[63]

While transferring such duties to the FBI is certainly a viable option, an alternative that may make more sense is to transfer those agents to the U.S. Marshals Service. With an organizational bloodline that begins with the Judiciary Act of 1789,[64] U.S. marshals and their deputies have exceptionally broad law enforcement authority—the same authority as FBI agents[65] as well as the authority possessed by their respective state law enforcement officers.[66] The principal mission of deputy marshals is to assist the federal courts,[67] but they also are generalists.[68] The Marshals Service has offices nationwide. It would expand the coverage that agencies like the EPA can provide and reduce the number of necessary geographic transfers, benefiting both the agents involved and the public.

In addition, the Marshals Service would be a cost-effective option as the home for regulatory agents. Deputy marshals and regulatory criminal investigators undergo the same basic criminal investigator training at FLETC, and former regulatory investigators already have the additional education and training needed to enforce regulatory criminal codes. On a prospective basis, the cost of adding that training to the basic training afforded deputy marshals is likely to be less than the cost of expanding the training programs at the FBI's Quantico facility because FLETC already accommodates numerous federal agencies.

In sum, transferring criminal programs and their agents from regulatory agencies to the Marshals Service would benefit the public and the agents at a potentially lower cost than would result from giving criminal regulatory responsibilities to the FBI.

Conclusion

President Donald Trump has directed federal agencies and has invited the public to suggest ways to reorganize the federal government to make it more effective and efficient. One possibility is to reorganize at least part of federal law enforcement. Numerous federal regulatory agencies have criminal investigative divisions. Congress and the President should consider consolidating those programs and transferring them to a traditional federal law enforcement agency. The FBI is a possible home for those agents, but the U.S. Marshals Service may have certain advantages that the FBI does not possess, including the possibility of a less costly transition. Either agency would make a more suitable home for investigative programs currently housed in administrative agencies.

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Appendix: List of Federal Law Enforcement Agencies

Departments

Department of Agriculture

Animal and Plant Health Inspection Service (APHIS)

Office of the Inspector General

U.S. Forest Service, Law Enforcement and Investigations

Department of Commerce

Bureau of Industry and Security, Office of Export Enforcement

National Institute of Standards and Technology

National Marine Fisheries Service, Office of Law Enforcement

Office of Security

Office of the Inspector General

Department of Education

Office of the Inspector General

Department of Energy

National Nuclear Safety Administration, Office of Secure Transportation, Office of Mission Operations

Office of Health, Safety and Security, Office of Security Operations

Office of the Inspector General

Department of Health and Human Services

Food and Drug Administration, Office of Regulatory Affairs (ORA)/Office of Criminal Investigations

National Institutes of Health

Office of the Inspector General

Department of Homeland Security

Citizenship and Immigration Services

Customs and Border Protection, Office of Customs and Border Protection Air and Marine

Customs and Border Protection, Border Patrol

Customs and Border Protection, Office of Field Operations/CBP Officers

Federal Emergency Management Agency, Security Branch

Federal Law Enforcement Training Center

Office of the Inspector General

Transportation Security Administration, Office of Law Enforcement/Federal Air Marshal Service

U.S. Coast Guard, Investigative Service

U.S. Coast Guard, Maritime Law Enforcement Boarding Officers

U.S. Immigration and Customs Enforcement, Office of Detention and Removal

U.S. Immigration and Customs Enforcement, Office of Federal Protective Service

U.S. Immigration and Customs Enforcement, Office of Intelligence

U.S. Immigration and Customs Enforcement, Office of Investigations

U.S. Immigration and Customs Enforcement, Office of Professional Responsibility

U.S. Secret Service

Department of Housing and Urban Development

Office of the Inspector General

Department of the Interior

Bureau of Indian Affairs, Office of Law Enforcement Services

Bureau of Land Management, Office of Law Enforcement and Security

Bureau of Reclamation, Hoover Dam Police

National Park Service, Ranger Activities

National Park Service, U.S. Park Police

Office of Law Enforcement, Security and Emergency Management

Office of the Inspector General

U.S. Fish and Wildlife Service, National Wildlife Refuge System

U.S. Fish and Wildlife Service, Office of Law Enforcement

Department of Justice

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Drug Enforcement Administration

Federal Bureau of Investigation

Federal Bureau of Prisons

Office of the Inspector General

U.S. Marshals Service

Department of Labor
Employee Benefits Security Administration
Office of Labor Management Standards
Office of the Inspector General

Department of State
Bureau of Diplomatic Security, Diplomatic Security Service
Office of the Inspector General

Department of Transportation
Maritime Administration, Academy Security Force
National Highway Traffic Safety Administration, Odometer Fraud
Office of the Inspector General, Investigations
Office of the Secretary of Transportation, Executive Protection

Department of Treasury
Bureau of Engraving and Printing, Police Officers
Internal Revenue Service, Criminal Investigative Division
Office of the Inspector General, Office of Investigations
Treasury Inspector General for Tax Administration
U.S. Mint, Police Division

Department of Veterans Affairs
Office of Security and Law Enforcement
Office of the Inspector General

Nondepartmental Entities

Administrative Office of the U.S. Courts (AOUSC)
Office of Probation and Pretrial Services

Agency for International Development
Office of the Inspector General

Corporation for National and Community Service
Office of the Inspector General

Environmental Protection Agency
Criminal Investigation Division
Office of the Inspector General

Equal Employment Opportunity Commission
Office of the Inspector General

Federal Communications Commission
Office of the Inspector General

Federal Deposit Insurance Corporation
Office of the Inspector General

Federal Reserve Board
Chairman's Protection Unit
Office of the Inspector General
Reserve Banks Security
Security Unit

General Services Administration
Office of the Inspector General

Government Accountability Office
Controller/Administrative Services, Office of Security and Safety
Financial Management and Assurance, Forensic Audits and Special Investigations

Library of Congress
Office of Security and Emergency Preparedness–Police
Office of the Inspector General

National Aeronautics and Space Administration
Office of the Inspector General

National Archives and Records Administration
Office of the Inspector General

National Gallery of Art

National Railroad Passenger Corporation (AMTRAK)
AMTRAK Police
Office of Inspector General

National Science Foundation
Office of the Inspector General
Polar Operations, Antarctica

Nuclear Regulatory Commission
Office of Investigations
Office of the Inspector General

Office of Personnel Management
Office of the Inspector General

Peace Corps
Office of the Inspector General

Railroad Retirement Board
Office of the Inspector General

Small Business Administration
Office of the Inspector General

Smithsonian Institution
Office of Protection Services

Social Security Administration
Office of the Inspector General

Tennessee Valley Authority
Office of the Inspector General
TVA Police

U.S. Capitol Police

U.S. Government Printing Office
Office of the Inspector General
Police

U.S. Postal Service
Office of Inspector General
U.S. Postal Inspection Service, Inspector
U.S. Postal Inspection Service, Postal Police

U.S. Supreme Court
Marshal of the Supreme Court

Source: U.S. Government Accountability Office, Federal Law Enforcement: Survey of Federal Civilian Law Enforcement Functions and Authorities (Dec. 19, 2006), Appendix II: Number of Federal Civilian LEOs with the Specified Authority, as of June 30, 2006, as Reported by the Federal Components.

Endnotes

1. Louise Radnofsky, Gary Fields & John R. Emshwiller, *Federal Police Ranks Swell to Enforce a Widening Array of Criminal Laws*, WALL ST. J., Dec. 17, 2011, at A1.
2. *See, e.g.*, GOVERNMENT ACCOUNTABILITY OFFICE, FEDERAL LAW ENFORCEMENT: SURVEY OF FEDERAL CIVILIAN LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES (Dec. 19, 2006), http://www.gao.gov/new.items/d07121.pdf (last accessed Apr. 19, 2017). The Appendix *supra* contains a list of such agencies. The powers noted in the text are the traditional ones vested in federal law enforcement officers. *See, e.g.*, 18 U.S.C. § 3052 (2012) (FBI agents); *id.* § 3053 & 28 U.S.C. §§ 564, 566(c)-(d) (2012) (United States Marshals and deputy marshals); 18 U.S.C. § 3056 (2012) (Secret Service agents).
3. *See, e.g.*, 6 U.S.C. 381 (2012) (U.S. Secret Service); 28 U.S.C. § 3053 (2012) (U.S. Marshals Service); *id.* § 3052 (FBI).
4. *See* 14 U.S.C. § 2 (2012) (empowering Coast Guard members to "enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States"); 16 U.S.C. § 559c (2012) (identifying law enforcement authority of U.S. Forest Service officers); 18 U.S.C. § 3061 (2012) (identifying powers of Postal Inspection Service officers); 54 U.S.C. § 102701(a) (2012) (empowering the Secretary of the Interior to designate law enforcement officers).
5. *See* 18 U.S.C. § 3063 (2012) (identifying authority of EPA law enforcement officers); EPA, CRIMINAL ENFORCEMENT, https://www.epa.gov/enforcement/criminal-enforcement (last accessed Apr. 29, 2017).
6. Another, more general issue is also worth noting. The assortment of federal law enforcement agencies mentioned in the text has come to exist over time in a random manner. There has been no recent systematic congressional or presidential analysis of their overlapping responsibilities and comparative advantages that they possess by statute, rule, tradition, and practice. Even the best-known federal law enforcement agencies—the FBI and Secret Service—are best known today for missions that differ greatly from the ones they had at their birth. The FBI has the broadest range of responsibilities, such as counterterrorism, counterespionage, and complex white-collar crime. *See, e.g.*, 18 U.S.C. §§ 351(g), 3052, 3107 (2012); 28 U.S.C. §§ 533, 540, 540A, 540B (2012); 50 U.S.C. §§ 402-404o-2, §§ 1801-1812 (2012). Yet, today's FBI began as the Bureau of Investigation, which had no law enforcement function and was limited to conducting background investigations of potential federal employees. The Secret Service was created to investigate the rampant counterfeiting seen after the Civil War. It became responsible for protecting the President, Vice President, their families, and visiting heads of state only after the assassination of President William McKinley in 1901. *See, e.g.*, 18 U.S.C. § 3056 (2012). But no one has ever inquired whether the responsibilities that each of those agencies has, as well as the ones that other federal law enforcement agencies possess, are better accomplished by combining different agencies or by transferring authority from one agency to another.
7. *See, e.g.*, Graham Hughes, *Criminal Omissions*, 67 YALE L.J. 590, 595 (1958); Paul J. Larkin, Jr., *Strict Liability Offenses, Incarceration, and the Cruel and Unusual Punishments Clause*, 37 HARV. J.L. & PUB. POL'Y 1065, 1072-79 (2014) (hereafter Larkin, *Strict Liability*); Francis Bowes Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55, 56-67 (1933). For an explanation of the rationale for those laws, see, for *e.g.*, Morissette v. United States, 342 U.S. 246, 253-56 (1952); Larkin, *Strict Liability*, *supra*, at 1072-79, 1081-83.
8. *See, e.g.*, Sanford H. Kadish, *Some Observations on the Use of Criminal Sanctions in Enforcing of Economic Regulations*, 30 U. CHI. L. REV. 423, 424-25 (1963); Gerald E. Lynch, *The Role of Criminal Law in Policing Corporate Misconduct*, 60 LAW & CONTEMP. PROBS. 23, 37 (1997) ("Legislatures, concerned about the perceived weakness of administrative regimes, have put criminal sanctions behind administrative regulations governing everything from interstate trucking to the distribution of food stamps to the regulation of the environment.") (footnote omitted).
9. *See, e.g.*, Paul J. Larkin, Jr., *The Dynamic Incorporation of Foreign Law and the Constitutional Regulation of Federal Lawmaking*, 38 HARV. J.L. & PUB. POL'Y 337, 354-58 (2015); Gary Lawson, *The Rise and Rise of the Administrative State*, 107 HARV. L. REV. 1231 (1994).
10. 11 U.S. (7 Cranch) 32 (1812).
11. The Court strongly suggested in *United States v. Eaton*, 144 U.S. 677 (1892), that an agency could *not* issue regulations that created federal crimes: "It is well settled that there are no common-law offenses against the United States. U. S. v. Hudson, 7 Cranch, 32; U. S. v. Coolidge, 1 Wheat. 415; U. S. v. Britton, 108 U. S. 199, 206; Manchester v. Massachusetts, 139 U. S. 240, 262, 26, and cases there cited. [¶] It was said by this court in Morrill v. Jones, 106 U. S. 466, 467, that the secretary of the treasury cannot by his regulations alter or amend a revenue law, and that all he can do is to regulate the mode of proceeding to carry into effect what congress has enacted. Accordingly, it was held in that case, under section 2505 of the Revised Statutes, which provided that live animals specially imported for breeding purposes from beyond the seas should be admitted free of duty, upon proof thereof satisfactory to the secretary of the treasury and under such regulations as he might prescribe, that he had no authority to prescribe a regulation requiring that, before admitting the animals free, the collector should be satisfied that they were of superior stock, adapted to improving the breed in the United States. [¶] Much more does this principle apply to a case where it is sought substantially to prescribe a criminal offense by the regulation of a department. It is a principle of criminal law that an offense which may be the subject of criminal procedure is an act committed or omitted 'in violation of a public law, either forbidding or commanding it.' 4 Amer. & Eng. Enc. Law, 642; 4 Bl. Comm. 5. [¶] It would be a very dangerous principle to hold that a thing prescribed by the commissioner of internal revenue, as a needful regulation under the oleomargarine act, for carrying it into effect, could be considered as a thing 'required by law' in the carrying on or conducting of the business of a wholesale dealer in oleomargarine, in such manner as to become a criminal offense punishable under section 18 of the act; particularly when the same act, in section 5, requires a manufacturer of the article to keep such books and render such returns as the commissioner of internal revenue, with the approval of the secretary of the treasury, may, by regulation, require, and does not impose, in that section or elsewhere in the act, the duty of keeping such books and rendering such returns upon a wholesale dealer in the article. [¶] It is necessary that a sufficient statutory authority should exist for declaring any act or omission a

criminal offense, and we do not think that the statutory authority in the present case is sufficient. If congress intended to make it an offense for wholesale dealers in oleomargarine to omit to keep books and render returns as required by regulations to be made by the commissioner of internal revenue, it would have done so distinctly, in connection with an enactment such as that above recited, made in section 41 of the act of October 1, 1890. [¶] Regulations prescribed by the president and by the heads of departments, under authority granted by congress, may be regulations prescribed by law, so as lawfully to support acts done under them and in accordance with them, and may thus have, in a proper sense, the force of law; but it does not follow that a thing required by them is a thing so required by law as to make the neglect to do the thing a criminal offense in a citizen, where a statute does not distinctly make the neglect in question a criminal offense." *Id.* at 687–88.

12. 220 U.S. 506 (1911).
13. *Id.* at 521 ("[T]he authority to make administrative rules is not a delegation of legislative power, nor are such rules raised from an administrative to a legislative character because the violation thereof is punished as a public offense.").
14. *See, e.g.*, Paul J. Larkin, Jr., *Public Choice Theory and Overcriminalization*, 36 Harv. J.L. & Pub. Pol'y 715, 728–29 (2013) (hereafter Larkin, *Overcriminalization*). As Stanford Law School Professor Lawrence Friedman once colorfully wrote: "There have always been regulatory crimes, from the colonial period onward.... But the vast expansion of the regulatory state in the twentieth century meant a vast expansion of regulatory crimes as well. Each statute on health and safety, on conservation, on finance, on environmental protection, carried with it some form of criminal sanction for violation.... Wholesale extinction may be going on in the animal kingdom, but it does not seem to be much of a problem among regulatory laws. These now exist in staggering numbers, at all levels. They are as grains of sand on the beach." Lawrence M. Friedman, Crime and Punishment in American History 282–83 (1993).
15. *See* Michael B. Mukasey & John G. Malcolm, *Criminal Law and the Administrative State: How the Proliferation of Regulatory Offenses Undermines the Moral Authority of Our Criminal Laws*, in Liberty's Nemesis: The Unchecked Expansion of the State 283–98 (Dean Reuter & John Yoo, eds., 2016).
16. Insofar as regulatory offenses involve the same type of lying, cheating, and stealing that also falls under other federal criminal laws, such as fraud, traditional law enforcement agencies like the FBI would also have jurisdiction to investigate the wrongdoing.
17. *See, e.g.*, Government Accountability Office, Federal Law Enforcement: Survey of Federal Civilian Law Enforcement Functions and Authorities (Dec. 19, 2006), http://www.gao.gov/new.items/d07121.pdf (last accessed Apr. 19, 2017); General Accounting Office, Federal Law Enforcement: Information on Certain Agencies' Criminal Investigative Personnel and Salary Costs (Nov. 15, 1995), http://www.gao.gov/assets/110/106306.pdf (last accessed Apr. 19, 2017); General Accounting Office, Federal Law Enforcement: Investigative Authority and Personnel at 13 Agencies (Sept. 30, 1996), http://www.gao.gov/assets/230/223212.pdf (last accessed Apr. 19, 2017); General Accounting Office, Federal Law Enforcement: Investigative Authority and Personnel at 32 Agencies (July 22, 1997), http://www.gao.gov/assets/230/224401.pdf (last accessed Apr. 19, 2017).
18. *See, e.g.*, Larkin, *Overcriminalization*, *supra* note 14, at 742–43.
19. *See* Lynch, supra note 8, at 23, 37. That phenomenon may explain the provenance of the criminal provisions of the federal environmental laws. Initially, those laws created only misdemeanors. *See* Richard J. Lazarus, *Meeting the Demands of Integration in the Evolution of Environmental Law: Reforming Environmental Criminal Law*, 83 Geo. L.J. 2407, 2446–47 (1995).
20. *See Fire Down Below* (Warner Bros. 1997). Steven Segal played Jack Taggart, an EPA Special Agent.
21. *See Ghostbusters* (Columbia Pictures 1984). William Atherton played Walter Peck, an EPA official.
22. Generally, felonies are crimes punishable by death or imprisonment for more than one year, misdemeanors are crimes punishable by a fine or by confinement in jail for one year or less, and petty offenses are crimes punishable by a fine or confinement for less than six months. *See, e.g.*, Wayne R. LaFave, Criminal Law § 1.6(a), at 36–38, §1.6(e), at 43–44 (5th ed. 2010); 18 U.S.C. § 19 (2012) (defining "petty offense").
23. That rationale may explain why we see small-scale criminal penalties in regulatory bills. *See, e.g.*, the Contaminated Drywall Safety Act of 2012, H.R. 4212, 112th Cong. (2012) (creating a strict liability offense for importing contaminated drywall, punishable by 90 days in custody); the Commercial Motor Vehicle Safety Enhancement Act of 2011, S. 1950, 112th Cong. (2011) (punishing violations of the bill with up to 90 days in custody).
24. Ethics in Government Act of 1978, Pub. L. No. 95-521, 92 Stat. 1824 (codified as amended at 28 U.S.C. §§ 49, 591 *et seq.* (1982)).
25. *See* Morrison v. Olson, 487 U.S. 654, 727–28 (1988) (Scalia, J., dissenting).
26. *See, e.g.*, Anthony G. Amsterdam, *The Supreme Court and the Rights of Suspects in Criminal Cases*, 45 N.Y.U. L. Rev. 785, 793 (1970) (police departments measure efficiency by arrests, not convictions); George F. Will, *Blowing the Whistle on the Federal Leviathan*, Wash. Post, July 27, 2012, http://www.washingtonpost.com/opinions/george-will-blowing-the-whistle-on-leviathan/2012/07/27/gJQAAsRnEX_story.html (last accessed Apr. 28, 2017).
27. Gene Healy, *There Goes the Neighborhood: The Bush–Ashcroft Plan to "Help" Localities Fight Gun Crime*, in Go Directly to Jail: The Criminalization of Almost Everything 105–06 (Gene Healy ed., 2004).
28. *Id.*
29. *Id.*
30. Part of the problem is caused by the needless use of the criminal law to enforce rules that (for several reasons) should not be subject to criminal enforcement at all, a phenomenon known as "overcriminalization." Over the past decade, several former senior Justice Department officials, the American Bar Association, numerous members of the academy, and a number of private organizations with diverse viewpoints

have roundly criticized overcriminalization. *See, e.g.*, Zach Dillon, *Symposium on Overcriminalization: Foreword*, 102 J. CRIM. L. & CRIMINOLOGY 525, 525 (2013) ("The Heritage Foundation and the American Civil Liberties Union joined forces to cosponsor our live Symposium and send the unified message that whether you are liberal, moderate, or conservative, overcriminalization is an issue that can no longer be ignored."); Paul J. Larkin, Jr., *Finding Room in the Criminal Law for the Desuetude Principle*, 65 RUTGERS L. REV. COMMENTARIES 1, 1–2 & nn.2–7 (2014) (collecting authorities). There are numerous examples of needless criminal statutes or regulations:

- Making unauthorized use of the 4-H Club logo, the Swiss Confederation Coat of Arms, or the "Smokey the Bear" or Woodsy Owl" characters.
- Misusing the slogan "Give a Hoot, Don't Pollute."
- Transporting water hyacinths, alligator grass, or water chestnut plants.
- Possessing a pet (except for a guide dog) in a public building, on a beach designated for swimming, or on public transportation.
- Operating a "motorized toy, or an audio device, such as a radio, television set, tape deck or musical instrument, in a manner...[t]hat exceeds a noise level of 60 decibels measured on the A-weighted scale at 50 feet."
- Failing to keep a pet on a leash that does not exceed six feet in length on federal parkland.
- Digging or leveling the ground at a campsite on federal land.
- Picnicking in a nondesignated area on federal land.
- Polling a service member before an election.
- Manufacturing and transporting dentures across state lines if you are not a dentist.
- Selling malt liquor labeled "pre-war strength."
- Writing a check for an amount less than $1.
- Installing a toilet that uses too much water per flush.
- Rolling something down a hillside or mountainside on federal land.
- Parking your car in a way that inconveniences someone on federal land.
- Skiing, snowshoeing, ice skating, sledding, inner tubing, tobogganing, or doing any "similar winter sports" on a road or "parking area... open to motor vehicle traffic" on federal land.
- Allowing a pet "to make a noise that...frightens wildlife on federal land."
- Bathing or washing food, clothing, dishes, or other property at public water outlets, fixtures, or pools not designated for that purpose.
- Allowing horses or pack animals to proceed in excess of a slow walk when passing in the immediate vicinity of persons on foot or bicycle.
- Operating a snowmobile that makes "excessive noise" on federal land.
- Using roller skates, skateboards, roller skis, coasting vehicles, or similar devices in nondesignated areas on federal land.
- Failing to "turn in found property" to a national park superintendent "as soon as practicable."
- Using a surfboard on a beach designated for swimming.
- Certifying that McIntosh apples are "extra fancy" unless they are 50 percent red.
- Labeling noodle soup as "chicken noodle soup" if it has less than 2 percent chicken.
- Riding your bicycle in a national park while holding a glass of wine.
- Failing, if a winemaker, to report any "extraordinary or unusual loss" of wine.

See, e.g., Larkin, *Overcriminalization*, *supra* note 14, at 750–51; John G. Malcolm, *Criminal Justice Reform at the Crossroads*, 20 TEX. REV. L. & POL. 249, 279–81 (2016); Edwin Meese III & Paul J. Larkin, Jr., *Reconsidering the Mistake of Law Defense*, 102 J. CRIM. L. & CRIMINOLOGY 725, 740–41 (2012).

31. *See* THE HERITAGE FOUND., USA vs. YOU 4 (2013); Joe Luppino-Esposito & Raija Churchill, *Overcriminalization Victimizes Animal-Loving 11-Year-Old and Her Mother*, THE HERITAGE FOUND., THE DAILY SIGNAL (Aug. 05, 2011), http://dailysignal.com/2011/08/05/overcriminalization-victimizes-animal-loving-11-year-old-and-her-mother.
32. *See* United States v. McNab, 331 F.3d 1228 (11th Cir. 2003), *as amended on denial of rehearing*, 2003 WL 21233539 (May 29, 2003); ONE NATION UNDER ARREST 3–11 (2d ed. Paul Rosenzweig ed., 2013); USA vs. YOU, *supra* note 31, at 20; Meese & Larkin, *supra* note 30, at 777–82.
33. *See* Joe Luppino-Esposito, *A Bird-Brained Use of the Migratory Bird Treaty Act*, THE HERITAGE FOUND., THE DAILY SIGNAL (Feb. 6, 2012), http://dailysignal.com/2012/02/06/a-bird-brained-use-of-the-migratory-bird-treaty-act/.
34. USA vs. YOU, *supra* note 31, at 15.
35. 16 U.S.C. § 470aa–470mm (2012).
36. 16 U.S.C. § 470ee(a).
37. *See* USA vs. YOU, *supra* note 31, at 11.
38. *See* Paul J. Larkin, Jr. et al., *Time to Prune the Tree, Part 3: The Need to Reassess the Federal False Statements Laws*, HERITAGE FOUNDATION LEGAL

MEMORANDUM No. 196 (Dec. 15, 2016), http://www.heritage.org/crime-and-justice/report/time-prune-the-tree-part-3-the-need-reassess-the-federal-false-statements. The states also have their own share of insane criminal laws. *See, e.g.*, Evan Bernick, *"Drop the Cabbage, Bullwinkle!": Alaskan Man Faces Prison for the Crime of Moose-Feeding*, THE HERITAGE FOUND., THE DAILY SIGNAL (Jan. 22, 2014), http://dailysignal.com/2014/01/22/drop-cabbage-bullwinkle-alaskan-man-faces-prison-crime-moose-feeding/ (noting that a 67-year-old man faced state misdemeanor charges, punishable by a maximum $10,000 fine and one year in jail, for feeding vegetables to a moose).

39. *Id.* There is an additional point worth noting: It might often be the case that regulatory infractions should be subject only to administrative or civil sanctions, not penal ones. That is true for several reasons. *First*, the criminal law should reflect the moral code that everyone knows by heart. Turning regulatory infractions into strict liability crimes because criminal enforcement is more efficient than civil enforcement may be fiscally responsible, but it does not reflect society's serious, sober, and moral decision that incarceration is an appropriate sanction. If the latter is what we are concerned with, then the ubiquitous presence of strict liability crimes authorizing incarceration does not represent that type of judgment by a mature society, a judgment that finds regulatory infractions to be as serious as traditional blue- or white-collar crimes. *Second*, regulatory crimes can spur companies to seek their own industry-specific law for anticompetitive purposes, to garner economic rents—supernormal profits obtained because of government regulation. For example, a business threatened by a particular imported commodity may persuade the government to impose strict regulations on importing that item, backed with criminal sanctions, to restrict competition. Antitrust experts have long believed that businesses will use the regulatory process as a form of economic predation, especially if a company can persuade the government to bear the investigative and prosecutive costs by bringing a criminal prosecution against a rival. *See, e.g.*, W. KIP VISCUSI ET AL., ECONOMICS OF REGULATION AND ANTITRUST 375, 381–92 (4th ed. 2005) (collecting authorities); William J. Baumol & Janusz A. Ordover, *Use of Antitrust to Subvert Competition*, 28 J.L. & ECON. 247 (1985); *see generally* Larkin, *Overcriminalization*, *supra* note 14, at 744–45. The point is not that there is something illegitimate about using law enforcement officers to enforce civil laws. The federal, state, and local governments may empower their officers to enforce the full range of provisions in the criminal and civil codes for whatever reasons those governments see fit. Whether the police can *arrest* someone for a purely civil infraction raises a different question. *See* Atwater v. City of Lago Vista, 532 U.S. 318 (2001) (holding that the Fourth Amendment does not forbid the warrantless arrest of a person suspected of committing a crime for which incarceration is not an authorized penalty). The point is that calling a civil or administrative infraction a crime should make us wary of what elected officials are doing. Tacking a term of confinement onto an administrative misstep or breach of contract is not a response signifying the same type of moral disapproval that people naturally feel at the sight of dangerous, harmful, or repulsive conduct. There should be more than the desire merely to enhance the U.S. Treasury as the justification for exposing people to criminal liability. Authorizing and imposing incarceration on a particular individual is a moral judgment about his actions and character. Imprisonment represents an extreme form of societal condemnation, one that should be seen as necessary only when an offender is deemed not fit to live free for a certain period. No court or legislature should make that judgment just to save or make a few bucks here and there.

40. For a discussion of the development of federal environmental criminal law, *see, e.g.*, Richard J. Lazarus, *supra* note 19; Richard J. Lazarus, *Assimilating Environmental Protection into Legal Rules and the Problem with Environmental Crime*, 27 LOY. L.A. L. REV. 867 (1994). The author of this Legal Memorandum was a Special Agent in the EPA criminal investigation program from 1998 to 2004 and draws on his experiences there as a basis for the recommendations contained herein.

41. For a discussion of the development of federal environmental regulation, *see, e.g.*, RICHARD J. LAZARUS, THE MAKING OF ENVIRONMENTAL LAW (2004).

42. There has been no shortage of criticisms of strict liability offenses. *See, e.g.*, LON L. FULLER, THE MORALITY OF LAW 77 (1969) ("Strict criminal liability has never achieved respectability in our law."); H.L.A. Hart, *Negligence, Mens Rea, and Criminal Responsibility*, in H.L.A. HART, PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW 152 (1968) ("Strict liability is odious[.]"); *see generally* Larkin, *Strict Liability*, *supra* note 7, at 1079 n.46 (2014) (collecting authorities). Common-law courts and scholars since William Blackstone have consistently and stridently disparaged liability without culpability, by which they have meant without proof of a wicked state of mind. At one time, even the Supreme Court wrote that it would shock a universal "sense of justice" for a court to impose criminal punishment without proof of a wicked intent. *See* Felton v. United States, 96 U.S. 699, 703 (1877) ("But the law at the same time is not so unreasonable as to attach culpability, and consequently to impose punishment, where there is no intention to evade its provisions, and the usual means to comply with them are adopted. All punitive legislation contemplates some relation between guilt and punishment. To inflict the latter where the former does not exist would shock the sense of justice of every one."). As argued elsewhere: "Critics maintain that holding someone liable who did not flout the law cannot be justified on retributive, deterrent, incapacitative, or rehabilitative grounds. By dispensing with any proof that someone acted with an 'evil' intent, strict liability ensnares otherwise law-abiding, morally blameless parties and subjects them to conviction, public obloquy, and punishment—that is, it brands as a 'criminal' someone whom the community would not label as blameworthy. By imposing liability for conduct that no reasonable person would have thought to be a crime, strict liability also denies an average person notice of what the law requires. The result is to violate a principal universally thought to be a necessary predicate before someone can be convicted of a crime and to rob people of the belief, necessary for the law to earn respect, that they can avoid criminal punishment if they choose to comply with the law. By making into criminals people who had no knowledge that their conduct was unlawful, strict liability violates the utilitarian justification for punishment, since a person who does not know that he is committing a crime will not change his behavior. Lastly, strict criminal liability flips on its head the criminal law tenet that '[i]t is better that ten guilty persons escape than that one innocent suffer.' Strict liability accomplishes that result because it sacrifices a morally blameless party for the sake of protecting society. In sum, by punishing someone for unwittingly breaking the law, strict criminal liability statutes mistakenly use a legal doctrine fit only for the civil tort purpose of providing compensation as a mechanism for imposing criminal punishment. By so doing, they unjustifiably impose an unnecessary evil. Strict liability for a criminal offense is, in a phrase, fundamentally unjust." Larkin, *Strict Liability*, *supra* note 7, at 1079–81 (footnotes omitted).

43. *See, e.g.*, Meese & Larkin, *supra* note 30, at 734–36, 744–46. The concern with strict liability exists not only when a criminal statute dispenses

altogether with proof of any mental element, but also when a statute does not require proof of mens rea in connection with a fact relevant to a defendant's culpability. Mistakenly taking someone else's umbrella does not constitute theft. *See, e.g.*, HERBERT PACKER, THE LIMITS OF THE CRIMINAL SANCTION 122 (1968). Eliminating proof of that fact abandons the precept that the criminal law should punish only culpable behavior.

44. That prospect is terrifying enough for people who believe that the criminal law must give the average person adequate notice of what is and is not a crime without the need to resort to legal advice to stay out of jail. But there is more. Regulations do not exhaust the number and type of administrative dictates that can define criminal liability. Agencies often construe their regulations in the course of applying them, and the interpretations that agencies give to their own rules receive a great degree of deference from the courts. The Supreme Court has explained that an agency's reading of its own regulations should be deemed "controlling" on the courts unless that interpretation is unconstitutional or irreconcilable with the text of the regulation. *See, e.g.*, Auer v. Robbins, 519 U.S. 452, 457 (1997); Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 417-18 (1945). If an agency's interpretations of its regulations were to be applied in a criminal prosecution, the result would be the development of a body of private agency "case law" that a person must know to be aware of the full extent of his potential criminal liability. In an opinion accompanying the denial of certiorari, Justices Antonin Scalia and Clarence Thomas wrote that the courts should never give deference to the government's interpretation of an ambiguous criminal law because the "rule of lenity" demands the exact opposite result. *See, e.g.*, Whitman v. United States, 135 S. Ct. 352, 353 (2014) (statement by Scalia & Thomas, JJ., respecting the denial of certiorari; concluding that courts should never give deference to the government's interpretation of an ambiguous criminal law because the "rule of lenity" demands the exact opposite result).
45. The Pollution Prosecution Act of 1990, Tit. II of the Act of Nov. 16, 1990, §§ 201–05, 101 Pub. L. No. 593, 104 Stat. 2954 (1990).
46. *Id.* § 202(a)(5).
47. See EPA, ENVIRONMENTAL MANAGEMENT SYSTEMS AT REGIONAL LABORATORIES, https://www.epa.gov/ems/environmental-management-systems-regional-laboratories (last accessed June 30, 2017).
48. *See* FBI, LABORATORY SERVICES, https://www.fbi.gov/services/laboratory (last accessed May 1, 2017).
49. *See* U.S. SECRET SERVICE, THE INVESTIGATIVE MISSION, FORENSIC SERVICES, https://www.secretservice.gov/investigation/ (last accessed May 1, 2017).
50. "Every organization has a culture, that is, a persistent, patterned way of thinking about the central tasks of and human relationships within an organization. Culture is to an organization what personality is to an individual. Like human culture generally, it is passed on from one generation to the next. It changes slowly, if at all." JAMES Q. WILSON, BUREAUCRACY 91 (1989).
51. I use the term "social worker" not to malign EPA employees with that mindset, but to describe a culture that, in the vernacular, might be referred to as a "do-gooder" enterprise. In my experience, EPA personnel see the agency's mission as protecting the environmental integrity of the nation and planet, goals that should be pursued above all others that the agency has been tasked with achieving and that are more important than most of the nation's other goals.
52. WILSON, *supra* note 50, at 99; *see also id.* at 95 ("When an organization has a culture that is widely shared and warmly endorsed by operators and managers alike, we say that the agency has a sense of *mission*. A sense of mission confers a feeling or special worth on the members, provides a basis for recruiting and socializing new members, and enables the administration to economize on the use of other incentives.") (emphasis in original; footnote omitted).
53. Also keep in mind that the special agents at the EPA criminal division have the authority to initiate criminal investigations of EPA employees who violate the environmental laws. So far, they have not done so. *See* Paul J. Larkin, Jr., & John-Michael Seibler, *Agencies Not Coming Clean About the EPA's Responsibility for Poisoning the Animas River*, HERITAGE FOUND. LEGAL MEMORANDUM No. 170 (Dec. 8, 2015), file:///C:/Users/Larkinp/AppData/Local/Temp/LM-170.pdf; Paul J. Larkin, Jr. & John-Michael Seibler, *"Sauce for the Goose Should Be Sauce for the Gander": Should EPA Officials Be Criminally Liable for the Negligent Discharge of Toxic Waste into the Animas River?*, HERITAGE FOUND. LEGAL MEMORANDUM No. 162 (Sept. 10, 2015), http://thf_media.s3.amazonaws.com/2015/pdf/LM162.pdf. But the possibility exists.
54. President Richard Nixon created the agency out of parts taken from several other agencies (such as the Department of Agriculture; the Department of Health, Education, and Welfare; and the Department of the Interior; the Atomic Energy Commission; and the Council on Environmental Quality) that he (with Congress's blessing) combined together as the EPA. *See* REORGANIZATION PLANS NOS. 3 AND 4 OF 1970, MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, H.R. Comm. on Government Operations, H.R. Cong. Doc. No. 91-366, 91st Cong. (July 9, 1970).
55. WILSON, *supra* note 50, at 96.
56. *Id.*
57. *Id.*
58. *See id.* at 101.
59. For example, the author was involved in the execution of a search warrant at a plant where a majority of the more than 100 employees had criminal records.
60. Which can happen. *See, e.g.*, Sean Doogan, *Alaska Governor Calls for Investigation of Armed, EPA-led Task Force*, ALASKA DISPATCH, Sept. 5, 2013, https://www.adn.com/alaska-news/article/governor-calls-special-counsel-investigate-actions-armed-epa-led-task-force/2013/09/05/; Valerie Richardson, *EPA Facing Fire for Armed Raid on Mine in Chicken, Alaska: Population, 7*, WASH. TIMES, Oct. 11, 2013, http://www.washingtontimes.com/news/2013/oct/11/epa-facing-fire-armed-raid-alaska-mine/.
61. *See* WILSON, *supra* note 50, at 95 ("Since every organization has a culture, every organization will be poorly adapted to perform tasks that are

not part of that culture."). As an example, Professor Wilson pointed to the Tennessee Valley Authority (TVA). "[F]or a long time [it] has had (and may still have) an engineering culture that values efficient power production and undervalues environmental protection." *Id.* For that reason, he concluded, it is unreasonable to expect that the TVA will treat environmental protection on a par with efficient power production, the mission for which Congress created it. *Id.*

62. *Id.* at 101.

63. It would be most unwise to exempt the newly added criminal investigators from the same education and training requirements demanded of FBI recruits. That would create two tiers of agents at the Bureau, which would generate a host of undesirable results such as ill will, ostracism, and so forth.

64. Ch. 20, § 27, 1 Stat. 73, 87 (1789).

65. *Compare* 18 U.S.C. § 3053 (2012) ("United States marshals and their deputies may carry firearms and may make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony."), *and* 28 U.S.C. § 566(c) (2012) ("Except as otherwise provided by law or Rule of Procedure, the United States Marshals Service shall execute all lawful writs, process, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties."); *id.* § 566(d) ("Each United States marshal, deputy marshal, and any other official of the Service as may be designated by the Director may carry firearms and make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony."), *with* 18 U.S.C. § 3052 ("The Director, Associate Director, Assistant to the Director, Assistant Directors, inspectors, and agents of the Federal Bureau of Investigation of the Department of Justice may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.").

66. *See* 28 U.S.C. § 564 (2012) ("United States marshals, deputy marshals and such other officials of the Service as may be designated by the Director, in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof."). In *Cunningham v. Neagle*, 135 U.S. 1 (1890), the Supreme Court recognized the broad authority that U.S. marshals and their deputies enjoy under federal and state law in finding justified the decision of a deputy marshal to use deadly force to protect Justice Stephen Field from a murderous assault. *Id.* at 52–76.

67. *See* 28 U.S.C. § 566(a) (2012) ("It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals, the Court of International Trade, and the United States Tax Court, as provided by law.").

68. "[The Marshals] were law enforcers, but also administrators. They needed to be adept in accounting procedures and pursuing outlaws, in quelling riots and arranging court sessions. The legacy of their history was the avoidance of specialization. Even today, in this age of experts, U.S. Marshals and their Deputies are the general practitioners within the law enforcement community. As the government's generalists, they have proven invaluable in responding to rapidly changing conditions. Although other Federal agencies are restricted by legislation to specific well-defined duties and jurisdictions, the Marshals are not. Consequently, they are called upon to uphold the government's interests and policies in a wide variety of circumstances." U.S. MARSHALS SERVICE, HISTORY—GENERAL PRACTITIONERS, https://www.usmarshals.gov/history/general_practitioners.htm (last accessed May 5, 2017).

Senator LEE. Thank you all very much for your testimony this morning.

Now we are going to start a series of five-minute rounds of questions, and I appreciate you being here for those.

Mr. Steed, let's start with you.

Tell me if you can, what law enforcement functions your office performs that could not be accomplished just as well but perhaps with the greater degree of discretion and concern for local communities by a combination of local law enforcement and traditional federal law enforcement agencies?

Mr. STEED. So, Senator, I appreciate the question.

If I'm understanding correctly, you're asking what we do that's different than anyone else?

Senator LEE. Yes, what do you do that could not be done just as well, or perhaps in some ways better, by a combination of local sheriffs and, as necessary, the FBI?

Mr. STEED. It's a difficult question to answer and I'll tell you why.

FLPMA, the Federal Land Policy and Management Act, gave discretion to the Secretary to stand up a law enforcement agency within the BLM, specifically to enforce the, well, those items in FLPMA that are addressed, that's been added on to in the time since—the Archeological Resource and Protection Act, Native American Graves Protection and Repatriation Act and others. And I think by default, based on our proximity to the land, we've been tasked with doing those jobs.

As to whether we are unique within the law enforcement community to do it, I don't have an answer for that besides to say that I think in enforcing federal law, generally, based on jurisdictional issues, federal law enforcement would be tasked rather than state law enforcement, unless they went through the training that's required to be qualified as a federal law enforcement agent.

Senator LEE. Yet nothing in federal law precludes them from using local law enforcement and in some ways it encourages it. It at least acknowledges it as a legitimate alternative that should be used, unless there's a reason not to.

Mr. STEED. And to that extent, we rely on a number of contractual relationships with local counties as well as other local law enforcement agencies to involve local communities as much as possible.

Senator LEE. Okay.

Mr. Perry, how would you answer the same question?

Mr. PERRY. Thank you, Chairman Lee.

What I would say to that question is that the Forest Service, we have a unique law enforcement mission and we have unique training and skills related to natural resource law enforcement that is unique to our agency.

Wildland fire investigations, timber theft investigations, illegal marijuana cultivation-related investigations, cultural resource protection investigations; we're the best in the world at that. We train specifically to do those things, and I think that differentiates us from our other federal, state and local partners. We work collaboratively with them on public protection and protection of the public in a lot of ways, but those specific skills are unique to us.

Senator LEE. Yet local law enforcement authorities are not strangers to cases involving theft, to cases involving arson? Surely you are not describing them as inadequate.

Mr. PERRY. I think that the training that we provide, specific to wildland fire investigations, cultural resource theft violations, I just think many of those investigations are very complex, and I think it takes a lot of training and a lot of specialized experience to be successful in prosecuting those types of cases.

Senator LEE. Mr. Noel, could the local law enforcement authorities in your district, the largest legislative district in Utah that includes, what did you say, seven counties, right? Could the local law enforcement officials in your district handle most functions or duties performed by BLM law enforcement?

Mr. NOEL. Yes, they could.

And I'm not just relaying that directly just to our local law enforcement because our local law enforcement is also tied in with the state. It's tied in with our Attorney General's Office. They work very closely with the DEA.

And so, when we talk about marijuana growing, our local law enforcement is very, very involved with that. They rely heavily upon the local people in that area to report marijuana growth, to report the things that are happening because those are the people that are out of the land. So, it's important that we have that relationship with them.

I don't necessarily disagree with Mr. Perry that they've had some extensive training, but in effect, a lot of the BLM officers don't have the type of training that our law enforcement officers do.

We get this idea that's Barney and Andy law enforcement. It's a whole different situation now with millions of visitors visiting the public lands, and our agents, our law enforcement agents, are trained very, very well.

They do a lot of drug interdictions. They deal with things that happen on the public lands now with rape, with theft—all those things happen. They're all prosecuted in our offices. And I don't think that the BLM nor the Forest Service agents have that type of training that is something different, that's what it is.

They do have resource training, I agree with that, and timber management and fire suppression. Those things, I think, they can do a good job there.

As far as the archeological theft, we have the help of the State Historic Preservation Officer, even the federal agencies have their own archeologist who work closely with the SHIPO, within the State of Utah.

So again, we have the Native American Liaison Committee in the House with the Native American. I, myself, have passed numerous laws on Utah Native American Graves Repatriation Act just this last two sessions ago. I passed a law that allowed for any remains to be buried on state and state park areas instead of site areas because the Native Americans in my area want them to be buried as close as possible to where they find the remains. And if those are on private property, if we can move those remains to an area in that locality, they would prefer that. That was accepted by the Native Americans.

And so, I appreciate Mr. Brossy in his comments, but again, we do consider grave digging and grave robbing as a very serious crime. We do respect your culture and respect the fact that we shouldn't have people out digging on those lands.

That was not the case in Blanding. We can go into that in great detail, but that was not the case that occurred. There were 26 people that were arrested. I believe there were two people that plead and no one really served any time. So it was 140 law enforcement agents that came in the community. They could have had a citation and a request to appear in court, and they would have all appeared in court. It was an overkill by the federal agencies, even the federal agencies themselves said it was an overkill to go through that and to do the type of tactics that occurred there. And this is what's happening with federal law enforcement, Mr. Chairman.

There's this buildup and this militarization. The weapons and things that they use now, automatic weapons, fully automatic weapons with police dogs and with tactical gear. It's not necessary. It's intimidation, and it's inappropriate for a rural area like my district.

Senator LEE. If the BLM law enforcement or Forest Service law enforcement were to enter into agreements with your local law enforcement officials, wouldn't those local law enforcement officials be willing and even eager to work with them to make sure the law was enforced within their jurisdiction?

Mr. NOEL. They absolutely would and they would be willing to be trained. And I think it would save the taxpayer a tremendous amount of money.

The differences in pay scale between local law enforcement and state law enforcement and federal law enforcement are astronomical. A federal law enforcement officer is in excess of $100,000 a year whereas a state or a county law enforcement officer is somewhere around $45,000 to $50,000 a year.

So with contracts, I think we can do a better job, have a better connection. It's no different than on the Navajo Nation or on the Paiute. They have their own law enforcement people, and they work with their own people. And this would be the same thing.

I understand these are ancestral lands, but they're also lands where people live and it's part of our state government.

The elected official in San Juan County, Rebecca Benally, she is responsible, partially, for the funding of law enforcement within that county and working with the local county sheriff. If there are problems there, she is the one that can actually say, we need to work on this more.

So, again, the training is there. We're much more sophisticated. It's not just one sheriff, it's the Utah Sheriffs' Association. It's the State of Utah. It's the Attorney General's Office.

But again, it goes back, Mr. Chairman, to the concept of federalism. We feel like we can do better as a state in managing our law enforcement affairs than the Federal Government.

Senator LEE. Mr. Steed, Representative Noel makes a good point, especially when you consider the differences in the pay scale. We are not talking about a slight difference there. That is a very significant difference.

If you could, in fact, get as good of an outcome, perhaps even better for something that he describes as, in some cases, maybe even less than half of the cost, why wouldn't you do that, especially given how much money that would save that could be put into other things you do within the Bureau of Land Management to make sure things are well maintained?

Mr. STEED. Senator, we're happy to take a look at that. I'm certainly not saying no.

What I would say is we're already engaged in a number of contracting arrangements with local and law enforcement agencies.

I provided you a letter earlier today, at least I provided it to your staff, I hope it filtered up to you. Sorry for it being a little slow.

[The information referred to follows:]

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
http://www.blm.gov

MAY - 8 2018

The Honorable Michael S. Lee
United States Senate
Washington, DC 20510

Dear Senator Lee:

Thank you for your letter dated March 19. 2018, regarding the Bureau of Land Management's (BLM) law enforcement program. I appreciate the time you took to share your concerns.

As you noted, recent events have highlighted problems within the BLM law enforcement program. We are committed and dedicated to facilitating Secretary Zinke's goal of restoring trust with local communities. To this end, we are refocusing BLM's law enforcement towards core functions as land resource officers to further our multiple use mission, consistent with the Federal Land Policy and Management Act.

During the short time that I have been in my position, we have directed officers to focus on casework with direct ties to public land and resources. We have made a concerted effort to work more closely with state and local law enforcement and to improve working relationships with partner organizations, including the Western States Sheriffs Association. We are also seeking increased communication and a change in culture to ensure that we are responsive to local needs.

The answers to your questions are enclosed. I look forward to continuing to work with you in managing our public lands on behalf of the American people. If you have additional concerns, please contact me at 202-208-3801, or your staff may contact Patrick Wilkinson, BLM Legislative Affairs Division Chief, at 202-912-7429.

Sincerely,

Brian C. Steed

Brian C. Steed
Deputy Director, Policy and Programs

Enclosures

Enclosure 1

Questions regarding coordination with state and local law enforcement:

1. How many section 303(c)(1) cooperative agreements are currently in effect between the BLM and state and local law enforcement entities nationwide?

The BLM has utilized Section 303(d) service contracts. There are 84 law enforcement service contracts currently in effect. There are no cooperative agreements in effect.

2. Please provide a list of all such agreements, including effective dates.

Table 1: BLM Law Enforcement Service Contracts

State		Vendor	Contract Description	Effective Date	Period of Performance Expiration Date*
1	CA	Lake County	Dispatch Services	5/2017	4/2022
2	CA	Mariposa County	Dispatch Services	5/2015	4/2020
3	CA	Mendocino County	Dispatch Services	5/2016	4/2021
4	CA	Sacramento County	California Law Enforcement Telecommunications	10/2014	9/2019
5	CA	San Berniardino County	California Law Enforcement Telecommunications	10/2016	9/2021
6	CO	Park County	Law Enforcement Services	6/2016	9/2017
7	CO	Public Safety Colorado Department	Law Enforcement Dispatch Services	7/2016	6/2019
8	ID	Ada County Sheriff's Office	Law Enforcement Services	7/2017	6/2018
9	ID	Bannock County Sheriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
10	ID	Bingham County Sheriff's Office	Law Enforcement Service Patrols	7/2016	6/2021
11	ID	Blaine County Sheriff's Office	Law Enforcement Patrol Services	7/2016	6/2021
12	ID	Boise County Sheriff's Office	Law Enforcement Services	7/2017	6/2018
13	ID	Bonneville County Sheriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
14	ID	Butte County Sheriff's Office	Law Enforcement Services	7/2014	6/2019
15	ID	Camas County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
16	ID	Caribou County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
17	ID	Cassia County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
18	ID	Clark County Sheriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
19	ID	Clearwater County Sheriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
20	ID	Custer County Sheriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
21	ID	Elmore County Sheriff's Office	Law Enforcement Services	7/2017	6/2018
22	ID	Franklin County Sheriff's Office	Law Enforcement Patrol Services	7/2016	6/2021
23	ID	Fremont County Sheriff's Office	Law Enforcement Services	7/2014	6/2019
24	ID	Gem County Sheriff's Office	Law Enforcement Services	7/2017	6/2018
25	ID	Gooding County Sheriff's Office	Law Enforcement Services	7/2016	6/2021

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26	ID	Idaho County Sheriff's Office	Law Enforcement Patrols Services	7/2017	6/2022
27	ID	Jefferson County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
28	ID	Jerome County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
29	ID	Kootenai County Sherriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
30	ID	Lemhi County Sheriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
31	ID	Lincoln County Sheriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
32	ID	Madison County Sheriff's Office	Law Enforcement Patrols Services	7/2016	6/2021
33	ID	Minidoka County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
34	ID	Owyhee County Sheriff's Office	Law Enforcement Services	7/2017	6/2018
35	ID	Payette County Sheriff's Office	Law Enforcement Services	7/2017	6/2018
36	ID	Power County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
37	ID	Shoshone County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
38	ID	Twin Falls County Sheriff's Office	Law Enforcement Services	7/2016	6/2021
39	ID	Washington County Sheriff's Office	Law Enforcement Services	7/2017	6/2018
40	MT	Helena, City OF	Law Enforcement Dispatch Services	10/2017	9/2022
41	MT	Lewis & Clark County	Law Enforcement Dispatch Services	9/2018	9/2019
42	MT	Madison County Sheriff's Office	Law Enforcement Dispatch Services	10/2017	9/2021
43	NM	Dona Ana County	Law Enforcement Services	4/2013	4/2018
44	NM	NM State Police	Law Enforcement Services	5/2013	4/2018
45	NM	Santa Fe County	Law Enforcement Services	5/2013	4/2018
46	NM	San Juan County	Law Enforcement Services	4/2013	4/2018
47	NM	Taos County Sheriffs	Law Enforcement Services	6/2015	6/2020
48	OR/WA	Baker County	Law Enforcement Services	10/2015	9/2018
49	OR/WA	Benton County	Law Enforcement Services	10/2017	9/2022
50	OR/WA	Clackamas County	Law Enforcement Services	10/2014	9/2018
51	OR/WA	Coos County	Law Enforcement Services	10/2013	9/2018
52	OR/WA	Deschutes County	Law Enforcement Patrols Services	2/2017	9/2018
53	OR/WA	Douglas County	Law Enforcement Patrols Services	4/2018	3/2019
54	OR/WA	Franklin County	Law Enforcement Patrols Services	4/2018	3/2019
55	OR/WA	Harney County	Law Enforcement Services	08/2013	09/2018
56	OR/WA	Jackson County	Law Enforcement Patrol Services	09/2013	09/2018
57	OR/WA	Josephine County	Law Enforcement Services	10/2013	9/2018
58	OR/WA	Kittitas County	Dispatch Services	4/2018	3/2020
59	OR/WA	Kittitas County	Law Enforcement Services	5/2018	9/2018
60	OR/WA	Klamath County	Law Enforcement Services	10/2014	9/2019
61	OR/WA	Lake County	Law Enforcement Services	10/2013	9/2018
62	OR/WA	Lakeview Town	Law Enforcement Dispatch Services	7/2013	6/2018

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63	OR/WA	Lane County	Law Enforcement Services	10/2013	9/2018
64	OR/WA	Lincoln County	Law Enforcement Dispatch Services	10/2016	9/2021
65	OR/WA	Linn County Board of Commissioners	Law Enforcement Patrols Services	10/2013	9/2018
66	OR/WA	Malheur County	Law Enforcement Services	5/2015	5/2018
67	OR/WA	Marion County	Law Enforcement Services	5/2013	9/2018
68	OR/WA	State of Washington Fish & Wildlife	Law Enforcement Services	7/2017	6/2019
69	OR/WA	Tillamook County	Law Enforcement Patrols Services	10/2017	9/2022
70	OR/WA	Wasco County	Law Enforcement Patrols Services	3/2018	12/2019
71	OR/WA	Washington Department of State Patrol	Dispatch Services	4/2018	9/2019
72	OR/WA	Wheeler County	Law Enforcement Patrols Services	3/2018	12/2019
73	OR/WA	Yamhill County	Law Enforcement Services	10/2017	9/2022
74	NV	Conservation and Natural Resources	Dispatch Services	1/2015	12/2018
75	UT	Emery County	Law Enforcement Patrol Services	9/2015	9/2020
76	UT	Juab County	Law Enforcement Support at Little Sahara	3/2015	2/2020
77	UT	Kane County	Law Enforcement Patrol and Dispatch Services	10/2015	9/2020
78	UT	Tooele County	Law Enforcement Dispatch Service	7/2015	6/2020
79	UT	St. George City	Law Enforcement Dispatch Service	7/2013	7/2018
80	UT	Uintah County	Law Enforcement Patrol Services	10/2017	9/2022
81	UT	Wayne County	Law Enforcement Patrol Services	7/2017	6/2022
82	UT	Utah Communication Agency Network	Support for Law Enforcement Radios	3/2014	3/2019
83	UT	Utah Department of Public Safety	Statewide Dispatch Services	9/2015	9/2020
84	WY	Wyoming Department of Transportation	Law Enforcement Patrol Services	11/2015	10/2020

**Note: In some instances, the period of performance expiration date is listed beyond 2018. However, each year the government has to add additional funding to the contract (renew and exercise the option year) to keep the contract effective If funding is not available and/or there is no longer a need for the contract, the government is not required to fund the contract through the expiration date. If a contract is needed beyond the existing expiration date, a new contract with an updated period of performance has to be established.*

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3. Please provide the termination date of all 303(d) agreements that have expired or have been terminated since 2008.

No law enforcement service contracts have been terminated since 2008. Table 2 is a list of contracts that have expired.

Table 2: Expired Service Contracts—BLM Law Enforcement Program

State		Vendor	Contract Description	Period of Performance Expiration Date
1	AZ	Cochise County	Law Enforcement Support	5/2014
2	AZ	Graham County	Law Enforcement Support	9/2013
3	AZ	Pima County	Law Enforcement Support	7/2011
4	AZ	Pinal County	Law Enforcement Services	6/2013
5	CA	Colusa County	Law Enforcement Support	1/2015
6	CA	Napa County	Dispatch Services	7/2015
7	CA	Yolo County	Law Enforcement Services	1/2013
8	CO	Hindsdale County	Law Enforcement Patrols Services	5/2014
9	CO	San Juan County	County Patrol Travel	9/2013
10	ID	Canyon County Sheriff's Office	Law Enforcement Services	6/2014
11	ID	Idaho Department of Fish and Game	Law Enforcement Patrols	3/2016
12	NM	NM Dept. of Info Technology	Law Enforcement Dispatch Services	4/2011
13	OR/WA	Crook County	Law Enforcement Patrol Services	12/2017
14	OR/WA	Emergency Communications of Southern Oregon	Dispatch Services	9/2013
15	OR/WA	Grant County	Law Enforcement Patrol Services – Drugs	8/2013
16	OR/WA	Jefferson County	Law Enforcement Patrols Services	7/2014
17	OR/WA	Oregon Department State Police	Law Enforcement Patrols Services	9/2017
18	OR/WA	Southern Oregon Regional Communications	Dispatch Services	9/2011
19	OR/WA	Washington State Department of Natural Resources	Dispatch Services	12/2010
20	NV	Carson City	Law Enforcement Patrol Services	6/2017
21	NV	Churchill County	Law Enforcement Patrol Services	5/2017
22	NV	Clark County	SNDO Law Enforcement Services	5/2012
23	NV	Humbolt County	Law Enforcement Patrol Services	9/2015
24	NV	Lincoln County	Law Enforcement Patrol Services	9/2015
25	NV	Pershing County	Law Enforcement and Dispatch - Burning Man	9/2014
26	NV	Storey County	Law Enforcement Patrol Services	9/2014
27	NV	Washoe County	Law Enforcement Patrol Services and Services	6/2015

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28	NV	Washoe County	Law Enforcement Support Burning Man	9/2014
29	UT	Emery County**	Law Enforcement Patrol Services	5/2012
30	UT	Juab County**	Law Enforcement Patrol Services	4/2013
31	UT	Kane County**	Law Enforcement Patrol and Dispatch Services	5/2013
32	UT	San Juan County	Law Enforcement Patrol Services	10/2013
33	UT	Tooele County**	Law Enforcement Dispatch Service	2/2013
34	UT	St. George City**	Law Enforcement Dispatch Service	6/2012
35	UT	Utah Department of Natural Resources	Law Enforcement Patrol - Factory Butte	9/2012
36	UT	Utah Motor Vehicle Enforcement Division	Law Enforcement Support at Little Sahara	5/2012

***Note: Although the original contract expired, new contracts have since been established (see Table 1).*

4. How many 303(d) agreements with local law enforcement entities has the BLM entered into since 2017?

There are no cooperative agreements in effect. Of the 84 current effective law enforcement service contracts, 26 were established in 2017 or later. Please note that we have encouraged all Districts and Field Office Managers to continue to seek out law enforcement partnerships to help augment our internal law enforcement program (see enclosure 2: Information Bulletin 2018-037 Collaboration with State and Local Partners).

Information regarding on-the-job incidents:

5. The number of incidents, on an annual basis, during which OLES officers were fired upon in the line of duty since 2008.

Year	No. of Incidents	Year	No. of Incidents	Year	No. of Incidents
2003	2	**2008**	0	**2013**	0
2004	0	**2009**	1	**2014**	1
2005	0	**2010**	0	**2015**	0
2006	1	**2011**	0	**2016**	1
2007	0	**2012**	1	**2017**	0

6. The number of OLES officers assaulted in the line of duty on an annual basis since 2008.

Year	No. of Officer Assaults	Year	No. of Officer Assaults	Year	No. of Officer Assaults
2008	6	**2012**	5	**2016**	4
2009	10	**2013**	5	**2017**	4
2010	4	**2014**	5		
2011	7	**2015**	3		

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7. The number of incidents, on an annual basis, during which OLES officers discharged their firearms in the line of duty since 2008.

Year	No. of Incidents	Year	No. of Incidents	Year	No. of Incidents
2003	2	**2008**	0	**2013**	2
2004	0	**2009**	2	**2014**	2
2005	2	**2010**	3	**2015**	0
2006	2	**2011**	1	**2016**	1
2007	3	**2012**	1	**2017**	1

8. The number of investigations in which the BLM requested FBI assistance and the number of BLM investigations in which the FBI actually assisted since 2008.

Since 2008, the BLM has requested investigative assistance from the FBI 68 times. The FBI provided assistance to all 68 requests.

9. The number of traffic citations issued by OLES officers on an annual basis since 2008.
(Note: The reporting system used cannot determine if the violation occurred on or off road, but was able to filter a passenger vehicle verses an OHV. These statistics relate to passenger vehicles.)

Year	No. of Citations	Year	No. of Citations	Year	No. of Citations
2008	1,902	**2012**	1,470	**2016**	1,091
2009	1,730	**2013**	2,114	**2017**	1,368
2010	1,919	**2014**	1,564		
2011	1,583	**2015**	1,249		

The BLM has issued about 15,900 traffic violations since 2008. The large majority, 6,200, were for speeding, and another 6,300 were for 'other state/local laws' (which includes everything from lacking insurance to having open container). Registration violations such as fictitious or altered plates numbered 1,780, and 556 were equipment violations (helmet, lights, mudguards, etc.). Safety violations of reckless driving (390) and seat belt violations were less frequent.

10. The number of drug enforcement-related citations issued by OLES officers on an annual basis since 2008.

Out of 8,935 citations since 2008, 7,347 were for marijuana or marijuana paraphernalia.

Year	No. of Citations	Year	No. of Citations	Year	No. of Citations
2008	540	**2012**	1,004	**2016**	846
2009	731	**2013**	1,375	**2017**	1,071
2010	759	**2014**	1,038		
2011	766	**2015**	805		

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11. The number of arrests made by OLES officers on an annual basis since 2008. (Note: More than 1 person may be arrested for a single incident.)

Year	No. of Arrests	Year	No. of Arrests	Year	No. of Arrests
2008	609	**2012**	222	**2016**	299
2009	535	**2013**	382	**2017**	336
2010	669	**2014**	366		
2011	443	**2015**	324		

12. The number of investigations the BLM requested DEA assistance and the number of BLM investigations in which the DEA actually assisted since 2008.

Since 2008, the DEA has requested investigative assistance from the DEA 119 times. The DEA provided assistance to all 119 requests.

Questions regarding policies and guidelines informing basic investigative actions:

13. In general, does the BLM coordinate the execution of warrants off Federal land with state or local law enforcement? If not, why not?

Yes, standard operating procedure includes coordination with local law enforcement agencies as appropriate when planning a Federal search warrant.

14. Please identify and describe any agreements or informal arrangements with state or local law enforcement entities regarding the execution of warrants in such cases.

No formal agreements exist. In general, contact with local agencies is made before a warrant is served, and assistance is requested as needed.

15. Does any component of the BLM operate a special operations or special weapons and tactics (SWAT) group? If so, please list the component(s) and the name(s) of the applicable group(s).

The BLM does not operate a special operations nor special weapons and tactics group.

16. Does any component of the BLM have guidelines for the use of snipers and other SWAT tactics during law enforcement operations, including the execution of search warrants? If so, please list the components and provide copies of the applicable guidelines.

The BLM does not have guidelines for the use of snipers nor other SWAT tactics during law enforcement operations, including the execution of search warrants.

Questions regarding OLES authorities:

17. Please describe the authority of OLES officers to take individuals into custody.

Enclosure I

A BLM law enforcement officer (LEO) has the powers to carry firearms; execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor s/he has reasonable grounds to believe is being committed in her/his presence or view, or for a felony if s/he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; seize without warrant or process any evidentiary item as provided by Federal law; and take oaths, affirmations, affidavits or depositions with the same force and effect as if administered or taken before an officer having a seal.

In accordance with Section 303(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733), BLM Law Enforcement Officers are authorized and directed to enforce all Federal laws and regulations pertaining to the use, management, and development of the public lands and their resources, including but not limited to:

Archaeological Resources Protection Act (16 U.S.C. 470aa et seq.).
Wild Free Roaming Horse and Burro Act (16 U.S.C. 1331-1340).
Land and Water Conservation Fund Act (16 U.S.C. 460 l 6a).
Federal Cave Resources Act (16 U.S.C. 4306).
Sikes Act (16 U.S.C. 670j).
Antiquities Act (16 U.S.C. 433).
National Trails System Act (16 U.S.C. 1241-1246).
Taylor Grazing Act (43 U.S.C. 315a).
Unlawful Inclosures of Public Land Act (43 U.S.C. 1061-1064).
Migratory Bird Act (16 U.S.C. 703).
Lacey Act (16 U.S.C. 3372).
Endangered Species Act (16 U.S.C. 1538).
Bald Eagle Act (16 U.S.C. 668(a)).
Native American Graves Protection and Repatriation Act (18 U.S.C. 1170)
Indian Arts and Crafts Act of 1990 (25 U.S.C. 305)
Federal Oil and Gas Royalty Management Act (30 U.S.C. 1701).
Clean Water Act (33 U.S.C. 1319).
Resource Conservation and Recovery Act (42 U.S.C. 6928(d)).
Mineral Leasing Act (30 U.S.C. 195).
Section 47, 111, 371, 372, 641, 1001, 1361, 1510, 1851 1861, 1864, and other sections of Title 18 U.S.C. as they relate to the use, management, and development of the public lands; protection of the property located thereon; or protection of any employee or volunteer of the BLM in the performance of their official duties.
Section 841 of Title 21 U.S.C. as it relates to public lands through cultivation of a controlled substance, creating a hazard, causing pollution, or using booby traps.
Oaths and Affidavits (43 U.S.C. 1466).
Title 43 CFR as it relates to public lands.
Title 50 CFR Part 20 as it relates to the taking of migratory birds on public lands, and Part 100 as it relates to the subsistence taking of fish and wildlife on public lands in Alaska.
Executive Order 11644 related to Off-road Vehicles.

Enclosure 1

Departmental Manual (446 DM).

18. What are OLES's policies relating to duration and location of custody?

BLM General Order 3, Authority, Section IV Part E. states a BLM LEO must take persons arrested for a Federal offense(s) to the nearest jail facility approved by the U.S. Marshals Service for Federal prisoners. An LEO may take persons arrested for a Federal offense(s) to any other facility pursuant to instructions received from the U.S. Marshals Officials or the U.S. Attorney. (Ref 18 U.S.C. 4086)

The BLM follows all applicable laws and regulations when it comes custodial issues and works closely with applicable U.S. District Courts throughout the west.

19. Given the vast array of federal law enforcement agencies within the Department of Justice and the Department of Homeland Security, why is OLES necessary?

When the Ninety-fourth United States Congress passed the Federal Land Policy Management Act (FLPMA) in 1976, it created law enforcement that is focused on protecting public land and the visitors that use the land throughout the western United States. Federal land management officers receive specialized training to enforce the laws and regulations referenced above, which are unique to public land. BLM LEOs have produced effective results in conservation law enforcement.

BLM law enforcement provides a regular and recurring presence over vast areas of public lands that in many cases cannot be performed by other agencies. LEOs are responsible for conducting high visibility patrols; public contacts; enforcing Federal laws and regulations; assisting local County or city police departments, as well as other Federal and state land management agencies, In addition, BLM officers investigate illegal activity on public land, and provide for the safety of all public land users. BLM LEOs, on a daily basis, are in the field to help inform and educate the public. BLM law enforcement works with our partners as a force multiplier in keeping public land safe and enjoyable for all Americans. The Bureau's law enforcement priorities are guided by an agency-wide multiple-use mission to manage public lands for the benefit of all Americans.

Questions regarding OLES personnel policies:

20. What changes has the current administration made to the Field Officer Training Program and OLES recruiting practices?

The current administration is reviewing the Field Officer Training Program and will implement changes to common practice issues identified during this review. The OLES employs hiring and recruitment authorities and practices outlined by the United States, Office of Personnel Management (OPM). The OPM provides Federal human resources policy and oversight for all Federal agencies.

The current training standards are listed in the BLM Law Enforcement Department Manual 446(Interior) Chapter 15- Training Standards and BLM Law Enforcement General Order 10 - Training requires that all new hire law enforcement rangers complete a prescribed field training

Enclosure 1

and evaluation program (FTEP) conducted by designated Field Training Officers. All trainees currently spend approximately 9 to 12 weeks in FTEP.

21. What is the role of the Office of Internal Affairs at the Department of the Interior with regard to OLES? Has this administration taken steps to strengthen the role of Office of Internal Affairs at OLES? What steps do you plan to take in the future?

The Department of the Interior, Office of Law Enforcement and Security (OLES) serves as the Departmental focal point to provide program guidance and oversight of the Department's law enforcement, security, and information sharing programs. The DOI, OLES coordinates bureau programs related to Internal Affairs and Program Compliance. Within the DOI, each Bureau, including the BLM OLES, has a robust Internal Affairs program effectively operating to respond to allegations involving BLM employees and contractors involving criminal and serious administrative misconduct.

Recent steps have been taken to increase and strengthen the Internal Affairs function within the BLM, OLES including a significant staffing increase to respond to the agency's most "sensitive, complex investigations." Additionally, recent efforts include newly established interim processes and protocols to closely resemble industry standards among partner Federal law enforcement entities, and incorporate best practices. Future steps include permanent staffing measures, permanent policy revisions, and hotline resources for mail, fax, telephone, intranet (employee facing), and internet (public facing), to receive complaints or allegations of employee misconduct nationwide.

22. What is OLES's process for handling "bad actors" within the force? What are the obstacles to firing a bad actor once they have been identified?

The BLM, OLES, Office of Professional Responsibility (OPR) (Internal Affairs) is responsive to complaints and allegations of employee and contractor criminal and serious administrative misconduct, including those of law enforcement and law enforcement managers. Ultimately, criminal misconduct is referred for criminal prosecution to the U.S. Attorney's Office or the District Attorney's Office in the respective districts of the offense, however, administrative remedies are also available to the agency in the interim or following final criminal prosecution.

The BLM, OLES has taken administrative action on law enforcement and law enforcement managers including reprimands up to termination from Federal employment and will continue to aggressively pursue such allegations, investigations, and agency administrative remedies in response to internal "bad actors." Procedural due process rights and coordination with Human Resources and the Department's Solicitors as established under Federal guidelines are followed in furtherance of agency administrative remedies.

23. What is the nature of the relationship between OLES and BLM state and field offices?

OLES works hand in hand with BLM state and field offices. The Special Agent in Charge and the State Chief Ranger interact with the State office on a daily basis.
Special Agents-in-Charge

Enclosure 1

The OLES Special Agents-in-Charge (SAC) are responsible for the implementation of policy, standards, and responsibilities established by directives in the Law Enforcement General Orders and Handbooks. They are responsible for providing leadership, advice, and guidance on law enforcement actions to protect resources and provide for public safety on public lands within the State(s). Pursuant to 446 Department Manual (Interior), the SACs are designated as the Senior Law Enforcement Officials for the State Office. The SACs report to the Director/Deputy Director, OLES. The SACs are responsible for:

- *Serving as the primary advisor and consultant for law enforcement and security matters to the State Director and other Bureau officials in the State.*
- *Developing and managing a Statewide Bureau law enforcement program, which includes long-range planning, budget formulation, case reporting, data collection and management, evaluation of program results, and supervision of subordinate law enforcement personnel.*
- *Coordinating law enforcement activities within the State and other Bureau program management activities to ensure compatibility and proper integration of effort.*
- *Managing agreements and contracts for law enforcement with other Federal, State, and local agencies, and conducting necessary liaison with such agencies.*
- *Coordinating the various law enforcement ranger activities in the Field Offices (District and Area Offices) to provide a comprehensive and consistent application of law enforcement services.*
- *Ensuring that the Field Offices develop appropriate strategies for the staffing and funding of law enforcement ranger positions.*
- *Providing appropriate program review of the Field Office law enforcement ranger activities and ensuring compliance with Departmental, Bureau, and State policies and procedures.*
- *Providing managers with training in the supervision and management of a law enforcement function and Bureau policy on law enforcement operations upon assignment of a law enforcement ranger to a Field Office. Providing all employees with appropriate law enforcement awareness training to enhance their physical safety and encourage reporting of incidents that they may become aware of when conducting field assignments.*
- *Providing recommendations to the appropriate managers for disciplinary action.*

State Chief Rangers

The State Chief Rangers (SCRs) report to the SAC, and are the top-ranking uniformed Federal law enforcement officers at the State level within the BLM OLES. They are responsible for providing program direction, management and leadership to the BLM uniformed law enforcement component throughout one or more States.

The SCRs serves as technical experts on all aspects of the uniformed law enforcement function on a Bureau-wide basis and provide advice, guidance, and recommendations to senior agency management to include the State Director, Deputy State Director, District/Field Managers, and the Special Agent-in-Charge on a wide variety of mission critical functions and operations.

Enclosure 1

The SCRs serve as the principal technical expert on Ranger operations, and are a key advisor to the Special Agent-in-Charge and State Leadership Team (SLT) on all areas of unauthorized use; enforcement policy; effects of proposed rules, regulations, and policies; land use planning issues; and matters related to specific cases. The SCRs also act in an oversight role to line managers supervising uniformed law enforcement personnel.

24. Do OLES officers report to BLM state and field offices?

No. However, SACs and SCRs usually have offices located in the State Office and have a direct line of communication with the State Director (see above).

25. Under your leadership, how has the BLM handled requests from OLES for new equipment? Does this represent a change from how equipment requests were handled by prior administrations?

All purchases in OLES are approved in the following matters:

All equipment purchases (up to $3,500 per purchase) follow the procedures in the BLM Manual 1512 - Charge Cards and Convenience Checks for Travel, Purchase, Fleet, and Uniforms. All purchases from $150 - $3,500 require supervisor approval before purchase.

For all equipment purchases over $3,500, a purchase requisition must be entered in the Financial Business Management System and is routed through multiple approval levels. After approval, the requisition is assigned to a warranted contracting officer who must follow the purchasing procedures as outlined in the Federal Acquisition Regulations.

This does not represent a change from how equipment requests are handled.

26. Does the BLM have plans to change how OLES officers are equipped and dressed that could help how they are perceived by local residents while on patrol?

The BLM is reviewing the safety equipment issued to officers to ensure that equipment provided is appropriate given the situation and location. The BLM will continue to ensure that uniformed officers present a professional image while patrolling on public lands and that all patrol vehicles are clearly identifiable to the public as law enforcement vehicles.

Enclosure 2

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Washington, D.C. 20240
http://www.blm.gov

MAR 0 3 2018

Information Bulletin No. 2018 - 037

To: All Washington Office and Field Officials

From: Deputy Director, Policy and Programs

Subject: Collaboration with State and Local Partners

The enforcement of laws and regulations is a critical part of managing approximately 245 million acres of public lands. The Bureau's law enforcement staff of approximately 200 Rangers and 75 Special Agents serve a unique function in enforcing the laws and regulations that help us manage the lands and keep our public land users safe. With each Ranger being responsible for covering on average over one million acres, it is imperative that we continue to build and strengthen our partnerships with the state and local law enforcement agencies fulfilling their respective missions on those same public lands. I encourage all Districts and Field Office Managers to continue to seek out those law enforcement partnerships to help augment our internal law enforcement program.

Additionally and equally important, all Managers and Law Enforcement Rangers should be regularly coordinating with our law enforcement partners during their planning efforts. Land management decisions, such as Resource Management Plans, Travel Plans, recreation development, and closures all have the potential to significantly impact state and local law enforcement agencies. For example, a newly developed recreation site would likely result in increased visitation and the potential for increased crime and public assist incidents, including search and rescues, over which our state and local partners generally maintain primary jurisdiction. It is imperative that we remain aware of how our management decisions impact our partners, and understand both the need for external input into our land management planning efforts as well as the effect Bureau decisions have on the various departments and missions.

Continued collaboration is critical to our success in managing the public lands in an efficient and effective manner for generations to come. Please direct any questions regarding the BLM's collaboration with local law enforcement partners to William Woody, Director of Law Enforcement and Security, at (202) 208-3269.

Brian C. Steed
Deputy Director, Policy and Programs
Exercising the Authority of the Director

Senator LEE. Better late than never.

Mr. STEED. Better late than never.

Detailing those arrangements that we have ongoing and we're proud of the work we do jointly with local law enforcement.

I think, to answer your question though, the one question that we have to address is whether or not we'd have to send local law enforcement officials through the Federal Law Enforcement Training Center, or FLETC, and that's an open question that's never truly been addressed in order to be federal law enforcement officials or qualified in enforcing those federal laws. To date, that's been the standard. And we haven't been, to my knowledge, we haven't been approached by the local sheriff's office asking for that authority. So it's something we can look at, but I think there are open questions there.

Senator LEE. Mr. Perry, same question.

Mr. PERRY. Yes, Mr. Chairman.

I think, you know, we work very well with our county partners. We value them. I mean, the sheriff, we recognize the sheriff as the supreme law enforcement official in the counties they serve in, and we want to work collaboratively with them. We just feel like our missions can work in conjunction with each other.

As it relates to the, again, the training and the ability of them to do our jobs, currently the Forest Service doesn't have a mechanism to confer federal authority onto our county partners. And most of the sheriffs that I've spoken with don't have an interest in enforcing federal law anyway. They would prefer to handle crimes that occur on National Forest System lands through their authorities of the state, which I think is certainly appropriate.

The Secretary has to have the ability to enforce rules and regulations that he promulgates and know the concern is that if there is no law enforcement mechanism within the Forest Service, then how does that get accomplished?

Again, I think that working collaboratively with our partners is exactly the way to go. I spent a lot of time traveling to the West to make sure that those relationships are strong. I've developed a lot of great friendships with the county sheriffs in the Western State Sheriffs' Association and the National Sheriffs' Association. Again, we recognize them for their authority and what they bring to the table. They're essential. We can't do the job without it.

We have roughly right now about 613 law enforcement personnel for 193 million acres of National Forest System lands. There's absolutely no way we can do that without their support.

Senator LEE. Mr. Steed, can you tell me about how many BLM law enforcement officers have been fired upon in the last five years?

Mr. STEED. That letter or that information is contained in the letter. I don't have it in front of me right now. There is a number of people who have been fired on.

Senator LEE. A number?

Mr. STEED. I can't remember the exact. It's——

Senator LEE. Single digits?

Mr. STEED. Yes.

Senator LEE. Okay.

Mr. STEED. It's not a huge amount.

Senator LEE. Okay, so very rarely. If it is in the single digits, we are talking about no more than one or two a year.

Mr. STEED. Although, if you're the law enforcement officer receiving fire——

Senator LEE. I understand that. No, I understand that. It is very, very serious. But it is nonetheless important to keep that number in mind.

How many traffic citations have BLM law enforcement officers issued in the past year?

Mr. STEED. And again, that number is contained in the letter that we submitted to you. I don't have that in front of me. It's a lot. I mean, it's——

Senator LEE. More than five or ten?

Mr. STEED. Correct. Correct.

Senator LEE. Are we talking hundreds?

Mr. STEED. Let me see if I've got those numbers in front of me. I may.

Senator LEE. I do have them. You submitted the letter this morning——

Mr. STEED. I apologize.

Senator LEE. ——just moments before the hearing so I did not have a chance to go through them.

Mr. STEED. Absolutely.

Senator LEE. We are talking about thousands, right?

Mr. STEED. It could be, correct.

Senator LEE. Okay, but we are talking about thousands of traffic citations being issued every year and yet in the last five years, we can count maybe five times in which a BLM law enforcement agent has been fired upon. Given that profile of activity why are armed BLM law enforcement agents wearing flak jackets, no less, executing search warrants in the private homes of artifact collectors?

Mr. STEED. We've been charged through our mandate to enforce federal law. Part of that federal law is archeological resources protection.

I believe that the case you're referring to is in—the case has been referenced previously. Is that accurate? Which was a multiyear effort, is my understanding which yielded 14 search warrants, 27 indictments, 12 felony convictions, 5 misdemeanor convictions and 10 collections served or seized, 10 collections seized of illegal artifacts. We currently have those artifacts in a warehouse, and we're working diligently to repatriate those. It was a large operation.

So as to tactics and approach, I'm not here to defend tactics taken. I can say that one of the things that we're doing in terms of our review is a uniform rules review. We specifically want to look at the necessity of those external flak jackets. In some cases, they may be well needed, especially in our operations along the southern border, but certainly that shouldn't be how we present ourselves on a day-to-day basis.

Senator LEE. Is there any reason why that warrant had to be executed in the manner it was? Why the raid had to happen the way that it did? And why it had to be done by these specialized federal law enforcement agents within a proprietary federal agency?

Mr. STEED. And again, this is before my time and, unfortunately, I don't know the details of why they decided to execute the warrants in the manner in which they did.

Senator LEE. Mr. Noel, in your opinion based on what you know about that instance, would local law enforcement have carried out the same procedure the same way?

Mr. NOEL. No. In fact, I talked to numerous individuals in the legislature, several which have a history. One was a federal or a state judge and just uncalled for—that type of an action was uncalled for. They could easily have asked people to appear. They had the evidence. There was no reason to go in, in the middle of the night.

If you read my full report and what happened and also, again, with the OIG report, you'll see what an extreme measure to have snipers on top of the Redd's roof and to hold him for six hours in chains. When he went in to use the restroom, to have two agents at one knee and make him use the restroom and not even allow him to clean himself.

To do those types of things is dehumanizing and humiliating. If you go back and you talk to the Native Americans in that area and the many, many years that Dr. Redd served them, their families, their children, delivered babies. He was very well loved there by both Native Americans and by the Caucasian community in that area. And so, it was just uncalled for, and it has had severe ramifications on the family. And it was an incident that should never ever happen again.

Again, I do not condone, in any way shape or form, of going in and digging into Native American graves. I think that is highly inappropriate. And I think it's, I strongly believe that anyone that's in a law enforcement capacity would stop that from happening and people would be prosecuted for it whether civilly or criminally, I don't know, but that case was definitely something that should not have happened in that manner.

And if you go back and you read this, Mr. Love and with his kill list and with his statements, you had a very deranged person in charge of this agency for many, many years. We tried to point it out and, prior to Mr. Steed, it fell on deaf ears on his supervisor, on the head of the agency, and this is the result that you have now and knowing what's happened and transpired since then, and all the information is now coming out.

We need to investigate this further because he didn't do it on his own. He was complicit with other federal people. In one case, in my discussions with a retired FBI agent, over two-hour discussion, two other individuals relayed to me this individual when he first started to work for the agency these characteristics were coming out in the very, very beginning. It's a very sordid affair that went on between him and another FBI agent that needs to be investigated, Mr. Chairman.

Senator LEE. If someone like him had been employed with the local law enforcement agency, I would imagine the outcome would have been different.

Mr. NOEL. It definitely would have been different. There would have been more oversight.

This was one of the things that we don't hear, who dispatches BLM? They're dispatched through the county. They work with county dispatching. Who does the search and rescue portion of it? The county does that. So as Mr. Perry said and also Mr. Steed said, the county is actively involved in all of these issues.

It's just the matter of, again, it goes back to the federalism, the proprietary jurisdiction that the agencies have as opposed to the exclusive jurisdiction which is well set out in the Constitution of the United States and the concept of federalism. With the concurrence of the state legislature they can have exclusive jurisdiction or concurrent jurisdiction. But in this case, it's proprietary.

I would certainly say to you, Mr. Secretary, under Section 303, part (c)(1), "When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations."

Now, whether that requires some federal training, I don't know, but it certainly seems to me—and the fact that it's laid out specifically in FLPMA in 1976 that they highlighted that they would have a uniformed desert ranger force in the California desert. For the first ten years of the agency of BLM we had no rangers, they were only in the California desert. That tells me that the intent of Congress in that law was not to have federal law enforcement agencies using state law arresting people for traffic citations, arresting people for crimes such as rape and murder and other crimes that would normally be done by a state and should be done by a state.

If you were in New Jersey or Delaware and someone came up to give you a traffic citation and you didn't recognize the uniform and he told you, well, I'm a BLM agent and I'm not even on federal land. I'm in your county on private property, and I'm issuing you a citation. And that has happened.

Anyway, I'm sorry. Go on, Mr. Chair.

Senator LEE. No, thank you. It is helpful insight.

When I was a teenager I was a big fan of a movie called, Fletch. In that movie the lead character, played by Chevy Chase, claims at one point, falsely, to be part of the federal mattress police, and he instructed someone that he was speaking to that they should be concerned because the "do not remove" tags on the mattress had, in fact, been removed when they weren't supposed to be.

I have thought many times since then, it is very fortunate that we do not have a federal mattress police in part because a law enforcement agency with such a confined, narrow stovepipe into the world, such a confined, precise mission would look around, sort of, like the person holding a hammer to whom everything looks like a nail. And all they see is perhaps opportunity for a raid. If that is all they are focusing on is enforcing the "do not remove" tags and the laws applicable to mattress tags, then perhaps everything would be a raid, complete with flak jackets and snipers on the roof.

Mr. Larkin, you have witnessed some of these problems firsthand while at EPA. For those of us who have not witnessed firsthand some of these problems, could you illustrate for us some of the per-

ils associated with giving regulatory or proprietary agencies law enforcement powers, particularly in a narrow-scoped area?

Mr. LARKIN. Sure, let me give you an example of a case of my own, a case that actually happened here in the District of Columbia.

I got a report that there was a business in the District of Columbia that was in the process of manufacturing glue and they had illegally stored hazardous waste in the yard right outside. I went there and, in fact, it was. It was all over. If I had wanted, I could have wound up hooking up the woman who was in charge of the business and she would have been charged, et cetera. But as I looked into the investigation, I found out that the business was actually run by her husband, who had died a few months before. She had only been down there one time to find out what the business was doing and while she was there she got mugged. So she had never been back again and had no idea what was going on. I decided this is something the civil people can handle. They can do the remediation. If they want, they can fine her, civilly or administratively. But this is not the sort of person that we need to use to make an example of for the purpose of protecting the public health. The civil side can adequately do that.

And in my office, all the other agents said, why are you doing that? It's a cheap stat. Now, I had a career before I became an agent at the EPA and maybe that's why I didn't see any need to use that as a way of getting a statistic. But even in the environmental area I think you have to make reasonable judgments.

I mean, I had another case where I helped send to prison a physician who went down to a homeless shelter and with the use of a dope dealer to get people at the homeless shelter doing asbestos rip and strip. He didn't give any training. He didn't give any protective gear. He didn't even tell them it was asbestos. Essentially, these people are all a manslaughter in progress because they're all going to die from the work they did. That's a very different case. This was a doctor who did this. He knew that it was illegal, and he knew the harm it would cause. That's the sort of person who you need to go after whether it's an environmental crime or something else.

But what we had here in the Blanding case seems to me, just to be, unfortunately, an overreaction. Even if they thought the people here were involved in some great black-market scheme to rob graves and do everything else, once they found out that that wasn't the case, they should have just ended it right there.

The problem in federal law enforcement is once you invest all these resources, everybody wants something to show for it. Nobody wants to just close a case and get heat from their supervisors about spending all this time and resources and getting nothing out of it.

You want in on a secret? Take a look at cases where people have plead guilty to misdemeanors. It is not uncommon to find that where people plead guilty to a misdemeanor, it's because there really isn't much of a case there to begin with, but they needed something to show for it.

Senator LEE. So it should not be the presumption that when somebody has done something wrong that the only solution, every time, is always just do criminal action. In many cases it could be

handled by a combination of fines, civil action, perhaps seeking an injunction in some cases, in other cases, civil monetary penalties.

Mr. LARKIN. I worked in the organized crime and racketeering section of the criminal division as one of the two offices I was involved in at the Justice Department. There are seriously bad people out there. We don't need to manufacture them.

Senator LEE. Let's talk about the different jurisdictional situations in which different landowners find themselves.

If we were talking about a private landowner, a private landowner has authority, obviously, to control what goes on, who enters and who doesn't enter onto his property and what they do there. He can ask people not to smoke on his property and ask them to leave, if they do it. If they're misbehaving, if they come onto the property without authority or if they come onto the property and disobey some request of the landowner, the landowner at that point can ask them to leave. If they don't leave, they can call the police. But the private landowner doesn't, it is not normally someone we would think of as someone who can, at that point, slap handcuffs on the person and book them himself and then bring charges.

Is that something we should take into account in looking at the fact that we are dealing with a land agency? I am not necessarily talking about the existing structure of federal law which does, in fact, report to authorize the creation of these jurisdictions. But if we were looking at it as a matter of first principles on a blank slate, wouldn't it be appropriate in some ways to view this as being a distinction between a proprietary interest in the federal land and having a law enforcement agency enforcing violations that someone commits as a condition of being on that property?

Mr. LARKIN. You grew up in Utah.

Senator LEE. Yes, sir.

Mr. LARKIN. I grew up in New York City. In New York City we don't make landlords into the police, okay? We have a police department for that.

And at a time, they even had a separate component just for public housing. It's now all part of the NYPD. We used local police to deal with local problems. In this circumstance, you could do, as my colleague, Mr. Noel said, and use the locals to do it.

Why? There are two types of knowledge you need to be an investigator. You need to know how to investigate a case, and you need to know what the law is. If the Sheriff's Department doesn't know what the special laws are, they can be taught those, and it's not going to take a long period of time. The Federal Law Enforcement Training Center probably could put the course together for them and they might even be able to do out in the different states in the West. After all, there is a federal law enforcement, at least when I was an agent, there was a Federal Law Enforcement Facility in Artesia, New Mexico. That's where I went to Firearms Instructor Training School. They could run a course there, even just to save on the costs of having everybody travel from all over. So that can be done. They could teach them what they need to know because the essential investigative skills they already have. They learned those when they went through their state or local academy.

In terms of being able to acquire the knowledge necessary to enforce these laws, you know, putting aside that whole question of overcriminalization, but they can be taught that.

But you also have another option that's the U.S. Marshal Service. The U.S. Marshal Service is a federal agency. They go through the same criminal instructor training program at FLETC that the people from the Forest Service and Bureau of Land Management do. It's the same course. FLETC trains everybody in that program with the exception of the FBI and the DEA. Even the Secret Service agents, at least when I was an agent, did their first round of training at FLETC in the criminal investigator training program before they went on to Beltsville to learn protection. So the Marshal Service has been trained up in all the investigative skills. If they needed some additional knowledge of what the particular laws are, again, FLETC could offer that for them. The Marshals work with the locals all the time and they, to my knowledge when I was an agent, had a great relationship with the locals.

Now the Marshals, I think, are an underutilized law enforcement component in the Federal Government. They principally work to serve the courts, but historically, at least in the 19th century, they had general law enforcement duties in many places in the West. I'm sure they did in Utah. In fact, the U.S. Marshals are still appointed by the President, so they're accountable and they have to be confirmed by the Senate so the Senate has room to play in deciding who becomes a U.S. Marshal. So there is that type of accountability.

Plus, to the extent you can hold people accountable through the budget process, you have an advantage with the Marshals that you don't with local law enforcement which is you control the budget. You don't control the budget for the sheriffs in Utah, but you do for the U.S. Marshal and you do for the Marshal Service, generally. Okay?

Finally, to the best of my recollection, the Marshal Service in the statute that creates them and empowers them, gives them the same sort of authority that the state law enforcement officers have. So they could, at least perhaps when they're working on a joint investigation, use whatever state law enforcement authority their counterparts have. In fact, I think the Marshal Service can also deputize state and local law enforcement officers in order to exercise federal law. Now I would ask the Director of the Marshal Service for that opinion or somebody at DOJ to confirm it, but to the best of my knowledge you can make people into, essentially, Deputy U.S. Marshals, Special Deputy U.S. Marshals, particularly on an as needed basis in a particular case.

So yes, my colleague talked about using state and local law enforcement and state and local law enforcement might be one way to go, but I think another option to consider is using the Marshal Service.

Since everybody at BLM and National Park Service has already been trained, you can transfer the people, Congress that is, could transfer the law enforcement programs from Agriculture and Interior to the Marshal Service without even costing people jobs.

It's another option to consider and to the extent that people are concerned that the Secretary of the Interior and the Secretary of

Agriculture want to have their authority enforced, the Marshal Service is certainly going to be responsive to their concerns.

Senator LEE. I appreciated what you said earlier about the overcriminalization issue and noting that although that is not the precise focus of this hearing, it is closely related to the overcriminalization problem.

It reminds me a little bit of something described in Federalist 62 which, I believe, was written by Madison, where he says in essence, it will be of little avail to the American people if their laws are written by those of their own choosing, if those laws are so voluminous and complex if they can't reasonably be read and understood and understand what the law is today and understand what it will be tomorrow.

How does this contribute then to your concern about these agencies, the fact that they are handling, among other things, a number of regulatory criminal offenses? Does that concern you?

Mr. LARKIN. Very much so.

The very first Congress passed the first criminal law act in the United States and made about 30 offenses. All those were ones necessary to get the new government up and running. They dealt with the courts, they dealt with the inspectors for the customs service and the like, and they dealt with piracy and other things dealing with trade because there was no income tax to fund the operation of the Federal Government.

It was basically through revenue from imports that the Federal Government got funded, as well as selling land later.

Nowadays, there are so many criminal statutes, federal ones, that nobody knows how many are out there. The Justice Department looked. It couldn't find the answer. The Library of Congress looked. It couldn't find the answer. The American Bar Association looked. It couldn't find the answer.

Now, add to this——

Senator LEE. They said that essentially that it is not only unknown, but it is unknowable.

Mr. LARKIN. Right.

Add to that the fact that there are many statutes that authorize agencies to promulgate regulations that amount to crimes. And you have, potentially, thousands of laws out there. No lawyer, no judge, no law professor can know them all.

And to make it worse still, many of them do not require that the government prove someone knew he was breaking the law in order to step across the line. If no reasonable person knows where the line is dividing criminal from, you know, permissible conduct, people are going to step across it unwittingly. That creates terrible problems because you allow then for discriminatory enforcement. You can pick who you're going to enforce the law against.

It also creates disrespect for the law. Normally people think lawbreakers are people who know what the law is and defy it. They go ahead and they break it anyway. If people can unwittingly break the law, you lose respect for the law because then the people who get arrested feel that it's more the result of happenstance than it is of intentional violation of a known legal duty.

It creates a terrible problem for businesses and, particularly, small businesses. If you're the CEO of Dow Chemical you have an

entire legal department and have lots of white-shoe law firms on speed dial. If you're the local dry cleaner, you don't. Probably the only time you deal with a lawyer is maybe when you deal with a contract to get supplies or maybe when you're getting your will done or something like that.

Yet, you can violate the federal environmental laws, in good faith, by trying to dispose of materials that violate regulations. Those people don't know what the law is and yet, what happens when you allow regulations to become crimes, is you essentially force people to consult lawyers before they take certain acts.

Neither the English Common Law nor American Law ever contemplated that. Basically, the criminal law was designed to deal with conduct that everyone knows in his or her heart is harmful, is wrongful and should not be engaged in.

Granted, we no longer have a criminal code that parallels the Decalogue, but the criminal code we have today, buttressed by the regulations that have been adopted over the course of decades now, make it impossible for the average person to know what the law is.

There are different ways of dealing with that. Former Attorney General Ed Meese and I have urged Congress to adopt a mistake of law defense that would exculpate someone if neither he nor any reasonable person would have thought that the conduct charged against him is a crime. That's one way to deal with it. There are others, but it's a serious problem and this case typifies some of what can happen when you do that.

If an agency is tasked with enforcing, you know, the anti-nail law and the only thing you give them is the hammer that you mentioned, then every case is a big case.

Senator LEE. In that respect, the problem of overcriminalization through legislative means and through the proliferation of regulatory offenses becomes even more pronounced when you combine that with a very specialized law enforcement agency because the disparity between the information available to the person, the citizen who is subject to those, and the very specialized agent who is in charge of those things, is that much greater.

Mr. LARKIN. Absolutely.

Senator LEE. Mr. Steed, BLM rangers have a long history of contributing to the stewardship and the effective management of federal lands.

Tell me how the job of ranger differs from that of the job of special agent.

Mr. STEED. So if I was going to make an analog to a traditional law enforcement, I would say, rangers are more the uniformed police officers on the beat. Special agents are more the detectives.

Senator LEE. Can you walk us through the history of when BLM began hiring agents, the number of agents and how they were equipped has changed over time?

Mr. STEED. So, unfortunately, I'm unaware of how that's changed over time. I can say that we've had a uniformed presence since 1978. Other than that, I can't provide specifics on the buildup. I'm sure we could follow up on that.

Senator LEE. That is fine.

[The information was not provided at the time of printing.]

What about today? Setting aside the historical context, how are special agents today equipped differently than rangers?

Mr. STEED. I don't think that there's any difference in equipment. They may appear without the same brown uniform that you frequently see with the rangers, but I think they're issued the same equipment.

Senator LEE. Do the rangers have flak jackets?

Mr. STEED. In some cases, they do, sir.

Senator LEE. Do the rangers have machine guns?

Mr. STEED. I don't know. I haven't done a full inventory. I can't say to this end, I mean we're doing a full uniform review, as I said earlier in the testimony, as well as to figure out what equipment we need and which we don't.

Senator LEE. I want to get back to a point Mr. Noel made a few minutes ago. I will preface this question with the fact that BLM, I think you would agree, has suffered significant reputational damage due to its officers, its agents, engaging in misconduct and their overzealous use of some really heavy-handed tactics.

Now FLPMA, as Representative Noel alluded to earlier, directs the Secretary of the Interior to delegate law enforcement on public lands to local law enforcement officials, "when the Secretary determines that assistance is necessary."

Given the lack of trust that exists between local communities and BLM law enforcement, couldn't BLM really benefit in a lot of ways from having the help of local law enforcement officials, helping any federal agents who might be involved?

Mr. STEED. So, two points.

First of all, just to clarify. Listen, I've been around the agency, interact with a lot of our law enforcement personnel, and I just don't want to paint with too broad a brush. We have many good people working for the agency. People who care deeply about their jobs and put themselves in harm's way every day. And I'd be remiss in not acknowledging that. We have identified a handful of bad actors, and based on that we're trying very hard to make those personnel actions.

Senator LEE. I want to be very clear, Mr. Steed. I agree that that is true. That is absolutely true. But there is still a big difference between the fact that these things have happened within your agency. federal land management law enforcement agents have done stuff that just would not happen in Kane County, that just would not happen in Garfield County or in any of the other areas represented by Representative Noel, in most of the other parts of my state and the Intermountain West. They just would not happen like this or they would occur with far less regularity because local law enforcement officers have something in common. They are all accountable, either directly to the people, as is the case with many sheriffs for instance, or to someone else who is accountable to the people—perhaps it is through the local police department that, in turn, is answerable to a mayor, who is herself elected. But these things just don't happen.

Sure, there are other problems that might arise. No law enforcement agency is going to be perfect as long as it is run by mortals, and we do not have access to angels to run our law enforcement agencies. But it seems to me that the particular species of heavy-

handed abuse is far more prevalent with a law enforcement agency like yours than it is with the, say, the Kane or Garfield County Sheriff's Office.

Mr. STEED. And I've acknowledged that we've had a problem. And in addressing that problem I can do three things: I can address personnel, I can address proximity, I can address policy. As to personnel, I think I've mentioned that we're pursuing, actively, civil, criminal and administrative actions against some of those bad actors. In proximity, we're trying to get law enforcement closer to those who we interact with and who we serve which is why we're looking to move BLM law enforcement headquarters to the West. And then policy, we're quite active right now in reviewing all policies regarding our law enforcement.

One of the first things I did in my current position with regards to law enforcement on March 3rd, I put out an information bulletin encouraging just what you're suggesting, to work closely with local law enforcement based on the unique attributes that local law enforcement brings to bear. I think we should do that, and I think we will continue to do that and increase our effectiveness in those collaborative agreements.

Senator LEE. I understand that.

I want to make very clear, I appreciate what you're doing and what Mr. Perry is doing. I appreciate your efforts in this area, and I appreciate the efforts of the many personnel who work under your supervision who are doing things right.

As my late father, who like me was an attorney, used to say, especially when speaking to groups of attorneys, "it's a shame when our entire profession is disparaged on the basis of only eight or nine hundred thousand bad apples."

[Laughter.]

I am sure the ratio of reputational harm among these agents is more favorable within your agency than it is of the legal profession.

Mr. STEED. As a member of the legal profession, can I take offense?

Senator LEE. Right, right.

My dad also had this little sign in his office that said, yes, I'm a lawyer, but don't tell my mother because she thinks I play the piano in a bordello.

[Laughter.]

The point is, there are some environments in which certain people of certain professions are going to be more inclined toward misbehavior than others.

This, as a very specialized federal law enforcement agency within a federal land management agency, it seems to me is particularly prone toward these types of missteps, notwithstanding the fact that most of them are very good people. It is just that the inputs are different.

I think that is one of the reasons why we have to be concerned here, one of the reasons why FLPMA favors, encourages and arguably creates a strong presumption in favor of bringing in local law enforcement to assist with the day-to-day management of public safety issues on federal lands and why it certainly would not contemplate this army of quasi-militarized federal police handing out traffic citations to the tune of thousands and thousands a year just

because those citations happen to have occurred within federal land.

On a related note, as you are aware, a federal judge recently declared a mistrial in the criminal trial of Cliven Bundy and his sons based on the U.S. Attorney's failure to produce exculpatory material before the trial. I am sure you would agree that the BLM-led standoff at the Bundy ranch, out of which those particular criminal charges arose, was ill-conceived and was poorly executed.

If BLM does law enforcement, doesn't it have a responsibility to set the tone for federal law enforcement down the chain?

Mr. STEED. In terms of the specifics on the Bundy case, I can't get into it. There's an appeal pending, unfortunately, and at the risk of being prejudicial to those cases, I just can't get into it.

Senator LEE. Okay, what about in the abstract?

I understand——

Mr. STEED. In the abstract, absolutely, which is exactly why I say that we absolutely are trying to increase our accountability to the American people by having the right personnel at the helms. We're absolutely trying to change policy to make sure that we're as accountable and as responsive and as good at our job as possible.

And I think if the Secretary were here, he would tell you that this is one of his strong priorities as well. I mean, he doesn't want people to fear Department of Interior law enforcement. He wants people to see that they're out there trying to do their jobs and manage resources as FLPMA and other laws have encouraged.

Senator LEE. Okay, but the judge's order in this instance said that the material related to the use of snipers which BLM had denied aggressively. Isn't that the case?

Mr. STEED. Again, I can't get into to the specifics of the case.

Senator LEE. But I think they are referring to an undisputed fact. I do not think that part of it is under dispute. If you have been instructed by legal counsel that you should not answer, then far be it for me to tell you otherwise.

I would just say that to the extent that BLM is not doing a good job of making sure that things are being handled correctly, not only within BLM but down the chain and particularly where, as I believe to be the case here, BLM denied rigorously, aggressively, what had in fact happened. I think to that extent in those instances BLM law enforcement agents are failing to do their job appropriately.

Tell me when the assistance of local law enforcement officials is not necessary?

Mr. STEED. Oh, I think that the default position should always be to incorporate local law enforcement.

Senator LEE. And to the extent it can achieve that, it saves the taxpayer money.

Mr. STEED. Yes.

And I think if you were to look at our cases at large, I mean, I recently read a report out of Alaska where on some BLM property we had auto thefts. Apparently, the investigation was conducted jointly with the local law enforcement. Regarding those and it was a theft out of automobiles, arrests were made and prosecution sought in state court without ever involving that. So I think there

are many, many cases in which that type of relationship plays out on a day-to-day basis.

Senator LEE. Mr. Larkin, let's get back to you.

There is a bill in the House of Representatives that has been introduced by my friend and colleague from Utah, Congressman Chris Stewart. It is called the Local Enforcement for Local Lands Act.

This is a bill that would eliminate criminal law enforcement offices within BLM and within the Forest Service and would use the funds saved by the elimination of those offices to provide grants to local law enforcement so that local officials within the area of lands managed by the Forest Service or the Bureau of Land Management could enforce criminal law, federal criminal law, relating to federal public lands. Is this approach something that you would support based on my description of it?

Mr. LARKIN. Yeah, I have to say at the outset I can't take a position in favor or against any particular legislation so, I can't say that is a good bill or a bad bill. What I can say is that it always makes sense to have local law enforcement involved. Why? Local law enforcement knows the people involved.

There's a famous case that happened in the suburbs of DC where in Maryland there were police that conducted a raid on a home and wound up shooting the two dogs that were there. The police that did the raid never contacted the locals to find out anything about the people inside. It turns out the home was the local mayor. Okay? And somebody, what had happened, as is practice, it happens in drug trafficking, they will ship the narcotics to an unsuspecting person and say you can leave it on the porch, and then they'll come by and pick it up, because if it gets intercepted en route they're not responsible. It wasn't their home they were having it shipped to. So that's what they did in this case. They had it shipped to the mayor, and somebody found out about it. The cops conducted this raid. They go in and they treat the mayor like he's, you know, a member of a Columbian cartel.

Well, if they had contacted the local police, the local police would have said, no, wait a minute, you don't need to go in this strong in this case. This is the mayor. Just knock on the door and talk to him, and he'll tell you he's not going to shoot you. You don't have to go in like you're breaking into a meth lab. It always makes sense to talk to the locals.

Now, of course, there are exceptions where maybe if you're dealing with a public corruption problem, et cetera, you have to exclude the people who may be the object of the search. But generally speaking, you know, in matters like the Redd case and in matters like the one that I just mentioned that happened in suburban Maryland, you want to include the locals because, if you're the Feds, because they have a much better feel for the people involved, the community, et cetera.

The case I mentioned earlier, the investigation I conducted of the physician who violated the environmental laws by doing an asbestos rip and strip, I worked with a police officer from Stanton, who was one of the best cops I've ever worked with. And I couldn't have made the case without her involvement. And it's going to be the case by and large that you want to get the locals involved because

they have more intel than you do. And they may even have more assets than you do because they have people that can be involved. So it is always sensible to try to get the locals involved, if you can.

If you're dealing with, like I say, a problem because the objects of the investigation themselves may be police or politicians or if you're dealing with a national security matter where you may feel that you can't disclose the information surrounding the case to the locals, who haven't got the security clearances, those are different cases. Those are a very small number of them. By and large, you want to get the locals involved.

Senator LEE. Going back to my earlier question.

Suppose Congress were to decide as a matter of policy and pass a law deciding that it was unnecessary or unwise for land management bureaucracies to control undercover criminal investigations or to execute search warrants or undertake raids or make arrests. Are there ways to organize those functions to ensure that federal law is still being respected on federal lands?

Mr. LARKIN. Yes.

Senator LEE. That would not be Armageddon. It would not produce an Armageddon type environment. Dogs and cats living together in the streets.

[Laughter.]

Book of Revelations stuff.

Mr. LARKIN. Yeah, yeah, yeah.

No, I mean if you want proof of that, this was created by FLPMA which was passed in the 1970s for more, you know, probably for 200 years we got by without having a law enforcement program in the Bureau of Land Management and the Department of the Interior. If that was when it got started, everything that happened up until then was able to work with just state or local law enforcement or the Marshal Service or the FBI, as need be. It wasn't as if all of a sudden there was some tremendous need just for law enforcement at a regulatory or proprietary agency. For a very long time we got along without it.

Senator LEE. Mr. Steed, following up on a previous question I asked you relating back to some of the other FLPMA provisions that Representative Noel referenced. FLPMA says that contracts must be offered, "with the view of achieving maximum feasible reliance upon local law enforcement in enforcing federal laws and regulations." Why do you think FLPMA envisions maximum feasible reliance on local law enforcement?

Mr. STEED. Senator, I think that we can all acknowledge that local law enforcement has a unique tie to local communities that probably can't be replicated to the same degree from a federal law enforcement perspective. And if I were to hypothesize on that, my guess is that those who authored FLPMA certainly were, not in their head, to that notion.

Senator LEE. What would you say in response to the question of whether BLM is achieving maximum feasible reliance on local law enforcement?

Mr. STEED. I can tell you our intent is to achieve maximum feasible reliance on local law enforcement.

I can't speak to the past. I can say that what we're doing here is trying to work very closely with our state and local partners and meet the needs that we face in managing public lands.

Senator LEE. Representative Noel, I assume you heard my question a moment ago to Mr. Larkin about Congressman Chris Stewart's bill. What is your reaction to that bill?

Mr. NOEL. I think this is the same bill that Congressman Chaffetz started on and actually was one of the bills that I proposed in the legislature. We've actually been able to, in the Utah State Legislature, limit what we call the assimilation of state laws, the traffic laws, et cetera. That bill went to Federal Court and one of the judges ruled it unconstitutional, and we had to revise it but it actually did go out.

It's interesting, Mr. Steed talks about he wasn't sure what happened when FLPMA was passed. I was actually working for the agency prior to FLPMA being passed and when it was passed. And that was when it went from an agency that was disposing of the public lands and managing them for disposal to one of we were now going to retain the public lands and ownership with an opportunity to dispose of lands still. There was no thought at the beginning of that agency for federal law enforcement. There was never any federal law enforcement in the State of Utah. There was a Special Agent-in-Charge, Marty and Skip. I can't even remember their last names, but they were exclusively with local law enforcement.

I don't think we got a BLM ranger for probably ten years into my BLM career from September 1976 and that agent was actually doing mainly resource protection things, someone is stealing wood, someone trespassing cows. Even then they used the brand inspector. So that was the way it worked then. And Skip and Marty would come down. They would work with local law enforcement when there were problems and they would take care of the situation.

When the first BLM law enforcement officer was hired, he didn't do anything in terms of ticketing or any type of thefts. He would work mainly on resource damage issues. In fact, the local sheriff at the time actually deputized him and made him a deputy sheriff along with his federal authority to be able to do and exercise the laws as a deputy sheriff which, I think, is very appropriate. I think that's happened in other parts of the State of Utah. But then he's under control in the accountability.

That is the whole key here, Mr. Chairman, is the accountability. The fact that when we see collusion with NGOs. This was some of the case with the Dr. Redd situation. There's a direct connection to an organization that wanted to seek prosecution and after eight years when there was no prosecution when this supposed million-dollar black market was out there.

I would ask the question, was any money recovered? No. It was simply a false narrative that was out there that this million-dollar trafficking of artifacts was going on in San Juan County. It's not true. It's never been true. There may have been some sold but it was very, very minor.

So, I think that's exactly the way things should work. I think we should, in fact, have local law enforcement.

Again, the Forest Service has specific duties with fire suppression and being able to stop fires and timber harvesting and theft. But again, those could be handled mostly civilly in penalties and fines and, again, if you get into it, it's when they cross over. We have lots of times where even the Park Service will have a situation where there was a rape that occurred in Glen Canyon National Recreation Area. The people involved there at the park had no, absolutely no, background to prosecute that case and to go forward and investigate that case. And when they got involved, the sheriff basically said, no, you're not going to do this. And they backed off of it. So, if you have the right sheriff and the right person involved that said, we're going to do it.

It goes really back to the fact that what is your right as a citizen to have a jury of your peers, not a federal magistrate in some court 200, 300 miles away when you get charged with a crime. Not having to go to Federal Court and deal with the cost, the high cost of the federal attorneys and what happens in a Federal Court, you go to your local court. You have a jury of your peers. You have an opportunity to go to court and to have an attorney, a local attorney handle those things.

This is a case that if you're, even if you're innocent by the time you go through that process, you have spent hundreds of thousands of dollars. I know this personally in my help with Mr. Lyman, who will soon be the representative. His entire case, his entire case on that road trespass, was based on a false premise on the road, and the federal judge would not allow the evidence to come forward. We went to the U.S. Attorney. We showed him the evidence that they—the actual case file showed it was not a Title V road, it was an RS 2477 and they just blew us off. And so, the arrest, the investigation, all the things that happened subsequent to that, should never have happened in the way that it did. It should never have happened. It would never have happened.

This is something I would like to see happen out of this, again, any of these cases that were prosecuted and ended up in people going to court, they should be allowed to have those cases re-looked at and evidence brought forward in a manner that would actually show the true story.

It goes back to what Senator Hatch said to Lorretta Lynch with the Ted Stevens case and he held up the book, License to Lie, by Sidney Powell and what happened to Ted Stevens, Senator Stevens, in his case when he was eventually exonerated after years and years and years. But he said, I want you to read this book because just like my friend to the left here said, you don't even know the crimes that are in there. You don't even know what you have to go through. It's all based on how many convictions, how many people get prosecuted, how many go to jail. And then when you get out, then you can go to work and say, hey, I can get you out of jail because I was able to put all these other people in jail when I was a federal prosecutor.

So it's a system that's broken and we are facilitating it in Utah by the Federal Land Policy and Management Act and having federal law enforcement stepping into areas and arenas where it should be a state court, it should be local law enforcement.

That's my main purpose of flying from China at, it was actually at eight in the morning. I left from Seattle last night and got here and went to bed at one o'clock in the morning because I wanted very much to get this on the record.

It's a huge problem in the State of Utah and in the West. And I really appreciate you, Chairman, bringing this forward. It's something we've got to solve.

So I support Chris Stewart's bill.

Senator LEE. Thank you very much, Representative Noel, and I appreciate your making the trip and providing your very significant perspective and your unique perspective as someone who has worn a number of different hats, all of which are relevant to this topic.

I have one final question for Mr. Larkin. I am not sure you will know the answer to this question. I don't, but something you said earlier peaked my curiosity.

You referred to the fact that in the first set of criminal laws passed by Congress at the time of the founding there were, I think you said, a few dozen, maybe 30 federal, criminal statutes. Do you know how those were typically enforced at the time? They did not have the FBI then. They did not have a swarm of federal officers then. How were those typically enforced?

Mr. LARKIN. My belief is they probably were enforced by people in the customs service.

Senator LEE. Okay.

Mr. LARKIN. That is, if you're dealing with the laws that made it a crime to cheat the government out of customs duties that it was due.

To the extent you had it a crime to assault a federal judge or the like, those would have been enforced by the Marshal Service because the Marshal Service and the Customs Service were, effectively, the first law enforcement agencies the Federal Government had. And the Marshal Service was the equivalent of the sheriff's departments, if you will, that they had in England and that we continue to have in this nation, particularly in your neck of the woods. So that would have been my understanding as to how those would have been done.

The Secret Service didn't come into existence until after the Civil War, and that was really at the outset to address counterfeiting rather than provide protection to the President.

The FBI was the Bureau of Investigation initially, then later became the Federal Bureau of Investigation.

What we had since then, unfortunately, is the development of various different federal law enforcement agencies without Congress or the President ever taking a look back to see how best this should all be organized. You know, is there jurisdiction that one has that actually is better with the other, et cetera, and the like.

I mean, we have two different types of protective services, three actually, if you will. The Secret Service protects a limited number of people, like the President, foreign Heads of State, et cetera; we have a Diplomatic Security Service that protects people from foreign governments at the next level down; and then the Marshal Service protects people if there are particular individuals, say, in the Federal Government who are at risk. But Congress hasn't ever stepped back and said, we've got this entire fleet of criminal inves-

tigative agencies out there and maybe it makes sense to consolidate or move things around.

So it's a very long-term project, but it's one that I've always hoped that somebody would take the laboring on because the public would be better off, I think. And I think it would also help address the overcriminalization problem because, like I've said, when people have the full range of wrongdoing to look at, they get a better perspective on what is and is not important. So the overall organization of federal law enforcement has been a haphazard development. I think it's something that Congress and the President should look at.

But like I said, to answer your question, I think, with respect to violations of the customs laws it would have been Customs Service agents. With respect to the federal courts, it would have been the Marshals.

Senator LEE. Thank you. That is a helpful perspective.

It seems to have been something of a one-way ratchet with federal authority and I think, as you say, it is important from time to time to look at whether what we have created makes sense. It is one of the reasons why we have oversight hearings like this one, I think, because Congress needs to do a better job of providing oversight in a big picture view with regard to what we need and where resources might be better spent elsewhere.

Okay, a couple of housekeeping items.

I have a statement for the record that has been submitted by Senator Lisa Murkowski from Alaska, who happens to be the Chairman of the Senate Energy and Natural Resources Committee of which this hearing is operating as a Subcommittee.

That will be admitted for the record without objection.

[Written statement from Chairman Murkowski follows:]

Statement for the Record
PLFM Law Enforcement Hearing
Chairman Lisa Murkowski
May 9, 2018

Chairman Lee, thank you for holding this hearing today. The issues surrounding law enforcement within BLM, the Forest Service, and other regulatory agencies are very real in rural communities across Alaska and the western United States.

When federal officers from these agencies coordinate closely with local police forces, collaborate on enforcement priorities, and have strong lines of communication, the partnership between the federal government and local communities can benefit both sides.

Unfortunately, this isn't always what we have seen.

In Alaska, we've seen heavy-handed tactics used by BLM, Forest Service and other agencies to intimidate and discourage legal land use rather than protect natural resources and citizens. Alaskans have experienced applications of force that are simply outrageous based on the situation, and enforcement priorities that challenge common sense.

I've seen how quickly trust in federal agencies can be eroded or destroyed when this bad judgement, or in some cases serious misconduct, occurs. This is especially true when there is a lack of accountability and no apparent action is taken to correct problems.

Frankly, this is very similar to some of the regulatory policies that we have seen from these same agencies in the past, where the input and needs of the local communities are ignored. And just as I often demand those policies be improved, I also want to make sure the law enforcement arms of these agencies are getting the same level of scrutiny – which is why we are here today.

There is a lot of important work being done by BLM and the Forest Service to prevent criminal activity from impacting the resources and enjoyment of our federal lands, including interrupting the cultivation and production of illegal drugs, investigating wildfires, patrolling and responding to emergencies, and many others. But it is also imperative that abuses and errors be recognized and corrected, and that the role, public posture, and policy of BLM and Forest Service law enforcement officers is appropriate, with systems in place to prevent issues from occurring again.

I have been encouraged to see that this Administration is taking these matters seriously and that efforts are underway to improve the programs at both agencies. I look forward to hearing what more Congress can do to ensure BLM and the Forest Service have effective and accountable law enforcement offices that are working to build trust back with local communities.

Thank you again, Chairman Lee, for holding this hearing.

Senator LEE. I want to close by pointing out that I think we all seem to agree, based on our discussions today, that there should be more local law enforcement involvement in this area. I have not heard any disagreement to that point. I think that is a good point of agreement or relative consensus that has come out of today's hearing.

The question that remains, as I see it, is whether law enforcement authority for federal land management agencies are, by their nature, so wrongly placed or at least situated in such a way that they are so prone to abuse that Congress should consider amending or perhaps revoking their authority. That is a question that, I think, needs ongoing discussion, but today's hearing has been very helpful in exploring this issue.

I really want to thank each of you for coming and for the very valuable testimony that you provided.

Seeing that there are no additional questions, I will indicate that members will be allowed to submit written questions while the record remains open. The record will remain open for an additional two weeks.

This hearing is hereby adjourned. Thank you.

[Whereupon, at 11:55 a.m. the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
Subcommittee on Public Lands, Forests, and Mining
May 9, 2018 Hearing
Law Enforcement Programs at the Bureau of Land Management & U.S. Forest Service, Coordination with Other Federal, State and Local Law Enforcement, and the Effects on Rural Communities
Questions for the Record Submitted to Mr. Tracy Perry

Questions from Senator Ron Wyden

Question 1: In Oregon, approximately 25% of the state is owned and managed by the U.S. Forest Service. Good relationships with Oregon communities, cities, counties, and tribes provides critical input to the management direction for thousands of National Forest and National Grasslands acres.

Please provide specifics on how you are collaborating with Oregon entities in administering these lands and responding to incidents on the ground.

USDA Forest Service Law Enforcement and Investigations *(LEI)* Region 6 (Washington and Oregon) works closely with state and local law enforcement, and enjoys a close relationship with the Oregon State Sheriffs' Association (OSSA) as evidenced by the inclusion of LEI leadership personnel contact information in the OSSA directory. The Forest Service has entered into a Memorandum of Understanding (MOU) with OSSA to assist with search and rescue efforts in national forest wilderness areas. The MOU allows Sheriff's search and rescue personnel the flexibility to make decisions and take action in wilderness areas, including the ability to utilize motorized equipment when deemed necessary by Sheriffs' personnel. In many small, rural Sheriffs' Offices across the Region, Sheriffs are often unable to respond to routine calls for service due to the lack of minimal resources necessary to access National Forest System (NFS) lands. In many instances the Forest Service has entered into Cooperative Law Enforcement Agreements *(CLEs)* to assist in these efforts, allowing our local cooperators to be reimbursed for work conducted in support of the Forest Service mission. Additionally, several Oregon Sheriffs have deputized Forest Service officers and agents to assist in resource challenged counties.

Recent examples of collaboration between local law enforcement and LEI include the 2017 gathering of the "Rainbow Family" in Grant County, Oregon and the total solar eclipse event, which attracted many visitors to Oregon during August 2017. In order to respond to these significant events, LEI assembled a national incident management organization for the "Rainbow Family" gathering and worked collaboratively with Oregon State Police and the Grant County Sheriff's Office. The 2017 eclipse was the first total solar eclipse in the continental U.S. in 38 years, and the path of totality stretched across Oregon, impacting NFS lands as well as state and private lands. LEI partnered with local communities, and ensured that personnel were available to manage resources and respond to emergencies. LEI personnel actively participated with our local partners in planning and ensuring adequate staffing and resources were available to safeguard the health and welfare of communities and the visiting public.

LEI works closely with local Indian tribes such as the Klamath, Modoc, and Yahooskin Paiute to protect cultural resources and tribal treaty right activities on NFS lands. LEI has agreements in

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place with several of these Indian tribes to formalize our commitment to engage and consult with them to minimize conflicts related to subsistence, treaty rights, and cultural activities.

LEI is an active member of the Oregon-Idaho High Intensity Drug Trafficking Area (HIDTA) program, established by the White House's Office of National Drug Control Policy. The Oregon-Idaho HIDTA covers a number of counties in Oregon and several Indian reservations. As a member of the HIDTA, LEI works collaboratively with Oregon State police, the Oregon Department of Justice, and Indian Tribes on illegal drug-related issues such as enforcement, prevention, and rehabilitation related regarding NFS lands. A primary example of HIDTA activity is working to reduce the illegal occupancy of public lands for marijuana cultivation on NFS lands. These grow sites pose significant public safety and environmental degradation concerns to the Forest Service and our local communities. LEI has eradicated hundreds of thousands of marijuana plants in Oregon over the past ten years, and enforcement operations were coordinated with Oregon State, county and/or local law enforcement personnel.

Wildland fire is a tremendous concern of the Forest Service and our local communities. Investigating and managing these fires requires close coordination with communities and state and local agency partners. LEI partners with Indian tribes and the Oregon Department of Forestry (ODF) when conducting fire investigations, and we assist our partners with other aspects of fire suppression, such as evacuations. Recently, LEI worked with ODF and provided "origin and cause" training to staff of local fire departments and Sheriffs' Offices. Benefits of these partnerships are already evident. In 2016 and 2017, LEI, in partnership with OSP and the Deschutes County Sherriff's Office, successfully investigated several wildland fire incidents resulting in civil and/or criminal prosecution.

LEI strives to work collaboratively with our state and local partners, and in many instances the relationships are that of hand-in-glove. Requests from our state and local cooperators for law enforcement assistance are commonplace. LEI personnel routinely assist in felony arrests, active shooter response, search and recovery missions, criminal surveillance, K-9 tracking and other law enforcement incidents.

We recognize the critical importance of building and improving relationships with the communities and public we serve. Our commitment to this is captured in our newly released LEI Strategic Plan which will help guide our activities and priorities now and into the future.

Questions from Senator Shelley Moore Capito

Question 1: In response to an interstate natural gas pipeline being constructed in my state, protesters built stands in the trees and camped out there for almost two months. The goal was to prevent the tree fellers from being able to cut down trees before the March 31 cutting deadline to

protect critical habitats for migratory birds. While local, state, and Forest Service law enforcement officers monitored the tree sitters throughout this process, their attempts to talk them down did not work. Please explain to me the procedures that your officers must follow when they are dealing with situations such as this and do you believe that these procedures were properly executed in the Jefferson Forest?

Our LEI personnel must conduct an evaluation of the situation (site visit) to determine the appropriate law enforcement response because each incident is unique; this specific form of protest activity is unusual in the Southeast. For this incident, after visiting the site and observing the structures, LEI made the decision to resolve the matter by going to the site during the time that LEI would likely catch the subjects when they might be out of the tree structures. Unfortunately, severe snow storms made use of this tactic unfeasible. While other tactics were being explored, the monopod structure was erected in the roadway. Later, an additional rope structure was erected. Due to health and safety concerns, LEI uses a patient approach focusing on protecting people's health when the sitters are uncooperative in being asked to voluntarily leave closed areas.

Question 2: The protestors were blocking the right-of-way of the tree fellers and there was even a person who was on a manmade monopod in the middle of the road. Please explain why your officers could not remove these protestors from the right-of-way, especially when they trespassers on Forest Service land. What do you think your staff could have done differently to stop this in a timelier manner?

Our LEI personnel made multiple attempts and worked closely with multiple local, state and federal agencies for assistance with removal of the monopod and its occupant. Unfortunately, due to the elevation of the monopod structure and its location, it has been difficult to locate personnel with expertise to perform such a removal (extraction). I am unaware of anything that our personnel could have done to resolve this matter in a timelier manner that would not have caused undue risk to the health and safety of all people involved.

Question 3: Many of my constituents were contracted to work on this project and now may have lost this seasonal employment until next year due to some out-of-state protesters with a lot of time on their hands. The Forest Service's Legislative Affairs office told my staff that they were trying to get a tree felling extension for the MVP because of the setback that the protestors caused. We have yet to hear a final decision on this matter. While I understand that the extension of deadlines are not within your division's jurisdiction, is there anything that you can do to help ensure that an extension or other allowance for this delay is granted?

The tree felling deadline for the Mountain Valley Pipeline Project (MVP Project) within the Jefferson National Forest was extended to May 31, 2018. After review and concurrence from the

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Fish and Wildlife Service, Forest Service, and Bureau of Land Management, the Federal Energy Regulatory Commission approved the variance to extend the deadline on April 23, 2018. A variance was requested by MVP in relation to the May 31, 2018 deadline for tree felling in association with protection measures for two bat species. The variance was reviewed and approved by FS and BLM as well as FERC after receiving additional input and analysis by FWS. The variance allowed for the remaining 0.31 acres of trees on the JNF to be felled. All trees requiring felling have been cut to date. The Forest Service has been and will continue in its role as a Cooperating Agency in regards to the MVP project.

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Questions for the Record Submitted to Mr. Brian Steed

Question from Senator Ron Wyden

Question: In Oregon, over 50% of the state is owned and managed by the federal government. Good relationships with Oregon communities, cities, counties, and tribes is critical to the management of thousands of acres and facilitate important public uses like recreation, ranching, and energy production.

Please provide specifics on how you are collaborating with Oregon entities to protect public lands and public land users.

Response: With 16.1 million acres of diverse BLM-managed public lands in Oregon and Washington, the BLM relies on interagency cooperation and support to assist in managing the public lands and public land users. BLM Law Enforcement seeks out partnerships and enters into contracts with local Oregon counties and the State entities to respond to issues ranging from archaeological theft and vandalism to natural disasters and drug trafficking. Currently, the BLM has 20 law enforcement service contracts with local Oregon government organizations. These service contracts are for patrols, dispatch, and other law enforcement services. The BLM also partners with local sheriff's offices, and is deputized in over ten counties throughout Oregon. In support of this partnership, the BLM regularly participates in the quarterly Oregon Sheriff's Association meetings and the yearly Western States Sheriffs Association meetings.

Drug trafficking is one issue of particular concern to law enforcement organizations nationwide. The BLM has a track record of coordinating with many states and localities throughout the west including Oregon to address this complex issue. The BLM is a board member for the High Intensity Drug Trafficking Areas (HIDTA) program for the Oregon-Idaho region. The HIDTA program, created by Congress with the Anti-Drug Abuse Act of 1988, provides assistance to Federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug trafficking regions of the United States. In Oregon, the BLM also has one agent assigned to the Douglas Interagency Narcotics Team, which is an initiative of the HIDTA program. The Douglas Interagency Narcotics Team was originally formed in October 1989 to help combat substance abuse issues affecting Douglas County, Oregon.

The work of BLM's 2017 Special Agent of the Year Charles "Chip" Mican of Roseburg, Oregon, is an outstanding example of what can be accomplished when BLM Law Enforcement collaborates with local law enforcement on this issue. Last September, Special Agent Mican assembled a team of local and Federal law enforcement officers to shut down illegal marijuana production in the Cascade-Siskiyou National Monument Soda Mountain Wilderness Area, which is managed by the BLM. Under his supervision, the team seized 700 pounds of marijuana, which had already been processed and packaged for distribution.

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Questions from Senator Steve Daines

Question: I have heard concerns from Montanans regarding BLM conducted raids, particularly with the seizure of property when no charges are ultimately brought against the individual. It is concerning that raids can result in significant property damage and lengthy legal battles, sometimes taking close to a decade to return seized property, all when the individual is never charged with a crime. What steps has the agency taken to minimize the number of raids that do not result in criminal charges? How does the agency handle restoring seized or damaged property when a raid does not result in formal charges?

Response: Engaging in unnecessary or outsized law enforcement actions fractures the trust built between law enforcement and local communities. The BLM is working to enhance its good neighbor relationships with communities in the west where the public lands are located. Part of that work is ensuring that BLM Law Enforcement is perceived and operates as an asset and force multiplier in the community.

BLM Law Enforcement works closely with the Department of Justice's (DOJ) United States Attorney's Office (USAO) when proceeding with an investigation that could result in Federal prosecution. As the USAO has sole discretion to file criminal charges, BLM Law Enforcement works closely with the USAO when seeking a search warrant.

The USAO is responsible for evaluating and approving the BLM's request for a warrant before a BLM officer meets with a Federal Magistrate Judge to get the judge's approval and signature. Once a Federal Magistrate Judge has signed the warrant, the BLM officer is authorized to serve it. Search warrants are obtained and ultimately served only when criminal prosecution is the end goal of an investigation. After serving a search warrant and executing a search, and prior to leaving the premises where the search was conducted, BLM officers provide a copy of the warrant and an itemized list of the property that was seized. The property is retained as evidence pending further court proceedings.

In rare circumstances, prosecutors at the USAO decide not to file charges even after significant steps, such as authorizing a search, have been taken. After a case is adjudicated in Federal court, or if prosecution is declined, property seized as evidence is returned to its owner.

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Federal Air Marshal Service
Federal Emergency Management Agency
Federal Protective Service
U.S. Secret Service
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OIG
HOUSING AND URBAN DEVELOPMENT – OIG
INTERIOR
Bureau of Indian Affairs
Bureau of Land Management
Fish and Wildlife Service
National Park Service
OIG
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JUSTICE
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Drug Enforcement Administration
Federal Bureau of Investigation
U.S. Marshals Service
OIG
U.S. Attorney's Office – CI
LABOR – OIG
POSTAL SERVICE
Postal Inspection Service
OIG
SOCIAL SECURITY ADMINISTRATION – OIG
STATE DEPARTMENT
Bureau of Diplomatic Security
OIG
TRANSPORTATION – OIG
TREASURY
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JASON BRIEFEL
BEN CARNES

May 11, 2018

The Honorable Mike Lee
Chairman, Senate Subcommittee on Public Lands, Forests, and Mining
361A Russell Office Building
Washington, DC 20515

Dear Chairman Lee:

On behalf of the Federal Law Enforcement Officers Association (FLEOA), the largest not-for-profit, non-partisan professional association representing 26,000 federal agents and officers across 65 agencies, I am writing in response to your recent oversight hearing and to express our support both to the Bureau of Land Management (BLM) and to U.S. Forest Service law enforcement programs and personnel.

The BLM and Forest Service have conducted professional law enforcement and investigative activities on our nation's public lands for well over a century. The predecessor agency to the BLM was the General Land Office, which appointed their first law enforcement personnel as far back as 1832. The statutory authority that provides law enforcement authority to the Forest Service is their 1905 enabling legislation, in which Congress deemed these authorities as absolutely necessary to enable the agencies to carry out their duties in a safe and effective manner and to protect federal public lands and the people using them.

In 1971, Congress responded to the slaughter of wild horses by enacting the Wild Horses and Burros Act, which provided any employee designated by the Secretary of the Interior with arrest authority for violations of the act. The BLM requested that the FBI handle such enforcement, but the FBI disagreed, instead determining that, given the unique and potentially complex cases, BLM take responsibility for their own investigations. Likewise, as recently as 1993, while responding to issues of fraud concerning timber management, legislators directed the Forest Service to develop a chain of command that stovepipes the agency's enforcement branch. Both Congress and the FBI—our nation's premier law enforcement agency—recognized the crucial mission of these men and women and ensured that they were able to efficiently and effectively perform their duties without persuasion or bias.

There is existing authority for the BLM and Forest Service to cooperate with state and local law enforcement. Agreements are currently in place and working well in most locations throughout the country. When local agencies provide specified services to the national forests and other public lands, they are reimbursed for the expenses incurred. Activities such as cooperative law enforcement patrols, drug trafficking and cultivation missions, and search operations. Opponents of these law enforcement agencies often lead one to believe that state and local law enforcement authorities are "more rooted" in the local community, and therefore better suited to enforce federal laws. On the contrary, Forest Service and BLM officers are often stationed in remote and sparsely populated communities where local law enforcement has minimal, if any, officers assigned. Land management law enforcement officers have an extremely low rate of turnover and transfer. These officers embark on a lifelong career and become valuable assets to their local communities. To suggest that Forest Service and BLM officers have difficulties working with local law enforcement is simply not true. Many of these agency's personnel hold deputizations from their local sheriff's to assist in times of need. FLEOA would be happy to detail the numerous instances where these brave men and women have saved lives and apprehended very dangerous criminals.

Federal authority is ultimately an expression of the will of the people and, in the case of conservation law enforcement, it is intended to preserve and to keep public lands

accessible to everyone. This is not to say that the federal government is insensitive to the hardships of local economies. There are plenty of assistance programs, such as the recently-renewed Secure Rural Schools Act, that show just how helpful it is in this regard. In fact, during today's hearing, an article was released indicating that twenty-nine counties in Oregon will receive $55 million from the Forest Service through the Secure Rural Schools Act for fiscal year 2017. Most of that money will go towards law enforcement services or other authorized expenses deemed necessary by Oregon government.

At today's hearing, repeated accusations of misconduct and unprofessionalism were discussed. While most such accusations are unfounded, they are taken extremely seriously. One example of this is the Forest Service's recent and ongoing formation of an Office of Professional Review. This division of the agency's law enforcement program will investigate and respond to significant accusations of misconduct and/or criminal behavior by its officers and agents. To continually have dialogue about disbanding federal agencies due to the behavior of one officer or issues in a single state is tantamount to throwing out the baby with the bath water. Such suggestions are preposterous and only serve to embolden an already anti-police society. For Mr. Larkin to compare the statistics of federal law enforcement agencies to that of a "Vietnam War body count," suggesting that such numbers lead to funding increases, is abhorrent.

The hearing mentioned legislation such as the *Local Enforcement for Local Lands Act* (H.R. 622), which will place both the public and federal workers at risk. It will embolden those who view federal public lands as an intrusion on their constitutional rights. It will lead to further hostilities and encounters such as those recently played out on the Malheur National Wildlife Refuge in Oregon. Federal law enforcement officers are free from political pressures, whereas sheriffs are political entities. Conflicting priorities with their local constituents could adversely affect their ability to protect our national treasures. Rather than objectively enforcing laws, rules, and regulations pertaining to our public lands, some sheriffs may carry out their own personal agendas or that of their constituents. FLEOA has and will continue to vehemently oppose such misguided legislation.

Forest Service and BLM officers routinely handle highly complex cases pertaining to archaeological resources, timber theft, international drug trafficking, illegal immigration, wildlife poaching, and catastrophic wildfires. These investigations often span numerous jurisdictions from counties, to states, and even internationally. Local law enforcement simply lacks the authority and resources to investigate such broad cases. With escalating violent crime, threats from drug cartels, and the remoteness of certain regions, natural resource law enforcement officers remain nine times more likely to be assaulted in the course of their duties. For anyone to suggest that wearing police body armor and the deployment of patrol rifles will be eliminated by utilizing local law enforcement is seriously misguided. Such officer safety tools are simply a sign of the times. Failing to acknowledge that or to properly equip our officers and agents will only lead to more names being engraved on the National Police Memorial.

The federal officers called into question at today's hearing were not present to discuss their perspectives or give testimony. They are not provided the opportunity to testify and are often silenced to even speak with Members of Congress and this Committee because of ethics and anti-lobbying regulations. Instead, they are out there right now. They are in the remote backcountry of our most wild and scenic places. They are the few who are protecting lands which are enjoyed by the many. They are some of our nation's greatest heroes. Before passing judgment on them and the myriad of other issues related to their protocols and perceived conduct, I encourage anyone to consider spending more time with them and the thousands of state and local authorities that have a productive and effective working relationship with them. What I strongly discourage is the furtherance of unfounded emotions or baseless theories that only serve to embolden and amplify those who seek to diminish federal authority and public land ownership.

Respectfully,

Nathan R. Catura

Nathan R. Catura
National President
Federal Law Enforcement Officer's Association

CC: Senator Ron Wyden, Ranking Member, Senate Subcommittee on Public Lands, Forests, and Mining
The Honorable Members of the Senate Subcommittee on Public Lands, Forests, and Mining

From: chris [mailto:chris@custermuseum.org]
Sent: Tuesday, May 22, 2018 10:01 AM
To: fortherecord (Energy); Catlett, Ron (Daines)
Cc: chris@custermuseum.org
Subject: BLM William Woody and Salvatore Lauro Info

To Whom It May Concern:

I have been asked to send in written testimony to be included in official record of the U.S. Senate Committee on Natural Resources Hearing that was held on 5-9-18.

Thank you for your time and consideration.

My name is Chris Kortlander. I am the Founding Director of the Custer Battlefield Museum, and I own and operate the historic town of Garryowen, Montana. I also was raided twice by Bureau of Land Management law enforcement and experienced overzealous military-style gestapo raid tactics. I was never charged or indicted for a crime. Dr. Jay Redd and I have become friends over the last few years, and I fully support an investigation into William Woody and Salvatore Lauro.

William Woody was the director of BLM Law Enforcement and Security from 2003 until after 2012. In 2012, he was reassigned to the head of Law Enforcement and Security for Fish and Wildlife. He was in Utah June 10, 2009, the day of the artifact raid on Dr. James Redd's house and may have been present at Dr. Redd's house the morning of the raid. He was present for the press conference in Salt Lake City the evening of the raid. He praises the job done by Dan Love and the other agents that raided Dr. Redd's house.

A little background on William Woody:

A graduate of Utah State University, Woody began his career as a sheriff's deputy in Rich County. He later became a trooper for the Utah Highway Patrol before joining Utah's Division of Wildlife Resources as a conservation officer in 1985. He briefly worked for the Phoenix Police Department in the early 1990s but soon returned to Utah's wildlife division.

Woody later graduated from the FBI Academy in Quantico, VA and worked his way up the ranks at the wildlife agency, serving as an investigator, lieutenant, and captain. In 2001, he was appointed to lead the 160-officer Natural Resources law enforcement unit. He served as lead investigator for Utah's Homeland Security Task Force during the 2002 Games and is well respected in law enforcement circles, said DWR Director Kevin Conway.

The attached articles and documents discuss Salvatore Lauro and William Woody.

Included in these documents is a previously leaked, anonymous 52-page document that discusses William Woody (highlighted in yellow). I was asked by an elected official to submit this leaked document as part of the House Committee on Natural Resources's Subcommittee on Public Lands and Environmental Regulations's oversight hearing in 2014 titled, Threats, Intimidation, and Bullying by Federal Land Managing Agencies.The document was successfully submitted and entered into the official record.

I have also included the 2009 BLM Law Enforcement year-end review in which William Woody praises the results of the artifact raids of June 2009 in which Dr. James Redd, Steven Schrader and the informant Ted Gardiner all died. In this magazine/document, Dan Love is recognized for his Special Agent of the Year award because of his involvement in the artifact raids.

William Woody has now been reassigned to his previous position as director of Law Enforcement and Security for the BLM. It seems that instead of draining the swamp they have just rearranged the swamp and have brought one of the original members of the swamp to take the lead and do damage control from the Wooten letter and all the wrongdoing of his one-time Special Agent of the Year, Dan Love. What better way to cover things up than to bring back the guy that started it all 15 or so years ago?

The other documents discuss Salvatore Lauro, who was the director of Law Enforcement and Security for the BLM from about 2012 until 2017. He was initially reassigned to be the head of Law Enforcement and Security at the Fish and Wildlife, but according to documents: "Lauro received a formal notice of reassignment to FWS Chief, Office of Law Enforcement. After receiving the notice, Lauro requested that he be reassigned to a Senior Advisor for Law Enforcement position within BLM due to....(the next sentence is redacted)....BLM leadership (Nedd and Ruhs) supported his request. The ERB granted Lauro's.....(the sentence continues but is cut off)."

As you will read in the 18-page leaked Wooten letter and both OIG reports, Salvatore Lauro is mentioned a number of times. It says that Lauro covered up for Dan Love concerning all he has been involved in. The OIG #2 report says that Lauro accepted three moqui marbles from Dan Love which were stolen from the BLM evidence locker. He was also present at the Burning Man event where Dan Love violated rules. There are more details of his involvement that I have not mentioned but you can read about them in the documents attached to this email.

Why would Sal Lauro not want to accept the job as head Law Enforcement at the Fish and Wildlife, which I would guess would pay more, but rather he asked if he could stay at the BLM and be a Senior adviser to William Woody? Could it be to help him cover up all the wrong doing by Dan Love under the supervision of Sal Lauro? It is very sad that instead of draining the swamp they just rearrange the same players to cover up and keep the truth from coming out. If changes are to be made in the BLM, then there needs to be new personnel, the removal of those involved in wrongdoing, and those involved in the wrongdoing must be held accountable. Getting reassigned does not fix the problem and is not justice.

On page 8 of the Wooten letter it reads,*"Time after time, I was told of former BLM SAC Love's misconduct. I was told by BLM Law Enforcement Supervisors that he had a "Kill Book" as a trophy and in essence bragged about getting three individuals in Utah to commit suicide (see Operation Cerberus Action out of Blanding, Utah and the death of Dr. Redd)."*

From page 20 of the 52 page leaked letter:*Operation Cerberus Action: Woody initially hired Special Agent Dan Love. Even though Love was an inexperienced field agent, Woody hand picked and assigned Love as the lead case agent on the joint undercover investigation (code-named Cerberus Action) conduced by the Bureau of Land Management and the FBI. Even though Larry Shackelford was the Special Agent in Charge for the State of Utah (Utah State Office), Woody supervised Love from Washington D.C.*

It is very concerning to think that William Woody is back as the Director of Law Enforcement and Security at the BLM with Sal Lauro next to him as supervisor. When considering the history of both of these men the leadership in the BLM Law Enforcement division appears to be exactly what it has been over the past 15 or so years. The bullying tactics and heavy handedness needs to stop but I don't see this happening with the personnel that is employed there at this time.
I have also included the transcript form the Senate Judiciary Committee Meeting held on June 17, 2009. Senator Hatch questions then Attorney General Eric Holder on the heavy handedness of the artifact raids in Blanding Utah on June 10, 2009 resulting in the death of Dr. James Redd. In the meeting Senator Hatch says, "I just hope you will do something about that type of activity in the future. I mean you can bring all the force you want against drug dealers and people who clearly are violent felons where our people might be in danger but in this case there wasn't the slightest possibility anyone could have been in danger down in that county." The heavy handedness did not stop as Senator Hatch cautioned. Dan Love then led the cattle roundup at the Bundy Ranch in Nevada in April 2014.

I respectfully request a formal investigation, or at the very least a congressional hearing, on the cover-up of Dan Love's egregious wrongdoings.

I have written a book connecting the raids on the town of Garryowen with similarly overhanded raids at Gibson Guitars and the raids in the Four Corners region titled Arrow to the Heart. Its release date is April 24 of this year. There is also a lot of relevant information available on www.ArrowtotheHeartBook.com.* If anyone further questions or concerns, please feel free to contact me regarding these issues and I would be happy to assist you.

Respectfully Submitted,

Chris Kortlander
Cell:406-679-4444

The following attachments referenced in the above statement are on file with the Committee:

Anonymous 52-pg leaked document
Unofficial 18-pg leaked Wooten letter

The referenced transcript from the Senate Judiciary Committee meeting on June 17, 2009, is available at:

U.S. Congress, Senate, Committee on the Judiciary, *Oversight of the U.S. Department of Justice*, 111th Cong., 1st sess., 2009, S. Hrg. 111–268, 27-29, https://www.govinfo.gov/content/pkg/CHRG-111shrg54719/pdf/CHRG-111shrg54719.pdf.

Arrow To The Heart

The Last Battle at the Little Big Horn

The Custer Battlefield Museum vs. The Federal Government

Christopher Kortlander

Foreword by
Ammon Bundy

A POST HILL PRESS BOOK

Arrow to the Heart
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The Custer Battlefield Museum vs. The Federal Government
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About the front cover: The arrow pictured on the front cover is an authentic arrow from the Battle of the Little Big Horn. It was given to the author by Presidential Medal of Freedom recipient Dr. Joseph Medicine Crow, a former board member at the Custer Battlefield Museum. Dr. Medicine Crow was given the arrow by his maternal step-grandfather, White Man Runs Him. White Man Runs Him was a scout for Custer. Oral history states that this arrow was picked up on the Custer Battlefield at Last Stand Hill, where Custer and his command were killed, on June 25, 1876.

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Advance Praise for *Arrow to the Heart*

"The Bureau of Land Management raided Mr. Kortlander like he was Scarface. Using force to go after drug dealers or violent criminals is understandable, but somebody in a hot, sultry part of Montana, in a trading post where people are wandering around buying blankets? Come on."

—*Penelope Strong*, Criminal Defense Attorney

"This story can be described as a defense lawyer's dream. Christopher Kortlander suffered the slings and arrows of the federal government with courage and integrity. He is truly a dedicated American citizen."

—*Charles "Timer" Moses*, Criminal Defense Attorney

"In 2009, at the end of its criminal investigation, the United States had a duty to return the items or institute forfeiture proceedings if it believed the items were contraband It has done neither; therefore, as a matter of law, the property must be returned."

—*William Perry Pendley*, President, Mountain States Legal Foundation

"*Arrow to the Heart* gives a raw, behind-the-scenes account of federal overreach into the lives of private individuals and corporations alike. This has now become commonplace in our nation. It is important that citizens like Chris Kortlander stand up for what is right and to stop federal tyranny."

—*Lance Tobacco*, Former DOI Law Enforcement Officer

Investigative Report of Ethical Violations and Misconduct by Bureau of Land Management Officials

Date Posted to Web: January 30, 2017

This is a version of the report prepared for public release.

SYNOPSIS

We initiated an investigation in October 2015, after receiving two anonymous complaints concerning a Supervisory Agent, Bureau of Land Management (BLM) Office of Law Enforcement and Security (OLES), Salt Lake City, UT.

The first complaint, received in September 2015, concerned the 2015 Burning Man event held annually in northwestern Nevada. The complaint alleged that—

- the Supervisory Agent used his official position to provide preferential treatment to his family members while attending the event;
- the Supervisory Agent directed five on-duty BLM law enforcement officers to escort his family and provide security for them at the event;
- the Supervisory Agent's family received unauthorized access to the Incident Command Post (ICP); and
- the Supervisory Agent's family received overnight lodging in BLM-leased facilities.

The second complaint, also received in September 2015, alleged that the Supervisory Agent improperly intervened in the April 2015 hiring process for a BLM special agent position after he learned that a friend did not make the initial list of candidates to be interviewed.

During our investigation, we received an additional complaint in September 2016, alleging that the Supervisory Agent drove around with his girlfriend in his BLM vehicle while working at the 2015 Burning Man event. The employees who provided details of the misuse stated that they had not fully disclosed this in prior interviews because they feared reprisal from the Supervisory Agent.

We substantiated all but one of the allegations associated with the 2015 Burning Man event.

We found that the Supervisory Agent violated Federal ethics rules when he used his influence with Burning Man officials to obtain three sold-out tickets and special passes for his father, girlfriend, and a family friend. In addition, we confirmed that he directed on-duty BLM law enforcement employees to drive and escort his family during the event with BLM-procured, all-terrain and utility type vehicles (ATVs/UTVs). Regarding the allegation of improper access to ICP by the Supervisory Agent's family, we found that was not against BLM policy. We confirmed that the Supervisory Agent's girlfriend stayed overnight with him in his BLM assigned trailer, contrary to restrictions in the operations plan for the event. The Supervisory Agent also violated Federal ethics regulations by having a subordinate employee make a hotel reservation for his guests. On at least one occasion, he misused his BLM official vehicle when he transported his girlfriend while at the event.

We interviewed BLM OLES Director Salvatore Lauro who stated that he took no action when he saw the Supervisory Agent use ATVs and BLM personnel to transport his (the Supervisory Agent's) family. In addition, Lauro knew the Supervisory Agent allowed his girlfriend to share his BLM overnight lodging accommodations during the event.

We also confirmed that the Supervisory Agent intervened in the hiring process by increasing the number of candidates that would be interviewed. As a result, the Supervisory Agent's friend, who had worked with the Supervisory Agent as a Federal air marshal received an interview and was ultimately hired as a BLM special agent.

During our investigation, the Supervisory Agent displayed a lack of candor when interviewed and tried to influence an employee's comments prior to an interview.

BACKGROUND

Burning Man, an annual gathering attended by thousands of people on BLM-managed Black Rock Desert, is organized by the Burning Man Project, a nonprofit organization, and its for-profit subsidiary, Black Rock City LLC (BRC). The permit issued by BLM to BRC showed the event was held from August 30 to September 7, 2015, and was limited to 70,000 paid participants. Interviewees stated that event attendees actually totaled about 80,000 individuals when vendors and support personnel were also counted.

OLES Director Salvatore Lauro identified OLES' major concern at Burning Man as potential mass casualty from fire-related artwork. He also referred to past BLM enforcement actions that resulted in crowd behavior and the need for tasers. The BLM OLES Official said that Burning Man had a history of illegal drugs, assaults, violence, and other criminal activity, in spite of its largely peaceful reputation. As a result, approximately 70 BLM law enforcement officers were assigned to the event. The BLM OLES Official also said that the Supervisory Agent prepared the operational plan, then briefed the BLM OLES Official and Lauro. He also said that the Supervisory Agent remained in command of operations, although Lauro attended the event.

DETAILS OF INVESTIGATION

On October 7, 2015, we initiated this investigation after receiving two anonymous complaints.

The first complaint, sent by email to BLM Director Neil Kornze on September 9, 2015, and copying the Office of Inspector General (OIG), came from the private email address of an unidentified BLM employee. The complaint stated that a Supervisory Agent had engaged in misconduct and ethical violations at the 2015 Burning Man event. Specifically, the Supervisory Agent used his influence to obtain tickets to the event for family members; he also permitted his family members to visit the ICP and receive overnight lodging at BLM-leased facilities. The complaint also alleged that he directed five BLM law enforcement personnel to provide his family members with an escort and tour through BRC, using BLM-procured all-terrain and utility type vehicles while the officers were on official duty at the event.

The second complaint, also submitted on September 9, 2015, alleged that the Supervisory Agent committed an unfair hiring practice in April 2015 when he intervened on behalf of a friend applying for a BLM special agent position.

A third complaint, received in September 2016 near the end of our investigation, alleged that the Supervisory Agent misused his Government vehicle when he used it to drive around with his girlfriend during the 2015 Burning Man event.

Supervisory Agent's Misconduct at Burning Man

Supervisory Agent Seeks Favor from Prohibited Source

During our investigation, we found that the Supervisory Agent obtained three full-event Burning Man tickets for "family" members identified as his father, a family friend, and the Supervisory Agent's girlfriend. At the time he bought the tickets, those available to the public had been sold out. The Supervisory Agent used his contacts and relationships with Burning Man officials to obtain the tickets. Federal ethics regulations prohibit soliciting gifts from a prohibited source. See 5 C.F.R. § 2635.202(a). Ethics regulations also prohibit Federal employees from using any authority associated with their public position for the private gain of friends and relatives. See 5 C.F.R. § 2635.702.

As part of our email review, we found that, as early as February 27, 2015, the Supervisory Agent told a BRC Attorney that he was considering bringing his parents to the 2015 event to honor a relative's passing at the Burning Man temple ceremony. He wrote that he might bring his parents with the BRC Attorney's help and approval.

We also found that the Supervisory Agent had discussed obtaining tickets with a former BLM Special Agent serving as a current reemployed annuitant hired as a special project manager for the event. The former BLM Special Agent reported three conversations with the Supervisory Agent:

- The Supervisory Agent asked if he could purchase tickets for $50 each through a program offered to locals, but the former BLM Special Agent informed him that his family members did not qualify.
- The Supervisory Agent then informed him that he intended to purchase the tickets from BRC officials at a discount; the former BLM Special Agent urged him not to do this because of the Supervisory Agent's bad publicity concerning demands for expensive items purchased by BRC for BLM's use at the event.

***Agent's Note**: In 2015, a newspaper published an article stating that a letter [went] to Secretary Jewell, expressing concerns with "providing outlandishly unnecessary facilities for BLM and its guests" at the 2015 event. The article also stated that the Supervisory Agent had been citied multiple times as the person behind many of the BLM requests, and further stated that BLM wanted Burning Man to provide a $1 million luxury compound.*

- During his third conversation with the Supervisory Agent, the Supervisory Agent informed the former BLM Special Agent that he had purchased full price tickets from the BRC Attorney, with whom the Supervisory Agent had a good relationship.

A September 3, 2015 email from the BRC Attorney to the Supervisory Agent at the time of the event cited the BRC Attorney's willingness to offer four regularly priced tickets as a courtesy to the Supervisory Agent's family. The BRC Attorney further stated that BRC held tickets at the Box Office for unique situations that arose after tickets were sold out and that he was happy to offer the tickets to the Supervisory Agent.

During his interview, the BRC Attorney said that the Supervisory Agent had either telephoned or sent him a text message asking for three tickets for his family members just before he sent the Supervisory Agent the September 3, 2015 email. The Supervisory Agent knew that regular tickets for the event were sold out but that BRC also held back about 100 tickets for special requests and needs. The Supervisory Agent approached the BRC Attorney to purchase tickets for his family, but wanted the tickets at the regular price because of scrutiny surrounding his role in BLM's request for the luxury compound. The BRC Attorney forwarded OIG investigators an email dated September 5, 2015, showing three tickets charged to the Supervisory Agent's personal credit card at $390 each, with a processing fee of $19 each, for a total of $1,227.

Lauro also reported that the Supervisory Agent showed him a receipt for approximately $1,200 paid on his personal credit card so that his family could attend the event. Lauro told the Supervisory Agent it was "probably the best $1,200 you've ever spent because it's going to turn, we know it's going to turn into a complaint." He said the Supervisory Agent was upfront with him regarding his family's attendance, having tried to make sure he did not violate any policies. Lauro knew that the Supervisory Agent had purchased tickets at full price with personal funds, and said that the Supervisory Agent "knows people are looking." We also found that the Supervisory Agent had discussed the ticket purchase with several BLM law enforcement personnel, who each felt that the Supervisory Agent wanted to make them aware that he had paid full price for the tickets.

Lauro and a BLM OLES Official both indicated that no policy prohibited OLES personnel from having family members attend the event. Lauro said that he attended the event and knew that the Supervisory Agent's family also attended. The family specifically visited the temple, which the Supervisory Agent helped to construct. He said that the Supervisory Agent was allowed to cut a piece of wood and place it in the temple in memory of a family member. The BLM OLES Official confirmed that two of the Supervisory Agent's family members, as well as his girlfriend, had attended a portion of the event for which the Supervisory Agent had placed a board in the temple in his family member's memory.

The Supervisory Agent also sent an earlier email to the BRC Attorney on August 26, 2015, in which he attached photographs depicting his significant temple construction efforts. In the photo, the Supervisory Agent wears his law enforcement equipment and firearm, and a shirt identifying him as a Federal agent.

The Supervisory Agent's account of his conversations with the former BLM Special Agent and the BRC Attorney differed from their accounts, however. He said the former Special Agent told him he was an "idiot" to pay full price. The Supervisory Agent said that when he went to the BRC Attorney to find a ticket option that would bring less scrutiny, he generally knew that tickets available for public attendance had been sold out, but he did not know that the BRC Attorney had extra tickets. He said that he told the BRC Attorney he did not want special treatment because of his position.

Supervisory Agent Seeks Favor from BRC for Special Passes to Man Burn

During our investigation, we learned that the Supervisory Agent had asked a BRC Official for three special passes so that his family could watch the Man Burn, the high point of the Burning

Man event when an effigy is burned at the temple. The passes, which have no face value but which are not available to the public, gave access to the inner perimeter on the night of September 5, 2015. Our interviews of BRC officials revealed that the inner perimeter was considered a privileged location, reserved primarily for BRC, pyrotechnics, and emergency services staff. The BRC Attorney told us that a BRC Official controlled the special passes and that they had never before been provided to a BLM employee's family members.

When interviewed, the BRC Official said that the Supervisory Agent had asked on Saturday afternoon, September 5, for three passes so that his family could attend the 10:00 p.m. Man Burn that night. The BRC Official confirmed that access to the inner perimeter was a special privilege and never previously requested by or given to a BLM official or law enforcement official. When asked if the Supervisory Agent's position had influenced the availability of the passes, the BRC Official said that there had been apprehension at first because it seemed "a little strange." The BRC Official still gave the Supervisory Agent the passes because being gracious was part of the Burning Man culture. Federal ethics regulations prohibit soliciting gifts from a prohibited source. See 5 C.F.R. § 2635.202(a). Ethics regulations also prohibit Federal employees from using any authority associated with their public position for the private gain of friends and relatives. See 5 C.F.R. § 2635.702.

The Supervisory Agent said that the BRC Official had given him special laminated passes so that his family could watch from the inner perimeter, but he did not necessarily consider it a special privilege.

During the interview, the BRC Official indicated that the Supervisory Agent was on official duty while in the inner perimeter with his family, as were all law enforcement officers who were on official business while present at the event. A review of the Supervisory Agent's time and attendance records showed that he was on official duty while at the Man Burn during the night of September 5, 2015. The review showed that he claimed 24 hours of official work time for Saturday, September 5, the day of the Man Burn. He also claimed 24 hours of official work time for Sunday, September 6, and again on Monday, September 7.

Supervisory Agent's Misuse of OLES Personnel and BLM-Procured, All-Terrain and Utility Type Vehicles

OLES personnel confirmed that the Supervisory Agent directed five on duty BLM law enforcement officials to drive, escort, and provide security for his family at the 2015 Burning Man event. A BLM Subordinate Supervisory Agent said the Supervisory Agent asked him to take the Supervisory Agent's family with him on his daily route around the event's playa. He transported the Supervisory Agent's father, family friend, and girlfriend on a BLM-procured Kubota utility vehicle while also performing his official duties. BLM Special Agents confirmed that they saw a BLM Subordinate Supervisory Agent transporting the Supervisory Agent's family in a utility vehicle at the event.

A BLM OLES Contracting Officer confirmed seeing the Supervisory Agent's father, girlfriend, and another man getting out of a Kubota utility vehicle, which she had procured for OLES to use during the event. A BLM OLES Contracting Officer provided a copy of a

"Solicitation/Contract/Order for Commercial Items," dated August 8, 2015, confirming the Federal procurement. Federal law prohibits the use of Government owned or leased passenger vehicles for unofficial purposes. See 31 U.S.C. §§ 1344(a) and 1349(b).

A BLM Special Agent further stated that the Supervisory Agent had directed him and another BLM Special Agent, as well as two BLM law enforcement officers to accompany his family around the event. They drove in separate all-terrain vehicles known as Razors. At one point, they all met up with the Supervisory Agent, BLM OLES Director Lauro, and former Department of the Interior OLES Director Harry Humbert.

A BLM Supervisory Law Enforcement Ranger also stated that at about 2:00 p.m. on September 5, 2015, the Supervisory Agent asked him to accompany Lauro, Humbert, and himself on a tour of the event. The four of them met up with another BLM Subordinate Supervisory Agent, who drove a Kubota utility vehicle with the Supervisory Agent's father, family friend, and girlfriend as passengers. A BLM Supervisory Law Enforcement Ranger said that the vehicles stopped at the temple, then drove around the playa looking at the art. They also went to an area known as the District, where several thousand people gathered to listen to and provide music. He said that the tour lasted 3 to 4 hours.

The BLM Supervisory Law Enforcement Ranger noted that the utility vehicles had been used to transport Government officials (e.g., a U.S. attorney, a BLM Official, and a DOI Solicitor Official), but that the vehicles had never been used to transport BLM OLES family members on a tour with a law enforcement escort. He said a tie to the Government always occurred when the utility vehicles were used for transportation. A BLM Subordinate Supervisory Agent informed us, however, that the former BLM Special Agent's wife had routinely attended the event and received a tour on a utility vehicle.

A BLM OLES Budget Analyst said the Supervisory Agent's father, family friend, and girlfriend toured the Burning Man event with Lauro and Humbert. She also said that other law enforcement personnel had their family members visit the event and that it was a common practice; however, the Supervisory Agent's family were the only non-law enforcement personnel provided a tour that day.

During his interview, the Supervisory Agent confirmed that he oversaw all BLM law enforcement personnel assigned to the event, while also confirming that another BLM Supervisory Agent, a BLM Supervisory Law Enforcement Ranger, a BLM Law Enforcement Officer and BLM Special Agents had been his subordinates during that time. The Supervisory Agent confirmed that he had asked a BLM Subordinate Supervisory Agent and other BLM law enforcement personnel to accompany his family on a tour of the event and that all OLES law enforcement officers were on official duty and in uniform when this occurred. The Supervisory Agent also said that the Kubota utility vehicle had been used routinely to transport the public because it had been rented, rather than owned by BLM.

Contrary to the Supervisory Agent, a BLM Subordinate Supervisory Agent did say that law enforcement officers typically did not escort or transport the public in the utility vehicles. He said that the Supervisory Agent's family received transportation, as well as preferential

treatment, because of the Supervisory Agent.

Lauro's Knowledge of the Supervisory Agent's Actions

We questioned Lauro about the Supervisory Agent's use of BLM's law enforcement officials and Government procured vehicles to transport the Supervisory Agent's family and give them a tour of the Burning Man event. Lauro acknowledged that he saw a BLM Subordinate Supervisory Agent driving the Supervisory Agent's family members during the event and stated that the Supervisory Agent told him his family was coming and that his girlfriend was staying in the trailer. He denied knowing that the BLM law enforcement officers riding nearby were a security escort, as well as whether the vehicle that a BLM Subordinate Supervisory Agent drove was a leased BLM ATV or belonged to the Sheriff's department. He said the use of ATVs and BLM personnel to transport the Supervisory Agent's family, in addition to the use of BLM lodging might be considered "technical" violations, especially since, as the Supervisory Agent's second level supervisor, he did not see anything that led him to tell the Supervisory Agent to stop. He explained the "reality" is we "regularly" drive non-government people. He stated he did not feel that the Supervisory Agent's family received preferential treatment. He also said he would not have let a BLM law enforcement officer's family who had lost a loved one travel around the event on their own. Lauro added, however, that he and the Supervisory Agent had discussed the potential for an IG complaint, saying "in fact we probably could have written it before it happened because he's had like eight anonymous complaints in the last two years."

When interviewed, Humbert said he did not know that the utility vehicles used to transport the Supervisory Agent's family belonged to the Government. He added that, if they did, then Government vehicle use policies applied. When asked if he felt the Supervisory Agent's family members had received preferential treatment because of the Supervisory Agent's position, Humbert said, "I don't think there is any other way you can look at it."

Supervisory Agent's Disregard for the Accommodations Directive and Allegations of Meals at BLM's Expense

The "Law Enforcement Operations Plan - Duties, Procedures, Protocols, and Rules Specific to the 2015 Burning Man Event, dated August 11, 2015," signed and approved by the Supervisory Agent, stated: "Since many law enforcement officers will be sharing a room with another officer during the Burning Man event, rooms are only for those persons assigned to the event."

***Agent's Note**: The operations plan is not provided as an attachment due to its sensitivity.*

A BLM Subordinate Supervisory Agent had been assigned to a BLM lodging trailer with the Supervisory Agent. He confirmed that the Supervisory Agent's girlfriend stayed 1 or 2 nights with the Supervisory Agent in the trailer. She also shared meals prepared with food he and the Supervisory Agent had purchased for the trailer. The BLM Subordinate Supervisory Agent did not know if the Supervisory Agent's girlfriend received meals from the dining facility provided for BLM employees.

When interviewed, the Supervisory Agent stated that his girlfriend stayed overnight with him in

his assigned lodging trailer, and that his father stayed the first night at a Marriott in Reno. He said that on the second night his father stayed with his family's friend. Regarding the lodging rules cited in the Law Enforcement Operations Plan, the Supervisory Agent said ". . . it's to keep people from jumping rooms or moving rooms or trading rooms."

During Lauro's interview, he stated that the Supervisory Agent informed him his (the Supervisory Agent's) girlfriend would stay the night with him in the trailer. The Supervisory Agent told him that he had checked with contracting and travel personnel and that there was no violation since it was the same as staying in a hotel room together.

The Supervisory Agent's Misuse of a Government-owned Vehicle

A BLM OLES Budget Analyst and a BLM OLES Contracting Officer contacted OIG near the completion of our investigation to request additional interviews regarding information they had not provided due to fear of retaliation.

Both provided details regarding the Supervisory Agent's misuse of his assigned Government vehicle, a silver Chevrolet Tahoe, while at the 2015 Burning Man event. According to an OLES Budget Analyst, she and a Contracting Officer learned from the Supervisory Agent that his girlfriend needed directions to the event. The Supervisory Agent told them that he might meet her in his Government vehicle at a nearby community, then transport her to the event. The OLES Budget Analyst and the OLES Contracting Officer warned the Supervisory Agent against his plan, but the Supervisory Agent only appeared frustrated when he left.

Later that night, according to the OLES Budget Analyst and the OLES Contracting Officer, the Supervisory Agent drove up to them in the Government Tahoe when they were near a mobile substation. They observed the Supervisory Agent's girlfriend in the Tahoe's front passenger seat, when the Supervisory Agent told them to get into his vehicle. They refused. The Supervisory Agent drove away when he saw someone approaching and became concerned that he would be seen.

The next day, the Contracting Officer asked the Supervisory Agent why he had driven his girlfriend in his Government vehicle. He responded to her, "You will forget that you saw that."

During our investigation, we learned that a retired police officer and paramedic assigned to the event had transported the Supervisory Agent's family from the nearby community, although we could not confirm the date or time. The retired police officer told us that, based upon a request from the Supervisory Agent, he had met the Supervisory Agent's family, then transported them in his personal vehicle. He took them through the main entrance where he thought their tickets were scanned, then dropped them off at the ICP where the Supervisory Agent waited for them.

During his interview on May 24, 2016, we asked the Supervisory Agent if he had transported his girlfriend or other family members in his Government vehicle while at the event. He said he had not, and that he had given orders not to transport his family in a Government vehicle.

Additional Statements by OLES Employees Regarding Lodging for the Supervisory Agent's Family

The BLM OLES Budget Analyst and the BLM OLES Contracting Officer provided additional details about the Supervisory Agent's intent to secure BLM lodging for his family. The BLM OLES Budget Analyst stated that she had observed a phone conversation in which the Supervisory Agent asked the former BLM Special Agent to reserve a travel trailer for overnight use by his father and family friend. The conversation occurred while she, the Supervisory Agent, and the BLM OLES Contracting Officer were outside the BLM State Office before they left for Burning Man. The BLM OLES Budget Analyst did not know if the Supervisory Agent's father and family friend stayed overnight in the trailer, but the BLM OLES Contracting Officer said that she used the Supervisory Agent's Marriott rewards number to reserve a hotel room for his father and family friend. The BLM OLES Contracting Officer did not know if they stayed overnight in one of the lodging trailers. Federal ethics regulations prohibit supervisors from encouraging or requesting subordinates to use their official time to perform unofficial duties such as personal errands. See 5 C.F.R. § 2635.705(b).

Supervisory Agent's Improper Influence in a Hiring Process

According to the second complaint, the Supervisory Agent increased the number of candidates interviewed for a hiring action, which enabled a friend to be interviewed and later selected for the job instead of other more qualified candidates. The complaint further stated that the interviews were short, that the Supervisory Agent's friend who had applied for the position apparently received the questions in advance, and that he was hired immediately after the interviews concluded.

We found that the BLM OLES vacancy announcement resulted in two applicants being hired: a BLM Special Agent, formerly employed as a special agent for the U.S. Secret Service, and the Supervisory Agent's friend, formerly employed as an air marshal for the Supervisory Agent's previous employer, the Federal Air Marshals Service (FAMS).

Hiring for a BLM Special Agent Position

The BLM OLES Official said he had little involvement in the hiring process for the BLM special agent position. He said the Supervisory Agent would have handled the hiring locally from a single announcement that filled two positions in the Supervisory Agent's office. He subsequently discussed the hiring with the Supervisory Agent, who identified a "natural break" of 5 percent in the resume scores at the 32nd candidate, which meant that a gap greater than one or two percentage points between the scores occurred at this point. He said he was not concerned if a friend of the Supervisory Agent applied for the position, as long as the Supervisory Agent followed the human resources process.

The BLM OLES Official further stated that, while gathering documents for OIG's investigation, he learned from the Supervisory Agent that the Supervisory Agent's friend had worked previously with him as a Federal air marshal. The Supervisory Agent told him that their working relationship had occurred years earlier, that he had not had contact with his friend (and special agent job applicant) since they worked together, and that the two of them were not friends.

Our review of documents gathered by the BLM OLES Official revealed a schedule titled "Resume Summary," signed by the Supervisory Agent and dated April 16, 2015, showing the combined scores of 121 unnamed applicants. This schedule also contained a handwritten notation, citing a 5-percent break at the 32nd applicant. A separate schedule, also titled "Resume Summary" but containing the names of the 121 applicants and their combined scores and ranking, showed that the Supervisory Agent's friend ranked 23rd out of 121 applicants.

Lauro stated that he did not know if the Supervisory Agent and the individual hired as a BLM Special Agent were friends when the man was hired, but he assumed that the Supervisory Agent probably knew the applicant since both worked for FAMS. He also did not know if the Supervisory Agent halted the hiring process so that the individual would receive an interview. When shown the Resume Summary and the various other hiring documents that the BLM OLES Official provided, Lauro said that he would never interview 30 people for a position and hoped that the Supervisory Agent had a good reason for his decision.

The Supervisory Agent's Influence On the Hiring Process

A BLM Subordinate Supervisory Agent said that he was designated as the selecting official for the two BLM special agent positions, for which more than 200 applicants applied. The Supervisory Agent had told him that an identified applicant's skills, as well as his personality, would fit well with the team and that he would like to give him a chance at the job. The BLM Subordinate Supervisory Agent said that the applicant should not have been hired because he was not as qualified as the top candidates.

A BLM Special Agent who was on both the resume review and interview panels said the Supervisory Agent tasked him to oversee the hiring process for the BLM special agent positions. He also said that the identified applicant had been discussed long before the applicant resumes had been ranked. The Supervisory Agent previously asked him to speak with the identified applicant on the telephone to discuss the hiring process, and the Supervisory Agent brought him into the office to meet with the BLM Special Agent to discuss the job.

The BLM Special Agent said that when he and a BLM State Ranger scored the applicant resumes, the identified applicant had ranked low, somewhere "in the forties" or lower. He further stated that, although the BLM Subordinate Supervisory Agent had intended to include only the top 10 to 15 candidates in the interview cut-off, the Supervisory Agent intervened, moving the cut-off to about the 30th applicant, which gave his friend, the identified applicant, an interview and made it clear to the BLM Special Agent that the Supervisory Agent had moved the cut-off for that purpose. He had concerns about the identified applicant's law enforcement qualifications, which did not match those of most criminal investigators.

The BLM State Ranger said that, while on assignment with other OLES employees, he and the BLM Special Agent scored and ranked the applicant resumes, finding a natural break at a 3- to 5-percent difference in the scoring after about the 13th applicant. He said that the identified applicant ranked at about 30 among approximately 120 resumes. Since he and other OLES employees had discussed the identified applicant, he knew the Supervisory Agent would not be happy if the identified applicant did not receive an interview. He said the BLM Subordinate

Supervisory Agent later told him that the Supervisory Agent had interfered with and suspended the process to ensure interviews for the top 30 candidates.

We also found that a BLM OLES Budget Analyst was assigned to handle certain administrative tasks pertaining to the hiring process. These included preparing spreadsheets to reflect applicant scores and rankings, and contacting applicants to arrange interviews. The BLM OLES Budget Analyst confirmed that the Supervisory Agent had discussed his friend, the identified applicant, with her and the other OLES employees many times to sell his qualifications. The Supervisory Agent's friend had visited the OLES office on several occasions, and the Supervisory Agent required her and other OLES employees to accompany them to lunch. The Supervisory Agent also told employees that everyone would like his friend, mentioning common interests his friend shared with OLES employees. The BLM OLES Contracting Officer reported that, in March 2015, the Supervisory Agent sent a text saying that his friend would be visiting the office that day. The Supervisory Agent wanted them all to go to lunch together. The BLM OLES Contracting Officer complied because the Supervisory Agent was her immediate supervisor and she feared he might retaliate if she refused.

The BLM Subordinate Supervisory Agent felt that a definitive interview cut-off occurred about the 12th or 13th applicant. He had several conversations with the Supervisory Agent about his friend, the identified applicant; he said the Supervisory Agent knew that his friend did not rank among the top 13. The BLM Subordinate Supervisory Agent told the Supervisory Agent that his friend was not the best candidate, but the Supervisory Agent disagreed. Eventually, the Supervisory Agent suspended the hiring process because, the BLM Subordinate Supervisory Agent believed, the Supervisory Agent wanted his friend hired. The BLM Subordinate Supervisory Agent provided a series of emails, dated April 13, 2015, in which the Supervisory Agent said he was going to suspend the hiring process until he could conduct a review. BLM's Subordinate Supervisory Agent said the Supervisory Agent suspended the process because he wanted to hire his friend.

During our second interview with the BLM OLES Budget Analyst, she denied she told the Supervisory Agent his friend's rank in the resume scoring. She told us during her final interview, however, that she met with the Supervisory Agent after returning from the Las Vegas assignment, and he looked at the rankings list without any names attached. The Supervisory Agent marked and signed the list, establishing the interview cut-off. He then told the BLM OLES Budget Analyst to let him know before proceeding with the interviews if the cut-off was not low enough. The BLM OLES Budget Analyst said she understood that he wanted to know if his friend did not make the cut-off because the Supervisory Agent had previously told her that he wanted his friend to be interviewed.

The Supervisory Agent acknowledged his role as the approving official for the hiring process. He said he stopped the process so that he could evaluate the rationale for selecting interview candidates. He expressed concern because only 12 applicants had been selected out of a pool of 130, using only their scored resumes as justification.

The Supervisory Agent further stated that he increased the number of candidates because the 32nd candidate marked the first 5-percent difference in scores and was the first natural break in the

list. He denied knowing where his friend ranked and that increasing the number of candidates meant his friend received an interview.

Interviews of Applicants

The documents that the BLM OLES Official provided included one titled "First Round Interview Schedule – Monday, April 20." It showed that 28 applicants had been scheduled for interviews at 20-minute intervals. The document also included each applicant's scores in response to four questions asked during interviews with the BLM Special Agent and the Special Agent Panel Member for Interviews. An interview rating summary showed that the Supervisory Agent's friend ranked fourth.

The BLM Subordinate Supervisory Agent said that the Supervisory Agent had wanted short applicant interviews with a definitive number of questions asked of all the candidates so that they could demonstrate their verbal skills.

The BLM Special Agent and the Special Agent Panel Member for Interviews conducted the interviews by telephone. Both indicated that the Supervisory Agent's friend appeared to know the questions in advance. When interviewed, the BLM Special Agent said that he, the Supervisory Agent, and the Special Agent Panel Member for Interviews had developed the questions, but that he no longer had them. The Special Agent Panel Member for Interviews said the same.

The Special Agent Panel Member for Interviews further stated that the Supervisory Agent's friend interviewed well and correctly answered the "zinger" question, which asked what percentage of the state was public land. She sensed that the Supervisory Agent's friend had been given the questions ahead of time, based on the way he responded. She also said that everyone knew the Supervisory Agent and the applicant he had identified for the position previously had worked together.

The Supervisory Agent said that 10 questions had always been asked during previous interviews. He did not know why only 4 questions were asked or if they were sufficient to consider hiring an applicant. He denied that he provided the questions to his friend for his interview. When interviewed, the Supervisory Agent's friend said he had not received interview questions beforehand.

Reference Checks for the Supervisory Agent's Friend

The BLM Subordinate Supervisory Agent said that he had contacted two individuals not listed as references on the resume of the Supervisory Agent's friend, both of whom had worked with the friend on a Joint Terrorism Task Force (JTTF) assignment. After speaking with them, the BLM Subordinate Supervisory Agent reported to the Supervisory Agent that he had received unfavorable feedback. The Supervisory Agent then contacted a FAM supervisor, who gave his friend a favorable recommendation.

An intelligence analyst who had worked with the Supervisory Agent's friend at JTTF told the BLM Subordinate Supervisory Agent that the Supervisory Agent's friend did not respond to requests for assistance or carry through with assigned tasks. A Federal Bureau of Investigation special agent also assigned to JTTF did not recall being contacted by the BLM Subordinate Supervisory Agent, but had talked with the Supervisory Agent's friend about the Supervisory Agent, whom she had known at JTTF. She also had seen both of them together. She said that they appeared to be good friends.

A FAMS Special Agent reported that the Supervisory Agent had contacted him during his friend's reference check. He gave the Supervisory Agent's friend a favorable recommendation. He also said that the Supervisory Agent's friend was a good employee with great character. He said being a good employee had been required for the Supervisory Agent's friend to be considered for the JTTF assignment.

When interviewed, the Supervisory Agent's friend said that he had known the Supervisory Agent since April or May 2002 and that they had worked together at FAMS. At that time, he and the Supervisory Agent also socialized periodically after business hours and on weekends with a group of friends. This continued until the Supervisory Agent transferred to JTTF. He said that the Supervisory Agent eventually transferred to BLM OLES in 2005 or 2006 and that they had no further contact until the Supervisory Agent's friend transferred to JTTF in 2012.

While with JTTF, the Supervisory Agent's friend reached out to the Supervisory Agent to discuss schools and homes in the area. He later pursued the BLM special agent position as his JTTF assignment neared an end and as his wife chose to remain in the area with their son. The Supervisory Agent contacted him 3 ½ weeks after his BLM interview to inform him that he had been selected for the position.

In a May 5, 2015, email, the BLM Subordinate Supervisory Agent notified the BLM OLES Official that he and the Supervisory Agent had selected the Supervisory Agent's friend for the position. The email reflected that the BLM OLES Official subsequently notified OLES Director Lauro of the selection.

The Supervisory Agent said that the BLM Subordinate Supervisory Agent never told him that his friend should not be hired or that he had concerns about his friend. The BLM Subordinate Supervisory Agent also never told him why his friend was not the best person for the job. He said the BLM Subordinate Supervisory Agent also had every opportunity to tell the BLM OLES Official if he thought hiring his friend was inappropriate.

The BLM Subordinate Supervisory Agent said that although he disagreed with the Supervisory Agent over hiring his friend, he ultimately selected the Supervisory Agent's friend for the position because "that's how life is and… it's his program."

The Supervisory Agent's Attempts to Influence Employee Testimony and Employee Concerns of Retaliation

Several employees informed us that the Supervisory Agent had contacted them prior to and after their interviews with OIG to influence them and to learn interview details. These employees feared the Supervisory Agent would retaliate because of information they had provided.

A BLM State Ranger and a BLM Subordinate Supervisory Agent both stated that the Supervisory Agent contacted them before their interviews with OIG. The BLM State Ranger said that the Supervisory Agent told him that saying "I don't recall" was a valid answer when responding to OIG's questions. The BLM State Ranger said that the Supervisory Agent contacted him after his interview. The Supervisory Agent asked him, "So do I still have a job or did you get me fired?" He said the Supervisory Agent's comments made him uncomfortable and were an attempt to influence his testimony.

The BLM Subordinate Supervisory Agent said that the Supervisory Agent gave him "stuff" to say. For instance, he said that the Supervisory Agent told him to tell OIG investigators that wives of sheriff's department officers had also attended the Burning Man event and eaten at the commissary, and that they had entered the event without paying. He further said that the Supervisory Agent told him to tell OIG about ticket types that could be purchased and that the former BLM Special Agent's wife attended the event.

Following his interview, the Supervisory Agent sent the BLM Subordinate Supervisory Agent a text message concerning a news article about a local sheriff transporting his wife and son by helicopter to the Burning Man event. In his text, the Supervisory Agent wrote, "Email that [article] to [OIG]! . . . Jesus! I look like a choir boy!"

When interviewed, the Supervisory Agent acknowledged that he had conversations with the BLM State Ranger, the former BLM Special Agent, the BLM Subordinate Supervisory Agent, and another BLM State Ranger about OIG's interview, but he denied that he attempted to influence anyone's testimony.

During her final interview, the BLM OLES Contracting Officer said that when she returned from the Burning Man event, the Supervisory Agent informed her that two complaints had been filed with OIG against him. She said the Supervisory Agent blamed her for the complaints and told her that she needed to do damage control. She said he threatened to ruin her career if she did anything against him.

The BLM OLES Contracting Officer also stated that during the return trip from Burning Man, the Supervisory Agent had a copy of a complaint sent to OIG. She said that he accused another BLM State Ranger of filing the complaint, and threatened to retaliate against the BLM Supervisory Law Enforcement Ranger, as well as an additional BLM State Ranger for providing OIG with information. She also stated that the Supervisory Agent later told her, "If you're not on my ship, you're going to sink . . . . So I suggest you get on my ship." As a result, she feared the Supervisory Agent and kept her office door locked.

The BLM OLES Budget Analyst said the Supervisory Agent told her that he was going to ruin the BLM Law Enforcement Ranger's career. He bragged about ruining a BLM State Ranger's reputation with BLM State Directors and other managers. She said that shortly after the Supervisory Agent changed positions, he had bragged to her that "he owned" Lauro and the BLM OLES Official and that, as a result, no action could be taken against him.

The BLM OLES Budget Analyst further stated that a few weeks after the Supervisory Agent's removal from his position in the office, he sensed that she no longer wanted to interact with him. She said he had called her into his office. The Supervisory Agent said, "You know, if you don't side with me, grenades are going to go off and you'll get hit."

SUBJECT(S)

1. Supervisory Agent, BLM OLES
2. Salvatore Lauro, Director, BLM OLES

DISPOSITION

We are forwarding our report of investigation to the Assistant Secretary for Land and Minerals Management for any action deemed appropriate.

Investigative Report of Misconduct by a Senior BLM Law Enforcement Manager

Date Posted to Web: August 24, 2017

This is a version of the report prepared for public release.

SYNOPSIS

We initiated an investigation in November 2016 into allegations concerning a senior law enforcement manager with the Office of Law Enforcement and Security (OLES), Bureau of Land Management (BLM). An OLES official forwarded allegations to us that the senior manager had mishandled evidence from a criminal case by having a subordinate improperly remove several moqui marbles from the OLES evidence room and give them to the senior manager. The senior manager also allegedly gave marbles as gifts to several people. In addition, the OLES official alleged that after the BLM received requests for emails concerning various matters under official inquiry, the senior manager directed his subordinate to review the senior manager's BLM emails and delete any that depicted him unfavorably.

During our investigation, we received an additional allegation that in February 2016, OLES documents related to a congressional request were intentionally deleted from a BLM shared Google drive the day before the request for the documents was received.

We substantiated all but one of the allegations. We found that the senior law enforcement manager instructed his subordinate to remove four moqui marbles from the evidence room and give them to him, which violated BLM and U.S. Department of the Interior (DOI) evidence policy. We also confirmed that the senior manager had his subordinate use the senior manager's computer, personal identity verification (PIV) card, and personal identification number (PIN) to search the senior manager's emails for messages related to the official requests, and to "scrub" any messages that could harm the senior manager or any in which he used demeaning or derogatory language. The senior manager's actions violated Federal security and records management policy as well as various regulations and guidance related to the conduct of Federal employees.

Regarding the final allegation, an OLES budget analyst told us she deleted documents from the Google drive the day before the congressional request, but we did not find that she had intended to obstruct the inquiry. We also did not find that the senior manager or anyone from BLM leadership ordered the documents deleted.

The senior manager declined to be interviewed for this investigation.

We provided this report to the Acting Assistant Secretary for Land and Minerals Management for any action deemed appropriate.

DETAILS OF INVESTIGATION

On November 18, 2016, we initiated this investigation after receiving allegations from an OLES official about a senior OLES law enforcement manager. The OLES official provided a written summary of the allegations, which stated that in late March or early April 2016, the senior manager directed a subordinate employee to take moqui marbles (accumulated masses of iron oxide, often spheroidal, that form in sedimentary rock), which had been seized as evidence in an OLES criminal case, out of the OLES evidence room. The senior manager allegedly had his subordinate remove the marbles so the manager could give them as a personal gift to a contractor who had done work on the OLES evidence room and Salt Lake City offices.

The OLES official also provided a record of an interview of the subordinate concerning an allegation that the senior manager had directed the subordinate to use the senior manager's PIV card and PIN to log on to the senior manager's BLM computer. After the BLM received official requests for documents as part of an employment-related matter and a congressional inquiry, the senior manager allegedly instructed his subordinate to search the senior manager's BLM email account for relevant emails. As part of this search, the senior manager allegedly told his subordinate to flag or "scrub," which the subordinate took to mean "delete," any negative emails that could harm the senior manager or any in which he used demeaning or derogatory language.

We attempted to interview the senior manager for this investigation, but a BLM official informed us that the senior manager's attorney said he was not able to participate in an interview.

Mishandling of Moqui Marble Evidence

Seizure of the Marbles by the OLES

In 2012, BLM OLES special agents seized thousands of moqui marbles as evidence during an investigation into allegations that the marbles had been collected illegally from a national park. These marbles were eventually stored in the OLES evidence room, located in the BLM State Office in Salt Lake City.

After the marbles were seized, the BLM asked a University of Utah professor who has studied the moqui marbles (see Figure) at the park to inspect the seized marbles, determine whether they were unique to the park, and estimate their dollar value.

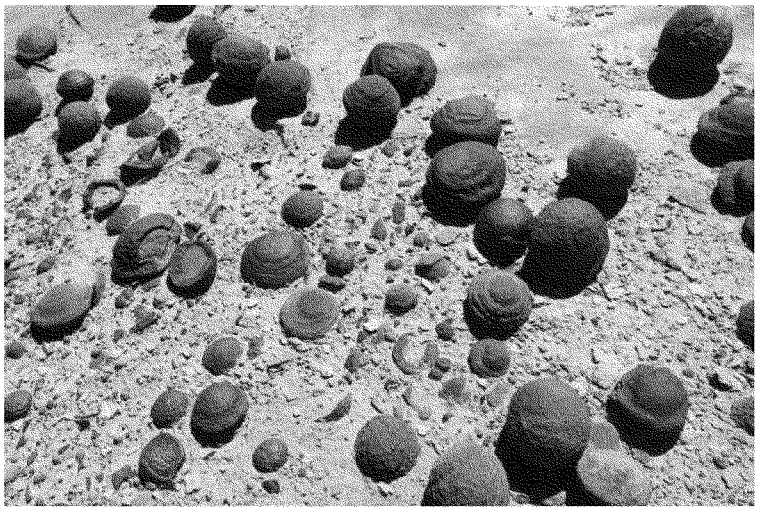


Figure: Assorted moqui marbles in a variety of sizes and shapes. Source: Shutterstock.

We interviewed the professor and reviewed her February 2013 report on the seized marbles as part of our investigation. The report concluded that, based on their physical characteristics (golf-ball size, shapes, patina, etc.) and abundance, the seized marbles did come from the park. The report estimated the total wholesale value of the seized marbles at between $80,000 and $260,000, with a total retail value of $160,000 to $520,000.

The Senior Law Enforcement Manager Directed the Unauthorized Removal of Moqui Marbles From the Evidence Room

We interviewed the senior manager's subordinate, who said that in late April 2016, he was in the OLES evidence room with an OLES budget analyst and an OLES contract specialist counting the moqui marbles, which were stored in 5-gallon buckets. (He confirmed during his interview that the marbles were kept in more than 80 buckets.) He said the senior manager told the three of them while they were doing this that they could each take a marble from the evidence room and display them on their desks. The subordinate said he did not take a marble, but he later saw marbles on the desks of the other two employees. He was certain that the marbles had come from the evidence room and stated, "They were clearly evidence."

When interviewed, both the budget analyst and the contract specialist confirmed that, based on the senior manager's offer, they each took a marble from the evidence room and displayed them in their offices. The budget analyst said she had believed it was all right to take a marble because she had seen marbles on display in the senior manager's office, and the contract specialist said she had assumed it was all right because a senior law enforcement manager said it was. They returned the marbles during our investigation.

The senior manager's subordinate stated that the senior manager also told him while he was counting the marbles to remove three or four of the "best" marbles from evidence and give them to the senior manager. He said the senior manager did not tell him why he wanted the marbles; nevertheless, the subordinate selected two spheroidal marbles and two "Saturn-type" marbles (which have additional mass around their middles, resembling rings), and gave them to the senior manager. The subordinate told us he "had a bad feeling" about removing the marbles from evidence, but he did not question the instructions because the senior manager was a law enforcement official and was "scary." The subordinate said he knew at the time the marbles were evidence in an ongoing criminal prosecution.

The budget analyst confirmed that while they were counting marbles she heard the senior manager tell his subordinate to bring him "a few" or "a couple" of marbles from the evidence room. The contract specialist stated she saw the subordinate give the senior manager four or five marbles while he was in the senior manager's office.

A review of the evidence room's access log showed the subordinate accessed the evidence room for the moqui marble case, but it did not show that marbles were removed. He said there was no evidence control sheet or evidence receipt attached to the buckets of marbles where he could document the removal.

We also reviewed the BLM OLES evidence policy and the *Departmental Manual*'s chapter on evidence handling and storage. Neither policy provides for the display of evidence, in employee offices or elsewhere, and both state that law enforcement officers are responsible for safeguarding all property taken into custody as evidence.

The Senior Law Enforcement Manager Gave Moqui Marbles as Gifts on at Least Four Occasions

The budget analyst stated that in April 2016 she had a conversation with the senior manager and a contractor who was doing work on the OLES' new evidence room and offices at the BLM State Office. She said that during the conversation the senior manager told the contractor about the buckets of moqui marbles and said that it would take time to relocate them to the new evidence room. She said the senior manager described the marbles to the contractor after the contractor expressed an interest in them.

The budget analyst said that a week later she saw the contractor in the OLES office. She said the contractor excitedly showed her two or three marbles he was holding and said to her, "Hey, I'm not supposed to say anything, but . . . look at what [the senior manager] gave me." He told her that the senior manager had also given him a business card and said he could use it like a "get-out-of-jail-free card" if he ever got into trouble.

The budget analyst said that a couple of days later, she asked the senior manager if he had given the contractor some marbles. She said he responded, "Shh! Don't say anything. If you say it too loud, [a BLM State ranger whose office was nearby] will hear, and he'll call OIG."

We interviewed the contractor, who said he had chatted often with the senior manager about various matters. He said that near the end of the project, he was in the OLES office space and saw a moqui marble on the senior manager's desk, and the senior manager explained to him how the marbles formed. He said either the senior manager or the budget analyst told him that thousands of marbles had been seized during an investigation.

About 2 weeks later, the contractor said, he was working in the OLES office when the senior manager called him into his (the senior manager's) office and gave him five or six moqui marbles, a business card, a BLM law enforcement coin, and other items. He said the senior manager told him these things were in appreciation for a job well done and that he should contact the senior manager if he ever got into trouble with law enforcement because the senior manager "knew a lot of people in a lot of places." He said he was later contacted by a BLM special agent, who had him return the marbles.

We spoke to this BLM special agent, who said that sometime around October 2016, after he learned the senior manager had given marbles to the contractor and others, he called the contractor into the office and took custody of the marbles. The special agent said that while meeting with the contractor, the contractor told him he understood that if the marbles had been removed from the evidence room, this could constitute "tampering with evidence." The special agent said the contractor asked him, "Is [the senior manager] going to get in trouble for this?"

The BLM special agent also said that in the fall of 2015, the senior manager gave him a marble from a handful on his desk. The special agent said he did not ask whether the marble was evidence; he told us that he "would certainly hope" a senior law enforcement manager "would know acceptable evidence practices."

Sal Lauro, the former OLES director, told us that shortly after he briefed his then-supervisor, BLM Deputy Director Steven Ellis, about the OLES moqui marble case, he received three marbles. He was certain the senior manager gave them to him but could not recall whether he did so in person, by mail, or via a coworker. He said he had no reason to believe that the senior manager would have removed these marbles from evidence, and he assumed they had been obtained from a university for educational purposes. During our investigation, we took custody of these marbles and placed them in our evidence room.

We interviewed another former OLES official, who said that he saw three marbles on Lauro's desk one day and asked what they were. The official said he later said to the senior manager, "Oh yeah, great. So you give the boss [Lauro] gifts, but you don't give any to me." According to the official, a few months later the senior manager gave him three marbles. We took custody of these marbles and placed them in our evidence room as well.

Other BLM Law Enforcement Officials and Employees Also Had Moqui Marbles

During our investigation, we learned of other BLM OLES employees and individuals who reportedly had moqui marbles that may have originally been seized as evidence during the OLES investigation. We contacted and interviewed the following individuals:

- A BLM special agent said she found a marble in a cubicle she moved into in 2014. She said that another special agent had previously occupied the cubicle. She recalled asking the senior manager and others about the marble, and being told that she was allowed to have it and that the marbles could be collected in small numbers for personal use. She said another BLM special agent had already taken custody of the marble.

- A BLM State ranger gave us one marble during his interview, saying that he found it in a box in his home. He said a BLM special agent had already taken custody of a second marble, which had been left on his desk. He did not know who gave him either of the two marbles, but stated that other employees in the office had marbles and the senior manager was "giving them out like candy."

- A former administrative employee said that when she worked at the OLES she found marbles in her office. She did not know whether the senior manager had put them there, but she left them behind when she left the OLES. We took custody of three marbles provided by an employee who later occupied the office.

Another BLM special agent who had been assigned to the OLES moqui marble investigation said it was improper for a BLM employee to have a marble that had been seized pursuant to a Federal warrant. He also said BLM law enforcement officers had no authority to give evidence from an ongoing investigation to other employees for their personal use or to display in their offices.

Regarding the senior manager's possession of moqui marbles, this special agent said he believed that the senior manager could only have acquired the marbles from those that had been seized as evidence. He said he had no knowledge of the senior manager ever obtaining marbles from anywhere else.

The first BLM special agent said he learned in late 2016 that marbles seized during that investigation might have been taken from the OLES evidence room. He confirmed that he collected one marble each from four employees, plus the five marbles from the contractor, and returned them—along with the one the senior manager had given him—to the evidence room.

The Senior Law Enforcement Manager Violated Federal Information Security Policy and DOI Rules of Behavior While Providing Documentation in Response to Official Requests

Emails Pertaining to an Employment-Related Matter

A BLM State official provided information about two document requests the BLM received in 2015. Per these requests, the senior manager and other OLES personnel were ordered to provide documents, including emails sent during a specified period, concerning an employment-related matter.

During his interviews, the senior manager's subordinate provided details about two email searches he conducted in response to this document request. He said that in 2015, the senior manager directed him to sit at the senior manager's Dell computer, access the senior manager's BLM email account using the senior manager's PIV card, and search for emails related to the

employment matter. The subordinate said the senior manager was logged on to his (the senior manager's) computer at the time and showed him what to search for. He said the senior manager also said to show him any emails "that could be bad" for the senior manager so that the senior manager could review them before they were included in the response. He understood these instructions to mean any email where the senior manager wrote anything demeaning or inappropriate. The subordinate said he deleted a few emails from the search results, printed the rest and put them in a binder, and flagged some of them with sticky notes for the senior manager to review.

About a week or two later, the subordinate said, a second request for emails was received, this time with a longer date range, and the senior manager again had him sit at the senior manager's Dell computer and review his email. The subordinate said he reviewed the senior manager's emails and had his PIV card and PIN for about 4 days. He said the senior manager told him to "scrub" the emails; based on the previous email search, the subordinate understood this to mean he was to delete inappropriate emails. He said he again deleted some emails from the search results, then printed and flagged others and placed them in a binder for the senior manager to review.

The OLES contract specialist explained to us that the senior manager instructed her and the subordinate to go through the senior manager's email account and flag emails "that could get him [the senior manager] in trouble." She and the subordinate searched for and printed copies of all pertinent emails and placed them into binders to provide to the BLM official. She said the subordinate did most of the flagging and she did not recall any specific emails flagged.

The OLES budget analyst also confirmed during her interview that she heard the senior manager tell his subordinate to search the senior manager's email for anything related to the employment matter, and to print and flag emails the subordinate thought were "inappropriate."

Emails Pertaining to a Congressional Inquiry

On February 4, 2016, Congressman Jason Chaffetz (R-UT), Chairman of the Committee on Oversight and Government Reform, and Congresswoman Cynthia M. Lummis (R-WY), Chairwoman of the Subcommittee on the Interior, wrote to then-BLM Director Neil Kornze requesting documents and information related to various matters.

The senior manager's subordinate said that in 2016, he left the OLES. He was asked to continue working there temporarily, however, so he returned and worked for over a week. During that time, the senior manager had him again sit at the senior manager's Dell computer with the senior manager's PIV card and PIN and review the senior manager's email to identify anything pertaining to one of the matters Congress had inquired into. The subordinate said the senior manager told him he only had a week to respond to the request, but the subordinate was to use the same process as before. He understood this to mean he should conduct the email search per the senior manager's previous instructions, then review the resulting emails and delete or show the senior manager any that would be inappropriate, prior to submitting them as the senior manager's response to the inquiry.

The subordinate stated that when he did his review, he created folders on the senior manager's computer desktop and labeled them "keep," "sensitive," and either "delete" or "discard" (he could not remember which). He then converted the emails he found to PDFs and placed them in the folders. He also deleted multiple emails. He said the search took him about a week to complete.

The subordinate told us he felt morally wrong about deleting the emails, but he did not discuss his feelings with the senior manager. He stated that he was "not going to tell a senior law enforcement [manager] no" because he felt that doing so might jeopardize his employment. He also said the senior manager was very intimidating, manipulative, and controlling, and he did not believe he could report the matter to Lauro or other OLES officials because the senior manager was "very, very close" to them.

The OLES budget analyst and contract specialist confirmed during their interviews that the senior manager was fully aware his subordinate was deleting emails. The budget analyst said the senior manager told her that BLM Deputy Director Steve Ellis had been disgusted by "unprofessional" emails from the senior manager about one of the matters under congressional inquiry. She said the senior manager asked her, "Do you know if [my subordinate] has gone through everything? Do you know if he's gotten rid of what he should [have]?" In addition, the contract specialist confirmed that she had heard the senior manager use the word "scrub" when telling the subordinate to go through his email. She said that, to her, this meant the subordinate should not include certain emails in the senior manager's response to the request.

On May 6, 2016, Chaffetz and Lummis sent a second letter to Kornze stating they had not received an official response to the February 4 letter or any documents. They demanded that the BLM provide a response, or a subpoena would be issued.

The senior manager's subordinate said that by May 2016, he was reemployed by the OLES. He said that after the second letter from Congress arrived, the senior manager directed him to use the same process to "scrub" his email for any related to the matter under inquiry. He said he first worked at the senior manager's computer and converted the emails he found to PDFs, then later used a thumb drive to transfer the folders he created to his own computer to finish the review.

The subordinate said he placed many emails into a "discard" folder but did not show them to the senior manager. He said, however, that he did discuss the emails with the senior manager and described the ones he had placed in the folder. He uploaded the emails in the "keep" folder to a shared Google drive for final submission and did not upload the emails in the "discard" folder.

We reviewed the senior manager's emails and found many that appeared to coincide with ones that his subordinate said he either deleted or flagged for review during his searches. In particular, we showed the subordinate four emails related to one of the searches, and the subordinate said he recalled three of them; he said he had flagged two of these emails and "probably would have deleted" the third. We then compared these four emails to those that had been uploaded to the Google drive for submission to Congress; we did not find any of the four emails among the uploaded emails. In addition, we showed the subordinate approximately 40 emails related to another inquiry, and he indicated that he would have deleted 11 of those emails. The OLES

budget analyst informed us the documents pertaining to the inquiry were no longer on the Google drive; therefore, we could not compare any with those that we showed the subordinate. As a result, we were not able to identify all emails that had been deleted or that the senior manager might have intentionally withheld from submission.

We also examined the senior manager's Dell computer and the thumb drive the subordinate used to transfer folders to his own computer. On the computer, we found no "delete" or "discard" folder containing emails added by the subordinate. Although we did locate a "discard" folder on the thumb drive, the subordinate said he was "carelessly grabbing files" and transferring them to the drive. Therefore, we were unable to rely on the contents of the thumb drive's "discard" folder for our investigation.

Finally, we reviewed the senior manager's training records, which disclosed that he completed annual Federal Information Systems Security Awareness + Privacy and Records Management (FISSA+) policy training in 2015 and 2016. The training required him to certify that he knew he should not share his PINs or his PIV card, and that Government equipment and PIV cards must not be used for illegal or inappropriate activities.

No Evidence That the Senior Law Enforcement Manager or BLM Leadership Directed Deletion of Documents from Shared Google Drive

In a February 14, 2017 letter to our office, Chaffetz and Congressman Blake Farenthold (R-TX), Chairman of the Subcommittee on the Interior, Energy, and Environment, alleged that relevant documents had been deleted from a shared Google drive the day before Chaffetz sent his February 4, 2016 request to the BLM.

During this investigation, the OLES budget analyst contacted us, told us that she was aware of Chaffetz's February 2017 letter, and said she wanted to provide information about what had happened. She explained that on February 3, 2016, she deleted outdated documents from the Google drive, but stated she did so only to free up space. She said she deleted drafts and duplicate copies of documents from 2012 and 2013, but no originals.

The budget analyst stated that she and the other OLES employees were not notified of Chaffetz's document request until on or about February 26, 2016. She provided emails showing that a BLM employee in Washington, DC, forwarded Chaffetz's request to an OLES official on February 23, 2016, and it was not provided to the budget analyst until February 26, 2016. She stated that no one instructed her to delete the documents.

The Senior Law Enforcement Manager Failed To Safeguard Sensitive IT Equipment

Our review of OLES property receipts showed that the senior manager had been issued two MacBook computers. We contacted him in order to secure his Government-owned computer equipment for our investigation, but he informed us that he was unable to locate either of the MacBooks. The OLES budget analyst, the contract specialist, and a BLM special agent subsequently informed us that the senior manager had stated to them on several occasions that

the MacBook he used would "disappear" or be reported as broken if "things ever get bad" or if anyone "comes after" him or his job.

We learned that the BLM reviewed the matter and found in early 2017 that both of the MacBooks assigned to the senior manager had been lost due to his negligence. The BLM made multiple attempts to contact the senior manager to return the MacBooks, but he did not respond. Contact attempts sent to him via certified mail were returned unclaimed.

An OLES official informed us that the missing MacBooks had been used for law enforcement purposes and were not traceable to the BLM. Our Computer Crimes Unit confirmed that the senior manager's MacBooks never accessed the DOI or BLM networks.

SUBJECTS

1. Senior law enforcement manager, OLES, BLM.

2. Senior law enforcement manager's subordinate, OLES, BLM.

DISPOSITION

We presented our findings with regard to the evidence mishandling to the U.S. Attorney's Office for Utah, which declined to prosecute this case. We provided this report to the Acting Assistant Secretary for Land and Minerals Management for any action deemed appropriate.

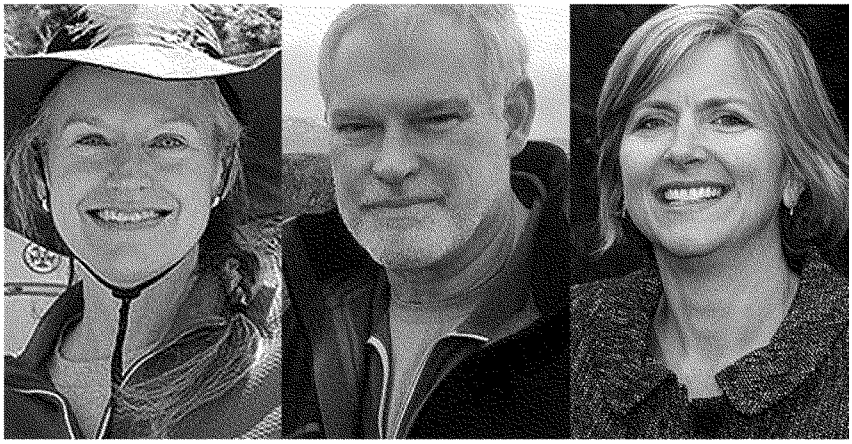
As of the date of this report, we still have custody of a quantity of moqui marbles that BLM employees gave us during our investigation. We will return these marbles to the BLM when this investigation is closed.

INTERIOR

3 BLM state directors removed in reorganization — sources

Scott Streater, E&E News reporter

Greenwire: Tuesday, June 27, 2017



(Left to right) The Bureau of Land Management is reassigning three state directors — Ruth Welch in Colorado, Bud Cribley in Alaska and Amy Lueders in New Mexico — to positions at other federal agencies as part of a broader Interior Department reorganization. BLM (Welch);Cribley/LinkedIn;BLM/Facebook (Lueders)

The Bureau of Land Management is reassigning the directors of the Alaska, Colorado and New Mexico state offices to positions at other federal agencies as part of an Interior Department reorganization that sources say is only beginning.

Alaska Director Bud Cribley, Colorado Director Ruth Welch and New Mexico Director Amy Lueders are among as many as 50 BLM and other Interior career officials notified this month that they are being transferred to different agencies or other positions within BLM, multiple sources with knowledge of the moves told E&E News.

The Senior Executive Service officials were told of the transfers earlier this month and given 15 days, or until Wednesday, to either accept the transfers, retire or resign (***Greenwire***, June 16). Additional transfer notices will be coming as soon as this week, sources said.

BLM and Interior Department officials have declined to provide many details about the ongoing reorganization effort, or the transfers of SES employees to other federal agencies.

But reassigning three state directors represents a major administrative change for the agency. The trio at issue oversee 94 million acres of some of the most resource-rich and environmentally sensitive lands managed by the agency.

It's not clear whether anyone has been named to replace the outgoing state directors.

Heather Swift, an Interior spokeswoman, declined to confirm that the state directors are being reassigned.

"I have no information on specific personnel matters at this time," Swift said in an email.

But sources confirmed that Cribley is being transferred from the Alaska state office to an unspecified administrative position at the Fish and Wildlife Service in Washington, D.C. Cribley would have 60 days to move if he accepts the transfer, sources said.

Welch is being reassigned to an administrative position with the Bureau of Reclamation but will remain in the Denver area.

Sources also confirmed that Lueders is being transferred to an unspecified position at the Fish and Wildlife

Service in Albuquerque, N.M. *The Washington Post* first reported Lueders' transfer.

It's not clear whether the three state directors have agreed to the transfers. Only Cribley, who first joined BLM in 1975, has been with the agency long enough to retire with full benefits, sources said.

Interior Secretary Ryan Zinke has defended the transfers in general, telling reporters last week that he wasn't firing anyone, but rather shifting people to jobs where their skills are better suited (***E&E News PM***, June 21).

Senior executives are required when they enter the SES to sign a form acknowledging they are subject to involuntary reassignments.

By statute, reassignments must comply with proper notification requirements of at least 15 days for a transfer to another SES job within the same agency and the same commuting area, and 60 days for a transfer outside the geographic commuting area.

"If you accept an SES position, you should be prepared to move," Zinke said.

More moves coming

BLM acting Director Mike Nedd held a June 16 teleconference with members of the agency's Executive Leadership Team to discuss the latest SES transfers and to prepare senior leadership for "one or two more rounds" of similar moves in the coming weeks, sources said.

A BLM source said a new round of agency transfers could come as early as Thursday.

Swift, in a brief email to E&E News, wrote that Zinke "has been absolutely out front" that transfers were coming since "his first-day address to all employees" in March.

They are part of an Interior agencywide reboot Zinke outlined in general terms this month that calls for reorganizing the agency under a "joint system" that would shift federal employees from Washington to the field (***E&E News PM***, June 8).

He has promised more details in the coming weeks.

"Personnel moves are being conducted to better serve the taxpayer and the Department's operations through matching Senior Executive skill sets with mission and operational requirements," Swift wrote.

The Trump administration's proposed fiscal 2018 budget for BLM calls for a nearly 13 percent cut in funding from current operating levels.

Nedd sent an agencywide email to all staff June 16 acknowledging that the budget cuts, if implemented, "could mean 1,000 fewer full-time equivalent employees across the Nation," according to a copy of the email obtained by Public Employees for Environmental Responsibility.

Nedd's email says the agency can probably handle most of the reduction through attrition and retirements but adds that BLM "may also seek authority from the Office of Personnel Management to offer early retirement and voluntary separation incentives later this year."

Nedd was not involved in the decision to transfer the state directors, a source with knowledge of the reorganization told E&E News. The source said Nedd was told of the transfers about an hour before the letters were sent June 15 to the employees targeted for transfer.

Sources said the transfer decision came down the chain of command from James Cason, Interior's associate deputy secretary.

Cason, a George W. Bush-era official who served as Interior associate deputy secretary from 2001 to 2009, is co-leading an Interior rule-cutting task force (***E&E News PM***, April 24).

Though details are few, the transfers have sparked questions from elected leaders. New Mexico Sen. Tom Udall (D) at a Senate Appropriations subcommittee hearing last week expressed concern to Zinke about losing Lueders.

Colorado Gov. John Hickenlooper (D), attending the Western Governors' Association annual meeting in Whitefish, Mont., told E&E News this week that he's concerned about the impacts of losing talented BLM staffers that his office has worked with on issues like greater sage grouse management.

"All I have is anecdotal information, but it sounds like people are being transferred away from their expertise and away from their traditional area of responsibility, and I do worry that we're going to lose some of the institutional

memory, that kind of muscle memory that allows you to get good policy and not bad policy," Hickenlooper said.

Montana Gov. Steve Bullock (D), also attending the WGA meeting, echoed Hickenlooper. While Bullock said it's "laudable" to reorganize the agency to make it more effective, "we need to make sure in doing so we're not taking steps back."

Political payback?

Alaska, Colorado and New Mexico have all been involved in controversial energy development and natural resource issues in the past few years, and sources say Interior brass do not view the three state directors at issue as being compatible with the Trump administration's stated push to promote more oil and gas development and mining activity on federal lands.

The transfer of Cribley, who has been BLM's Alaska state director since November 2010, comes just weeks after Zinke toured the state and announced plans to open new sections of the National Petroleum Reserve-Alaska to oil and gas leasing (***Energywire***, June 1).

Sources said Cribley had a good relationship with Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska), who accompanied Zinke on part of his tour through the state last month.

But Murkowski and other members of Alaska's congressional delegation have long complained about federal land-use policies that they say have limited access to mineral resources and stifled economic development.

Welch, appointed Colorado state director in June 2014, helped broker agreements throwing out already-issued oil and gas leases in the Thompson Divide portion of the White River National Forest and atop the sensitive Roan Plateau.

Welch stood next to former Interior Secretary Sally Jewell during a ceremony in Denver announcing both agreements; the leader of an industry trade group derided the ceremony as "despicable" (***E&E News PM***, Nov. 17, 2016).

Lueders, appointed New Mexico state director in 2015, was viewed as instrumental in helping BLM develop sweeping federal greater sage grouse conservation plans that were key in convincing the Fish and Wildlife Service not to list the bird for protection under the Endangered Species Act.

Prior to her appointment as New Mexico director, she served on detail in BLM's Washington headquarters overseeing sage grouse conservation as acting assistant director for renewable resources and planning.

Zinke, a longtime critic of the federal plans, this month announced Interior will review the grouse plans to determine in part whether they are hindering energy production on public lands (***Greenwire***, June 7).

Lueders was also BLM Nevada director during the disastrous 2014 armed standoff with ranchers and militia groups who blocked the agency from removing hundreds of head of cattle owned by rancher Cliven Bundy that were illegally grazing on federal land.

Other moves

Other high-ranking BLM officials are also being transferred.

Among them is Salvatore Lauro, who directs the agency's Office of Law Enforcement and Security.

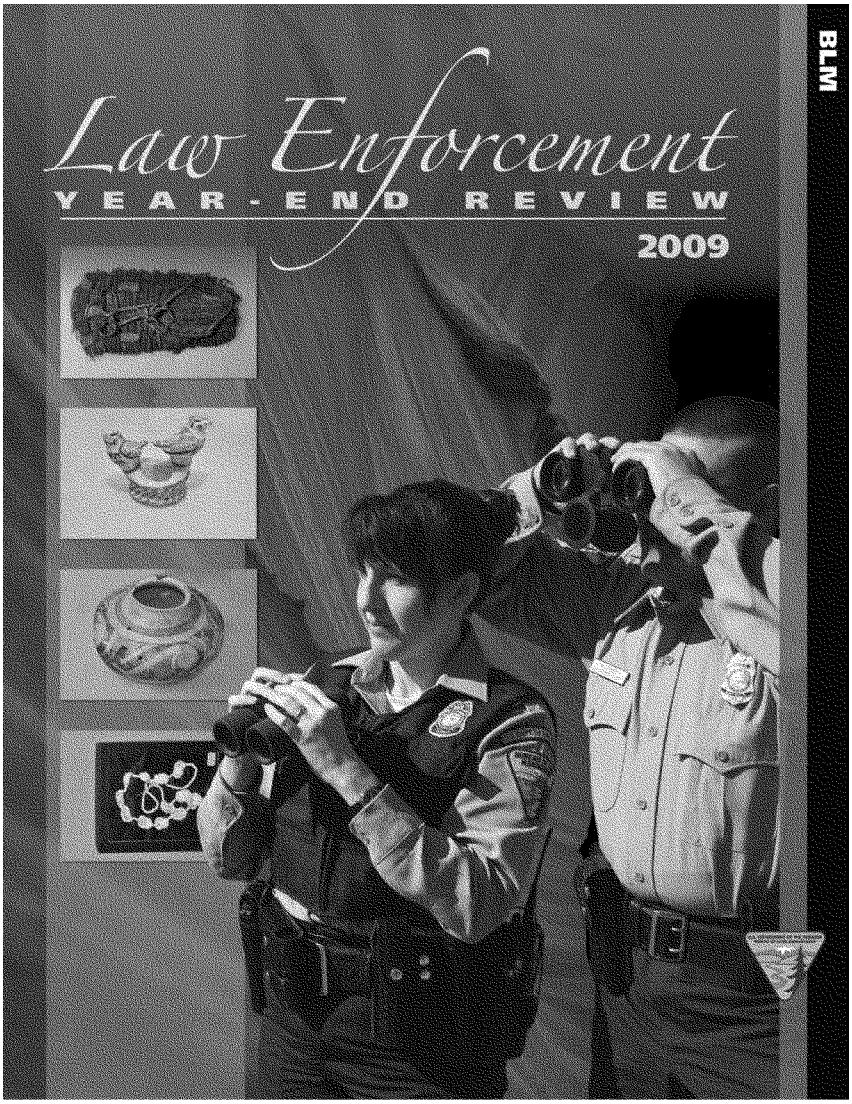
Lauro is scheduled to be transferred to the Fish and Wildlife Service as chief of FWS's Office of Law Enforcement.

The current FWS Office of Law Enforcement chief, Bill Woody, will essentially switch places with Lauro and is scheduled to be transferred to head up BLM's Office of Law Enforcement and Security.

In addition, Janine Velasco, BLM's assistant director of business, fiscal and information resources management, is being transferred to an unspecified administrative position at FWS in Washington.

Reporter Jennifer Yachnin contributed.

Email: **sstreater@eenews.net**


BLM
Law Enforcement
YEAR-END REVIEW
2009

For more information, contact:
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c/o National Interagency Fire Center
3833 S. Development Ave.
Boise, ID 83705
208-387-5126

BLM/WO/GI-10/004+1800

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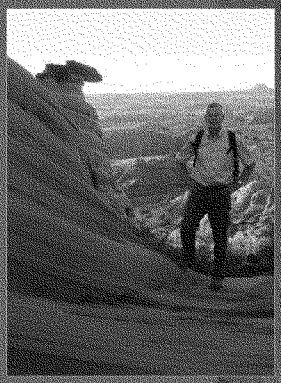
Cover inset photos top to bottom: Anasazi sandal woven with yucca, Anasazi ceramic bird effigy, Hopi polychrome jar, shell bead necklace.

DIRECTOR'S MESSAGE

William Woody

Director of Law Enforcement and Security



In 2009, Bureau of Land Management (BLM) law enforcement Special Agents and Rangers continued to tackle a wide range of issues on the 253 million acres of public lands the BLM manages, mainly in the Western United States. As the largest land management agency in the Nation, the BLM's multiple-use mandate presents a variety of unique challenges for law enforcement personnel and staff. With the population of the West rapidly expanding, and the corresponding rise in public demand for uses such as recreation, wildlife, energy and minerals, timber, forage, and wilderness areas, the BLM Law Enforcement Program faces increasing resource protection, public land use, and safety issues.

A number of criminal activities and unauthorized use "natural resources" cases, which caused degradation to fragile geological, archaeological, and paleontological resources, were investigated on public lands in 2009. These activities put at risk the safety of the public and BLM employees who enjoy and work on these federally administered public lands. Of particular significance were the arrests of multiple suspects as the result of a 2-year undercover investigation (code-named *Cerberus Action*) in the remote Four Corners region of Arizona, New Mexico, Colorado, and Utah. This investigation involved the trafficking of Native American artifacts looted from archaeological sites and Native American graves in violation of the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA).

Agents from the BLM, Federal Bureau of Investigation, and Internal Revenue Service have recovered more than 30,000 priceless Native American artifacts in six States. Artifacts include whole decorated pottery vessels such as mugs, jars, and bowls; stone carvings; ceramic effigies, pendants, necklaces, beads, and other jewelry pieces made from carved shells and bones; gaming pieces; sandals; cradle boards, stone tools; and turkey feather blankets. These artifacts are affiliated with ancestral southwestern Indian tribes and range from 100 to 10,000 years old. The BLM anticipates that additional collections of artifacts stolen from public and tribal lands will be forfeited by current and future suspects. To date, 31 suspects have been indicted with two of the suspects already pleading guilty to federal felony charges. Indictment of additional suspects on multiple counts of violation of ARPA and NAGPRA is expected in the near future. In addition to the Four Corners investigation, on which more than 100 BLM Special Agents, Rangers, curators, and archaeologists have been assigned to work during this year, the Agents and Rangers have also dealt with numerous other investigations involving spreading large-scale marijuana cultivation issues; wildland arson; and oil and gas investigations involving production verification, non-payment of royalties, and theft of oil and gas equipment.

The Special Agents and Rangers who serve in the BLM Law Enforcement Program make up a small part of the dedicated BLM employees who work on a multitude of public lands issues. In cooperation with Federal, Tribal, State, and county agencies, the BLM continues to sustain the health, diversity, and productivity of the public lands for future generations.

William C. Woody, Director
BLM Office of Law Enforcement and Security

Dan Love – Special Agent of the Year

Dan Love, a Special Agent with the BLM Utah State Office, is BLM's Special Agent of the Year for 2009. Agent Love was selected for the award because of his outstanding work conducting investigations in the protection of renewable and non-renewable resources.

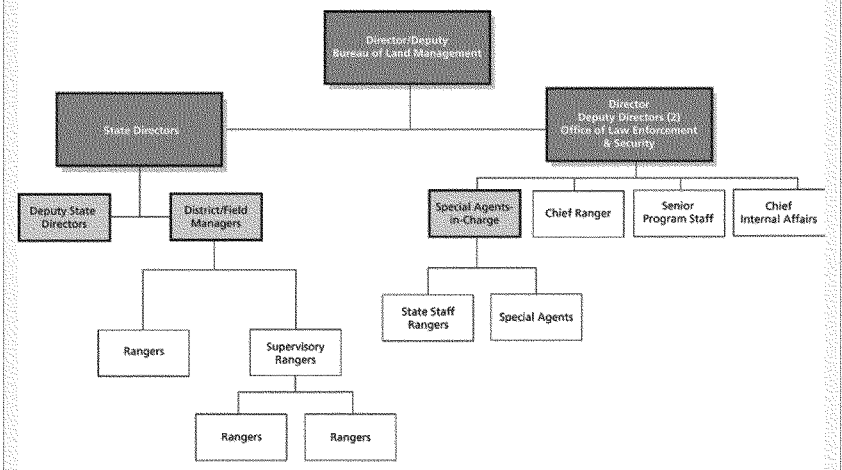
Specifically, Agent Love was assigned as the lead case agent on a joint undercover investigation conducted by the BLM and the FBI. The undercover investigation (code-named *Cerberus Action*) targeted suspects who had violated the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA) to illegally obtain numerous Native American artifacts from the public lands. The operation was unprecedented, targeting over 50 persons suspected of multiple counts of ARPA and NAGPRA violations in the Four Corners region of the United States.

This investigation could not have been completed without the unparalleled dedication of Agent Love and his coordination with the United States Attorney's Office, and other Special Agents, BLM Rangers, and archaeologists.

The many artifacts and other culturally significant pieces that have been recovered in this operation will be returned to the scientific and Native American communities. In addition to returning the stolen properties to their rightful owners, a secondary goal of the operation was to significantly deter the future dealing and illegal excavation of stolen artifacts from public lands.

Special Agent Love's exemplary effort on this investigation has brought great credit upon him and the BLM. The illegal removal and destruction of archaeological and Native American treasures from public lands has become a highly lucrative business. The cultural significance of the artifacts that were seized is without a doubt of immeasurable value to the scientific, academic, and Native American communities.

Bureau of Land Management
Law Enforcement Organization



Line Authority

Total Special Agents = 96
Total Rangers = 236

12/2009

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Cerberus Action: Combating Exploitation of Cultural Resources on Public Lands

In the Nation's largest investigation of the theft of archaeological resources, law enforcement officers from the BLM, the Federal Bureau of Investigation (FBI), and the U.S. Marshals Service, joined by local and State law enforcement partners, arrested 31 individuals and executed a dozen search warrants in the Four Corners region of Utah, New Mexico, Arizona, and Colorado between June and September of 2009. The BLM and FBI initiated the undercover investigation, code-named *Cerberus Action,* in 2007.

Characterized as one of the most significant operations of its kind, the case focused on the full range of participants in the illegal antiquities trafficking networks, from diggers and dealers that feed the market with looted antiquities, to the collectors that drive the market by buying and amassing large collections of these objects. The archaeological sites in the four States impacted by unauthorized excavations, and the artifacts taken from these sites and trafficked, are invaluable to the Native American tribes whose culture and legacy these items represent. These irreplaceable treasures are meaningful not only to Native Americans, but to all Americans as they represent the heritage of our Nation.

Using a confidential source in 2007 and 2008, the BLM and FBI purchased over 250 stolen artifacts totaling more than $335,000. The agencies' source was a well-connected dealer who permitted the installation of various video and audio recorders in his place of business. Recordings provided information on illegal sales transactions involving items that included Anasazi pottery, stone pipes, burial and ceremonial masks, as well as ancient sandals known to be associated with Native American burials. These artifacts had been illegally obtained by looters from public and tribal lands. Though the sellers readily identified where the object or objects for sale had been retrieved on public lands, they were willing to provide a "certificate of authenticity" that noted the items were obtained from private land.

Footage of the transactions revealed a variety of tactics used by the illegal networks in widespread and systematic looting of sites on public lands. For example, looters were believed to have operated at night, camouflaging themselves and their operations by stashing shovels and backfilling holes. Additionally, many were aware of Rangers' schedules and monitoring cycles. Some individuals even used helicopters and airplanes to survey the land and locate sites from the air, and then hike into the backcountry or use off-highway vehicles to access the sites.

On June 10, 2009, the case became public when 24 indictments were unsealed and 180 Federal law enforcement officers arrived in Blanding, Utah; Durango and Grand Junction, Colorado; Santa Fe, New Mexico; and other locations. Officers arrested these individuals and executed search warrants. Immediately following the joint arrests, Secretary of the Interior Ken Salazar, Assistant Secretary for Indian Affairs Larry Echohawk, Deputy Attorney General David Ogden, U.S. Attorney Brett Tolman, and FBI Special Agent-in-Charge Timothy Fuhrman held a joint press conference in Salt Lake City. In his statement to the press, Secretary Salazar reinforced the gravity of the alleged crimes, while providing insight in to the BLM's intended course of action. "Let this case serve notice to anyone who is considering breaking these laws and trampling our Nation's cultural heritage that the BLM, the Department of Justice, and the Federal Government will track you down and bring you to justice," said Salazar. "As these alleged criminals are prosecuted and as Federal agents continue to hunt down wrongdoers, BLM cultural resources staff will work to ensure the proper recovery, identification, repatriation, and storage of the artifacts that have been confiscated."

Defendants have been charged with multiple counts of violating the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA), as well as theft of government property, depredation of government property, and theft of Indian tribal property. Agreements with three individuals charged in the case included voluntary relinquishment of their entire artifact collections. These relinquishments resulted in the recovery of thousands of significant artifacts, Native American human remains, and objects sacred to tribes. The remaining defendants have pleaded not guilty and their trials will be scheduled in 2010.

The BLM has an ongoing commitment to enforce its mandates under ARPA, which includes protecting the archaeological resources on Federal lands from unauthorized excavation and removal, and the unlawful sale, purchase, or exchange of such resources. Similarly, the BLM will continually enforce its mandates under NAGPRA. This includes the repatriation to Indian tribes of any Native American human remains, funerary objects, objects of cultural patrimony, and sacred objects. The BLM will consult with tribes

to determine cultural affiliation and to facilitate repatriation of the stolen artifacts. For objects not subject to NAGPRA, the agency will work with museums to stabilize, identify, and preserve them under the provisions of ARPA and make them available for scientific research and public education.

Cerberus Action represents an important collaboration between law enforcement and cultural resource specialists. The cultural resources on western public lands represent almost all major periods and events in the broad sweep of human occupation in the West. They tell the story of all kinds of people, representing nearly every cultural tradition and ethnicity present in American society. The BLM will continue to address the urgent need to preserve these resources for their scientific and cultural significance.

The stealing and destruction of archaeological and Native American treasures from public lands has become a highly lucrative business. By pursuing those who participated in the illicit networks and returning the artifacts to the Native American tribes and the public, the BLM and FBI have taken important steps in addressing the damage inflicted by these illegal activities. Investigators working on *Cerberus Action* targeted suspects who violated ARPA and NAGPRA laws, in most cases over decades, to illegally obtain numerous Indian artifacts from the public lands. The investigation has resulted in leads to additional looters, expert dealers in stolen property, and opportunistic buyers in the United States and throughout the world. The BLM law enforcement and cultural staff will continue to work cooperatively with the FBI and U.S. Attorney's Office both in following through with this investigation and adjudication, as well as in future cases that may occur.

BLM archaeologists and law enforcement personnel conducting a damage assessment of a looted archaeological site.

Utah

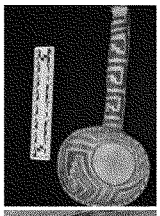
The 22 million acres of public lands managed by the BLM in Utah include magnificent open spaces of extraordinary beauty and diversity; remote wilderness areas teeming with countless species of plant and animal life, many of them threatened or endangered; extensive reserves of energy and mineral resources; and spectacular world-class recreation venues that attract visitors by the millions from around the Nation and the world.

While BLM law enforcement has many varied and significant responsibilities across Utah, law enforcement personnel have come to play an increasingly important role in one critical facet of the BLM's mission—protection of the vast and invaluable treasure of cultural and heritage resources found on the public lands.

In 2009, BLM law enforcement was instrumental in the success of one of the largest criminal investigations ever conducted into the theft and trafficking of prehistoric cultural resources from public lands. The 2-year undercover investigation, carried out jointly by BLM law enforcement and the Federal Bureau of Investigation, centered on the theft and sale of archaeological artifacts from public lands in the Four Corners region. The operation targeted a complex criminal network of looters, expert dealers in stolen property, and opportunistic buyers in the United States and throughout the world.

In the course of the operation, undercover agents purchased more than 250 illegal artifacts from 48 suspects, obtaining more than $300,000 in evidence. On June 10, 2009, 24 suspects were arrested and 12 search warrants were executed on Utah suspects. To date, two suspects have pled guilty in Federal Court, and two collections valued at more than $6 million have been recovered. The investigation and prosecution of the case are expected to last for several years.

The hundreds of artifacts and other culturally significant articles recovered in the operation will be returned to the scientific community and to Native American communities. Law enforcement authorities believe the success of the joint operation in the Four Corners region will serve as a significant deterrent to any future theft of artifacts from the public lands.



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Utah Official Named BLM Law Enforcement Director

| Posted Aug 8th, 2003 @ 10:47am

SALT LAKE CITY (AP) -- William Woody, chief of law enforcement for the Utah Department of Natural Resources, has been named the new director of law enforcement for the U.S. Bureau of Land Management.

His appointment was announced this week by BLM Director Kathleen Clarke, a former state

Natural Resources director.

"William Woody brings vast experience to this position," said Clarke. "He understands the issues BLM rangers and investigators face."

Keith Aller, special agent in charge of law enforcement in the BLM's Utah office, agreed. "He's a very professional, very competent investigator," he said.

A graduate of Utah State University, Woody began his career as a sheriff's deputy in Rich County. He later became a trooper for the Utah Highway Patrol before joining Utah's Division of Wildlife Resources as a conservation officer in 1985. He briefly worked for the Phoenix Police Department in the early 1990s but soon returned to Utah's wildlife division.

Woody later graduated from the FBI Academy in Quantico, Va., and worked his way up the ranks at the wildlife agency, serving as an investigator, lieutenant and captain. In 2001, he was appointed to lead the 160-officer Natural Resources law enforcement unit.

He served as lead investigator for Utah's Homeland Security Task Force during the 2002 Games, and is well respected in law enforcement circles, said DWR Director Kevin Conway.

Woody is scheduled to take his BLM post in Washington, D.C., on Sept. 7. He will oversee 250 federal law-enforcement officers responsible for protecting public safety and natural resources on 262 million acres of BLM lands, which comprise one-eighth of the nation's total acreage.

In Utah, about 20 federal rangers patrol 22 million acres of BLM lands.

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From: jay redd [mailto:jayredd8@yahoo.com]
Sent: Wednesday, May 23, 2018 1:56 PM
To: fortherecord (Energy)
Subject: Information discussing BLM agent Dan Love, his kill book and other info

To Whom It May Concern:

We have been asked to submit written testimony to be included in the official record of the U.S. Senate Committee on Natural Resources Hearing, held on 5-9-18.

Thank you for your time and consideration.

The family of Dr. James Redd:

Jeanne Redd (wife of Dr. James Redd)
Jericca Redd (daughter)
Jay Redd (son)
Javalan Redd (son)
Jamaica Lyman (daughter)
Jasmine Stephens (daughter)

For the Congressional Record:

These past 8 1/2 years have been the most difficult of our lives. On June 10, 2009 the BLM and FBI raided our parent's, Dr. James and Jeanne Redd's home early in the morning after a 2 1/2 year sting operation in order to try and entrap the Redd's into participating in selling, purchasing or trading Anasazi artifacts to the, now dead, secret informant Ted Gardiner. As Dr. Redd drove up his driveway early that morning he was met by federal agents. One of the agents pulled out his gun and pointed it at Dr. Redd's head as his jeep came to a stop. They then handcuffed him, sat him down in his garage and proceeded to interrogate him for 3 1/2 hours concerning a tiny little bead he picked up off the ground. During the interrogation they told him over and over that he was a liar, that he was going to prison and would lose his medical license, house, cars and land. They also asked him which shovel he liked to dig dead bodies with as they pointed to some shovels in the garage. As you can imagine Dr. Redd needed to use the restroom so the agents marched him down the stairs to the bathroom. While he used it one agent stood 6 inches from his right knee and another agent stood 6 inches from his left knee until he finished, at which time the agents would not even remove his handcuffs for him to clean himself. They then threw him in a paddy wagon and hauled him off to Moab to stand before a federal judge in order to make a plea concerning the false felony charge for the tiny little bead. He pled not guilty.

We have a few concerns that we were hoping you could assist us with. Dan Love was the BLM Special Agent in charge for Operation Cerberus Action. When he and his fellow agents raided our parent's home they took the journals of our dad Dr. Redd, our mom Jeanne and our sister Jericca. These journals describe day to day life and the events that happened in our family over the past years. They are priceless to our family and cannot be replaced. When our sister Jericca asked Dan Love if we could

have our father's writings back he said he would make a deal with her. He told her that if she would go outside and pick up all the broken pottery around our parent's home, box it up and then get it to him, he would consider giving her our dad's personal writings in trade. At the time our sister was not allowed to have anything to do with artifacts due to her probation therefore she realized that Dan may be setting her up so she declined to follow Dan's plan. We were never given any of the journals back or even copies of them. We would be most grateful to have them returned.

While Dan Love and the other agents were there they decided to take our mother's collection of 80 year old Pima, Apache and Mono baskets. The baskets had nothing to do with the reason why the federal agents were there. Dan Love said that there was a report of some stolen Pima baskets in the past year from Arizona and in order to be sure these were not stolen he said they were taking them. He said that they would be returned once it was determined they were not stolen. The Pima baskets were all purchased by my mother years ago and were not stolen. We have never had them returned to us but we would be grateful if they were.

From the very beginning of this tragedy we have thought that Dan Love targeted our parents and was determined to focus the show of force and humiliation on the Redd's much more than any other defendant. Dan had, according to his own words, 80 agents at one time at our parent's home and a total of 140 agents there throughout the day. The highest number of agents sent to any other defendants home was 8-10. Our parents had no criminal history and were upstanding citizens of the community throughout their lives. Dan had the agents search the Redd's house for 11 1/2 hours. The most that any other home was searched was 2-3 hours.

When you watch the undercover videos you will see where one defendant asks the informant Ted Gardiner why he is willing to pay such a high dollar amount for a certain arrowhead and Ted's response was that Jeanne Redd likes them and he wanted to get it to try and sell to her.

On April 17, 2008 Dan Love was written up by FBI agent Gibson M. Wilson. This is taken directly form our wrongful death lawsuit against Dan Love, which reads: "94) Defendant Love's lack of the respect for the Constitution and proper law enforcement procedures was illustrated when, in April of 2008, 48 artifacts alleged to have been traded in August 2007 by informant Ted Gardiner with Jeanne Redd failed to appear in the case evidence file, and were instead discovered by FBI agent Gibson M. Wilson in Defendant Love's vehicle. These 48 items of evidence had been kept over nine months by Defendant Love, and were not recorded as evidence until Defendant Love was written up by Defendant Wilson." We used the actual FBI document in our lawsuit but just as we filed it the government immediately sealed it. The document may be sealed but what we have above is what is written in our lawsuit. Then you have the OIG report #2 that details Dan Love stealing the "moqui marbles" from the evidence locker at the BLM. He had the custodian of the evidence locker retrieve 9 or so of the best ones which he then handed out to coworkers and one government contractor. It is reported by those who witnessed this that Dan Love handed them out like candy. Dan Love stealing the moqui marbles was not his first time stealing artifacts as we can see from the FBI writing him up for stealing Jeanne Redd's artifacts. We have always thought that Dan Love may stolen more than the artifacts he was written up for.

Dan Love and the others returned to the Redd's home a month after the raid to take all the artifacts and anything else they wanted. Our mother Jeanne recalls while he was there Dan Love said to her, "I know what artifact is your favorite, it is the pendant that looks like a sprocket." My mom responded, "yes it is." Dan had read in our

mother's journal that this little pendant was her favorite and he was more than happy to take it from her. Our mom said to him that it came from private land on Murphy Point found by someone from Blanding in 1960 but Dan didn't care.

Due to Dan Love's pattern of conduct when it comes to stealing artifacts, we would encourage someone to look into where the artifacts from our parent's home are now. It would be difficult for someone besides our mother to know exactly which artifacts are from the Redd's home and which of them may be missing so I will narrow it down to a few specific items:

• The bead or "effigy bird pendant" our father picked up off the ground

• The pendant that looks like a sprocket (see photo)

• The digging stick with a wooden handle and a big horn sheep's horn wrapped with original wrapping

• The Pima, Apache and Mono baskets made in the early 1900's (see photo)

• Collection of Pre-Columbian artifacts

We are not asking for Anasazi artifacts i.e. the bead or "effigy bird pendant", Anasazi digging stick or the pendant that looks like a sprocket be returned to us, we would just like to know if they have disappeared and if so where are they.

On page 4 of the Wooten letter it reads, "I was even told of threats of physical harm that this former BLM SAC (Dan Love) made to his subordinate and his family." Due to the erratic behavior of Dan Love, the agents that worked with him were scared by what he may do to them. It is reported that he is no longer an employee with the BLM, whether he was fired or not isn't completely clear. We have heard that he is under mental evaluation at this time. With his erratic behavior and fear that his coworkers had of him we would speculate that he may be even more unstable after being let go by the BLM. We have heard that he may be staying in his mother's house. We have also heard that she has a house in Salt Lake City and St. George. Our brother Jay Redd, Dr. James Redd's son, works in St. George as a dentist. He is in his office Monday-Thursday 8am-5pm. He is easy to find. He is concerned for his safety, his family's safety and the safety of his staff at work. The Agent Wooten letter details 18 pages of wrongdoing mainly by Dan Love. We would like to focus on page 8 which reads, "I was told by BLM Law Enforcement Supervisors that he had a "Kill Book" as a trophy and in essence bragged about getting three individuals in Utah to commit suicide (see Operation Cerberus Action out of Blanding, Utah and the death of Dr. Redd)." This is very troubling and shocking to say the least. The Redd family brought a wrongful death lawsuit against Dan Love for Dr. Redd's untimely death which has since been dismissed by the federal judges. In our lawsuit we included two statements Dan Love made to our sister concerning our father. About a month after our dad had passed away Dan asked our sister Jericca if our mom hated him. She responded and said she doesn't like you very much. Dan Love proudly responded, "I know why your mom hates me, I'm the reason your dad is gone." On another occasion our sister asked Dan why he thought our dad took his own life. He responded coldly saying, "I think he just took one for the team."

About a month after the death of Dr. Redd, Dan Love was leaving the Redd home following a meeting. While standing in the garage, SA Love gave Dr. Redd's 3 year old grandson, Sebastian, a child's BLM badge and told the toddler he could call him *"Uncle Dan."* Little Sebastian, who idolized his 'Poppy' probably did not comprehend at the time that the man whose actions led to the death of his beloved 'Poppy' wanted

him to call him *"Uncle Dan."* It's hard for the adult mind to comprehend any words or actions more intentionally fiendish.

When our mother and sister were released from probation a year and a half early for good behavior it was reported to our attorney that Dan Love was "catatonically enraged" because he did not have power over the Redd family anymore.

On October 21, 2010 Dan Love sent BLM Special Agent Dan Barnes to our brother Jay Redd's dental office to tell him he couldn't threaten federal employees. He asked Dan Barnes who he had threatened and he responded that he didn't say he had threatened anyone but that he was there to tell him that he couldn't or there would be investigative action taken against him. Dan Love knows where Jay works and most likely where he lives. He is concerned by what Dan might do. We already know he has a kill list/trophy book with our father's name in it, and who is to say that he might want to add another Redd name to the list. Jay has contacted the sheriff's office there but they said they can do nothing for him.

We would also like to know what is the status of the "Kill book" that Dan Love had/has as a trophy. What information is there on it? What names are in it and where is the book?

To close we would like to compare and contrast briefly the crime that our father committed and the numerous ones Dan Love has committed, according to OIG reports and the Wooten letter.

Our dad picked up a $75 bead which he did not attempt to trade or sell to the informant or anyone else. Dan Love and the others purposely inflated the value of the tiny little bead to over $1,000 in order to reach the felony threshold for items taken from Reservation Land. In actuality it should have been a misdemeanor but that would not have taken Dr. Redd's medical license away along with his cars, house and land. It would also not have brought the attention to the raids they were desiring. Due to the horrible treatment and lies Dan Love and the others inflicted on him he took his life the morning after the raid.

It cost the tax payers more in money to fill up one tank of gas for one of the 18 or so Government SUV's that Dan Love and his fellow agents drove from Salt Lake City to Blanding than what the value of the tiny little bead was worth which Dan Love falsely arrested and destroyed our dad for. Our dad, Dr. James Redd is essentially gone for less than a tank of gas.

In contrast Dan Love, who was a "Special Agent" for the BLM and should be held to an even higher standard than a regular citizen, harasses, intimidates, threatens, steals artifacts traded to the informant Ted Gardiner and later moqui marbles from the evidence locker at the BLM, destroys documents and emails when he is requested to provide them by Congress, "loses" two government issued mac laptops which he informed others he would do if there was ever an investigation into him, is responsible for the death of our dad which he has proudly stated to our sister, has a Kill List/trophy book with our dad's name in it which he brags about and has two more deaths for a total of three as a result of Operation Cerberus in which he was the lead BLM agent.

Our father is in the cemetery in Blanding while Dan Love roams free doing exactly as he pleases with no charges facing him. We have heard that Dan is under mental evaluation at this time and because of this there has been no legal action taken against him but in contrast with what he did at our parent's house, our father was not evaluated for any type of mental condition by Dan Love or the others before they

arrested him at gunpoint. They seemed to enjoy the mental anguish they inflicted on our father.

We feel if Dan Love is not held accountable for his crimes then there will be more "Dan Loves" in the future. And being placed on paid leave for indefinite mental evaluation, or whatever they are doing with him, is not justice.

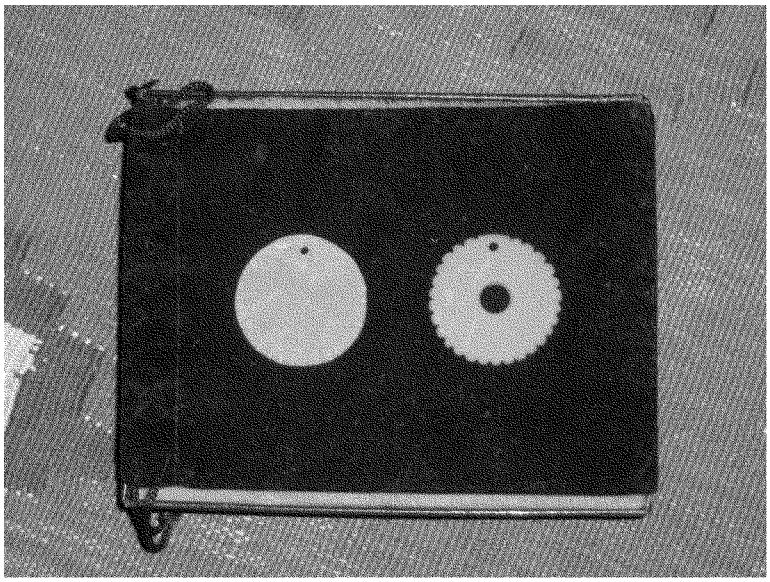
Thank you for your time and consideration into this matter. We appreciate all your efforts in keeping safe the citizens of this country and in bringing criminals to justice.

Thank you,

From the children of Dr. James Redd:

Jericca Redd
Jay Redd
Javalan Redd
Jamaica Lyman
Jasmine Stephens

Dan Love at Bundy ranch—notice his name on his hat



The pendant that looks like a sprocket

Pima, Apache and Mono baskets made early 1900s from the Redd house

From: jay redd [mailto:jayredd8@yahoo.com]
Sent: Wednesday, May 23, 2018 3:11 PM
To: fortherecord (Energy)
Subject: Dan Love stealing artifacts/evidence (moqui marbles), destroying emails and "losing" government laptops

To Whom It May Concern:

We have been asked to submit written testimony to be included in the official record of the U.S. Senate Committee on Natural Resources Hearing, held on 5-9-18.

Thank you for your time and consideration.

The family of Dr. James Redd:

Jeanne Redd (wife of Dr. James Redd)
Jericca Redd (daughter)
Jay Redd (son)
Javalan Redd (son)
Jamaica Lyman (daughter)
Jasmine Stephens (daughter)

Concerning BLM Special Agent Dan Love and his alleged stealing of ancient Native American artifacts from the American People

Dr. James Redd was charged with a federal felony and arrested by BLM Special Agent Dan Love and other BLM and FBI agents for picking up off the surface of the ground a tiny little bead. Dr. Redd did not try to sell, trade or give the bead or any artifact to the informant or anyone else ever. He was treated by Dan Love and the others was as if he was the worst criminal on earth. He took his life the next day due to the lies and treatment he received from Dan Love and the others over the $75 bead. Fast forward nearly 8 years and we see this new development:

This is the most recent OIG report on Dan Love stealing "moqui marbles", giving them to his buddies and keeping some for himself. It also speaks of him ordering subordinates to destroy all emails that do not shine a good light on him since 2009. Also he said he "lost" his two Mac laptops provided him by the government. This was done after he was ordered by Congress to provide this info.

https://www.doioig.gov/sites/doioig.gov/files/MishandlingofEvidencebyBLMLEManager_Public.pdf

In this country, law enforcement is supposed to be held to an even higher standard of conduct than the average US citizen. If this is the case then it would only be justice for the federal government to charge Dan Love, not just one felony, but multiple felonies for stealing "priceless" artifacts from the American people. He stole these artifacts in order to display them on his personal desk. He also gave some of them to his fellow BLM agents and a private contractor as mementos from the sting operation named Operation Cerberus Action.....which ultimately ended the lives of four human beings.

Jeanne Redd, the wife of Dr. James Redd, said that Dan Love confiscated her journal during the raids and then proceeded to read it with great interest. In her journal she

wrote specifically about a collection of "gaming pieces" she had legally acquired over the years from other people. When Dan Love and the others took all her artifacts, along with whatever else they wanted, Jeanne said specifically to them that they will never find another collection of "gaming pieces" like hers. Dan Love took special note of the items Jeanne loved. A month after the raid, which resulted in Dr. Redd's death, Dan Love and the others came to Jeanne's house to take all the artifacts away. While there Dan Love said to her, with a smile on his face, that he knew what her favorite artifact was. He then said it is the pendant that looks like a sprocket. Jeanne said yes.

This incident of Dan Love taking of evidence (coqui marbles) that should be in the evidence locker for his personal use/gain is not the first time he has done this:

This information is from the Estate of Dr. James Redd's wrongful death lawsuit against Dan Love. In the lawsuit it mentions that Dan Love kept some crude artifacts Ted Gardiner (the now dead secret informant) acquired from Jeanne Redd. These very crude artifacts should have been entered into the evidence locker but they were not. After searching for them the FBI found them in Dan Love's vehicle. There is a document in the Redd's lawsuit (exhibit 11) that is the FBI document concerning Dan Love being written up for keeping Jeanne Redd's artifacts personally and not entering them into the evidence locker. When the Redd's filed this the government quickly had this document (exhibit 11) sealed so no one could see or read it but it is spoken of in the lawsuit itself.

What this shows is a pattern of conduct that Dan Love has exhibited concerning these "priceless" artifacts. It appears he believes they are his.

The day before Dr. Redd's funeral FOX 13 news interviewed Secretary of the Interior Ken Salazar about the raids. His response was, "I have frankly no regret about what has happened here. We were simply upholding the law in the name of protecting the cultural and landscape cultures of America." He continues,".....the law is the law. No man or woman is above the law." Ken Salazar June 15, 2009.

According to the once Secretary of the Interior Ken Salazar, no man or woman is above the law and this should include Dan Love.

From the press release by the Department of the Interior June 10, 2009 (the day of the raids):

"Let this case serve notice to anyone who is considering breaking these laws and trampling our nation's cultural heritage that the BLM, the Department of Justice, and the federal government will track you down and bring you to justice," said Secretary of the Interior Ken Salazar. "As these alleged criminals are prosecuted and as federal agents continue to hunt down wrong doers, BLM cultural resources staff will work to ensure the proper recovery, identification, repatriation, and storage of the artifacts that have been confiscated."

"Looters robbing tribal communities of their cultural patrimony is a major law enforcement issue for federal agencies enforcing historic preservation laws in Indian Country," said Interior Assistant Secretary-Indian Affairs Larry Echo Hawk. "Today's action should give American Indians and Alaska Natives assurance that the Obama Administration is serious about preserving and protecting their cultural property."

"These archaeological treasures are precious and protecting them preserves a rich history and heritage," said Deputy Attorney General David Ogden. "That is why the Justice Department will use all of its tools to vigorously enforce the laws designed to safeguard the cultural heritage of Native Americans."

"These treasures are the heritage of all Americans, and some of the objects are sacred to American Indians," said U.S. Attorney Tolman. "Those who loot or damage public and American Indian resources for their own personal use or gain take something from all of us. Those engaged in this kind of conduct will be prosecuted," Tolman said.

"The FBI has taken this matter seriously and spent a significant amount of personnel and financial resources in exposing this network of individuals illegally trafficking in these items," Said FBI Special Agent in Charge Fuhrman. "The FBI remains committed to devoting all necessary resources to address this problem."

It appears that Dan Love is now part of the problem.

I have attached two short videos. The first one was from KSL channel 5 news and was from the day of the raids. Larry Echohawk (secretary of Indian Affairs for the U.S.) says, "I think I can say on behalf of Native Americans that these articles (artifacts) are really priceless. You cannot put a dollar figure on them." They then they say, according to the Secretary of the Interior Ken Salazar, that those who steal artifacts (i.e..Dan Love), federal agencies will hunt you down and bring you to justice.

In the next video, then acting U.S. Attorney for Utah Carlie Christensen says, "I hope that San Juan County will understand that there was a very careful and deliberative process undertaken before charges were filed." Well I am sure she and the others are going through again a "careful and deliberative process" before filing felony charges on Dan Love. Also pay close attention to what Melody Rydalch says right after Carlie Christensen speaks. She says, "we take these kinds of cases very serious. We think it's part of our responsibility to protect the resources of the country and the tribal lands. It is something we feel very strongly about." Melody Rydalch is the spokeswoman for the U.S. Attorney's office in Utah.

According to the information concerning Dan Love stealing these artifacts/moqui marbles from the American people, the BLM is doing the investigation. This should be very concerning to everyone because the BLM was the agency that spearheaded Operation Cerberus Action in the first place. The BLM has always defended the operation and its results. As most people know Dan Love was the BLM Agent in Charge of the operation and had a wrongful death lawsuit filed against him by the Estate of Dr. James Redd. Dan Love was awarded by the BLM Special Agent of the the Year for 2009. In the BLM Law Enforcement Year-End Review 2009 it speaks of the accomplishments of Dan Love concerning Operation Cerberus. Here are a few excerpts:

"Dan Love, a Special Agent with the BLM Utah State Office, is BLM's Special Agent of the Year for 2009. Agent Love was selected for the award because of his outstanding work conducting investigations in the protection of renewable and non-renewable resources.....This investigation could not have been completed without the unparalleled dedication of Agent Love with the United States Attorney's Office, and other Special Agents, BLM Rangers, and archaeologists. The many artifacts and other culturally significant pieces that have been recovered in this operation will be returned to the scientific and Native American communities. In addition to returning the stolen properties to their rightful owners, a secondary goal of the operation was to significantly deter the future dealing and illegal excavation of stolen artifacts from public lands."

"Special Agent Love's exemplary effort on this investigation has brought great credit upon him and the BLM. The cultural significance of the artifacts that were seized is without a doubt of immeasurable value to the scientific, academic, and Native American communities."

As you can see, the BLM is pleased with what happened in Operation Cerberus Action and the major role Dan Love played in it. They say this operation and Dan Love have brought great credit upon him and the BLM. According to the memorandum from the Department of the Interior, Dan Love had the Department of the Interior Evidence Custodian retrieve for him artifacts from the evidence room so he could display them on his personal desk. It also states that he gave some of the artifacts to fellow BLM agents and one private contractor. These artifacts were confiscated by him and the others during Operation Cerberus Action. This conduct by Dan Love, the BLM's Special Agent of the Year, seems to turn the whole secret operation on its head. Here we have the special agent in charge of the operation stealing some of these artifacts he and others had used as a means to destroy Dr. James Redd.

I have no confidence in the investigation being conducted by the BLM into this matter. According to a letter sent by Congressman Jason Chaffetz to Ms. Mary L. Kendall at the Inspector General's office he states:

"Your report documents that a witness told your investigators that after receiving a congressional request for documents, the witness heard Dan Love "say to [another BLM employee] that [said BLM employee] needed to make sure that he scrubbed the emails before he sent them, you know, flagging anything that looked inappropriate so that [Dan Love] could remove them if needed." In another part of the report, a witness testifies about how a BLM employee accessed and "deleted hundreds of documents" from a shared network. The deleted documents were "team documents" which served as the "historical record or administrative record" for a BLM authorized event. The witness stated the deleted documents were subject to the Federal Records Act, and were required, under the law not to be destroyed. If substantiated, these attempts to conceal documents and destroy federal records responsive to a congressional inquiry are unlawful, as it is a federal crime to obstruct a congressional investigation or falsify, conceal or cover up a material fact in one."

He continues:

"It also raises questions that former BLM Director Neil Kornze was provided, as a courtesy, advance notice of the congressional document request prior to February 3rd. We must find out which BLM employees were aware of an impending congressional inquiry when they set about deleting potentially responsive federal records."

As we can see here, many of the BLM employees try to cover up for their fellow BLM employees. This, among other things, is one of the reasons I have no confidence in the BLM investigating Dan Love's stealing of the artifacts and then giving them to his BLM friends.

Another concern I have about this situation is that Dan Love worked very closely with the US Attorney's office in Utah on Operation Cerberus. If the prosecution of Dan Love for the stealing of the artifacts is left up to the US Attorney's office in Utah I doubt that anything would be done. I have no confidence in them prosecuting someone they worked so closely with. The US Attorney's office has defended Operation Cerberus just as much as the BLM has. I have a feeling neither of them want any more scrutiny to come upon their train wreck of an operation which resulted in no jail time for any of the accused and the deaths of three human beings.

As mentioned earlier in this email, Dan Love was written up for keeping some artifacts that Jeanne Redd traded to the informant Ted Gardiner which Dan Love kept in his vehicle for over 9 months. He was later written up for this by the FBI. The reason I bring this up again is that with Dan Love giving out these moqui marbles like candy it is

hard for to believe that this is only the second time he has stolen items/artifacts from the evidence locker. I would hope that this investigation into Dan Love would also include looking at the artifacts he took from Dr. Redd's house that should be in the evidence locker. I would be more than shocked if all those artifacts are still in the evidence locker. If Dan Love would have been treated as he treated Dr. James & Jeanne Redd and how regular U.S. citizens are treated then he would have received a raid by fully armed agents at 6:30 AM, held at gun point, handcuffed, interrogated for at least 3 1/2 hours and not been allowed to have his handcuffs removed when he needs to clean himself after having to use the restroom.....also while he would be using the restroom there would have been one agent 6 inches from his right knee and one agent 6 inches from his left knee as he had a bowel movement just like Dan Love had Dr. Redd experience in 2009. Then there would have been 80-140 agents searching Dan Love's residence for any evidence they could find. If this would have happened to Dan Love the government laptops issued to him may not have been "lost" and who knows what other evidence they would have found in his house. It would be interesting to see where all the artifacts from Operation Cerberus are today. Instead, as you know, Dan Love did not receive this kind of treatment, the treatment he was so apt to use on family practice physicians that had picked up off the surface of the ground a tiny little bead. If the artifacts from Dr. Redd's house are looked for in the evidence locker and photographed, I know Jeanne Redd can identify exactly what would be missing if there is anything missing.

I feel that there are a lot of federal agents watching to see what happens to Dan Love. I also feel that if justice is not served on him, there are going to be many more Dan Loves in the future. They will see that it is OK to take evidence out of the evidence locker to use for whatever they want and to give that evidence to whom ever they want and face no consequences because laws don't apply to federal agents. If he is not prosecuted properly for destroying emails and conveniently losing government issued laptops when requested by Congress then why would any federal agent ever provide emails/laptops required by Congress for an investigation because it is much easier to destroy the evidence than provide it. If you destroy it you will not face justice for it anyway but if the evidence is provided then there may be consequences. This is a critical case and justice needs to be served to avoid this kind of situation in the future.

I have been hearing over the past months that Dan Love has a mental condition or is not very stable mentally. I would hope that this claim is not the reason that action concerning his employment has not been taken. The mental stability or instability that the illegal arrest, horrible intimidation and horrendous treatment that Dr. James Redd received at the hands of the BLM, Dan Love and the other agents involved in his death never seemed to be a concern for them. It appears that this horrible mental anguish was one of their objectives. Not only does Dr. Redd's family deal with this anguish each day, but so does everyone else that knew and loved him, which is many many people. When considering what Dan Love has done to Dr. Redd and so many others it is unbelievable that he may still employed by the Government in some capacity and is still receiving a paycheck that is provided for him from the taxpayers of this country that he so brazenly oppresses.

An update on this last concern: Since the new report by the OIG's office concerning Dan Love.....The information was turned over to the US Attorney's office in Utah and just as I had predicted they declined to prosecute him with no explanation as to why or how they came to the conclusion to not prosecute him. See this article:

Synopsis of Dan Love's criminal activities laid out in OIG report

Synopsis of Dan Love's criminal activities laid out in OIG report

The subordinate told us he felt morally wrong about deleting the emails, but he did not discuss his feelings wit...

New report faults controversial BLM agent for mishandling evidence

New report faults controversial BLM agent for mishandling evidence

While Dan Love was in charge of Bureau of Land Management law enforcement for Utah, rare items known as moqui ma...

Report: BLM agent handed out confiscated Moqui marbles 'like candy'

Report: BLM agent handed out confiscated Moqui marbles 'like candy'

By Amy Joi O'Donoghue

The same Bureau of Land Management law enforcement agent who led the raid in the country's largest Native Am...

I have attached some documents, videos and photos concerning Operation Cerberus including Congressman Jason Chaffetz letter about Dan Love.

To read more about what happened in Operation Cerberus and its aftermath please click on these links:

Bundy Ranch Special Agent in Charge Dan Love Facing More Allegations of Misconduct that led to Suspension

Bundy Ranch Special Agent in Charge Dan Love Facing More Allegations of Mis...

Daniel P. Love doesn't just deserve to lose his job, he deserves to lose his liberty over his misconduct and...

The FBI sting that tore apart a small town

The FBI sting that tore apart a small town

For generations, the people of the Four Corners region have battled the federal government over the land and its...

If You Think the BLM and Daniel P. Love were Bad at Bundy Ranch, Look at what They did to this Man over Indian Artifacts - The Washington Standard

If You Think the BLM and Daniel P. Love were Bad at Bundy Ranch, Look at wh...

In March of 2016, I reported on the Bureau of Land Management and the leader of the BLM at Bundy Ranch, Daniel P...

BLM Agent Dan Love: A cruel and unusual history

BLM Agent Dan Love: A cruel and unusual history

In another instance, SA Dan Love was with another agent in the Provo, Utah, apartment of Jamaica Redd Lyman, alo...

Legacy of Kindness: James Redd, the man bullied to death by the BLM

Legacy of Kindness: James Redd, the man bullied to death by the BLM

"Dr. Redd's patients suffered as much direct personal loss as anyone. Many of them had medical histories that e...

Challenge coin Operation Cerberus Action front and back

Dan Love and Carlie Christensen

COUNT 2

On or about September 19, 2007, in the Central Division of the District of Utah,

JEANNE H. REDD,

defendant herein, did receive, conceal, and retain property belonging to an Indian tribal organization, with a value of more than $1,000 to wit: a hafted axe, knowing such property to have been embezzled, stolen, or converted, all in violation of 18 U.S.C. § 1163.

COUNT 3

On or about September 19, 2007, in the Central Division of the District of Utah,

JEANNE H. REDD,

defendant herein, did receive, conceal, and retain, property belonging to an Indian tribal organization, with a value of more than $1,000 to wit: a gourd necklace, knowing such property to have been embezzled, stolen, or converted, all in violation of 18 U.S.C. § 1163.

COUNT 4

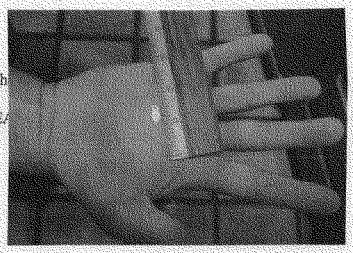
On or about March 27, 2008, in the Central Division of the District of Utah,

JEANNE H. REDD and JAMES D. REDD,

defendants herein, did receive, conceal, and retain property belonging to an Indian tribal organization, with a value of more than $1,000 to wit: an effigy bird pendant, knowing such property to have been embezzled, stolen, or converted, and did aid and abet therein, all in violation of 18 U.S.C. § 1163 and 2.

On or about March 27, 2008, in th

JE



Charging document

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
MAJORITY (202) 225-5074
MINORITY (202) 225-5051
http://oversight.house.gov

February 4, 2016

The Honorable Neil Kornze
Director
U.S. Bureau of Land Management
1849 C Street NW, Room 5665
Washington, D.C. 20240

Dear Director Kornze:

The Committee has become aware of increasing complaints about Bureau of Land Management activities in Nevada and Utah. State officials have asserted that BLM law enforcement agents use tactics that amount to "bullying, intimidation and . . . lack of integrity."[1] Those tactics have undermined safety in rural communities and strained local law enforcement budgets. In particular, BLM's officers allegedly harass citizens and tourists, interfere with the work of local law enforcement, operate outside of their jurisdictions, and refuse to cooperate with local officials.[2] The situation has led some local counties to declare the presence of BLM law enforcement in Utah and Nevada "a threat to the health, safety and welfare of their citizens."[3]

Last year, BLM law enforcement terminated long-standing contracts with county sheriffs in Utah. Under those agreements, BLM compensated local law enforcement officers for patrolling public lands, handling emergency and rescue operations, and providing crucial police oversight during busy periods.[4] This decision created a law enforcement vacuum in the area and caused serious financial problems for local governments. As one county official from Utah stated, "BLM's Chief of Law Enforcement cancelled the agreement leaving Garfield County with a significant budget shortfall and staff operating in an area without an agreement."[5]

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[1] *Threats, Intimidation and Bullying by Federal Land Managing Agencies, Part II. before the Subcomm. on Public Lands and Envt'l Regulation.*, 113th Cong. (2014) (Testimony of Leland F. Pollock, Commissioner, Garfield Cty, UT), *available at* http://naturalresources.house.gov/uploadedfiles/pollocktestimony7-24-14.pdf.
[2] *Id.*
[3] Brian Maffley, *BLM, Utah Counties Wrangle Over Law Enforcement*, THE SALT LAKE TRIB., June 19, 2014.
[4] *Id.*
[5] *Supra*, note 1.

The press reported on allegations that the contracts were cancelled as retribution for state legislation passed in 2013 to limit federal police powers on public lands.[6]

Moreover, during the summer of 2015, BLM law enforcement demanded a more than $1 million increase to the permit price for the annual *Burning Man* event in Nevada's Black Rock Desert to fund amenities for BLM agents.[7] The demands were unrelated to providing safety and security, and instead included having laundry facilities, 24-hour access to ice cream, air conditioning, and vanity mirrors.[8] BLM eventually withdrew its demands and granted the permit,[9] but only after a significant public outcry, including intervention by Senator Harry Reid (D-NV), who criticized these "outlandishly unnecessary facilities."[10]

In order to help the Committee better understand BLM's changing role, please provide the following documents and information:

1. All documents and communications referring or relating to BLM's decision to terminate or not renew contracts with Utah sheriffs;

2. All documents and communications referring or relating to the BLM permit for *Burning Man* in 2015, and demands made by BLM law enforcement relating to the event;

3. All communications between BLM law enforcement personnel and state and local officials in Utah and Nevada, including elected officials, county commissioners and state/local law enforcement, from January 2009 to the present; and

4. All communications between BLM law enforcement personnel referring or relating to state and local officials in Utah and Nevada, including elected officials, county commissioners and state/local law enforcement from January 2009 to the present.

Please provide the requested information as soon as possible, but no later than by 5:00 p.m. on February 18, 2016. An attachment to this letter provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the OGR Majority staff in room 2157 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

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[6] *Supra*, note 3.
[7] Jenny Kane, *RGJ Exclusive: BLM Wants $1 Million VIP Compound From Burning Man*, RENO GAZETTE JOURNAL, June 26, 2015.
[8] *Id.*
[9] Assoc. Press, *Burning Man Gets Black Rock Site Permit, BLM Scraps 'Lavish' Request*, BILLBOARD, Aug. 10, 2015.
[10] Jenny Kane, *Reid to BLM: You want flush toilets at Burning Man? Go to Gerlach*, RENO GAZETTE-JOURNAL, June 29, 2015.

The Honorable Neil Kornze
January 29, 2016
Page 3

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

Please contact Bill McGrath of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,

Jason Chaffetz
Chairman

Cynthia M. Lummis
Chairman
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member
Subcommittee on the Interior

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States
House of Representatives
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
MAJORITY (202) 225-5074
MINORITY (202) 225-5051
http://oversight.house.gov

February 14, 2017

Ms. Mary L. Kendall
Deputy Inspector General
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Ms. Kendall:

We received the unredacted report from your office titled "Investigative Report of Ethical Violations and Misconduct by Bureau of Land Management Officials" dated January 30, 2017.[1] I understand your office initiated this investigation in October of 2015 after receiving numerous complaints concerning Bureau of Land Management (BLM) employee Daniel Paul Love. The report documents numerous instances of troubling behavior exhibited by Love.[2]

One such instance involved the intentional withholding of documents responsive to a congressional inquiry.[3] Your report documents that a witness told your investigators that after receiving a congressional request for documents, the witness heard Dan Love "say to [another BLM employee] that [said BLM employee] needed to make sure that he scrubbed the emails before he sent them, you know, flagging anything that looked inappropriate so that [Dan Love] could remove them if needed."[4] In another part of the report, a witness testifies about how a BLM employee accessed and "deleted hundreds of documents" from a shared network.[5] The deleted documents were "team documents" which served as the "historical record or administrative record" for a BLM authorized event.[6] The witness stated the deleted documents were subject to the Federal Records Act, and were required, under the law not to be destroyed.[7] If substantiated, these attempts to conceal documents and destroy federal records responsive to a congressional inquiry are unlawful, as it is a federal crime to obstruct a congressional investigation or falsify, conceal or cover up a material fact in one.[8]

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[1] U.S. Department of Interior Office of Inspector General, OI-PI-15-0768-I, Ethical Violations and Misconduct by Bureau of Land Management Officials (2017).
[2] *Id.* at attachments 18 and 48.
[3] *Id.* at attachment 18.
[4] *Id.* at attachment 48.
[5] *Id.* at attachment 18.
[6] *Id.*
[7] *Id.*
[8] 18 U.S.C. § 1505 states, in relevant part:

The timing of the deletion of federal records raises questions. In your report, a witness notes a BLM employee "deleted hundreds of documents" on February 3, 2016, only to receive a congressional request for those same documents the very next day.[9] The witness states that "it just seemed odd to [her] that on February 3rd a lot of documents were removed or deleted from the Google drive, and then the next day [BLM is] hit with th[e] congressional" inquiry.[10] It also raises questions that former BLM Director Neil Kornze was provided, as a courtesy, advance notice of the congressional document request prior to February 3rd. We must find out which BLM employees were aware of an impending congressional inquiry when they set about deleting potentially responsive federal records.

Your report documents that Love allegedly attempted to influence the outcome of your investigation by coaching a witness in advance of an interview with your investigators.[11] In your investigative report, you state a specific occasion when "Dan Love called [a BLM employee] and…essentially gave [said BLM employee] talking points for any questions that may come up during his interview" with your office.[12] The report states Love provided that same BLM employee with "rationalizations," leading the employee to believe Love was essentially telling them what to say in the interview.[13] This allegation is problematic as it occurred after you had already initiated your investigation into Love's behavior.

As a federal law enforcement officer, Love's actions have the potential to not only taint your investigation, but to seriously undermine the trust in BLM's law enforcement office and

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> Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States, or the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House or any joint committee of the Congress—
>
> Shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both.

Similarly, 18 U.S.C. § 1001 states, in relevant part:

> (a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—
>
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined under this title [or] imprisoned not more than 5 years . . . .

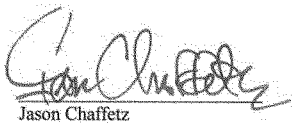
[9] *Id.* at attachment 18.
[10] *Id.*
[11] *Id.* at attachment 18.
[12] *Id.*
[13] *Id.*

thwart congressional oversight of the Bureau. As such, I request that you investigate the specific allegations raised in your interviews of destruction of federal records, witness tampering, and obstruction of a congressional investigation.

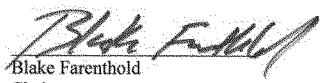
The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

Please have your staff contact Chris Esparza of Chairman Chaffetz' staff at (202) 225-5074 with any questions about this request. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz
Chairman



Blake Farenthold
Chairman
Subcommittee on the Interior,
Energy, and Environment

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Stacey E. Plaskett, Ranking Minority Member
Subcommittee on the Interior, Energy, and Environment

From: jay redd [mailto:jayredd8@yahoo.com]
Sent: Wednesday, May 23, 2018 11:08 AM
To: fortherecord (Energy)
Subject: Bullet point summary of what the BLM did to Dr. James Redd over a bead

To Whom It May Concern:

We have been asked to submit written testimony to be included in the official record of the U.S. Senate Committee on Natural Resources Hearing, held on 5-9-18.

Thank you for your time and consideration.

The family of Dr. James Redd:

Jeanne Redd (wife of Dr. James Redd)
Jericca Redd (daughter)
Jay Redd (son)
Javalan Redd (son)
Jamaica Lyman (daughter)
Jasmine Stephens (daughter)

This is a short summary of what happened to Dr. James Redd at the hands of the BLM and Dan Love.

• Dan Love was the Special Agent in charge of Operation Cerberus Action (the artifact raid in Blanding Utah June 10, 2009). He was also the Special Agent in charge of the Bundy Ranch Standoff April 2014.

• The government hired a secret informant (Ted Gardiner) to set up and entrap Dr. James Redd, his wife Jeanne and others for trafficking in artifacts. The government and Ted Gardiner knew Dr. James Redd and his wife Jeanne were not traffickers but it appears that they were determined to make them look like they were.

• According to the head FBI agent in Utah, Tim Furhman, this trafficking was a Black market "multimillion dollar industry." (see Salt Lake Tribune article by Patty Henetz titled "The Source: the inside story of the key player in Fed's Indian artifacts case").

• In the article from KSL titled "FBI boss says agency did well in artifacts bust" by Robert Gehrke June 7, 2010 it reads: "FBI Director Robert Mueller said Monday he is satisfied law enforcement acted appropriately when it broke up a black market ring selling American Indian artifacts last year." He continues, "There have been a number of pleas to date from everything I've seen we acted very appropriately," Mueller said during a routine visit to the FBI's Salt Lake City office."

• There was no black market ring connected with Dr. James Redd, Jeanne Redd or anyone else in Blanding. There was a phone call in December 2015 from an agent that was part of the raids. He said, among many other things, that the Redds were not part of a "black market ring" in artifact trafficking and that the whole operation did not tap into any "black market" ring at all. It was all made up by Ted Gardiner and others in order to get this bogus operation funded.

• In the article previously mentioned by Patty Henetz, we also read: "The night of June 9, a tribal elder from the Southwestern pueblo blessed more than 100 U.S. Bureau of Land management law enforcement officers and archaeologists who the next day would mount a dawn raid on Blanding, Moab and Monticello residents indicted for looting graves and trading in relics taken from tribal, BLM and Forest Service land." I wonder how much tax payers money was spent on paying this "tribal elder" to bless these BLM / FBI agents for their raids the next day. As you will read below Dr. Redd was not involved in any grave robbing or looting activities or in trading, buying or selling any artifacts. (see Undercover FBI video/audio of Dr. Redd).

• Dr. James Redd was a family practice physician for over 30 years in Blanding, Utah and served the Native American people and all others he could help.

• He is the father of 5 children and grandfather to 10 grandchildren. They will never see him again in this life.

• Dan Love and the feds sent an undercover informant (Ted Gardiner, previous artifact dealer for 11 years, drug addict and alcoholic) to Dr. Redd's house, and some other homes, to try and entrap them in Native American artifact dealing. He wore a secret audio/video camera.

• After a two and half year undercover investigation, the feds were only able to charge Dr. Redd with one bogus "felony" count of possessing an artifact. Jeanne was charged with 7 counts that were also all purposely inflated in value but that is another story.

• Dr. Redd's only charge reads: Count 4: On or about March 27, 2008, in the Central Division of the District of Utah, JEANNE H. REDD and **JAMES D. REDD**, defendants herin, did receive, conceal, and retain property belonging to an Indian tribal organization, **with a value of more than $1,000** to wit: an **effigy bird pendant**, knowing such property to have been embezzled, stolen, or converted, and did aid and abet therin, all in violation of 18 U.S.C. 1163 and 2.

• The artifact or "effigy bird pendant" (as the feds like to call it) was a tiny little bead, which is less than half the size of a dime (see attached photo of the "effigy bird pendant"). Dr. Redd picked it up off the ground and brought it home. He did not try to sell it or trade it or any artifact ever to Ted Gardiner or anyone else, he just showed it to the informant. (see Undercover FBI video)

• Less than a week after Dr. Redd's untimely death, the U.S. Attorney's Office gave a press release In it Attorney for Utah Brett Tolman is quoted as saying, "None of the charges in the indictments is for mere possession of a protected artifact. The charges in the indictment are for trafficking in archaeological artifacts, which includes the sale, purchase or exchange of protected artifacts." This is untrue. Dr. Redd never sold, purchased or exchanged any artifact. At the time this press release came out there were a lot of upset people about the untimely death of Dr. Redd. It appears in order to try and calm everyone down the US Attorney's Office wanted everyone to think that Dr. Redd was a trafficker in illegal artifacts which was untrue. (see undercover FBI videos of Dr. Redd also see attached Press Release)

• The bead or "effigy bird pendant" is worth $75 according to expert appraiser Dace Hyatt. (see attached Dace Hyatt affidavit from the wrongful death lawsuit by the estate of James Redd vs. Daniel P. Love)

• They lied about the value of the tiny little bead and said it was worth over $1,000 in order to charge my Dr. Redd with a felony. The felony threshold for an artifact taken from reservation land is $1,000. Therefore if the artifact in question has a value of

over $1,000 it is a felony, but if the value is less than $1,000, it is a misdemeanor. A misdemeanor charge on Dr. Redd would not do.

• A misdemeanor would not take away Dr. Redd's medical license and destroy his life, so they inflated the value by over 1,250% in order to exceed the felony threshold.

• The time the little bead is mentioned on the undercover video is a total of one minute and twenty two seconds. Dr. Redd actually talks for about 20 seconds.

• Dan Love and the feds raided Dr. Redd's house on June 10, 2009. Dan Love boasted to Dr. Redd's daughter Jericca that he had 80 agents at Dr. Redd's house at one time and throughout the day he said there were a total of 140 agents that visited the house. They searched Dr. Redd's house for 11 1/2 hours. The other defendants in the case that were arrested that day had at the most 10-12 agents at their houses.

• It appears that no other houses were searched for more than a few hours and none of the defendants said they were interrogated for more than around half an hour yet as you will read Dr. Redd was interrogated in handcuffs for about 3 1/2 hours.

• As the feds entered the front door and handcuffed Jeanne Redd (Dr. Redd's wife) they asked over and over again, "where's the white bird? Where's the white bird?" Jeanne was in a sense relieved because she knew they did not have a "white bird" and she felt they had the wrong house. She did not expect that this many armed agents would storm the house because they wanted the tiny little bead or "effigy bird pendant" as the feds like to call it.

• As the feds, with their firearms, mulled around 5'3" 110 lb. Jeanne Redd in handcuffs one of the agents kept repeating to her, "do you know how much trouble you are in? Your life is over as you know it. This is the worst day of your life. This is like a death in your family." Another agent said to her three times, "are you suicidal?"

• Dr. Redd arrived back at his house at 6:45 am the morning of June 10, 2009. As he pulled up to his house that morning he would have seen swarms of federal agents around his home.

• One of the FBI agents drew his gun, pointed it at Dr. Redd, ripped him out of his jeep, handcuffed him and sat him down in the garage with the doors shut to begin their 3 1/2 hour interrogation concerning the minuscule little bead.

• Dan Love told Dr. Redd's daughter Jerrica that he handpicked the agents that went to Dr. Redd's house.

• In the garage the federal agents, both BLM and FBI, called him a liar over and over, asked him what shovel he liked to dig bodies with, and that he would never practice medicine again. Dr. Redd never dug any bodies.

• Dr. Redd had to go to the bathroom, as you can imagine, so at least two agents marched him down the stairs to the bathroom. One agent stood 6 inches from his right knee and another agent stood 6 inches from his left knee as he used the bathroom. When he was done they would not remove his handcuffs for him to even clean himself. They then stuffed him in a paddy wagon and drove him off to the BLM office in Monticello where they shackled him to others arrested and drove them to Moab to stand before the federal judge to hear their charges and enter a plea. Dr. Redd"s plea was not guilty.

• According to Dan Love he sent 7 snipers on to the roof of Dr. Redd's house the day of the raid. He said they were waiting for Dr. Redd's son Javalan to drive down to the house. Dan Love said they had a description of Jav's car and knew what he looked

like. According to Dan Love the reason they did this was because Jav called the house when the feds were there and said "don't touch my animals, I'm coming down to get them. Be ready."

• Dan Love said they (the feds) took this as a threat to their lives and therefore were waiting for him. The next day Mr. Shumway, from Blanding, went down to the house and said he was watching the Redd house with binoculars most of the day. He said he saw a number of people on Dr. Redd's roof resting next to the chimneys and other things on the roof for hours and hours, not moving. At the time it was unknown why they would be on the roof. Later Dan Love clarified that he sent them on the roof to wait for Jav.

• Dan Love was at Dr. Redd's house the whole morning until they took Dr. Redd away in the paddy wagon. There were many other people arrested that day but Dan Love was at the Redd house and no other. Jericca Redd heard Dan Love on the phone throughout the morning telling the other agents to "come on down to the Redd's house."

• That night, Dr. Redd left his family a recorded message about 40 minutes long describing how he loved his family and speaks to each family member individually. He also speaks in length about his love and testimony of the Restored Gospel of Jesus Christ and the importance of keeping the commandments. **Among other things he mentions the government and that with him gone "there will be one less charge to contend with".**The one charge Dr. Redd is talking about is the false felony charge for the tiny little bead. Approximately 24 hours after BLM agent Dan Love and the feds raided Dr. Redd's home he asphyxiated himself in his jeep. Dr. James Redd is gone because of a false felony charge that the feds knowingly falsified.

• Dan Love and the feds are 100% responsible for Dr. Redd's death because of the lie they conjured up about the bogus felony charge concerning the tiny bead and how they treated him and threatened him that day in executing the arrest.

• At the Senate Judiciary Committee Meeting On June 17, 2009 (the day of Dr. James Redd's funeral), Senator Orrin Hatch questioned Attorney General Eric Holder about the artifact raids and focused exclusively on the over-the-top treatment and heavy handedness of BLM and FBI agents in Dr. James Redd's arrest and suicide. At that time Senator Hatch had no idea the only charge on Dr. Redd was for a tiny little bead that he only possessed and which should have never been a felony charge. (see attached the written transcript and video of the conversation and meeting).

• A few months after Dr. Redd's death, in a meeting at the Old Timer Restaurant in Blanding, Utah, Dan Love and another BLM agent met with Jericca Redd (Dr. Redd's daughter) to discuss an obscure email of Jeanne Redd's which was never actually discussed. During this meeting Dan Love asked Jericca how the family was doing. She politely tried to say not well. Dan Love proudly stated, **"I know why your mom hates me, I'm the reason your dad is gone."** He continued and said to not "give into the hate like the town of Blanding has done". At this same meeting Dan Love made many inappropriate comments to his fellow BLM agent about the teenage girls waitressing.

• About a month after Dr. Redd's death Dan Love, Brent Range and an FBI agent were back at the Redd home. While there Dan noticed a picture of the Prophet Joseph Smith on the kitchen table and told Jeanne and Jericca, "it's good you have his picture there, keep praying to him." He was referring to Joseph Smith. During this meeting, Dan received a phone call and after hanging up made the comment to Jericca that he had just spoken to the "secret informant" Ted Gardiner and complained that Ted

continues to ask for more money. (Dan Love and Ted Gardiner, two of the main people responsible for the untimely death of Dr. Redd are discussing the exchange of money for their actions against Dr. Redd resulting in his death and then letting Dr. Redd's daughter know about it) As they were leaving, while standing in the garage, Dan Love gave Dr. Redd's 3 year old grandson Sebastian a child's BLM badge and said he could call him "Uncle Dan". Sebastian idolized his Poppy and the guy responsible for his death is telling him he can call him "Uncle Dan".

• Dan Love and Brent Range were at Jamaica Redd Lyman's (Dr. Redd's daughter) apartment in Provo, Utah talking to Jeanne Redd, and her three daughters. Jericca asked Dan Love why he thought Dr. Redd did what he did. **Dan Love's response was, "I think he took one for the team"**. Dan Love also told each of them what he had learned from reading all of Dr. Redd's private journals and explained what he had learned from it. He detailed many of the private thoughts and concerns Dr. Redd had for each of his children and his wife. He let them know his opinion about the so called poor penmanship of Dr. Redd. Little did he know or probably understand that Dr. Redd used shorthand and medical abbreviations in much of his writing. At this same meeting Dan Love boasted that he did not need to follow the posted speed limit because due to his status as a federal agent these laws did not apply to him.

• Months before the raid occurred, two small bags of nominally-priced artifacts were found in Daniel P. Love's vehicle 8 months after they were acquired by the informant Ted Gardiner. They were from Jeanne Redd. Why would he only have artifacts from Jeanne Redd in his car, for 8 months and no artifacts from other defendants?

• During a two day discussion with Dan Love and others at the BLM office in Salt Lake City, Jericca noticed maps and photos of the artifact defendants on the walls. As she sat down she noticed another map with a photo on the floor that had appeared to have been pulled off of the wall. She saw that the picture was of her father Dr. Redd and asked Dan Love why it was there on the floor. He shrugged his shoulders and said yeah we need to get rid of that, yet it was there the next day. At the end of the emotional two day meeting for Jeanne and Jericca, Dan Love and Brent Range proceeded to throw tennis balls at each other while everyone was still in the room including Jeanne Redd, Jericca and their attorney. One of the tennis balls actually hit their attorney.

• Nine months after Dr. Redd was gone, the informant Ted Gardiner said to his friend that he "felt guilty for killing two people". One of those was Dr. Redd, the other one was a guy that shot himself (he was also indicted). A few days after Ted said this he had a shootout with local police then put a bullet in his head. (see the article "Report: Artifacts source blames self for suicides" by Paul Foy April 1, 2010 on KSL.com website also see Unified Police Report on Ted Gardiner's suicide). Why would an undercover informant who was supposedly doing his job properly to rid the U.S. of evil underground criminals, feel guilty for the actions of those he caught in secret, illegal, underground activity? Could it be because he made friends with Dr. Redd who gave him medical advice on his ankle injury, encouraged him a few times to quit smoking to improve his health, invited him to the LDS church function that night.....could it also be that Ted and the feds knew there was no black market ring and that Dr. Redd was not a dealer, trafficker or even a collector and never had been? (see FBI undercover video concerning these facts)....Ted knew he had a major part in Dr. Redd's death because he was falsely charged a felony for a tiny little bead he merely picked up off the ground and after nine months of torment it appears Ted could not take it anymore and therefore put a bullet in his head. (See attachment: Police Report containing quote of friend that Ted told he felt guilty for killing two people)

• So the result of the two and a half year undercover operation was three dead human beings, some probation for the defendants and the government was able to take whatever artifacts they desired whether legally obtained or not. From the Redd home, among other things, they took 80 year old Pima baskets just because they wanted to. They also took a very nice collection of artifacts from Central America that had nothing to do with the raid. They destroyed a 10 year old handmade bow and arrow because they said it had bugs on it. They told Jeanne they did her a favor. The bow and arrow was a decoration piece hanging in Dr. Redd's living room.

• Dan Love was given by the BLM "special agent of the year 2009" award. In the words from the BLM "year end review" journal it reads, "Agent Love was selected for the award because of his outstanding work conducting investigations in the protection of renewable and non-renewable resources.....The investigation could not have been completed without the unparalleled dedication of Agent Love.....**Special Agent Love's exemplary effort on this investigation has brought great credit upon him and the BLM**." Sometime after the artifact raid Dan Love was promoted by the BLM and as of September 5, 2014 he was head of BLM law enforcement in Utah and Nevada. One of the more recent operations he was head of was the Bundy Ranch incident at Bunkerville, Nevada in April 2014.

• A comment from Dan Love in a Deseret News article shows his character in trying to undermine the tragic events that he perpetrated on Dr. Redd. Part of the article reads: "His widow, Jeanne, said in a wrongful death suit filed in May, that FBI and BLM agents' "excessive, overreaching and abusive treatment" pushed her husband to suicide. She claims that agents "manhandled" her husband and interrogated him for hours in the garage. But Love said it didn't appear that Dr. Redd had any animosity or anger toward authorities as a result of the investigation or the way he was treated that day. In fact, he said Redd shook his hand and thanked him for being treated with respect and dignity." This article and statement occurred after the wrongful death lawsuit was filed against Dan Love by the Estate of James Redd. Interesting how Dan Love never made this false statement about Dr. Redd and his thankfulness for the "respectful and dignified" treatment he received from the federal agents in the raid until after a lawsuit was filed against him specifically.

• Dan Love told Dr. Redd's daughter Jericca that he had 80 agents at the Redd's house at one time and that there were a total of 140 agents that were there throughout the day. These are some of the Government's responses as to the reasons they give for the need of the excessive number of agents sent to Dr. Redd's home the day of the raid:

1. They say they needed the excessive number of agents because of the number of felony charges they had on Dr. Redd's wife Jeanne. Jeanne had 7 felonies and Dr. Redd had one (false) felony. Jeanne is 5'3" 110 lbs.

   Another pair of defendants that were arrested the same day in Blanding were charged with 29 felony counts and his wife was charged with 4 felonies yet the feds sent a total of 10-12 agents to their house that day.

2. They also say they needed the excessive number of agents because of the number of artifacts in the Redd home. The reality is that all the artifacts could have been packed into the back seat and trunk of a regular sized car. For show the feds claimed they needed two moving trucks to move all the artifacts. They would pack a little artifact into a large box to take up excessive space in the moving truck.

Another defendant the feds went to that day lived in Colorado. This defendant happened to be fishing at a local pond near his house the morning of the raid and for some reason the feds didn't want to wait for him to return or go get him at the local fishing pond. It turns out that they actually never even arrested him. He has been a dealer in artifacts for twenty to thirty years and he has at least 10 times the amount of artifacts that Jeanne Redd had which Jeanne actually discloses in those exact words to the informant Ted Gardiner on the undercover FBI videos. The feds sent 8-10 agents to his house that day despite the excessive amount of artifacts at his house. The agents were at his house for about an hour or so, not the 11 ½ hours spent at Dr. Redd's house.

Do you think if Dr. Redd had been fishing at a local pond that morning that the feds would have just not worried about arresting him and just let him keep fishing? I think not. And remember Dr. Redd was not a digger, dealer or collector. He just happened to show the informant the tiny little bead one day.

3. They also say they needed the excessive amount of agents that day because Dr. Redd was known to hunt animals. Many of the other defendants arrested that day were also animal hunters yet none of them had more that 10-12 agents at their houses that day.

• In June 2010, Dan Love and BLM agent Dan Barnes presented at a meeting of the Dixie Archaeology Society in St. George, Utah. Despite the fact that prosecutions of numerous defendants in the case were still pending BLM agents Dan Love and Dan Barnes gave a formal presentation on "Operation Cerberus." In the middle of the presentation, Detective Love postulated that "stealing artifacts" was a way of life for the people involved, and was a family affair in one case, showing a picture of the Redd family outdoors (confiscated during the ransacking of the family home) claiming they were out "pot hunting." Not only is this behavior contrary to the professional standards of law enforcement but a disregard for the Redd family's privacy, the untruth that was presented, and the fundamental unchecked power of Dan Love to do whatever he pleases. Less than one hour after Jay Redd found this information on the internet (the information was on a blog) the blog was changed. The names of Dan Love and Dan Barnes were removed and the information about Dan Love showing the photos of the Redd family to the group was also removed. Why would the names of Dan Love and Dan Barnes need to be removed? Why would it be removed so abruptly after Jay found it? It is interesting what information was removed. (see attachment to view the blog before it was changed and what it looked like after it was changed)

• On October 21, 2010 there was an unwarranted and unannounced visit by BLM agent Dan Barnes to Dr. James Redd's son Jay Redd's dental office. About a half hour after the visit this email was sent by Dan Love to Jeanne Redd's attorney. The first part mentions that BLM agent Dan Barnes went to Jay Redd's office to discuss statements that were both past and continuing that he has made to members of the community. Dan Love says that they tried to contact Jay at home but the attempt had failed. It says that according to Dan Barnes, Jay Redd was visibly upset and that his mother's attorney may get a call from me. He continues and says that Mr. Redd is very close to the line in some of his statements and comments about investigators assigned to the investigation involving members of his family. It continues and implies that SA Barnes was just making contact to visibly reinforce that statements and or threats made by Jay Redd could and in some cases would warrant investigative activity against him. He finishes the email by implying that the matter is deemed closed, unless Jay Redd continues with his statements and ongoing pattern of behavior. He

concludes by saying, if you have any questions please don't hesitate to call me. This is essentially what the email says. Copies of the original email exist.

It is interesting to note that BLM agent Dan Barnes was one of the agents handpicked by Dan Love to interrogate Dr. Redd in his garage for about four hours the day of the raid. He is also the other defendant sued for the wrongful death of Dr. Redd by the estate of James Redd. The statements that were made that he is referring to were that Jay felt that those agents involved in his dad's death will have to pay for what they have done in the next life.

• This unwarranted visit and email was just another intimidation tactic on the Dr. Redd family that Dan Love is so prone to do.

• Jay Redd contacted Phil Lowe, CEO of the San Juan Health Service District, concerning the loss of Dr. Redd and the impact felt on the Monticello, Utah Hospital. He wrote Jay this letter on August 2, 2011 which reads:

> Dear Jay,
>
> Just wanted to write a short note to tell you and your family how much we miss your father known to us as Dr. Redd. He has been sorely missed on a personal level as well as on a professional level. Our patients miss him dearly. We have placed a large photograph of Dr. Redd in our front hospital lobby as a memorial to our friend.
>
> His medical practice contributed significantly to the success and viability of San Juan Hospital in Monticello. In fact, I have included some financials from our health district audited financial statements to help you see the negative impact his loss had on the health care in this area. The health district incurred some large decreases in revenue and losses from operations comparing 2009 to 2010. When he left us in the summer of 2009, the losses we incurred from hospital and clinic operations were very hurtful to our financial viability. He was definitely a strong advocate for the health district and contributed significantly to its success.
>
> We thought you would be interested in the impact his life and his death have had on the health care in this area. Hope your family are all doing as well as can be expected.
>
> Sincerely,
>
> Phil Lowe, CEO San Juan Health Service District

• Please see attached page of "statements of revenues, expenses, and changes in net assets for the years ended December 31, 2010 and 2009". You will see that there was about a $1.5 million dollar loss the year after Dr. Redd was gone.

• In the evening of the day of the raid (he died early the next morning) Dr. Redd went to the nursing home to check on all his patients there even though he knew he would not be alive in a few hours he still needed to make sure he did his rounds at the nursing home. Also late that evening when he recorded his last message to his family, one of the last things he says is that he apologizes to his office manager because he didn't get all the dictation done on his patients he had seen the day before. So just before he leaves this mortal world he is concerned and sorry he doesn't get the dictation done for all his patients. That shows the character of a man that was dedicated to his job in serving the people of San Juan County.

• To think that such an integral part of the community could be singled out and destroyed by Dan Love, the BLM and the others involved because of a tiny little bead is beyond disgusting. It seems like those responsible for Dr. Redd's untimely death just continue on with their lives like nothing out of the ordinary happened while those who knew him suffer from their actions daily. It's as if those involved in the death of Dr. Redd believe that the "ends justify the means" and that those who died were just collateral damage. The community of Blanding, Utah will never be the same. This kind of treatment to one of its most important and beloved doctors and members of the LDS church and community will be missed for generations to come.

• Dr. James Redd is a man of great integrity and someone who loved America. These three letters give a great insight into what kind of a man Dr. James Redd is.

The first letter was written by Dr. Paul Reay, a family practice physician who worked along side Dr. Redd in San Juan County, Utah. They were not only colleagues but friends as well. After the untimely death of Dr. James Redd, Dr. Reay wrote a letter to Jay Redd, Dr. James Redd's son, detailing the devastating impact the sudden loss his father has had on the medical care for the rural communities in the area.

The next letter describes Dr. Redd's kindness in helping those he came in contact with. The letter was sent via Facebook to one of Dr. Redd's daughters from Afghanistan. The author of the letter was a soldier serving our country there. No one in Dr. Redd's family knew who the author of the letter was except for one of his daughters. Dr. Redd had never mentioned to any of his family what he had done for this high school wrestler. Dr. Redd did not do it to receive praise or recognition from others, he did it out of the kindness of his heart. Who knows how many other people he touched in a similar manner. The Redd family has received over 60 letters from those whose lives have been touched in one way or another by Dr. James Redd.

The third letter was written by Dr. James Redd to President Bush. It illustrates the love he had for America, the President and the government.

In Dr. Redd's last part of the audio message he left for his family he says, "Tell Debbie I'm sorry I didn't get everything dictated." He is referring to the dictation on the patients he saw the day before Dan Love and the BLM/FBI raided his home and destroyed his life over a tiny bead. The night of the raid, which was Dr. Redd's final evening on Earth, he went up to the nursing home to check on his elderly patients one last time before he left this mortal life. He wanted to make sure they were taken care of and to see if there was anything he needed to do for them. When you compare and contrast the characteristics of Dr. Redd and Dan Love there seems to be a quite a difference. Work ethic and kindness are just two that are illustrated here. (See the OIG's report on the investigation into ethics violations, intimidation and coverup's by Dan Love).

Dear Dr. Jay Redd, July 29, 2011

I am pleased to be able to respond about the value and importance of your father, James Redd, MD; and the impact of his loss both upon me personally and upon the medical community and healthcare delivery system.

James Redd shared the responsibilities for medical care in our rural area where we are chronically short of physicians. He shared the large patient load with three or four other physicians, both in the clinics and in the emergency room. The most difficult

part of that contribution would be the "on call" hours attending to emergency room patients during the nights, on weekends and on holidays. Those hours are the hours that steal sleep and health from physicians. It is at times almost overwhelming and his loss added a 30% increase to labor and load of the remaining physicians in our system. Since his death, I have questioned and I believe the other physicians have also, whether we can continue in the demands that are placed upon us.

Dr. Redd's patients suffered as much direct personal loss as anyone. Many of them had medical histories that existed only in Dr. Redd's memory. His time with them stretched back so far that records had long been lost or destroyed, and he alone carried full knowledge of their past medical care and needs. Many of them were on medical regimens with which only he was familiar. Many had never seen another physician. He was especially favored by the Native Americans who saw him with fervent dedication, often at significant personal sacrifice (relinquishing completely financially subsidized care to see him).

The loss of James Redd to our hospital almost resulted in financial ruin. It was probably the single most devastating thing that could have happened to us just from a standpoint of financial loss. We only barely waded through the months following his death.

I've repeatedly called Dr. Redd, "larger than life", and part of that reputation and legend was the extraordinary and almost extra-human things that he accomplished as a physician. I was present on the night when he orchestrated the care of victims of a large bus accident in our area. Five patients at a time could overwhelm our small emergency room, but 10 times that many patients were processed and cared for under his direction all through the night. He not only coordinated the effort, and directed the other physicians, but cared for an equal share of the victims. I would have thought what he did to be impossible had I not seen it. He had skills that few other rural family practice physicians possess, and mind and memory so sharp that it seemed he never forgot or overlooked anything. Losing those capacities from among us might cost the lives of patients in the future.

In addition to everything else, Dr. Redd served as the Chief of the Medical Staff. He served on the Health Service District Board. He championed the political causes of the underserved and neglected in this area, and was loved by them. He was loved and will be missed by many of us.

Sincerely,

Paul R. Reay, DO Chief of Medical Staff, San Juan Hospital

June 2009

You probably don't know me and I don't know you but I knew your dad. I lived in Blanding a while ago and was in your grade. When I was in high school I lived down the road with a family that was less fortunate than others. I would walk home from school just about every day after wrestling practice. I never went to any of the wrestling matches or anything like that because I didn't have wrestling shoes. One day on the way home from practice a car stopped and picked me up. The man (your father) asked me where I was going and where I was coming from. I told him and he took me home. The next day the same thing happened and continued to happen at least three days out of the week. I informed him that he didn't need to pick me up everyday. He said that he was on his way home but I'm pretty sure he would come

looking for me. One day he asked me how wrestling was going, I said good. I didn't tell him that I didn't have shoes or any of the required gear because I couldn't afford them. I don't know how he found out but he did. About a week later I was sitting in school and got called to the office. I went to the office and was given a box with a note on top. I opened it and there were some brand new wrestling shoes and gym clothes. The note gave me some words of encouragement and told me good luck. The next time he picked me up I told him that I was very thankful for all the stuff but that there was no way I could repay him. He told me to do my best and to win some matches and that would be good enough. I mentioned that when I won state I would show him my medal. Shortly after that I was moved to another foster family. I started school and was not doing very well. The guidance lady at the school told me that I didn't really have any chance of graduating because of the credits I lacked from moving around. Wrestling season started and I started to pass my classes. I was pretty bad at wrestling but by my senior year I was winning a lot of my wrestling matches and was on track to graduate. I thought a lot about what your dad said to me and what he did for me. I didn't want to let him down. I wanted to thank him but I didn't know how to and was afraid so I just tried harder when it came to wrestling and school. It is hard for me to put into words how that act of kindness has affected my life but it had a major impact. Your father didn't know who I was but went out of his way to help me. He showed me kindness that I had never had before and it's helped me throughout my life. What I am trying to say is that your dad helped me more than he will ever know. I only hope that someday I can do something to make up for what he did for me. I never won state but I took third in the state final my senior year. I wanted to call him or write him a letter to tell him but I was too scared and I was not sure how to do it. That little act of kindness that didn't even faze him has helped me throughout my life. The wrestling medals I won hang in my room. They are a constant reminder of a man that helped me more than he will ever know.

J. L.

Letter written by Dr. James Redd to President Bush on 3-23-03

Dear President Bush, 3-23-03

It has been a pleasure to observe you during your presidency. My family appreciates your efforts on our behalf - to maintain freedom now and for our children.

I'm amazed at the mountainous challenges you have faced and are surmounting at this time.

Your demeanor, words and actions have been notable in their timeliness.

Please continue the forthright decision making. Know that we pray for you, your associates and America daily.

Sincerely,

James D. Redd M.D.

P.S. Do you know any good places to hunt quail in Texas?

• People may wonder why Dan Love and the Feds would want to single out the Redds and destroy them.

• We believe this next story is the reason behind their vendetta against Dr. Redd and his wife Jeanne.

Bluff incident:

• At the end of 1995, Erv Guyman told Jeanne Redd that he had land in Cottonwood Canyon North of Bluff, Utah with some "mounds" or ruins on them. He told her that she was welcome to gather what artifacts she would want there either by digging or screening or whatever. On private land this is completely legal.

• On Saturday, January 6, 1996, the Redd family went to Erv Guyman's land, opened the gate, unloaded the four-wheelers and the hotdogs to cook for lunch. That morning the Redd's actually passed Erv himself as they were driving into his land, he waved and the Redds continued on.

The Redds started to look for arrowheads and did some screening of the dirt that had already been dug up. This site was not a cliff house but was a slightly raised area of dirt called a "mound". This mound had been dug over and over ever since the pioneers had settled the area in 1880.

• After the Redd family had been there for some time a police officer came to where they were. Officer Naranjo asked what they were doing and they answered, "we are screening." He said, "do you know who's land this is?" They replied, "yes, it is Erv Guyman's land." He said, "do you have permission to be here?" They said, "yes we do." The officer said, "alright, thank you." He then left.

• What the Redds did not know at the time was that about three months earlier a person named Mr. Perkowski, had observed three people in a full size green van digging on a Sunday afternoon on the same "mound". It turns out there was dispute about whether the site was on Utah School Trust Land or private land owned by Erv Guyman. BLM agent Jim Ragsdale was given the information and went to the site on November 2, 1995. He observed where some digging had been done and he also "saw what appeared to be human bones on the west side of the hole." This information was written in his field notes.

• The BLM then heard that Dr. James Redd had been seen at the site two months after the bones were seen and recorded by BLM agent Jim Ragsdale. After a few months, the State of Utah filed 3rd degree felony charges on Dr. James Redd and Jeanne Redd for desecration of a dead human body.

• Even though the BLM and State of Utah knew Dr. Redd and his wife Jeanne did not disinter a body, due to the bones already being present before the Redd's arrived at the site, they still wanted to pin it on them. He was a prominent physician and citizen in the area and had a nice house on a hill south of Blanding. They knew this story would make the papers.

• There was and still is dispute about who owns the tiny little piece of land and the history of its ownership.

• On the current BLM map at the time, it indicates that the small section of land the "mound" is on is private land.

• The small area in question has no fence or demarcation that it may be anything else other than private land. Erv Guyman thought it was his land. School Trust Lands require ranchers that graze their cattle on School trust lands must have a permit to do so. They never required it of the Guymans before and to this day they still do not

require a permit. Their cattle have been walking over this "mound" for years and years and continue to do so.

• In a letter written by the Utah State Archaeologist dated January 10, 1996 (4 days after Dr. Redd and his family were seen on the site) he says among other things, "I understand that Jim (Dr. Redd) stated they thought they were digging a site on private land, which is pretty close, just across the section line to the east. In any case, everyone close to the investigation expects that there will be some sort of pressure to forget about it because of the prominence of the alleged perpetrators. I think it is an appropriate opportunity to send a strong message that the Trust Lands Administration will not tolerate the willful and illegal destruction of the trust's archaeological assets. I recommend we take this case very seriously and support the sheriff in the criminal investigation, and that we commit whatever resources necessary to pursue the strongest civil action penalties possible."

• In this letter, it says that Dr. Redd stated that he thought they were on private land then later in the letter it states that they will not tolerate anyone that "willfully" and illegally destroys school trust land archaeological sites. It is obvious that Dr. Redd and his family thought they were on Erv Guyman's land and that Erv thought it was his land as well yet in this letter the Utah State archeologist doesn't care about that. He wants to prosecute to the fullest extent regardless of intent or knowledge.

• There is an email sent by this same archaeologist May 20, 1996 to the same people as the letter above saying just that day (May 20, 1996 over five months since the Redds were at the site) they ascertained that the land belongs to the public schools fund. It took them 5 months to come to the conclusion that the land actually belonged to the Public Schools Fund. Even though it took them 5 months to determine this, according to them, Dr. Redd did not take the proper precautions to find out if the land was actually private land even though the BLM map said it was private land and Erv Guyman said it was his.

• On July 22, 1996 Utah Special Assistant Attorney General sent a letter to Dr. and Mrs. Redd. In the letter it reads among other things, "On January 6, 1996, you were observed by private citizens and law enforcement personnel excavating an ancient Indian ruin site located on trust lands in the above-referenced location. the ruin in question has been designated in the National Register of Historic Places as site 42SA23040."

• The significance of this letter is that the site Dr. Redd was seen at was never designated in the National Register of Historic Places. That claim was a complete lie and the research backs it up. Also, the site is referred to as a numbered site 42SA23040. In order to have a number assigned to a site it must be a significant site, if the site is on private land the land owner must apply for a site number and it also takes time and must pass certain criteria to have a site number assigned. Through research it has been determined that this site number was assigned January 11, 1996, five days after Dr. Redd and his family were there.

• This was done in order to make it look as bad as possible for Dr. Redd and was done even though they knew it was untrue.

• There are those who say that this was a State of Utah issue, not a Federal issue but if you look at all the players involved many if not most of them were BLM. The archaeologist who assessed the site was BLM, all the investigators were BLM, the soil specialists were BLM.

• in short summary the case was in the court system for 7 years. The felony charges were first dismissed by Judge Anderson in San Juan County. The state then appealed it to the appellate court which upheld Judge Anderson's ruling. The state then claimed they had "new" evidence and refiled charges. They did not have new evidence and the case was then sent to the State Supreme Court of Utah, which was hopefully going to rule on the issue of refiling charges without new evidence (this is called a Brickey violation). The State Supreme Court did not rule on the Brickey issue but instead said the Redd's should have been bound over for trial on the original charges. The case went back to San Juan County and judge Mary Manly ruled that the state violated Brickey by refiling the charges without new evidence and dismissed the criminal charges on both Dr. James Redd and his wife Jeanne.

• After this ruling, those who were pushing all of this got the state to charge the Redds with trespassing and to go after them for $250,000 in damage to repair the site. They knew there were people digging at the site before the Redds were there, therefore they knew the Redds did not do the damage since they were screening the dirt that had already been dug up. Also at the time the Redds were there, they did not know who owned the little piece of land but that didn't matter, they still wanted to hold the Redds accountable for being on land that the trust lands did not even know they may have owned.

• Legislators had the law changed because of the Redd case to include bone fragments to be a violation if not reported properly.

• Forrest Cuch was the Director of Indian Affairs for Utah from 1997-2011. He was abruptly fired by Governor Herbert in 2011. He was very outspoken against the Redds during the Bluff case from 1996-2003. From an article in the Salt Lake Tribune on March 1, 1998 by Christopher Smith titled, "Burial ruling stuns Indians and Scientists". Forrest Cuch is quoted as saying, "There is clearly an attempt to interpret this law in a loose fashion and we would certainly recommend this decision be appealed to the highest level and the Redds prosecuted to the fullest extent."

• After seven years of dealing with this issue in the courts and in the media, Jeanne Redd agreed to a settlement with the Utah Trust Lands. She paid $10,000. This was in 2003 and many people thought it was over. Then in 2006 a secret informant knocks on the door of the Redd's home with a plan to entrap them if possible with artifacts.

• In a video clip on KSL news June 10, 2009, the day of the artifact raid in Blanding, Forrest Cuch, in speaking about the raids that day, says, "It also breaks us a big ring that has been operating for many years. It also includes Dr. Redd and his wife who were basically slapped on the wrist a couple of years ago. And a lot of us were not happy with that case but we think it is being redeemed now."

• The Bluff case for the Redds lasted from 1996-2003. The BLM was heavily involved in the attempted prosecution of the Redds at that time then in 2006, three years after the Bluff case ends there shows up at the Redds house, just out of the blue, the secret informant Ted Gardiner attempting to entrap Dr. James Redd and his wife Jeanne in purchasing, selling or trading artifacts.

• It appears that the BLM, Forrest Cuch and others were upset that the Redds were not punished for their false charges of desecrating a dead human body and then three years later Operation Cerberus began.

Their unwarranted actions and lies are the only reason Dr. James Redd is now in the cemetery.

• It is important for the truth to get out. Dr. Redd and the Redd family have nothing to hide.

• A quote by our great President George Washington is appropriate here. It is taken from a letter to Charles Mynn Thurston, Philadelphia, August 10, 1794 which reads, "Truth will ultimately prevail where pains is (are) taken to bring it to light."

• Below is transcribed word for word the undercover audio of all that was ever talked about concerning Dr. Redd's "effigy bird pendant".

This is what is said:

Jeanne is Dr. James Redd's wife, Jeanne Redd
Ted is the undercover informant Ted Gardiner
Jim is Dr. James Redd

Jeanne: Down in Arizona, down by baby rock, down by mounds down there....look what....Jim found that. (Jeanne shows Ted the little tiny bead my dad, Dr. Redd picked up off the ground)

Ted: Oh that's sweet.

Jeanne: It's got to be a bird....and we found those (talking about some small items in the tray including the little white bird and an arrowhead).....and that's the arrowhead I found.

Ted: That's a nice bull creek (a bull creek is a type of arrowhead).

Jeanne: It sure is a pretty red.

Ted: Good job.

Jeanne: It was fun but we were only gone about an hour.

Some time passes until Dr. Redd comes into the room

Dr. Redd: Hey what do you think? What do you think of that little dude there? Huh? Huh?

Ted: That is nice! (sarcastic)

Everyone: Laughter from everyone due to the tiny size and insignificance of the little bead when compared to the stuff Ted and the government brought to my parent's house.

Dr. Redd: He knows just the thing to say.

Ted: You are talking about the little white pendant, right?

Everyone: Laughter from everyone again.

Dr. Redd: Pretty good eh?

Ted: Yeah, and the bull creek's not bad either.

Everyone: More laughter.

Dr. Redd: Oh you would have to bring that up. I guess those Anasazi were not quite as bad as I thought they were. That's pretty tricky isn't it? So it's a stylized bird?

Ted: I think so.

Dr. Redd: Jeanne knew it right off.

Ted: Jim, where did you find this little white bird pendant?

Jeanne: Baby rock, Baby rock Arizona.

Dr. Redd: Yeah

Ted: OK

Jeanne: Have you been to baby rock?

Ted: It sounds familiar.

Dr. Redd: It's on the way to Kayenta, back behind Baby rocks.

Ted: Oh, OK. Yeah I know where it is.

Dr. Redd: There used to be a service station there but there's not.

Ted: OK.

Dr. Redd: Get up on those mesas.

And that is the end of the conversation concerning the "effigy bird pendant" that the feds said was worth over $1,000 in order to charge Dr. James Redd with a felony. If they were going to charge him with anything it should have been a misdemeanor but that just would not work for them, they had to charge him with a felony in order to take away his medical license and destroy him. With a misdemeanor Dr. Redd would have still been able to keep his medical license but there was no way the feds would allow that to happen.

• Dr. Redd did not try to sell or trade the "effigy bird pendant" to the informant Ted Gardiner or anyone else.

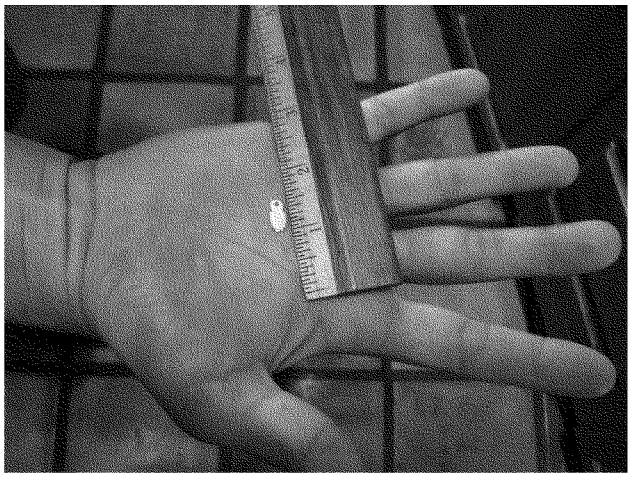
• After the secret video/audio tapes were reviewed concerning Dr. Redd, they could only come up with this incident (the "effigy bird pendant" incident) that they could possibly do anything with. They would have to inflate the value of the "effigy bird pendant" by over 1,250% saying falsely that the value of "bird" was over $1,000 in order to reach the felony threshold.

• Because of the Bluff case which involved Dr. Redd, the media and many of the public would consider him guilty automatically because of the previous bogus charge of desecrating a dead human body.

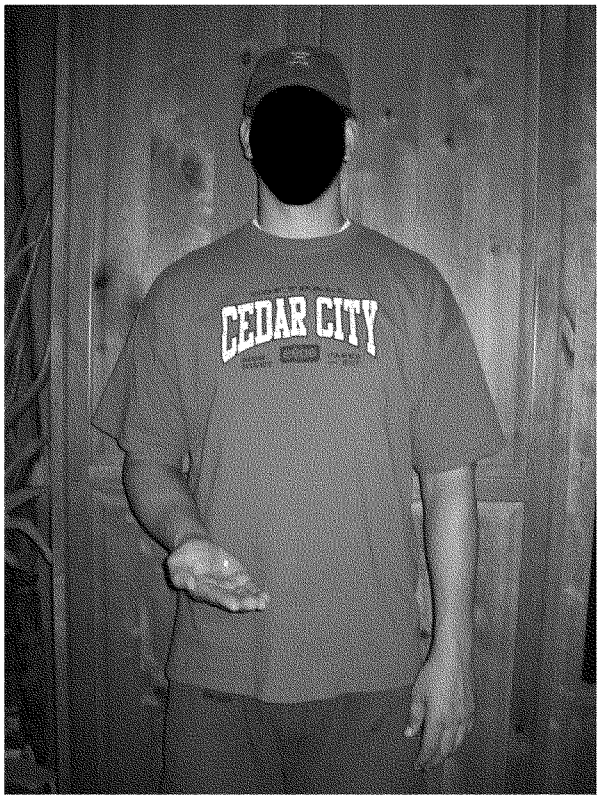
• The informant Ted Gardiner was an artifact dealer for over 10 years before he became a government undercover informant and therefore knew without a doubt that the tiny little bead (effigy bird pendant) was worth about $75. Please read the "Affidavit of Dace Hyatt" (which is included in the Biven's Action Lawsuit against Dan Love as Exhibit #8), he confirms everything about the informant Ted Gardiner.

• You will also see a photograph of the "effigy bird pendant" which is attached to this email. You may wonder how a photograph was taken of this all important item because you may assume that the federal agents that raided the house would take if for sure since they were yelling at Jeanne, "Where is the white bird?" It turns out that the feds did not even take the "effigy bird pendant" the day of the raid. It was in a tray in plain sight right under their noses yet they just left it there.

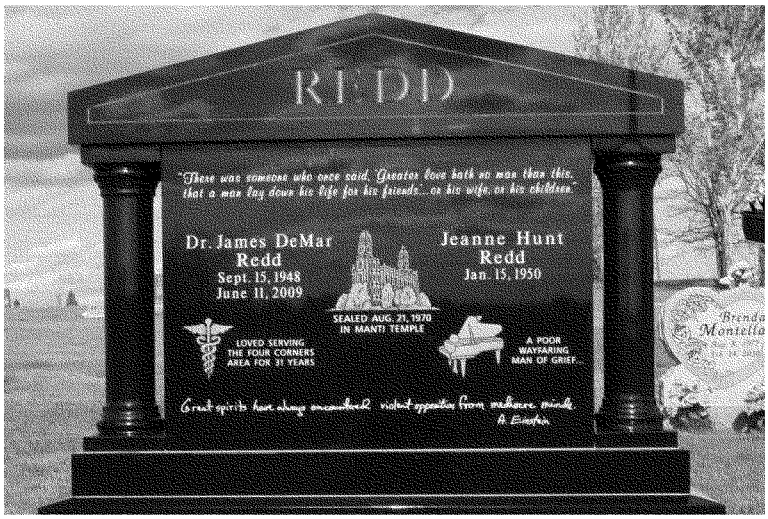
• The photograph of it that is attached to this email was taken about a week after the raid. The feds went back to the Redd's house on July 7, 2009 to take all the artifacts and that is when the "effigy bird pendant' was taken.



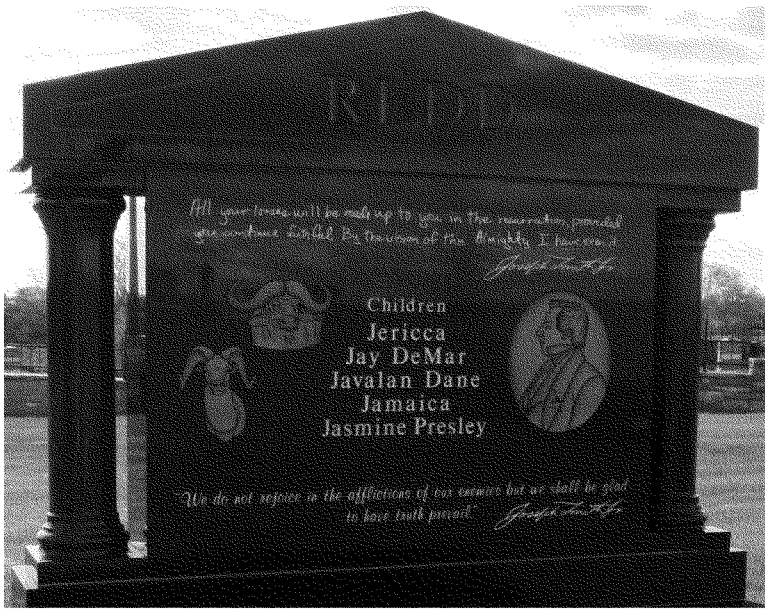
Effigy bird pendant picked up by Dr James Redd



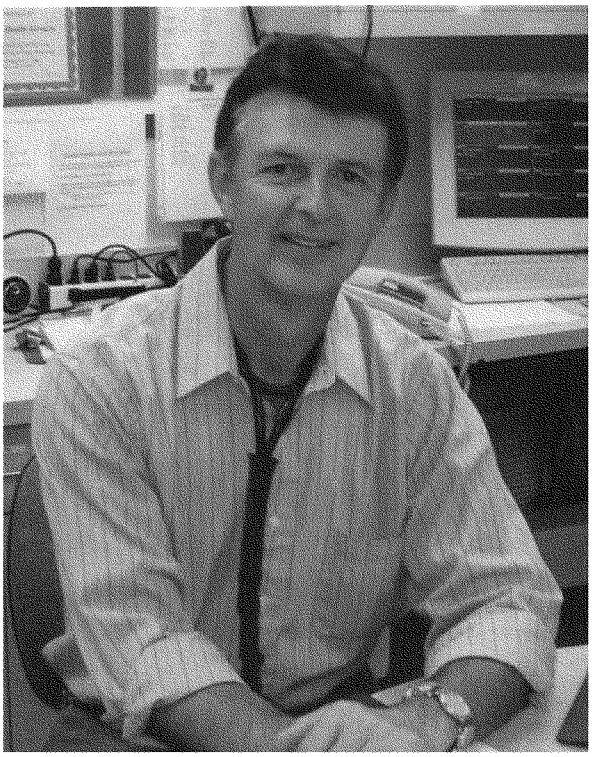
Jav holding Dr Redd's effigy bird pendant (blacked out face)



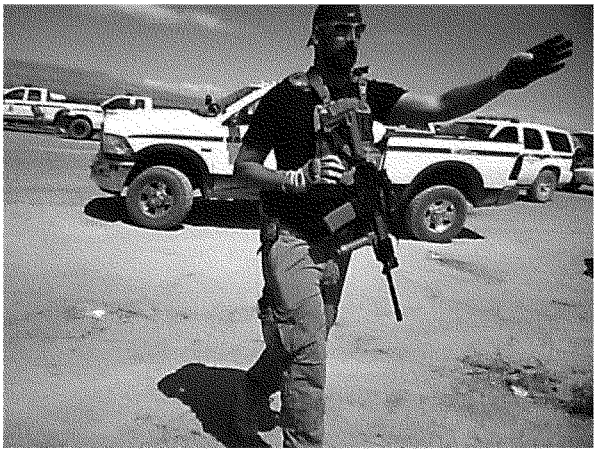
Dr Redd front of headstone



Dr Redd back of headstone



Dr Redd at the hospital working



Dan Love at Bundy ranch with automatic rifle

Jay and Javalan Redd with Dr James Redd casket

Subject: press release june 16, 2009

From: jay redd (jayredd8@yahoo.com)

To: jayredd8@yahoo.com;

Date: Monday, December 19, 2011 2:30 PM

U.S. Department of Justice
Brett L. Tolman
United States Attorney
District of Utah

FOR IMMEDIATE RELEASE CONTACT: MELODIE RYDALCH
June 16, 2009 801-325-3206
801-243-6475 (CELL)

PRESS RELEASE

PROSECUTORS, INVESTIGATORS PROVIDE INFORMATION CORRECTING MISPERCEPTIONS ABOUT NATURE AND SCOPE OF ARRESTS IN INDIAN ARTIFACTS CASE

SALT LAKE CITY – Twelve federal indictments, charging 24 individuals with violations of the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act, among other charges, were unsealed last week in Salt Lake City and 23 individuals arrested.

Since the law enforcement operation conducted by the FBI and the BLM was announced, there have been some misunderstandings about the nature and scope of the enforcement actions taken in the case. "Unfortunately, some of the misperceptions minimize the scope of this investigation or the importance of protecting these heritage items for all Americans. Hopefully, the information provided today will answer the concerns that have been raised," U.S. Attorney Brett L. Tolman said today.

"This case involves significant collections of Indian artifacts taken from public and tribal lands by excavators, sellers, and collectors, including priceless artifacts sacred to Native Americans, not 'trash and trinkets' as some have suggested," Tolman said. "None of the charges in the indictments is for mere possession of a protected artifact. The charges in the indictment are for trafficking in archaeological artifacts, which includes the sale, purchase or exchange of protected artifacts."

The law enforcement operation was conducted on June 10, 2009 by approximately 150 agents and employees from the FBI and the BLM. The felony arrests of the defendants were made in accordance with the agencies' standard operating procedures. Decisions as to when

and whether to use handcuffs or draw firearms were also made in accordance with the agencies' standard operating procedures based upon the circumstances which the agents encountered when executing a warrant. Some of these circumstances include the nature of the criminal charges brought against the defendant, the defendant's criminal history, the presence of firearms or other weapons in the defendant's residence, the presence of other individuals in the defendant's residence, the need to protect the safety of the agents and any other occupants in the residence, and the need to prevent the destruction or concealment of evidence. Bullet-proof vests are routinely worn by law enforcement agents engaged in the execution of felony arrest and search warrants to protect them from injury.

The FBI notified the San Juan County Sheriff six days prior to June 10th that federal agents would be conducting an enforcement operation in San Juan County. On June 9th and 10th, prior to the execution of the warrants, the FBI also notified the Moab, Blanding, and Monticello Police Departments of the operation.

During the operation, defendants were afforded every reasonable accommodation. Those defendants who were arrested early in the morning were allowed to groom themselves and provided their necessary medication before being transported to the Courthouse in Moab, Utah. Defendants, who were waiting to be transported to the Moab Courthouse, were provided lunch by law enforcement agents. Defendants were properly restrained for transport to the courthouse in accordance with standard operating procedures for the U.S. Marshal's Service.

"I am proud of the efficiency and professionalism of the FBI and BLM agents involved in arresting nearly two dozen people and preserving vital and fragile evidence," Tolman said.

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On August 30, 2007, Jeanne Redd gave Mr. Gardiner a tour of her native artifacts collection. During the tour, Mr. Gardiner wore a wire whereby Defendant Love could listen to his conversation with Mrs. Redd. FAC ¶ 48. The Defendants learned, via the wire, that Mrs. Redd preferred small objects – beads and pottery shards – over more valuable artifacts normally coveted by collectors. FAC ¶ 48. That day, Defendant Love sent Gardiner to the Redds' home armed with the Shumway bird. Mrs. Redd immediately recognized the bird and swapped two bags of nominally-priced artifacts for it. Almost eight months later, on April 17, 2008, BLM Agent Wilson Gibson found the bags in Defendant Love's vehicle. (Exhibit 11).

Statement for the Record
U.S. Senator Ron Wyden

Law Enforcement Programs at the Bureau of Land Management & U.S. Forest Service, Coordination with Other Federal, State and Local Law Enforcement, and the Effects on Rural Communities

U.S. Senate Committee on Energy and Natural Resources
May 9, 2018 Hearing

Statement

Mr. WYDEN. Mr. Chairman, members of the subcommittee, I am unable to attend this important hearing regarding oversight of law enforcement programs at the Bureau of Land Management and U.S. Forest Service due to a Senate Intelligence Committee hearing occurring at the same time. While I am unable to attend this morning, I take law enforcement on public lands very seriously.

During my time in the U.S. Senate, I have been an outspoken supporter of America's public lands and I have worked tirelessly to protect our parks and forests from wildfire, preserve the nation's treasured areas, and increase access to public lands for all Americans. In Oregon, the federal government owns and manages over 50% of the landmass, ensuring thousands of acres are available for locally and nationally important public uses like recreation, ranching, and timber production - all of which provide critical economic opportunities for Oregon communities. I appreciate the federal resources that U.S. Forest Service (USFS) brings in safeguarding 17 million acres of national forests and grasslands in Oregon. In addition, the Bureau of Land Management (BLM)'s law enforcement program provides critical assistance to state, local and tribal entities in managing approximately 15 million acres of BLM land in Oregon.

Cooperation between federal, state, and local entities is the best way to protect the natural, cultural, and historic values for the benefit of the American public. The law enforcement programs of the BLM and USFS are crucial for safeguarding these public resources from a few bad actors who wish to profit at the expense of the majority. Oregon and American taxpayers expect their safety and the rule of law to be protected, and they expect to be paid for private activities conducted on their public lands. I will continue to monitor the effectiveness of the public lands agencies' law enforcement, the agencies' abilities to protect our public resources, and their royalty and fee collection for appropriately harvestable resources. Public lands ultimately belong to all of the people, and safeguarding these valuable resources requires an all hands on deck approach.

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