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BORDERLINE SECURITY:
A chronicle of reprisal, cronyism and
corruption in the U.S. Customs Service

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BORDERLINE SECURITY:
A chronicle of reprisal, cronyism and
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BY BILL CONROY

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Who wants to know what's in this book?

A leaked memo from the investigative arm of the Department of Homeland Security sparked its officials to interview a writer last month in an attempt to discover his source for an article on the online news service Narco News. ...Bill Conroy did not divulge the source of the leak in his article and refused to when agents visited his home and workplace on May 23 and 24, respectively, asking for his sources in the department.

— *The Reporters Committee for Freedom of the Press*

When federal agents knock on your door, chances are they're not bringing you a Publisher's Clearinghouse check. Just ask San Antonio freelance journalist Bill Conroy: Federal agents visited his home and workplace trying to squeeze him for the source of a leaked Department of Homeland Security memo.

— *Lisa Sorg, Editor, San Antonio Current*

After journalist Bill Conroy wrote a story in the online publication Narco News concerning a memo that had been leaked to him from the Department of Homeland Security, the Department sent two agents to his home and to his workplace, where they pressed him to identify his source. In an apparent attempt at intimidation, they also approached his employer after he declined to cooperate.

— *Secrecy News, a publication of the Federation of American Scientists' Project on Government Secrecy*

It has come to the attention of the Federal Hispanic Law Enforcement Officers Association that federal agents may have harassed a reporter by the name of Mr. Conroy because he reported information that they did not consider favorable. Mr. Conroy's constitutionally protected freedom of speech is a right FHLEOA holds to be sacrosanct.... The right to say what we want to say and what needs to be said is fundamental to our liberty and the righting of wrongs.

— ***Federal Hispanic Law Enforcement Officers Association***

To read more about Bill Conroy's experiences with Homeland Security, go the following Web link at the online investigative newspaper Narco News:

<http://narcosphere.narconews.com/story/2005/5/24/222740/305>

Borderline Security was originally serialized online by the investigative newspaper Narco News. Additional original documentation related to this book can be found at the following Web link:
<http://www.narconews.com/Issue32/article893.html>

The Author

Bill Conroy's newspaper career spans more than two decades and includes work at newspapers in four states: Wisconsin, Arizona, Minnesota and Texas. During that time, he has written for or been an editor at a variety of print and online publications, including daily newspapers, alternative weeklies and several business publications.

Conroy's investigative reporting on U.S. Customs and other federal agencies has earned a variety of accolades, including a Gavel Award from the State Bar of Texas, two Lone Star Awards from the Houston Press Club, and the Jim Lehrer Award for Print Journalism in South Texas (in 2000 and again in 2002).

In the late 1980s, Conroy helped to launch a weekly alternative newspaper in Milwaukee that has since grown to become the second largest newspaper in the city based on circulation. The newspaper, the Shepherd-Express, features investigative reporting as well as political, arts and entertainment coverage.

Conroy is a native of Wisconsin and graduated from Marian College in Fond du lac, Wis., in 1982 with a degree in English. He was awarded a research scholarship to attend Marquette University in Milwaukee, Wis., where he earned a master's degree in mass communications in 1985.

Acknowledgements

To Al Giordano and the entire crew of authentic journalists at Narco News (www.narconews.com), I extend a special thank you. Without their faith in and support of this project, you would not now have the opportunity to read this book.

Special thanks also go to Jeremy Bigwood, who snapped a photograph of me in Bolivia in 2004 that is now on the back cover of this book. Jeremy is an independent investigative journalist and photographer who has covered Latin America since 1976. (<http://jeremybigwood.net>)

And most importantly, I wish to express my heartfelt gratitude to my wife, Teddi, and my family, who have stood by me through thick and thin.

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“Until you’ve been a victim of discrimination, maybe you can’t realize how much it hurts and pulls in your gut, and makes you feel alone.” — **a U.S. Customs special agent**

PROLOG

Jumping In

The 1999 cyber-fi movie “The Matrix” includes a pivotal scene in which the lead character, Neo, is given a choice between waking up in his bed and continuing on with his life as it has always been, or staying in “Wonderland” and seeing just “how deep the rabbit hole goes.”

That scene goes a long way in explaining my experience in digging into the “wonderland” that is the U.S. Customs Service. After more than two years spent falling into the “rabbit hole,” I still don’t know how deep it goes, but I can no longer pretend that the rabbit hole doesn’t exist.

Customs’ historical charge has been to safeguard the integrity of the U.S. border. The federal agency has been tasked with enforcing hundreds of U.S. laws and international agreements related to trade, commerce, drug interdiction and national security. Each year, Customs officials collect billions of dollars from import duties and other fees, and process millions of land, air and sea passengers.

The U.S. agency can trace its roots back to 1789 — making it the nation’s first federal law-enforcement agency. Customs carried out its vast mission as part of the U.S. Treasury Department from 1875 through 2002. However, that all changed with the enactment of legislation in late November 2002 that created the Department of Homeland Security (DHS).

In the new department, Customs operates as part of the Directorate of Border and Transportation Security. Within the directorate, oversight of Customs’ operations falls under the purview of two bureaus: the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (ICE). Customs inspectors and canine enforcement officers are under the direction of CBP while Customs’ investigative and intelligence operations are under the supervision of ICE. (Customs air and marine operations were

initially organized under ICE but have since been transferred to CBP.)

Some 22 agency puzzle pieces have been brought together to form the Department of Homeland Security. However, blending the diverse cultures of these various federal agencies — and their nearly 200,000 employees — into a cohesive operation is likely to take years.

As a result, it is useful to pay attention to the cultures of the affected agencies, as it may offer insight into what the future holds for the nation in terms of homeland security. To that end, this book is an exploration of the culture of one of those agencies: the U.S. Customs Service.

The genesis of this book was a series of investigative stories I wrote for publication from the fall of 2000 through the end of 2002 that detailed disclosures of alleged mismanagement and corruption within U.S. Customs. Because events are still playing out as this book goes to press, by the time you read these pages, there will undoubtedly have been new developments — particularly in relation to DHS as well as the litigation outlined in the book. But the purpose of the book is not to provide a definitive history of the U.S. Customs Service. Rather my intention is to peer through the veil of spin cloaking a complex and important government agency. This book should be thought of as a looking glass that can offer you a glimpse of the darker regions of a centuries-old federal law-enforcement agency that has now been plugged into a new super department charged with protecting the security of the United States.

This book is not written from the perspective of a journalist working inside the Beltway. I live in San Antonio, a couple of hours by car from Mexico. In addition, the primary sources for this book are not powerbrokers working the Washington, D.C., political scene. Rather, they are a diverse group of individuals who are spread across the country serving on the frontlines of law enforcement — many assigned to key field positions along this nation's borders.

Along with reviewing stacks of legal filings, internal Customs documents, congressional testimony and other public records for the investigation that led to this book, I also interviewed dozens of individuals, many of them whistleblowers — including current and former Customs supervisors, inspectors, intelligence officers and investigative agents. The book explores corruption allegations affecting Customs’ operations in Texas, Louisiana, Arizona, California, New York — and beyond, into the very heart of the nation’s capital.

Sources within Customs came out of the woodwork as I dug into this project, with each tip leading to new contacts that helped drive the investigation. I had to deal with many sources on background or on a not-for-attribution basis. They feared, I felt legitimately, retaliation if exposed. Still, in those cases, I secured documentation or additional sourcing to support any allegations. On more than one occasion, documents showed up in my mailbox from anonymous senders.

The allegations advanced by these whistleblowers boil down to an assertion that Customs is operated through a “good-ol’-boy” system of management that has perpetuated a culture of reprisal, cronyism and corruption.

The story of the U.S. Customs Service that is drawn out in the pages to follow is ongoing — even as Customs is being rebranded as part of the Department of Homeland Security. To come anywhere near a conclusion, many more journalists will have to jump into the rabbit hole. But if you’re interested in one writer’s view from inside that rabbit hole, read on. I promise nothing more than the facts — and the truth as far as I can see it.

CHAPTER 1

Investigation Derailed

You're in your car, waiting, late for an appointment, as the long train in front of you snakes its way over a stretch of urban railroad track in a bustling city neighborhood.

The train is hauling the goods that fuel the global economy: hoppers packed with coal and fertilizer, flatcars stacked with lumber and machinery, and pressurized tanker cars full of hazardous chemicals like chlorine, sulfuric acid and liquid oxygen.

Suddenly, out of the corner of your eye, you glimpse a blinding light, followed instantaneously by a deafening BOOM! In the next moment, a pall-like cloud of fire, poisonous fumes and smoke rips through the neighborhood, snuffing out thousands of lives.

The above movie-like scenario, unfortunately, could easily cross the line into reality today, tomorrow, or at some other future trigger moment in the high-stakes war on terrorism, according to a former federal agent who claims the government has gone to great lengths to keep a lid on her story.

Former U.S. Customs Service Special Agent Darlene Fitzgerald contends that our nation's railroads are the perfect tools for delivering destruction to our doorsteps. Fitzgerald came to this conclusion in the late 1990s while working as a federal agent on an investigation into a major drug-smuggling operation in Southern California. The smugglers, she discovered, were using railcars to move tons of dope from Mexico into the United States.

However, Fitzgerald alleges that the investigation was "torpedoed" by the brass at Customs, without explanation. She suspects the investigation was shut down because of corruption within the federal agency.

The dope Fitzgerald had uncovered was being delivered as part of an operation run by the Arellano-Felix Mexican drug cartel; the drugs (tons of pot and coke) were being shipped across the border from a rail yard in Guadalajara, Mexico, a yard Fitzgerald claims was controlled by the cartel. The railcars moved into the United States unchecked, and then along rail routes up the West Coast — where the dope was to be retrieved by cartel operatives and sold for millions of dollars on the streets of America.

Fitzgerald, along with U.S. Customs Special Agent Sandy Nunn, a former Customs inspector named John Carman, and several other federal agents, decided to blow the whistle on the torpedoed operation, hoping to get someone within Customs or the FBI to investigate why it was shut down. Fitzgerald also says the whistleblowers have a far more serious concern.

If the cartel could smuggle tons of drugs via railroad, why not guns and munitions? And, even more frightening, she says, is the prospect that terrorists might tap into the cartel's system to smuggle in weapons of mass destruction.

Fitzgerald says she and her fellow agents went to the FBI in the spring of 1999 to report their concerns. She also contacted the U.S. Office of Special Counsel, which is an independent federal agency charged with investigating governmental misconduct.

"I have additional information concerning potential corruption that far outweighs anything in the attached affidavits/letters," Fitzgerald wrote in a May 10, 1999, letter to the U.S. Office of Special Counsel. "This information is something that I am very afraid of revealing to anyone in this agency (Customs). I feel that this information may very well place my life in jeopardy. I wish very much to report this to an agent in your agency, but only with my attorney present."

Fitzgerald and Nunn allege that after they began blowing the whistle on the torpedoed investigation, their lives were turned upside-down due to the retaliation and emotional abuse they were subjected to by their supervisors. That abuse, Nunn claims

in a statement she submitted to Congress, included “unrelenting retaliation, adverse actions against us, false accusations of wrongdoing, frivolous Internal Affairs investigations, surveillances, threats against us, (and) slander of our reputations in the workplace.”

In one case, Nunn alleges in the congressional statement, a fellow Customs agent involved in seeking to expose the corruption, Ruben Sandoval, “woke up and found two surveillance cameras mounted on light poles on his street pointed directly at his residence.”

“I was shocked and still am at how our civil rights were so blatantly violated by management officials within one of the top federal law enforcement agencies in the United States merely because we stood up and told the truth,” Nunn adds.

Both Fitzgerald and Nunn decided to resign from their jobs in the fall of 1999 and to go public with their allegations — after no action was taken by the FBI or the other federal agencies to which they reported their concerns.

Testimony

Fitzgerald and Nunn submitted written statements summarizing their experiences to the Senate Governmental Affairs Subcommittee on International Security, Proliferation and Federal Services. Nunn’s statement was actually submitted in July 2001, nearly two months prior to the September 11 terrorists attacks on New York City and Washington, D.C.

Following is an excerpt from Nunn’s statement.

From 1998 through the latter part of 1999...Darlene (Fitzgerald) began intense work on a major narcotics investigation involving railway tanker car shipments of tons of narcotics coming into the United States from Mexico. Darlene, a highly competent and successful agent as well as my friend, had successfully tied these tanker car shipments of drugs to the Arellano-Felix drug cartel (aka the Tijuana cartel) in Mexico.

This case was the first of its kind and magnitude in the United States. It was so significant that the Acting Commissioner of Customs called her personally to congratulate her for a job well done after her first seizure of approximately 6 tons of narcotics.

However, shortly thereafter, Darlene's efforts were undermined when Customs management began ordering her to shut down the case and cease and desist any further investigation.

As a seasoned agent who had served as the case agent for what was described in 1991 as the "second largest money laundering case in U.S. history," I understood major investigations and felt strongly that there were serious issues of corruption beginning to emerge, particularly when Darlene determined that several of the tanker cars, which had clearly been suspicious, were released contrary to her direction, not just once, but over a hundred times, by an unknown Customs official.

These tanker cars, which had been documented as being empty, were showing as being about 5-9 tons overweight. Based on my experience dealing with narcotics smuggling, it is my professional opinion that those released tanker cars were very likely smuggling either narcotics or possibly something more sinister, such as firearms or potential tools for use by terrorist groups within the United States.

As a special agent dealing with arms and technology smuggling cases, I even pulled up Darlene's case files through the Customs computer, as I along with Darlene had received information from a source that there might be a connection to arms smuggling. I was subsequently placed under Internal Affairs investigation by my immediate supervisor...for doing the job I had been paid to do.

After further investigation, Darlene determined that over the past several months, well over 100 of these tanker cars with similar

weight characteristics and so forth had passed into the commerce of the United States undetected by inspection and investigators. What was in those tanker cars remains a mystery.

But the fact remains that someone within Customs was clearly permitting this to happen without checking these tanker cars as required by proper Customs procedure....

In Fitzgerald's congressional statement, submitted in September 2001, after the 9/11 terror attacks, she lays out specifically how railcars could be used in a future terrorist attack. In particular, she points to the ease with which these cars could be moved from a rail yard in Mexico and into the U.S. rail system, without ever being inspected.

Railroad officials confirm that their employees do not actually open up every railcar to ensure that what is listed on the shipping manifest is actually inside the cars.

In particular, Fitzgerald says the government needs to focus on rail tanker cars, which she says can be put under pressure, filled with volatile chemicals or bio-terror agents, rigged with explosives and detonated remotely like giant "pipebombs."

"...These (rail) cars are rarely inspected, and the smugglers are aware of that," Fitzgerald said in her congressional statement. "...These (rail) tanker cars are the perfect instruments for a terrorist attack against the U.S. ...As the result of our investigation into the (drug-smuggling) case, we identified just how easy it would be to do this. The terrorist would simply lease/sublease a tanker car — even more easily accomplished south of the U.S. border — and pay cash to set up an account with any of the major railroads.

"Once a person has set up an account (easily accomplished with a fake ID and front company all declaring a location south of the border), all one has to do is to 'front-end pay' for the movement of any tanker cars, and they can be moved anywhere

in the country with extreme ease. This movement can be directed remotely via the Internet or telephone.

“...These tanker cars are the metal cylindrical-shaped cars that carry anything from hazardous materials, to oil, to gasoline, all flammable....”

Cracks in the system

Clearly, the U.S. government's preoccupation with stemming a terrorist threat from abroad seems to come at the expense of focusing attention on the problem inside its borders. Neo-conservative elements of the U.S. power structure could be accused of having a vested interest in promoting the foreign terror threat in order to bolster their Pax Americana agenda.

Such a political strategy could prove deadly in the future, however. The Oklahoma City bombing drives that point home, as does the alleged plot uncovered in East Texas in 2003 that involved right-wing extremists concealing a stash of weapons and the ingredients for a highly lethal sodium cyanide bomb.

Still, Fitzgerald's warnings can't be discarded out of hand. Government corruption in both the United States and abroad, coupled with the merciless pecuniary preoccupation of drug syndicates, creates opportunity for a dedicated extremist foe — whether that group has foreign or domestic roots.

For example, Algerian Ahmed Ressam, a convicted terrorist, testified in a trial in New York in the summer of 2001 that terror training camps in Afghanistan included instruction on how to sabotage infrastructure targets, such as power plants, airports, military installations, large corporations and “railroads.”

Fitzgerald, in her congressional statement, asserts that the U.S. railroad system is vulnerable to being compromised from abroad. In particular, she claims that pressurized rail tankers are not being systematically checked by Customs as they cross the border.

That claim is backed up by sources within Customs who explain that there are thousands of railcars crossing the Mexican

and Canadian borders daily and inadequate resources to thoroughly check each one.

In the wake of the 9/11 terror attacks, Customs did begin installing gamma-ray imaging devices at border crossings to scan incoming railcars. However, these devices, similar to airport scanning systems, are not foolproof — a fact that is only magnified when operator error or corruption is factored into the equation.

Further, in the case of pressurized tanker cars, special hazardous materials teams need to be called in to complete thorough inspections, an expensive and time-consuming process.

John Carman, a former uniformed officer with the U.S. Secret Service as well as a former U.S. Customs Inspector, agrees with that analysis as well.

Carman says he was among the first people within Customs to identify the railcar smuggling problem, and, along with Nunn, Fitzgerald and others, has been instrumental in blowing the whistle on the lack of attention to the issue.

“If I can smuggle drugs on these railcars, I can smuggle anything,” Carman explains. “Customs simply does not have enough time or people to inspect all of these railcars. If one or more of these railcars (loaded with explosives or biological agents) got through, it could do a lot of damage.”

That fact is underscored, Fitzgerald adds, by the vastness of this nation’s rail system.

“Now consider the fact that one can simply remotely send these giant instruments of death, simultaneously, to any one of thousands of rails spurs, virtually undetected,” Fitzgerald pointed out in the statement she provided to the Senate subcommittee. “...Now add to this the fact that once this is done, the perpetrators will be extremely difficult to trace and no suicide bombers are needed.”

Fitzgerald says rail spurs are located near major buildings throughout the country.

She adds an even more terrifying scenario: what if one or more explosive-laden rail tanker cars were to be detonated in a

major urban rail yard — where hundreds of other loaded railcars are located?

“These tanker cars in general carry a plethora of hazardous material,” Fitzgerald says. “If one or more is blown up in a rail yard, it could start a devastating chain reaction.”

CHAPTER 2

The Belly of the Snake

Moving drugs across the border is only one facet of the smuggling game. An equally important component is collecting the money on the drug sales.

Drug traffickers must convert, or launder, black-market cash — often in the form of small bills — into "legitimate currency" in order to perpetuate their operations and maintain their power. As a result, federal law enforcement officials say rapid cash movement among accounts or large cash surpluses in the economy can be a sign of money laundering activity.

It's not enough simply to say that a transaction or account appears suspicious, though; you have to prove that the money was obtained illegally. That is no easy task, especially once the money has made its way through the belly of the snake to the tail end of the money laundering process.

Traffickers are most vulnerable, then, prior to the funds reaching the banking system.

However, federal law enforcement officials say that the vastness of the U.S./Mexico border makes it very difficult to intercept shipments of U.S. currency from drug sales that are being transported across the border to be laundered through the Mexican banking system. Once the profits of the drug trade make it across the border to Mexico, drug syndicates have a variety of options available to them for converting it into "clean" money. For example, drug traffickers may choose to wire money from a Mexican bank to a U.S. bank, or deliver the cash back to the United States in deposits small enough to avoid kicking in currency transaction reporting requirements — a practice known as "smurfing."

In order to stop money laundering, you have to plug all the holes in the financial system because, like water, traffickers will always find the place in the system with least resistance.

"We lost the war years ago," says one executive with a bank located along the Texas/Mexico border. "The only way to solve the problem is to legalize the damn stuff, because we can't spend enough money to stop it."

The banker, who asked not to be identified, went on to explain that the United States has a 2,000-mile border with Mexico "and if we stacked all the legal crossing points side-by-side, they might stretch five miles, and that's where all our law enforcement is concentrated."

"So how can we stop it?" he asks. "If the big money in the drug trade wants to get into the system, it will find a way.... We ought to legalize the stuff and tax it."

Playing with money

A small bank in Roma, Texas, offers a case example of how vast sums of money can be moved through the banking systems on both sides of the U.S./Mexican border with few clues as to the sources or ultimate destinations of that money.

Although a large movement of cash through the banking system is not in itself proof that money laundering is occurring, such activity can be a red flag to regulators and law enforcement officials. One means of tracking these cash movements is through an analysis of foreign-deposit account activity.

The Roma lender crossed into red-flag territory in the international banking game in the mid-1990s. The lender — Citizens State Bank — had about \$9.3 million in foreign deposits at year end 1995, according to federal banking data. Three months later, that figure had dropped to \$151,000. Through the balance of 1996, the lender's foreign deposits never topped \$600,000.

In other words, over a three-month period, at least \$9 million in deposits were moved out of the coffers of the bank.

Foreign deposit accounts are perfectly legal and essential to conducting international commerce. According to industry experts, the accounts at Texas banks, for example, are primarily held by Mexican lenders and facilitate the currency exchange

(pesos to dollars and vice versa) that is essential to conducting trade and commerce with Mexico.

Roberto A. Salinas, spokesman for the Roma bank, says the source of the foreign deposits at Citizens State Bank was a branch of a Mexican bank located just across the border from Roma in the town of Miguel Aleman, Mexico.

Roma is located along the U.S./Mexico border midway between Brownsville and Laredo. A suspension bridge over the Rio Grande River links Roma with Miguel Aleman.

"We never understood why they were letting it (the deposits) sit in a checking account here," Salinas says. "They made deposits daily by armored car...and later wired the money to a main account in New York."

There is no indication that Citizens State Bank did anything improper in handling the deposits from the Mexican bank. In fact, Salinas says the bank filed currency transaction reports almost daily during the period the money was being deposited.

The Mexican bank delivering the deposits to Citizens State Bank was a branch of Bancomer, Mexico's second largest lender at the time. Manuel Garcia, an executive with Bancomer who oversaw the Miguel Aleman branch and eight other branches in northern Mexico in the mid 1990s, says the amount of money in the account at the Roma bank actually rose to \$11 million before it was wired to an account at Chase Manhattan Bank in New York in late February 1996. The Bancomer branch in Miguel Aleman had total deposits of \$5.3 million as of the end of February, Garcia says.

The money in the Roma account had built up over seven months due to an error on the part of Bancomer's treasury department, Garcia explains.

"It was an oversight," Garcia adds. "We did not realize the \$11 million was there."

Garcia was unable to provide information on the number of account holders who controlled the \$11 million. Garcia stresses, though, that \$11 million is not a lot of money, considering that it

had accumulated over seven months in a border region that is heavily reliant on cash-based commerce.

According to a number of Mexican and U.S. observers familiar with the stretch of border near Roma and Miguel Aleman, the area has earned a reputation as a drug trafficking corridor. Garcia, too, says he is aware that drug traffickers are active in the area.

"We read about it in the (Mexican) news," he says. "...Drug dealing in this area — there is a problem with it."

Garcia could not say where the \$11 million went after it was transferred to the account at Chase Manhattan. Officials with the New York bank declined to comment on the matter, but there is no indication that Chase did anything but conduct a normal business transaction in relation to the wire transfer.

Foreign banks use Chase and other New York money-center banks to settle their accounts, which means it's likely the \$11 million was transferred elsewhere after it cleared through the account at Chase, according to industry insiders.

Red flag

Regardless of the reason, \$11 million is a lot of money to move from a small bank in Mexico to a small bank along the Texas border and then through the U.S. banking system and onto some undisclosed point. But then, as one banking industry observer puts it, "It's not a crime to be rich."

However, the anonymous nature of cash does make highly liquid accounts vulnerable to manipulation. Criminals seek out such conduits to camouflage money-laundering activity.

Stemming the flow of black-market dollars through these highly liquid banking accounts is a nearly impossible task absent human intelligence. That reality spawned a major undercover sting in the late 1990s called Operation Casablanca.

Senior Customs Agent William F. Gately led Operation Casablanca, which was the first major U.S. money-laundering investigation aimed at foreign lenders.

The three-year undercover investigation culminated in the spring of 1998 with the arrest of more than 100 alleged money launderers and indictments against three Mexican banks. In March 1999, two of those banks, Bancomer S.A. and Banca Serfin S.A., pled guilty to one count each of money laundering — agreeing to civil forfeitures of \$9.4 million and \$4.2 million, respectively. The banks also agreed to pay a criminal fine of \$500,000 each, according to information released by the U.S. Department of Justice. Confia S.A., the third bank, agreed to a civil forfeiture of \$12.2 million; criminal charges against the lender were dismissed.

By all appearances, a major money-laundering snake had been snared. But appearances may have been the very concern that led to Operation Casablanca being cut off at the knees.

According to Gately, the undercover operation suffered an early death. The operation was shut down in 1998, he told the media, after evidence surfaced that implicated high-level Mexican military officials in the drug trade — including Mexico's Secretary of Defense at the time, General Enrique Cervantes.

If Operation Casablanca was digging up information on entangling alliances between the Mexican government and drug traffickers, it would not be the first time. It also would not be the first time that the U.S. government failed to aggressively pursue such alleged corruption.

According to Charles A. Intrigo, publisher of the Miami-based *Money Laundering Alert* and a former federal prosecutor in Miami, the U.S. government also dropped the ball in a high-profile case involving a former Mexican deputy attorney general, Mario Ruiz Massieu.

A U.S. jury in the mid-1990s found that nearly \$8 million of the money deposited by Ruiz Massieu at Texas Commerce Bank (TCB) in Houston came from Mexican drug lords who were seeking protection from prosecution in Mexico.

"The U.S. government is also open to scrutiny in the case since it took no action on the Ruiz Massieu account despite

receiving more than 50 (currency transaction) forms from TCB and Ruiz Massieu's cash courier about the massive flow of currency into the account," Intriago's *Money Laundering Alert* reported in April 1997.

U.S. law enforcement officials "only took action on the case after the Mexican government reported its suspicions about Ruiz Massieu in March 1995," more than 14 months after Massieu's activity began, the *Money Laundering Alert* reported.

Ruiz Massieu, who served as Mexico's deputy attorney general from 1993 to 1994, died in 1999 in an apparent suicide at his home in New Jersey. He was facing money laundering charges in the United States at the time.

Ruiz Massieu's death spared Mexican and U.S. officials the embarrassment of having the corruption that allegedly plagued the presidency of Carlos Salinas de Gortari — under whom Ruiz Massieu served — laid out in open court.

Parallel paths

The death of Operation Casablanca in 1998 likewise spared the Mexican and U.S. governments the international embarrassment of having a spotlight put on the suspected ties between the Mexican military and drug traffickers. The operation was short-circuited, according to public statements made by Gately, out of fear that it would damage U.S. relations with its southern neighbor. And it didn't help that U.S. officials had billed Mexican General Cervantes as the United States' partner in the war on drugs.

In any event, Gately later turned the media spotlight on his boss, John Hensley, who headed Customs' Los Angeles field office at the time of Casablanca. In an April 16, 2000, broadcast of the CBS news show "60 Minutes," Customs Commissioner Raymond Kelly said Casablanca was shut down because media leaks were jeopardizing the operation's undercover status, which put the lives of agents at risk. In that same broadcast, Gately accused Hensley of being one of the sources of the leaks. Although the veracity of that charge is open to debate, Hensley

was in favor of bringing the operation to an end in 1998, according to sources and other media reports at the time.

Coincidentally, Hensley is accused of bringing the axe down on Fitzgerald's railcar investigation in 1999 in Southern California. Nunn lays out the allegation in her July 2001 congressional statement:

"...Further, when pressed to reveal who was ordering this very successful case to be shut down and basically filed away, Darlene's (Fitzgerald's) immediate supervisor revealed in a meeting witnessed by a former federal prosecutor who is now a federal judge in the Ninth Circuit that SAC (special agent in charge in Los Angeles) John Hensley had ordered that the case be shut down.

"Ironically, Mr. Hensley had been instrumental in prematurely shutting down Operation Casablanca, the major money laundering case which made national headlines in 1998...."

Fitzgerald and Nunn produce no hard evidence to show that Hensley did anything improper or illegal with respect to Casablanca or the railcar investigation. What would have motivated him to take the actions alleged by Nunn, Gately and others is not clear.

In addition, at least one Customs insider takes issue with Gately's version of what happened to Operation Casablanca, contending that the information he had implicating Mexican General Cervantes was little more than hearsay. The insider also points out that Casablanca actually was extended five months beyond its original shut-down date of year-end 1997.

A source familiar with the railcar investigation, who asked not to be identified, also questions Fitzgerald's and Nunn's charges that their operation was torpedoed. The source says it was simply another case and that the former agents' allegations were investigated by Customs but not substantiated.

The truth in those cases may never be fully known. But one thing that is clear is that Hensley's name is a common factor in each. Several sources describe Hensley as "well-connected" and

as a real “political” player. His career path demonstrates that he has made friends in high places.

Hensley, who spent 29 years with Customs, held the number two spot in the federal agency in the early 1990s, serving as assistant commissioner of enforcement. He finished his Customs career in the late 1990s, leaving his job as special agent in charge of Customs’ Los Angeles field office to move into the private sector. After serving from 1999-2000 as director of the western operations of Investigative Group International Inc., Hensley accepted then Gov. Gray Davis’ appointment to the chairman post at the California Gambling Control Commission. The commission is charged with overseeing and regulating all gaming operations in the state.

In his role as chairman of the gambling-control commission, Hensley again found himself surrounded by storm clouds. In October 2002, the state-sponsored commission and members of the California Nations Indian Gaming Association (CNIGA) became embroiled in a controversy over the management of a trust fund that is used as a revenue-sharing vehicle for Indian tribes in California. CNIGA is a nonprofit group comprised of representatives from 76 tribal governments.

“California Nations Indian Gaming Association is demanding a legislative audit of the Revenue Sharing Trust Fund that was established by the tribal-state compacts for gaming tribes to share revenues with non-gaming tribes and those with very limited gaming,” states an October 22, 2002, press release issued by CNIGA. “The California Gambling Control Commission, which has fiduciary responsibility for dispersing monies from the Indian Gaming Revenue Sharing Trust Fund account, said in August (2002) it would begin mailing out checks for approximately \$188,000 to each of the 75 eligible tribes. None of the tribes have received their checks.”

The controversy even prompted two tribes involved in gambling in California to file a joint lawsuit in federal court in October 2002 against the state of California. The litigation, filed by the Pechanga and San Manuel bands of Mission Indians,

accuses California of allegedly violating the terms of the tribal-state gambling pact.

Carol Klimas, a spokeswoman for the San Manuel band, says one of the claims raised in the litigation centers on the revenue-sharing trust fund, which is managed by the California Gambling Control Commission chaired by Hensley.

“A major claim (in the lawsuit) revolves around the state’s distribution of Revenue Sharing Trust Fund fees to tribes that have limited or no gaming,” states a news release issued by the San Manuel band. “According to the tribes, the state has failed to manage and distribute millions of dollars set aside by successful gaming tribes, including Pechanga and San Manuel, to the poorest tribes as required by the compact.”

One source familiar with the controversy — who asked not to be named — claims that the state gambling commission was simply exercising prudent financial management of the revenue-sharing fund by initially keeping the reins on payouts to assure that the fund would not go into a deficit mode. In any event, the tribes’ breach-of-contract case never made it to trial. The judge dismissed the case in May 2003.

Hensley declined to comment on Casablanca, the railcar investigation and the California gambling commission controversy when contacted in early December 2002 in California. About a month later, Hensley told Gov. Gray Davis that he planned to step down from the California Gambling Control Commission, according to media reports.

Former Customs Agent Fitzgerald, though, did not mince words in an interview discussing her assessment of the links between the outcome of Operation Casablanca and her ill-fated railcar case.

“My railcar case was torpedoed and Operation Casablanca was torpedoed by the same group of people,” Fitzgerald alleges. “...That should have been investigated.”

Fitzgerald’s September 2001 congressional statement asserts further that “for all the allegations that many have made repeated

attempts to get someone to investigate, the result has been that only whistleblowers have been placed under investigation.”

“I was completely undermined repeatedly in my efforts to continue this large...rail operation,” Fitzgerald continues. “My help was pulled, my surveillance was pulled, and I was subjected to one frivolous Internal Affairs investigation after another.

“...I also reported documented proof of special agents taking heroin evidence home overnight, and then lying about it under oath in depositions.... The list of corruption, violations of Customs’ policies, etc., etc., goes on and on. Yet, only the honest Customs employees doing their jobs and reporting this behavior have been investigated, harassed, intimidated, threatened and wrongfully disciplined.”

Fitzgerald and Nunn jointly filed a discrimination lawsuit against Customs in U.S. District Court in San Diego, Calif., in March 2001. The lawsuit alleges that they were discriminated against by Customs managers because of their gender and for participating in Equal Employment Opportunity (EEO) legal actions while serving as Customs agents. Among the discriminatory acts they accuse their managers of committing are withholding recognition, training opportunities, career-advancing work assignments, and promotions, as well as equipment and case support.

Nunn and Fitzgerald have “endured continued discriminatory and retaliatory acts by (Customs) and its employees, which caused them and their families to suffer great mental anguish and emotional distress, as well as extreme financial hardship,” the lawsuit asserts.

As relief, they asked the court to order Customs to pay monetary damages and “that their names and reputations be cleared through publication to the law enforcement community,” according to the litigation.

Customs, for its part, claims in its answer to the lawsuit that the agency and its employees did not engage in “any wrongful or discriminatory or retaliatory conduct.”

“The employment practices of which (Fitzgerald and Nunn) complain, to the extent undertaken, were undertaken for lawful, valid reasons unrelated to (their) race, color, gender, heritage, national origin, alleged disability or protected (EEO) activities,” states Customs’ pleadings in the litigation.

Nunn and Fitzgerald's discrimination case went to trial in March 2005, some four years after it was filed. The jury found that the two former agents had failed to show that a “preponderance of the evidence” supported their claims.

The verdict in the discrimination lawsuit, however, does not put to rest the whistleblower claims made by the former federal agents. The alleged cover-up in the railcar case, Nunn and Fitzgerald claim, continues to be a long train running.

CHAPTER 3

Shooting the Messenger

U.S. Customs is controlled by an entrenched “good-ol’-boy” network that goes to great lengths to protect its own interests, sources within the agency contend.

These sources — who include agents, inspectors, intelligence operatives and supervisors — assert that those who challenge the good-ol’-boy system get thrown to the sharks. However, those who are protected by the good-ol’-boy network — or find themselves aligned with its interests — can seemingly act with impunity; or, as one Customs intelligence officer put it, “If they screw up, they move up.”

One example in which this Custom’s good-ol’-boy network, or inner circle, showed its true colors, according to some agency insiders, involves a case in South Texas that threatened to be quite embarrassing to Customs’ leadership.

At the center of the case is a Laredo-based inspector supervisor who was accused of creating false drug-seizure reports in the Treasury Enforcement Communications System (TECS). The female supervisor, who will be referred to as Ms. A, allegedly generated the phony reports by using the names and social security numbers of real Customs inspectors — making the reports read as though the inspectors had written the narratives themselves.

These false narratives, or offense reports, were purportedly generated following a joint Customs/U.S. Border Patrol operation called Triple Edge that took place in the late 1990s. According to the sources within Customs, Ms. A falsified as many as 16 drug-seizure records to embellish her record. The fabricated Customs seizure reports, the sources claim, were based loosely on actual drug seizures carried out by Border Patrol employees.

A Customs media spokesman in the agency's Laredo office declined to comment on the allegations, other than to say that "what you're talking about is very sensitive." Another source familiar with the case who recently came forward says the supervisor contends she is innocent and "was only recording information from other people" who claimed to be on-site when the drugs were allegedly seized.

Julie Marquez, a San Antonio, Texas-based spokeswoman for the League of United Latin American Citizens (LULAC), a Hispanic civil rights group, obtained documentation detailing the allegations concerning Ms. A.

Marquez says the alleged drug-seizure falsifications are of particular concern because they have serious implications for defendants charged with crimes related to the seizures.

"No one should go to prison because of phony seizures," Marquez adds.

In February 2001, LULAC brought the charges being made against Ms. A, as well as other sensitive information, to the attention of Chief U.S. District Judge George P. Kazen of Laredo. LULAC also asked the federal judge to "appoint a special master or empanel a grand jury to investigate serious acts of misconduct...."

In a letter accompanying the package sent to Judge Kazen, LULAC states:

"We have enclosed documents that were filed with the (Customs) Office of Internal Affairs, which show that the matter was brought to the attention of the (Customs) Service. ...The U.S. Customs Service is involved in a cover-up of the criminal activity of the filing of false offense reports...."

"What makes this matter even worse is the fact that individuals have been charged with criminal offenses," LULAC's letter continues. "All convictions obtained by the Service or by the Border Patrol in Operation 'Triple Edge' are suspect.... The U.S. Customs Inspectors whose names were used to file the false offense reports, and their careers, also are at risk. For all that is required is that those inspectors be placed under

investigation by (Customs) Internal Affairs themselves and then be terminated and...the high ranking officials will save themselves.”

In response to the package sent to him by LULAC, Kazen wrote, “I have read your letter...and briefly reviewed the various attachments. Considering the nature of the materials, it is my judgment that the appropriate course of action is to forward them to the United States Attorney for the Southern District of Texas, Mervin Mosbacher. I have just spoken with him, and he assures me that he will give the matter his prompt and serious attention. I am sending your material to him in Houston by overnight mail.”

The package

Included in the documentation provided to Kazen by LULAC were several internal letters written by Customs inspectors to their supervisors as well as to Customs Internal Affairs and the U.S. Office of Special Counsel.

“These complaints of falsified seizures happened during the time period U.S. Customs inspectors at the Port of Laredo and U.S. Border (Patrol) agents worked together at the Border Patrol check points in what was known as operation Triple Edge,” states one letter penned by a Customs inspector and directed to the U.S. Office of Special Counsel. “SCI (Supervisory Customs Inspector Ms. A) apparently would periodically take the seizures made by the Border Patrol during this time period that did not relate to U.S. Customs and then would go into TECS (computer system) and generate false seizures.”

“She knowingly and illegally went into TECS and falsified seizures using the names and Social Security numbers of various Customs inspectors and canine enforcement officers,” the letter continues. “She not only used the names and Social Security numbers of the inspectors but she made the narratives read as if these government employees had written the narrative themselves.... SCI (Ms. A) is still at work with badge and gun performing supervisory inspection duties.”

Another letter contained in the package sent by LULAC to Judge Kazen contains equally shocking claims regarding Customs' operations in Texas. Because the letter was sent anonymously, references to names have been redacted here.

Charges raised in the anonymous letter include the following:

- "Chief Inspector XX, teaching at the local Jr. college on government time. Nothing happened."
- "YY and the ZZ contract, accepting gifts and paying out for services never rendered. Nothing happened."
- "Supervisor AA, taking of 5 government tires, two bench seats and using the government credit card to change the tires to his personal car. Nothing happened."
- Chief Inspector BB, drunk on duty, driving a government car while intoxicated. Nothing happened."
- CC had a party at her house that was paid for by (a government contractor). Accepted gifts from (the government contractor).... Nothing happened."
- "...Director DD, investigated for associating with less than reputable Mexican customs brokers and freight forwarders with connections to narcotics dealings. Nothing happened."

The letter concludes with, "Will send more later..... deep esophagus!"

Norma Lacy, spokeswoman for the U.S. Attorney's Office for the Southern District of Texas in Houston, confirmed in early March 2001 that her office did receive the package sent by LULAC to Judge Kazen.

She said at the time that her office was reviewing the material. "If we determine the matter merits investigation, it will be referred to an investigative agency, such as the FBI or the Office of Inspector General," Lacy said. However, efforts to determine the status of the case after that point proved fruitless.

Several sources within Customs did say that a U.S. Customs Internal Affairs investigative team visited the Laredo office about a month after the U.S. Attorney's Office was put on notice about the Ms. A case. As part of that visit, a number of U.S.

Customs inspectors were questioned about the alleged drug-seizure record falsifications.

The primary focus of the interrogations carried out by Internal Affairs agents, though, was not to investigate the charges against Ms. A, but rather to determine who gave the information to the media and LULAC, the sources indicate.

“Internal Affairs came down here to see how much we knew and to find out who leaked the information,” says one source.

Another source adds, “Internal Affairs had two missions: damage control and finding someone to make an example out of for leaking out this information.”

The irony of the situation, according to several sources inside Customs, is that the charges against Customs supervisor Ms. A were referred to Internal Affairs initially and they failed to act on them — which is what prompted whistleblowers to talk to the media. A number of the inspectors in Laredo now fear their careers have been ruined because they blew the whistle on alleged corruption.

Through it all, Ms. A retained her position as a Customs inspector supervisor. In fact, as of 2005, a Customs insider confirms, Ms. A was still working for the border agency.

“The inspectors who came forward did the right thing,” one source says. “This is an abuse of authority, and it’s unjust. It’s scary, because these people have the power to turn things around on you.”

The Laredo case is not the first time in which Customs Internal Affairs has been accused of pursuing the whistleblowers. *Insight* magazine, which ran a series of articles exposing alleged corruption within U.S. Customs in 1997, reported that a similar shoot-the-messenger strategy was employed after its exposé on Customs appeared in print.

“According to Customs employees, Internal Affairs, or IA, agents have unleashed a witch-hunt aimed at identifying the sources for the border-corruption series,” states a March 24, 1997, article in the Washington, D.C.-based magazine. “Armed with copies of *Insight*, agents have been questioning suspected

Customs employees and taking them line-by-line through articles to see if they will slip up or confess to having revealed the degree of corruption.”

Crossing the line

Former Customs inspector John Carman — one of the whistleblowers in the railcar smuggling investigation — claims he had his own run-in with Customs’ good-ol’-boy network after refusing to look the other way when confronted with corruption.

Carman rolls out a laundry list of alleged wrongdoing that he asserts has been perpetrated by Customs employees along the California/Mexican border. Among the charges he makes — as in the Ms. A case — is that records were altered in Customs’ computer system.

Carman raises those claims in a lawsuit he filed in the summer of 2000 in federal court in San Diego.

“...Customs personnel, including high-ranking personnel, have accepted bribes and engaged in other unethical and illegal activities, including falsifying reports, deleting suspect information from the Customs Intelligence Reporting Computer System, aiding and abetting in the facilitating and importing into the United States undocumented persons and contraband — such as narcotics.”

By way of example, Carman, in his lawsuit, charges that “high ranking officials” discouraged Customs line inspectors from searching suspect trucks. He also claims those same Customs officials “provided preferential treatment to companies with ties to drug trafficking” and provided so-called “‘Bingo Cards’ or ‘Get out of Jail Free Cards’ to drug dealers.”

“Said cards, when presented by the holder, entitled the recipient to ‘preferential treatment’ at the United States borders,” the lawsuit asserts.

In the wake of reporting the alleged corruption to his superiors — and ultimately the media — Carman claims he was harassed, retaliated against and finally fired in 1997.

“While he was an employee, (Carman) was refused promotions to which he was entitled, has had his performance evaluations changed, has had test scores reduced...was stripped of his gun and badge,” Carman’s lawsuit alleges.

Carman contends the retaliation even continued after he lost his job, due to his ongoing efforts to expose corruption within Customs. In the lawsuit, Carman asserts that defendant Rudy Camacho, director of the Customs Management Center in San Diego, “and others made a concerted and intentional effort to prohibit (Carman) from securing a concealed weapons permit, which was necessary to (Carman in) successfully pursuing his livelihood of becoming a California licensed private investigator.”

“On or about June 16, 1999,” the lawsuit continues, “United States Customs Officers, without basis...retaliated further against (Carman) by ordering and directing state law enforcement officers of the La Mesa Police Department...to stop (Carman’s) vehicle and detain and search him and his vehicle, which they did without probable cause....”

Court records indicate that in the wake of the traffic stop, Carman was prosecuted in state court for illegally carrying a concealed weapon. However, the state court threw out the case after finding that the police lacked reasonable suspicion for stopping Carman’s vehicle.

In his civil litigation, which was filed in federal court in June 2000, Carman alleged that his constitutional rights were violated by a host of defendants, including both U.S. Customs officials as well as local police officers. Carman sought monetary damages as well as a court-enforced end to the retaliation and discrimination against him.

The defendants denied Carman’s accusations in an initial answer filed in November 2000. The judge ultimately dismissed the U.S. Customs defendants from the lawsuit on technical legal grounds — such as the qualified immunity from prosecution granted to federal law enforcement officers.

However, the judge ruled that two local police officers involved in the traffic-stop incident described by Carman should remain as defendants. After they successfully appealed that decision, the case was dismissed in the fall of 2004 by the U.S. Circuit Court judge.

Regardless of the court rulings in his case, Carman maintains that Customs is the source of his problems. He argues that Customs is incapable of investigating charges of wrongdoing within the agency. He claims further that any whistleblower who attempts to stand up to the agency faces nearly insurmountable odds — given the fact that Customs has the full power and resources of the federal government at its disposal.

“Customs inspectors who have complained about corruption or unlawful practices are harassed, retaliated against, demoted, transferred, discredited and/or dismissed,” Carman asserts in his litigation. “Few inspectors are willing to reveal their names as ‘whistleblowers’ for fear of reprisals against them....”

Carman also alleges in the lawsuit that his complaints “to Internal Affairs fell on deaf ears, and the only significant action taken by the department (is) to conduct ‘damage control’...and to cause the termination of employment and (to) discredit employees...who address this corruption.”

CHAPTER 4

The “Racist Manifesto”

Whistleblowers are not the only victims of Customs’ good-ol’-boy management style. One Hispanic U.S. Customs inspector stationed along the nation’s southwest border describes the work environment at the federal agency as being similar to the plot of *Animal Farm* — a 1945 satire of Stalinism penned by George Orwell.

Paraphrasing a passage from the book, the inspector says that when it comes to opportunity within Customs, “Everyone is equal. It’s just that some are more equal than others.”

The bite of that comment underscores the frustration felt by many Hispanic Customs investigative agents and uniformed inspectors, according to a number of agency employees interviewed. In many cases, the employees asked that their names not be used in print because they feared Customs management would retaliate against them.

Along with the charges of inequities in the workplace, sources within Customs also have stepped forward to blow the whistle on what they claim are startling examples of abuse of power within the federal agency.

The sources allege that Customs management has condoned a policy of shredding records used in disciplinary actions in order to keep those documents away from union officials.

The records are called “briefing papers,” according to a legal deposition taken in the fall of 2000 as part of an employee disciplinary hearing involving Hispanic Customs Agent Miguel Contreras.

The briefing paper provides members of Customs’ Disciplinary Review Board (DRB) with, among other facts, a synopsis of the case against an employee, proposed charges, the range of potential penalties as well as the disciplinary history of that employee.

“Once we get through the DRB process, the briefing (papers), we put those in a shredding bin....We have been told that after the (disciplinary review) board has made its presentation, you collect them back (the briefing papers) and then put them in the bin,” states a Customs employee-relations specialist in the legal deposition. “I have been told they (Customs management) didn’t want the union to get their hands on them (the briefing papers).”

The disclosure of the document-shedding practice prompted some strong reactions at the time from individuals who deal with Customs regularly. The allegation even led to a government investigation in the spring of 2001, according to an official with the League of United Latin American Citizens (LULAC).

Thomas Allison, a former Customs agent and an attorney who has represented Hispanic Customs agents in discrimination litigation, says the alleged policy of shredding briefing papers, “even if it is limited to just that set of documents, can have serious implications on promotion and disciplinary matters.

“It’s a problem if they are destroying those documents, because they are destroying proof,” Allison adds.

Jim Watkins, media spokesman for the National Treasury Employees Union (NTEU), which represents uniformed Customs employees such as inspectors, says the union is “very concerned about the shredding of documents.”

“When we go into a case involving allegations of disparate treatment, these documents (the briefing papers) are relevant information and should be made available,” he adds. “It’s hard to believe they are shredding them.”

Colleen M. Kelley, national president of NTEU, adds that “if there is a spin being put into these briefing papers to prejudice a case, then it surely would be a major concern.

“If we were involved in a case where we knew this was going on (documents being shredded), we would do everything we could do legally to stop it,” Kelley adds. “...Clearly, nothing should be shredded that is used in a case.”

Dennis Murphy, a spokesman for Customs in Washington, D.C., responded to the shredding allegations by saying, “We

don't operate that way. They (Customs employees) are getting their due process. That's how we operate."

Officials with the civil-rights group LULAC, which conducted its own investigation of the document-shredding and the Laredo drug-seizure falsification allegations, have a different take on the situation.

"LULAC is extremely concerned about all of the allegations made with respect to document shredding and false reports," says LULAC spokeswoman Julie Marquez. "We are concerned with the shredding of documents in order to keep them away from the union, because this represents a blatant attempt to obstruct the lawful performance of union activities."

Marquez adds that she was questioned in late April 2001 by an investigator from the U.S. Treasury Department's Office of the Inspector General (OIG). She says the meeting with the OIG investigator concerned allegations that Customs officials are shredding records used in disciplinary actions in order to keep those documents away from union officials.

"There is an official investigation underway, and we (LULAC) have been contacted and interviewed by an investigator from OIG," Marquez asserts. "The investigation is related to the matter of document shredding, which we are concerned about because of the impact that type of activity has on the ability to compile data to show disparity of treatment as well as patterns of racial profiling within Customs."

The OIG issued a report on its findings in the document-shredding investigation in December 2001. The report concluded that U.S. Customs Labor Employee Relations (LER) personnel, prior to 2000, were not retaining the "briefing papers" in case files.

"... LER staff recognized that not including the briefing paper as part of the employees' case file was problematic," the OIG report states. "In the fall of 2000, LER management made the decision to include the briefing paper in the employees' case file."

Since that time (through the date of the OIG report) LER personnel were able to “recover 284 briefing papers associated with the 339 cases brought before the DRB,” according to the OIG report. A total of 55 briefing papers were not recovered.

The OIG report did not address the reason why the briefing papers were being shredded, nor did it explore the issue of whether such activity compromised the integrity of any cases brought before the DRB.

The document-shredding practice is only the tip of the iceberg, though, in the ongoing battle between Hispanic Customs agents and the federal law-enforcement agency.

The letter

In the late 1990s, a Customs agent in El Paso, Texas, sent an anonymous letter to Customs headquarters. The letter was addressed to Raymond Kelly and sent to headquarters in the spring of 1998, about three months before Kelly was sworn in as Commissioner of Customs. On September 29, 1998 — nearly two months after Kelly took over the helm at the agency — an Internal Affairs unit from Customs headquarters was dispatched to the El Paso office to investigate the allegations made in the letter.

Copies of the anonymous letter and the subsequent Customs investigative report were obtained from LULAC. In addition, related legal documents were obtained in which the anonymous letter writer is identified as Special Agent Sean Mulkearns.

In the correspondence, Mulkearns makes a series of unsubstantiated charges concerning a group of Hispanic Customs agents working in the El Paso Customs Office of Internal Affairs. Mulkearns is Caucasian, and the individuals referred to in the missive as “Mexican Mafia” are Hispanic Customs agents.

Among the accusations made in the letter are the following: “There are a number of agents/supervisors which have banded together into what the...office calls the ‘Mexican Mafia.’ These agents have gravitated to the Office of Internal Affairs. They have and are pursuing what can only be called ‘vendettas’

against a number of agents.... Many of these vendettas started years ago but these Mafia agents never forget.”

Later in the letter:

“All of these ringleaders/agents (the Mexican Mafia) have started their careers, either as patrol officers, inspectors, or El Paso police, in the El Paso office’s jurisdiction. They have significant ties and dealings with smugglers. Some rumors state that some smugglers are in their close family relations, but that information is closely guarded. They have positioned themselves to know when one of their ‘OWN’ relatives or close friends is being investigated and to snuff out any competition.... They (the Mexican Mafia) have gravitated to and infiltrated the Office of Internal Affairs (in Customs’ El Paso office) in a slow and progressive manner.”

Later in the letter:

“I believe if these rogue agents (the Mexican Mafia) are allowed to solidify into a ‘Hit Team’ in IA (Internal Affairs), it will eventually lead to physical violence and possibly someone being shot.”

Mulkearns at one point refers to the Hispanic agents as a “band of low lifes” and says they should be forced to submit to polygraph tests. “If they refuse to submit, then they should be transferred — with no hope of returning to the El Paso area,” Mulkearns’ letter states.

“I have always believed that nothing sanitizes better than shining the light of day onto it,” the letter concludes.

It is signed (spelling as it appears in the letter): “Sempre Fi, a Good/Honest Customs Agent.”

In response to the letter, and under the watch of Commissioner Kelly, an Internal Affairs unit was flown to El Paso to investigate the charges in Mulkearn’s letter.

The findings of the investigative unit, called a “Flying Squad,” according to the their report, were as follows:

- The agent who wrote the letter admitted under oath that he “wrote the letter because he/she did not get selected for an agent position” in Internal Affairs (IA) at the El Paso office. “During

(Mulkearns') debriefing on Oct. 8, (he) stated that (he) was 'pissed off' at the time (he) wrote the letter primarily because (he) applied for a position with IA El Paso and was not selected."

- Mulkearns admitted under oath that he "embellished some of the information/allegations contained in the anonymous letter."

- Mulkearns admitted under oath that he "included false information in the anonymous letter."

- Mulkearns admitted under oath that "the anonymous letter contained information/allegations that were hearsay, speculation and the perception of certain individuals who do not like some of the (Hispanic agents)."

"The Headquarters Internal Affairs/Flying Squad (investigation) did not reveal any evidence of misconduct by Office of Internal Affairs/El Paso personnel as described in the anonymous letter...(and) could not corroborate any of the allegations delineated in the anonymous letter," the investigative report states.

Despite this fact, and an admission in the investigative team's report that it was "identified early in the investigation" that "many of the allegations were identified as rumor, speculation or unfounded," the investigation proceeded "in an effort to determine if there was a perception that Internal Affairs/El Paso agents were targeting Office of Investigations/El Paso personnel."

"Although the (Hispanic agents) voiced their disgust with the allegations and their resentment for the label 'MEXICAN MAFIA,' the agents conducted themselves in a courteous and professional manner throughout the...investigation," the investigative report states.

In addition, even though he admitted under oath that he "embellished" and included "false" information in the correspondence sent to Kelly, Mulkearns was given an opportunity by the investigative unit to rewrite the letter.

Even after the rewrite, the allegations were determined to be unfounded, according to the investigative report, which concluded by stating that “no further investigation by the Headquarters Internal Affairs Flying Squad is anticipated.”

LULAC spokeswoman Julie Marquez claims Mulkearns “received a plum duty station assignment” in the wake of the investigation. In addition, Marquez says Hispanic agents who were the targets of Mulkearns’ letter were dispersed to different posts within the Customs Service — as was requested in the letter.

Other sources within Customs also verified this information.

“We have never seen a more hateful, racist document come from a department of the government,” Marquez says. “... I think this letter, this racist manifesto, and how it was handled is really reflective of the mindset of the management of Customs and how it has used its Hispanic agents.”

Customs officials in Washington, D.C., did not provide comment on the letter incident. However, the Customs’ Flying Squad investigative report states: Internal Affairs’ “current policy requires that all allegations, including anonymous information, be investigated and that (Internal Affairs) employees are not immune to this process.”

An e-mail was sent to Commissioner Kelly by a Hispanic agent from Customs’ San Diego field office just weeks prior to the Internal Affairs Flying Squad descending upon El Paso to investigate the letter-writing incident. The e-mail draws out in vivid terms the concerns of Hispanic agents within the agency.

Excerpts from the e-mail, dated Sept. 10, 1998, follow:

Historically, the (U.S. Customs) Office of Investigations has been controlled by a certain group which is perpetuated by cronyism, favoritism, nepotism and the exclusion of minorities. The result of this corrupt system of promotions and selections often enough is the appointment of an individual, not based on experience, training and competence, but on favoritism and membership in exclusive circles. This reflects the lack of

professionalism, integrity and dedication to the mission of the Office of Investigations (OI), and the fostering of sycophancy and self interest/promotion.

...I am sure that you will be bombarded with counter arguments to my observations made in this message, but I beg you please consider the bottom line. There are four SAC (special agent in charge) positions in the Southwest border, all of which have a huge Mexican American population, and none of which have a Mexican American SAC. The vast majority of undercover work and development of actionable information is done by Mexican American agents. Most Mexican American agents in OI are assigned to the Southwest border offices. Are we not qualified to lead? Or, are we not part of the controlling faction in OI? Are we only good enough to be subordinates and not leaders?

...I am deeply concerned that we are facing a moral bankruptcy of leadership in the Office of Investigations. Persons in power seem truly to believe that their authority and leadership derive strictly from the position they encumber, rather than from the integrity, knowledge, experience and dedication that you find within the heart and mind of the individual, and not in any position description. Leadership must be kept strong by strong people, not weakened by cronyistic appointments and incompetence.

The photographs

Despite the risks inherent in standing up to a powerful federal agency like Customs, individuals within the agency continue to put their careers on the line for what they perceive as matters of justice and self-respect, according to agency observers.

One individual who stepped forward is Samuel Rivas St. John, a Customs inspector based in Washington, D.C.

St. John decided to tangle with the top brass at Customs in the mid-1990s when he filed an Equal Employment Opportunity (EEO) discrimination complaint over what he describes as a

racist incident. Federal EEO statutes, which are enforced by the Equal Employment Opportunity Commission (EEOC), make it illegal to discriminate against employees or job applicants on the basis of race, color, religion, sex, national origin, disability or age.

St. John's EEO battle with Customs, which lasted some seven years, had its genesis at a 1994 staff party held at Customs headquarters in Washington, D.C. St. John alleges that Charles Winwood went out of his way to belittle Hispanics by attending the luncheon event dressed in the stereotypical sombrero and serape of a Mexican peon.

At the time, Winwood was a senior Customs executive. He later rose through the ranks of Customs, taking over the agency's top spot in January 2001 with the retirement of Commissioner Raymond Kelly.

Winwood's rising-star status within Customs, however, did not dissuade St. John from speaking out against him in what St. John deemed a matter of honor. In a May 1998 letter written to then-Secretary of the Treasury Robert Rubin, St. John states:

"I have enclosed photographs of one of your senior executives, Mr. Charles Winwood, assistant commissioner, Office of Strategic Trade, in which Mr. Winwood demonstrates the agency's attitude toward Hispanics, in this case Mexican-Americans. Mr. Winwood decided to wear a sombrero and serape in order, in his words, 'to look like a Mexican' for a TexMex luncheon sponsored by his office.... I am of Hispanic descent, and I am very proud of my heritage. When I see such displays of blatant insensitivity, especially from a senior executive, it is impossible to ignore or just pass it off as an isolated incident. I have filed a formal complaint on this matter...."

Even though the photographs were taken a number of years ago, they have retained a long shelf life, according to several Customs insiders familiar with the incident.

"They have had a life of their own....," concedes Customs spokesman Dennis Murphy.

Those who raise concerns about the photographs do so in the context of the large number of Hispanics employed by Customs. Prior to being merged into the Department of Homeland Security in 2003, some 3,900 of Customs' roughly 20,000 employees were Hispanic.

"This is a stereotype we've been fighting for years to erase from the American psyche — a picture of a Mexican peon taking a nap with a bottle of tequila. It's equivalent to someone putting on black face," says LULAC's Julie Marquez. "It's having fun at the expense and pain of another cultural group that you don't understand. It's insensitive, and he (Winwood) needs to look inward if he fails to see the pain it causes."

In defense of Winwood's behavior, Murphy stresses that the incident occurred as part of a "let-your-hair-down" office party for employees at Customs headquarters in Washington, D.C.

"This happened to be a Southwestern theme lunch, and he (Winwood) put on a sombrero and poncho," Murphy explains. "His intent was to build office camaraderie."

St. John stresses, though, that Winwood was the only one dressed "in costume" for the luncheon.

"(Winwood's) costume shows insensitivity to Hispanics," stresses attorney and former Customs Agent Tom Allison. "It's like the Frito Bandido commercial. Here's some guy dressed in a costume that Mexicans find offensive in order to make fun of them. It's insensitive and it shows up in everything they (the top management of Customs) do."

Murphy confirms that someone at the 1994 luncheon did complain about Winwood's behavior. That resulted in an investigation into the incident by the Treasury Office of Inspector General (OIG). "They (OIG) determined that no (disciplinary) action was necessary," Murphy adds.

Murphy says he cannot explain why no one else was dressed in a costume. He stresses, though, that there were Southwestern-theme decorations and Mariachi performers at the party. In addition, he says Winwood subsequently made a general apology stating that he did not intend to offend anyone.

However, that apology was of very little consolation to St. John — who contends he was subjected to retaliation and was passed over for promotions after filing his discrimination complaint concerning the incident. In a second letter sent to Treasury Secretary Rubin in June 1998, St. John states:

“The bottom line is that this incident did take place and it was a disgraceful and unpardonable offense by a senior Customs executive.... For (Winwood) to parade around the Customs headquarters building in a serape and sombrero to ‘look like a Mexican’ as Mr. Winwood stated, is absolutely deplorable and cannot be brushed off with just an apology. This is a senior Customs executive we are talking about....”

St. John adds that the flyer distributed to Customs employees promoting the 1994 luncheon was equally disturbing in that it includes a demeaning drawing of a Mexican bandit and it makes reference to Poncho and Cisco — also considered belittling characterizations of Mexicans.

As evidence of the uphill struggle St. John endured, he points out that his complaint was fought tooth and nail by Customs and was still pending a hearing before an EEO judge some seven years after it was initially filed. St. John says his EEO case was finally settled in September 2001. The settlement terms are confidential, he adds.

No fault

St. John’s long, contentious battle with Customs is not unique. E. William Velasco, who served as the acting assistant commissioner of Internal Affairs for the Customs Service before retiring in May 1999, paints a bleak picture of the culture within the agency as well.

Velasco, who is Hispanic, says he attained a high position within Customs, “but I had to fight and scratch all the way there, and I had to file EEO actions repeatedly.

“I endured discrimination there (in Customs) for many years; it goes back 15 to 20 years,” adds Velasco. “I made the best qualified list (for jobs) numerous times, and I was never

promoted. Finally, I had enough of it and I decided to file through EEO.”

Velasco says he “was privy to a lot of high-level meetings” in his executive role with Customs.

“Frankly,” he says, “the mentality was that there was no way they (Customs) were going to give in to anyone. They were not concerned with right or wrong. They were concerned about giving in. The issue was whether they (Customs) would be found at fault.”

Customs Agent Romeo Salinas learned that reality first-hand. A jury in a federal court case in Laredo awarded Salinas \$1 million in actual damages in June 2000. The jury found that Customs failed to promote Salinas in retaliation for that agent’s prior EEO filings. Despite the hefty jury verdict, under the law, the statutory maximum Salinas was entitled to recover was \$300,000 in damages.

During the trial, Salinas’ attorney, Ronald Tonkin of Houston, called as a witness a former assistant commissioner of Customs, who provided testimony detailing the retaliatory culture within the U.S. Customs Service. In addition, 10 other former and current Customs employees testified that they, too, had suffered retaliation from Customs officials.

According to Tonkin, immediately after the jury award, the government filed a motion seeking to reduce the judgment in the Salinas case to nominal damages. Tonkin says the government’s attorney proposed to him that Salinas should receive only \$10,000 in damages. In addition, Tonkin says “a couple of days after the jury made its decision, my client (Salinas) was suspended (from his Customs job) for two days.

“Even when it’s a clear-cut case, Customs will continue to fight it by filing more appeals,” says Tonkin, who is a former federal prosecutor. “In my client’s case, it has already cost \$180,000 in expenses (as of June 2000) and attorney’s fees, and Customs is still fighting it. They (Customs) try to bury you in paperwork and spend an inordinate amount of time and money fighting these things.”

In January 2001, the judge in the Laredo case ruled in favor of Salinas, granting him the maximum amount of compensatory damages, \$300,000, as well as ordering the government to cover back pay, medical expenses, attorney's fees and court costs. Tonkin adds, though, that the U.S. Attorney's Office appealed the U.S. District Court judge's ruling.

The federal appeals court ultimately remanded the case back to the district court on the issue of compensatory damages and Salinas agreed to accept the suggestion of the appeals court for a \$150,000 settlement. In addition, the final judgment required Customs to provide Salinas with, in round numbers, \$38,000 in back pay, plus \$9,000 in interest; \$16,000 for past medical expenses; \$157,000 in attorney's fees; and \$26,000 in court costs — plus another \$5,000 in attorney's fees to conclude the case.

However, as of year-end 2002, Tonkin said Customs had still not provided Salinas with proper notification of a promotion he had earned, nor had the agency made good on the back pay and interest due.

The foot-dragging by the agency prompted Tonkin to fire off the following threat in a letter to the deputy assistant commissioner of Customs:

"In the event that I do not receive in WRITING...verification that the above items have been addressed and that the necessary steps have been taken to comply with the judgment, you will leave me no alternative but to bring on a motion for contempt of the District Court for your failure...to comply with the judgment," wrote Tonkin in the letter.

Several months later, the government finally fulfilled the terms of its settlement with Salinas.

Throwing rocks

Ricardo Sandoval, the resident agent in charge of the Customs Office of Investigations in El Centro, Calif., in July 2000 won a U.S. Court of Appeals case in which Customs was challenging a 1998 lower court's finding that he had been the victim of discrimination and retaliation. In that lower-court case,

Sandoval raised allegations that a neo-Nazi ring was operating inside the Customs Service in the San Diego area. The case stemmed from an incident in 1992 in which Sandoval's first-line supervisor in the Office of Internal Affairs in Calexico, Calif., ordered him to investigate a complaint that involved a white supervisor assaulting a black officer.

Legal documents filed in federal court in Washington, D.C., in May 2002 in a related class-action discrimination lawsuit against Customs describe the rock-throwing incident as follows:

Several white Customs managers had thrown rocks at Ken Lakes and it appeared to be racially motivated. One of the perpetrators wore a Nazi Swastika ring. Evidence was developed showing that these Customs managers collected Nazi memorabilia and they had scrawled swastikas on lockers and elevators in Customs buildings.

Sandoval came to believe that a neo-Nazi group was behind the incident. He reported it to his superiors and recommended that it be referred to the United States Attorney's Office for prosecution as a "hate crime" under the civil rights statutes. His request was denied and he was told that Customs would send out a memo saying inspectors should not throw rocks at black employees.

Sandoval ignored his superiors and reported the results of his investigation to the United States Attorney's Office, where the case was referred to the Justice Department's hate crimes unit in Washington, D.C.

Thereafter, Agent Sandoval's upgrade to GS-14 (rank) was denied and he was not selected for the Internal Affairs/Office of Enforcement rotation. He did not receive temporary acting supervisory assignments. Based on the foregoing, Agent Sandoval filed an EEO complaint alleging discrimination and retaliation.

In 1998, a California federal jury awarded Sandoval \$200,000 for discrimination and retaliation. Several jurors said they believed that corruption and discrimination may be systemic within the Customs Internal Affairs unit where Sandoval worked in 1992.

“He (Sandoval) has been under investigation for frivolous things for years,” says Sandoval’s attorney in the California case, David Spivak. “It’s all retaliation.”

Spivak adds that Customs fought the award of attorney’s fees in relation to Sandoval’s 1998 case. In addition, Customs took nearly a year to make good on the damages awarded to Sandoval after the appeals court ruled in his favor in July 2000.

“The EEO process with respect to Customs is a shambles,” Velasco says. “... Once this issue gets outside that building in Washington, the truth will come out.”

CHAPTER 5

The Hydra

Customs Agent John Yera stood in the parking lot of a Holiday Inn hotel on June 25, 1991. He was wearing a wire and working an undercover operation targeting two Colombian drug smugglers.

Yera was in the parking lot for an exchange of 100 kilos of cocaine. The U.S. Attorney and Yera's group supervisor had instructed him to get the Colombian suspects to handle the cocaine, which was stashed in the trunk of a car.

Unfortunately, Yera's supervisor failed to brief him on how or when the take-down team would approach the scene to make the arrests. Yera also found out later that the agents monitoring his wire did not speak Spanish.

As result, Yera, along with the suspects, were caught off guard when the take-down team suddenly converged on the parking lot. Among the first on the scene was Group Supervisor Phillip Shields, who raced in with his car, his gun drawn, his finger on the trigger.

Shields hit the brakes and shifted the vehicle into park. In the process, his gun accidentally discharged. The bullet ripped through Yera's back, hitting his spine just above his waist — leaving Yera paralyzed from the stomach down.

In a segment aired nationally in 1999 on the ABC-TV news-magazine show "20/20," Customs Commissioner Raymond Kelly stated the following: "John Yera is clearly a hero, and we should be championing people like John Yera. He certainly has done the job we asked of him. He's doing excellent work now in our cyber-crimes smuggling center."

Despite the commissioner's public praise of Yera, the paralyzed agent wasn't getting a hero's welcome behind the scenes. In fact, the careless actions of his supervisors in the botched drug bust as well as the treatment he received from

Customs in the wake of the shooting compelled Yera to join in a class-action discrimination lawsuit filed by Hispanic agents against Customs.

"Had sufficient care been taken to ensure that a Spanish-speaking agent was monitoring the undercover wire, Agent Yera would not have been injured," states the class-action litigation filed in federal court in Washington, D.C., in May 2002. "Similarly situated non-Hispanic agents who speak English during undercover assignments are not treated in a similar fashion. The lack of concern here is reflective of the discriminatory animus against Hispanic special agents."

The lawsuit goes on to point out that none of the supervisory agents involved in the botched undercover operation were disciplined. "In fact, Customs promoted Phillip Shields, the supervisory agent who shot John Yera," the lawsuit states.

In the wake of the shooting, Yera spent about two years in rehabilitation. "During this time, he was forced to stay in a hotel for a year until handicapped accessible housing could be obtained for him," the class-action lawsuit states. "The Customs Service denied him per diem allowance for this entire period. The added financial burden piled insult on injury."

Among the other problems confronted by Yera after the shooting included having to endure delay after delay — waiting nearly a year and half — to get approval from Customs' management to telecommute to his job, according to attorney Tom Allison, who was involved in the early stages of the class-action litigation. Yera sought permission to work from a computer at home because occasionally the pain from his injury or inclement weather make it impossible for him to get into the office.

"While assigned to the Cybersmuggling Center in 2002, Agent Yera and another Hispanic agent were speaking Spanish," the 2002 class-action complaint states. "Customs Program Manager Claude Davenport told them both that they should stop speaking Spanish and speak 'American.'"

Ironically, according to the litigation, Davenport had previously asked Yera to help translate some Spanish documents.

“People sometimes don’t always like the truth,” says one Customs agent who asked not to be named. “But the truth is, Customs did this to him (Yera), and they don’t seem to care. Until you’ve been a victim of discrimination, maybe you can’t realize how much it hurts and pulls in your gut, and makes you feel alone.”

Class action

Charges that U.S. Customs engages in racial profiling by subjecting a disproportionate number of minorities to searches at airports led to congressional hearings in the spring of 1999.

Similarly, Senate and U.S. Treasury probes were launched in 1999 into allegations that the agency’s internal discipline system was wracked with problems, including lax enforcement, favoritism and inadequate follow-up. Customs officials also were accused of retaliating against whistleblowers who reported wrongdoing.

In the wake of the publicity and scrutiny, officials with Customs, including Commissioner Raymond Kelly, promised Congress and the public that they would fix the problems.

“While instances of corruption in Customs are few...we may not have always done a good job in responding to allegations of misconduct. That is changed,” Assistant Commissioner of Customs William Keefer told a Senate committee in May 1999.

However, like the mythical Hydra, a beast that sprouts two new heads for every head severed, the problems within the federal agency continue to multiply, according to a number of current and former Hispanic Customs agents.

Those agents decided to strike at the heart of the beast by banding together to expose what they allege is a machine-style system of management within Customs that is dominated by a good-ol'-boy network of powerful Anglos who are perpetuating a culture of institutionalized racism.

To that end, as of September 2000, several dozen former and current Hispanic Customs agents had paid a \$225 retainer to the law firm pressing an Equal Employment Opportunity (EEO) class-action complaint against Customs, according to Thomas Allison, who represented the agents in the litigation.

“If it was shown through congressional hearings that Customs was racially profiling citizens, why is it hard to believe the agency is racially profiling its own employees?” asks one Hispanic Customs agent who asked to remain anonymous. “Eventually, I’ll retire, but what happens to the people who remain? The animal (racism) will still be there eating everything up.”

The class-action discrimination complaint, which was launched in March 1995 by Special Agent Miguel Contreras, had grown to encompass a class of some 400 active and retired agents in the offices of Investigations and Internal Affairs by the spring of 2002.

The original complaint alleged that the Customs Service’s “policies and practices toward Spanish-speaking agents, specifically regarding how they are assigned, have a negative impact with respect to training, promotions and discipline.”

Allison stresses, though, that the case was fought tooth and nail every step of the way by Customs officials. He says it took five years of legal battles finally to move the EEO case to the discovery phase.

“We’ve run into a brick wall with every decision made in this case being appealed by Customs,” Allison says. “Frankly, they (the appeals) have been a waste of time on everyone’s part. If there’s a problem in Customs, it’s in everyone’s best interest to look into it and get it resolved.”

In addition to the alleged stonewalling, the agents participating in the case, Allison asserts, have lived in fear of retaliation from the agency. Allison took the case all the way through the EEO process. Then, in 2002, another lawyer, Ron Schmidt of Washington, D.C.-based Shaffer, Rapaport & Schmidt, stepped in to take on the next phase of the battle.

Schmidt, whose firm has since merged with New York City-based Garvey Schubert Barer, moved the class-action complaint into federal court in May 2002. The lawsuit names eight Hispanic agents as plaintiffs who claim they are suing Customs as representatives of a class of more than 400 active and retired agents.

The lawsuit filed in federal court in Washington, D.C., like the EEO action, alleges that Customs has engaged in a pattern of discrimination against Hispanic agents. That discrimination, which the lawsuit claims dates back to the 1970s, manifests itself in differential treatment as it relates to promotions, transfers and assignments, awards and bonuses, training, and discipline.

"The (lawsuit) further alleges that the Customs Service maintained a hostile work environment, retaliated against agents for asserting their EEO rights and discriminated against them by denying foreign-language pay awards," states a press release issued by Schmidt.

In addition to back-pay and compensatory damages, the Hispanic agents ask the court to grant a permanent injunction requiring Customs to cease and desist "from continuing to engage in the illegal and discriminatory conduct..." the lawsuit states.

The litigation was still pending in federal court as of mid-2005.

Another court filing related to the class-action case illustrates the insidious nature of the alleged racism that the Hispanic agents are seeking to expose. The related filing asserts that Customs was among the three federal law-enforcement agencies that were previously "the subject of congressional hearings in connection with the 'Good O' Boy Roundup,' and all had agents attending or organizing the event. All (three agencies) have tolerated an atmosphere of discrimination, harassment and retaliation for at least three decades."

The Good O' Boy Roundup was an annual party held in the backwoods of Tennessee that was marked by blatant racist activity. The other two agencies involved in the 1995

congressional hearings were the U.S. Secret Service and the Bureau of Alcohol, Tobacco and Firearms (BATF) — both also part of the Treasury Department at the time.

"On July 11, 1995, a newspaper article appeared on the front page of the *Washington Times* entitled, *Racist ways die hard at Lawmen's retreat — Annual 'Good O' Boy Roundup'* cited as evidence of 'Klan Attitude' at BATF," states a March 2002 court filing by the law firm of Shaffer, Rapaport & Schmidt. "... The article detailed allegations of racist misconduct by personnel of the BATF and other federal law enforcement agencies at an annual retreat outside Ocoee, Tenn."

The court pleading continues as follows:

"... The tape (of the event) was shocking. It showed a 'Nigger check point' sign at which, ostensibly, cars were checked to determine whether blacks were trying to attend the Roundup. Another sign asked, 'Any niggers in that car?' There were also Confederate flags posted at the event.

"In his testimony (before the Senate Judiciary Committee in July 1995) BATF Director John Magaw...acknowledged that racist activity had taken place at the Roundup every year it occurred since 1985. Director Magaw described to the committee some of the activities at the Roundup, including a skit that was put on in which a person dressed as a Ku Klux Klansman simulated performing sodomy on a person with a blackened face."

Customs contends the allegations raised in the Hispanic agents' class-action lawsuit are without merit. The agency asserts that the claims in the complaint are not supported statistically. The federal law-enforcement agency stresses further that Hispanic agents have received the number of promotions to supervisory and management positions that would be expected as part of a race-neutral system.

In a prepared press statement issued May 23, 2002, concerning the class-action case, Customs states the following:

The U.S. Customs Service is proud of its diverse workforce, which includes a significant number of Customs special agents of Hispanic ancestry. The allegations of this lawsuit, that Customs has discriminated against Hispanic Customs agents, are without merit and are not supported by statistical evidence.

...For the past seven years, the U.S. Customs Service has been defending a class-action complaint by plaintiff Miguel Contreras and his attorneys before the Equal Employment Opportunity Commission (EEOC). This complaint was filed by Agent Contreras on behalf of a class of the agency's Hispanic special agents. The case was scheduled for a five-week trial before an administrative judge beginning June 10, 2002. In preparation for this trial, the parties were ordered to prepare and submit a statistical analysis supporting their respective cases by May 10, 2002. On that date, instead of filing the report as ordered by the judge, the plaintiff's attorneys requested dismissal of their case from the EEOC and filed a lawsuit in federal district court in the District of Columbia.

While the U.S. Customs Service supports all employees' rights to avail themselves of any and all appropriate systems to lodge a complaint or grievance, and takes all allegations of discrimination very seriously, the action to withdraw from the seven-year EEOC proceeding and today's press conference (announcing that decision), indicate an apparent desire by the plaintiff's attorneys to try this case in the media, not in the courtrooms.

In the case of Agent Miguel Contreras, according to some Customs observers, the agency appears to have gone to extraordinary lengths to ensure the price of pursuing such litigation is taken "very seriously" — specifically by other agents seeking to file similar claims in the future.

“Concern over retaliation by Customs has been ongoing for us,” stresses attorney Allison. “Look at what happened to Contreras; his participation (in the class-action case) we believe led to severe disciplinary action.... The problem is that in (Customs’) offices of Investigation and Internal Affairs, there is a very centralized system of strong managers who promote who they want, and when they don’t like someone, those people suffer, and where they suffer is in the assignments they get.”

Retaliation

By most measures, Agent Miguel Contreras was living out the American dream — until he decided to tangle with the brass at Customs.

Contreras immigrated to the United States from Mexico when he was 12. He worked as a laborer in the farm fields of Arizona and California to support himself and later worked his way through college.

After serving as a local police officer in Michigan for several years, Contreras landed a job as a special agent with the U.S. Defense Investigative Service in San Diego. Two years later, in 1983, he became a special agent with the U.S. Immigration and Naturalization Service in San Francisco.

Contreras went on to work as a special agent with the U.S. Drug Enforcement Administration (DEA) and the Bureau of Alcohol, Tobacco and Firearms (BATF) before joining the Customs Service in 1988 as a special agent.

Throughout his career, Contreras has been in the thick of dangerous undercover work, a fact that is apparently not unusual for Hispanic Customs agents. The Hispanic agents’ class-action lawsuit filed in May 2002 in Washington, D.C., spells it out this way:

"Hispanic special agents are often assigned to undercover (operations) without proper training or adequate back-up support. The Customs Service subsequently devalues undercover work and Spanish-language-related investigative activities in terms of promotions (and) awards.... As a result of the Customs

Service's use of such methods of assigning cases, Hispanic special agents are assigned to fewer high-profile cases, receive cases that are not career-enhancing, and are disproportionately tasked to undercover work and other Spanish-language-related duties than are similarly situated white non-Hispanic special agents."

In addition, the lawsuit claims, Hispanic agents, compared to their fellow Anglo agents, are more likely to be assigned to the Southwest border and Puerto Rico. Hispanic agents also are more likely to be stationed at small offices "and therefore are less likely to receive the diverse work experience necessary for promotion," the class-action lawsuit alleges.

In Contreras' case, over the course of his career at Customs, he has been assigned to a number of undercover operations in California and Michigan. One of those operations involved infiltrating a Colombian drug ring in Detroit, which he did successfully, resulting in the arrest and conviction of several individuals on charges of drug trafficking and money laundering.

However, as appears to be the case for many other Hispanic agents, Contreras' successful undercover work for Customs came at a steep price for his own career. "The inordinate amount of undercover and Spanish-language-related duties he (Contreras) was assigned adversely affected his opportunity to obtain the diverse experiences necessary for promotion," the class-action lawsuit alleges.

Despite the obstacles, Agent Contreras continued to work hard and advanced through the ranks at Customs. By 1995, he had been promoted to a field management position: resident agent in charge (RAC) for the El Centro, Calif., Internal Affairs office. That same year he filed his class-action EEO complaint against Customs. From that point on, Contreras' problems at Customs began to escalate.

Between 1996 and 2002, Contreras applied for 40 higher-level positions, frequently making the best-qualified list for the posts, but was never interviewed for any of the jobs.

“In most cases, white special agents with similar or less experience or qualifications were selected,” states the Hispanic agents' class-action lawsuit.

After battling Customs for some five years on the EEO front, in 2000 Contreras found himself demoted in rank and stationed at a small Customs office in Yuma, Ariz.

By the spring of 2002, Contreras — then a senior special agent with the Office of Investigation in Yuma — was out of work after being placed on administrative leave.

Contreras points out that he was suspended in the wake of informing his supervisors that he was taking anti-depressant medication. Contreras also had filed a workers' compensation claim against Customs, alleging that the agency had caused his depression.

Contreras' supervisors would later claim he was unfit for duty because he was an alcoholic, a charge Contreras contends they trumped up to justify their actions.

As part of the administrative leave, Contreras' gun, government car, office keys and credentials were taken away from him. Contreras was then ordered to undergo a series of psychiatric examinations. About three months after those examinations were completed, Contreras received a letter from Customs:

“In September 2002, you underwent an agency-directed psychiatric fitness-for-duty examination. The results of the examination indicated that you are not medically fit for full duty as a U.S. Customs Service Criminal Investigator, to include carrying firearms. Agency representatives are currently conducting a job search to determine if there is an appropriate position available within the scope of your medical restrictions....”

The letter also encouraged Contreras to explore disability retirement options.

As of 2005, Contreras was still battling to overturn Customs' decision. He points out that his medical doctor and psychologist both gave him the green light to return to work as an agent. In

his view, Customs railroaded him to undermine his credibility in the class-action lawsuit.

A Freedom of Information Act (FOIA) request was sent to Customs in November 2001 seeking all records maintained by the agency on Contreras since 1994 that are related to “Merit Systems Protection Board, Equal Employment Opportunity (EEO) and whistleblowing activity and proceedings.”

Shortly after the FOIA query was filed, Richard Anthony, a Customs staffer charged with reviewing such requests, stated that there were about eight boxes of material containing some 25,000 pages of documents that were being examined for potential release.

“This (volume of documents) certainly is not normal,” Anthony says.

However, some four years after the FOIA request was made, Customs had produced only a couple hundred pages of documents — the bulk of it material that had already surfaced as part of the Hispanic agents class-action case.

But even absent additional FOIA records, the trail of alleged retaliation against Contreras between 1995 and 2002 is clearly marked by numerous career-threatening actions taken by Customs.

The Hispanic agents’ class-action lawsuit sheds some light on the agency’s treatment of Contreras:

- “In July 1998, Agent Contreras was investigated for theft of government property and unauthorized use of government property when he and another Hispanic special agent posted a message in TECS (the Treasury Enforcement Communications System) regarding his class action complaint.”

- “In October 1999, Special Agent Contreras was served with a letter of removal for allegedly divulging confidential information to his secretary regarding her son's involvement in drug activities. Agent Contreras had received information that the woman's son was going to be killed by members of a drug organization. Agent Contreras appealed this action to the Merit

Systems Protection Board (or MSPB, which hears and decides appeals of personnel actions taken against federal employees).”

- “In June 2000, Agent Contreras settled his MSPB appeal by agreeing to accept a reduction in grade (rank) to GS-13 in exchange for all pending charges being expunged from his personnel file. During negotiations, Customs attorney Dylan Medina suggested that Contreras could obtain better terms if he would dismiss his class-action suit. Contreras refused to compromise the interests of the class.”

- “In 2000, Special Agent Contreras also was investigated by the Department of Treasury's Inspector General because his cousin was married to an alleged drug smuggler. His last contact with the cousin was at a family funeral in 1995.”

- “In 2002, the acting SAIC (special agent in charge in Arizona) served Special Agent Contreras with a 'Letter of Caution' because Contreras granted an interview to the Hispanic newspaper, 'Bajo El Sol,' for an article dealing with his rise from migrant farm worker to customs special agent criminal investigator. In the article, Contreras advised young people to 'stay away from drugs and violence, and to try and find ways to succeed and be happy through formal education.' ”

Contreras is not the only agent participating in the class-action lawsuit against Customs who has been the victim of alleged retaliation by the agency.

Another agent involved in the litigation, Ruben Gonzalez, while serving as the associate special agent in charge (ASAIC) of Customs' Houston Office of Investigations, was called to testify in the spring of 2002 in an EEO deposition in Washington, D.C., regarding discrimination against Hispanic agents.

“When (Gonzalez) returned to the Houston, Texas, Office of Investigations where he serves as the GS-15 ASAIC, Gonzalez discovered that he had been replaced and that a GS-14 special agent had been put in an acting position as the ASAIC,” states the Hispanic agents' class-action lawsuit. “Special Agent Gonzalez...was told that a GS-14 was put in charge because the

special agent in charge did not know when Gonzalez would return from Washington. This action was retaliatory.... Agent Gonzalez's secretary knew his itinerary and he could easily have been reached by cell phone."

The Houston incident was far from the first time Gonzalez had run into career setbacks at Customs. From 1999 to 2002, Gonzalez applied for more than 30 GS-15 supervisory positions. He made the "best-qualified" list for each post sought, "yet he was never interviewed for any of them," according to the class-action lawsuit. When he finally did receive a promotion in March 2002, he was forced to move his family from the East Coast to Houston.

The treatment dished out to agents Contreras and Gonzalez, who both retired from their federal law enforcement jobs in 2006, stands in sharp contrast to the treatment of Customs employees like the supervisor in Laredo who was accused of falsifying drug-bust records; or Sean Mulkearns, the author of the so-called "racist manifesto" directed at Hispanic agents in the El Paso Customs Office of Internal Affairs. Sources within the agency also point to another egregious example of disparate treatment with respect to disciplinary action. The case involves a supervisory special agent in Customs' Office of Investigation.

An agent under the supervisor became suspicious of the supervisor's use of a computer in the office dedicated to conducting child-pornography investigations. After compiling substantial evidence that the supervisor was likely using Customs equipment to view pornography, the special agent sent a letter in August 2000 to Customs Office of Internal Affairs to report the supervisor's activities.

The end result, according to sources, is that the supervisor received a two-week suspension. The letter sent by the agent is reprinted below. Names and locations have been removed to protect the identities of the parties involved.

Internal memo
UNITED STATES GOVERNMENT

Memorandum

DATE: August 22, 2000

TO: U.S. Customs Service, Office of Internal Affairs

SUBJECT: Inappropriate use of U.S. Customs Service equipment

I feel that it is my responsibility to report something that has been occurring in the...office of the U.S. Customs Service, Office of Investigations, for an extended period of time. I am not making this report due to any personal dislike or bad feelings against the individual involved. On the contrary, I think of the individual as a friend, but I feel that certain things that he has been doing need to be reported. To follow is, to the best of my knowledge, a chronological course of events that I have witnessed. Please understand that some of the dates are approximations since I am only now thinking back on them, having failed to see their true importance at the time that they occurred.

On Aug. 1, 1998, I transferred to the...office from the...office of the U.S. Customs Service, Office of Investigations. After working in the office for a few months, I began to notice that Supervisory Resident Agent (SRA) AA would frequently work at a computer maintained in a common area of the office. Initially, I didn't think that it was unusual for SRA AA to work on that specific computer since it was a "stand-alone" (not connected to the Treasury Enforcement Communications System) computer used by the whole office to do miscellaneous work. I first began to notice that every time that SRA AA used the computer, he turned the computer monitor screen at an angle so that people passing by could not readily see what he was doing on the computer. I then remembered that the computer had Internet access for utilization in a child pornography Internet operation that Senior Special Agent (SS/A) BB was actively working. I began to wonder if SRA AA was using the computer to access the Internet....

Shortly after developing my suspicions, in approximately November 1998 to January 1999, I noticed SRA AA once again using (the stand-alone) computer with the screen turned at an angle. After SRA AA finished using the computer, I opened the computer's Netscape Internet browser program. I checked the browser history and found that Internet pornography sites had been accessed during the time that SRA AA was sitting at the computer. I then checked the browser history again after approximately two more times when SRA AA was utilizing the computer and found the same results. SRA AA utilized the (stand-alone) computer in the above described manner on a regular basis so there was not a long time between developing my suspicions and confirming them.

Initially, after my discovery, I thought that maybe SRA AA was assisting SS/A BB with his child pornography Internet operation. In approximately January 1999, I told SS/A BB what I had recently discovered and asked him if SRA AA was assisting him with his operation. SS/A BB advised me that SRA AA was not assisting him with his operation and that he too had previously made the same discovery as I. SS/A BB stated that he discovered that SRA AA was accessing Internet pornography as early as nearly the beginning of when the office first got Internet access. According to SS/A BB, SRA AA was utilizing both (the stand-alone) computer as well as the...computer in SS/A BB's office to access Internet pornography sites. SS/A BB advised me that for a long time he had been concerned that SRA AA's actions would jeopardize his child pornography Internet operation. SS/A BB also advised me that he was concerned that if it was ever discovered that someone was accessing Internet pornography on (an office) computer that he would be the one blamed. SS/A BB stated that he had been accumulating evidence of SRA AA's actions so as to protect himself from such blame. SS/A BB explained that he could prove that he was not the one accessing the pornography because he had browser log records

(cache records) that he had maintained showing that the Internet sites were accessed from his computer on days that he was on annual leave or out of the office.

From approximately January 1999 to the summer of 1999, I noticed, on a regular basis — approximately every few days — SRA AA utilizing (the stand-alone) computer with the monitor turned at an angle. I also noticed, on a less frequent basis, SRA AA utilizing SS/A BB's (office) computer in the same manner. I occasionally checked the Internet browser history for the times that SRA AA was at (the stand-alone) computer and confirmed that Internet pornography sites had been accessed.

In the summer of 1999, the...office received two new lap-top computers. SRA AA took one of the lap-top computers and hooked it up to the Internet in his office. Since then, I have noticed, on an almost daily basis, SRA AA utilizing the lap-top computer in his office with the screen turned away from the door. I have not confirmed that SRA AA has utilized the lap-top computer in his office to access Internet pornography sites, though it is my suspicion that that is what he is doing when he has the screen turned away from the door.

From approximately the summer of 1999 to May 2000, I continued to observe SRA AA utilizing (the stand-alone computer) and SS/A BB's computer, as well as the lap-top computer. In the same manner as described above, SS/A BB advised me on several occasions that he had confirmed that SRA AA was continuing to access Internet pornography sites on his computer when he was on annual leave or out of the office. SS/A BB also noticed that, after using his or (the stand-alone) computer, SRA AA had started attempting to erase the cache records. According to SS/A BB, SRA AA had also changed the Netscape browser history retention date from thirty (30) days to one (1) day.

On May 9, 2000, while in...to effect an arrest warrant, SS/A BB, SS/A CC, and myself, were discussing events in (our) office. SS/A CC had worked in the same office as SS/A BB and SRA AA prior to transferring to a different office. SS/A BB mentioned to SS/A CC that SRA AA regularly accesses Internet pornography sites on the (office) computers. SS/A CC advised SS/A BB that he already knew that SRA AA did that kind of stuff; that he was doing it when SS/A CC was working in (the office). According to SS/A CC, Special Agent (S/A) DD was also aware of SRA AA's Internet activities.

On May 10, 2000, after learning that SS/A CC and S/A DD had known about SRA AA accessing Internet pornography sites on the Internet for years, I discussed with SS/A BB and S/A EE the need to advise the Office of Internal Affairs about SRA AA's activities. SS/A BB and S/A EE both agreed that something needed to be done because the problem seemed to be getting worse.

On July 6, 2000, I learned that SS/A BB was resigning his position as senior special agent with the U.S. Customs Service in order to enter into private business.

On July 7, 2000, SS/A BB, S/A EE, and myself again discussed the need to report SRA AA's activities to the office of Internal Affairs. SS/A BB advised that for some time he had also noticed something else that he considered to be unusual. SS/A BB explained that he had noticed that oftentimes when he would come into work on a Monday morning, the conference room chairs and television would be arranged differently than when he left on the previous Friday evening, even though he was the last one to leave the office on Friday. According to SS/A BB, on those suspect Monday mornings, a chair would be pulled up in front of the television/VCR and the conference room blinds would be closed.

On July 10, 2000, SS/A BB advised me that, being the last person out of the office on the previous Friday night, he made sure to notice that the conference room shades were open and that the chairs were pushed up to the table. On that morning (Monday), when he came in to work, he noticed that the conference room shades were closed and that a chair was pulled up in front of the television/VCR. Later that day, while cleaning out his office, SS/A BB found a mail-order pornographic videotape placed on a shelf in a dresser in his office, within easy reach of the conference room. SS/A BB stated that he had never seen the pornographic tape before and was sure that it was not any type of evidence belonging to any case he had or was currently working. SS/A BB believed that someone had been coming into the office during the weekends and viewing this and possibly other pornographic videotapes in the conference room.

On July 20, 2000, after having been told that on the previous day SRA AA had spent a lot of time on (the stand-alone) computer with the monitor turned at an angle, I checked the Internet cache record and found that several pornographic Internet sites had been visited on the previous day. I copied the cache to a floppy disk for future reference.

On July 21, 2000, SS/A BB provided to me a plastic bag filled with computer floppy disks containing cache records, as well as print-outs of cache records and pornographic images accessed on the Internet from his and (the stand-alone) computer. The records span a time frame of early 1998 to present (August 2000).

On July 25, 2000, and July 26, 2000, after SS/A BB's last day at (the office), SRA AA destroyed a large amount of pornographic videotapes, computer disks and pictures that had been maintained by SS/A BB as part of his child pornography operation. Since that date, I have not witnessed any incidents in which SRA AA has accessed pornography on the Internet.

I realize that my observations, as outlined above, should be verified by someone other than myself. I am in possession of the above-mentioned documentation that was provided to me by SS/A BB, and I am confident that you will find that it supports my allegations. I am of course concerned about maintaining anonymity, especially since the individual against whom I am making these allegations is my direct supervisor. I therefore ask, if at all possible, to please keep my identity and this document as confidential as possible.

Sincerely....

CHAPTER 6

Green Quest

On the surface, a U.S. Customs agent in Houston appears to have made all the right moves to scale the agency's career ladder.

But some Customs officials familiar with the agent's track record claim his advancement up the command chain epitomizes the dysfunctional management culture plaguing U.S. Customs. They point out that the Houston agent was promoted despite his past record of being the primary target of an Internal Affairs corruption probe in the 1990s and later being part of a bungled sting operation that cost the government some \$600,000.

The agent in question was one of the targets of a corruption probe by Customs Internal Affairs in the 1990s, according to the sources. The probe centered on the Currency Narcotics Enforcement Team (CNET), an undercover unit tasked with setting up stings on money-laundering operations carried out by drug traffickers.

The suspect agent (who will be referred to as Mr. S) was never charged with a crime as part of the investigation. However, Mark Conrad, former resident agent in charge of Customs' Internal Affairs office in Houston, contends that bureaucratic stonewalling at headquarters undermined the probe.

"Whatever investigation was done ultimately would never be fruitful because of (the overzealous) oversight from headquarters," alleges Conrad, who oversaw the Internal Affairs investigation of CNET.

At the time of the probe, the Houston-based CNET was part of Customs investigative arm, and included both Customs agents and local law enforcement officers. The undercover unit continued to operate after Customs' merger with the Department of Homeland Security (DHS),

Dean Boyd, a spokesman for Customs, dismisses the claim that headquarters thwarted the Internal Affairs investigation into CNET. He contends further that CNET has been an extremely successful undercover operation.

"If someone is of the opinion that the investigation (into CNET in the 1990s) was hampered or railroaded, we invite that person to bring forth hard evidence as proof," Boyd says.

Despite the fact that, as part of the agency's vetting process, Customs agents can be denied promotions based only on allegations of wrongdoing, Mr. S was put on a career fast-track, agency sources claim. He was later promoted to a supervisory role with Green Quest, a Treasury Department-sponsored national task force.

Green Quest was established in October 2001 and charged with ferreting out illegal financial schemes used by terrorists groups. (However, shortly after the Department of Homeland Security was put in place in early 2003, the Green Quest task force was disbanded.)

Boyd stresses that no criminal charges or administrative sanctions have ever been issued against Mr. S.

While a Customs agent in Houston, the individual "was investigated thoroughly and there was no evidence found that (Mr. S) committed any wrongdoing," Boyd adds.

Still, given the serious allegations that prompted the CNET probe, some law-enforcement sources question the wisdom of promoting Mr. S to a supervisory position on a national counter-terrorism task force.

"It is ridiculous that we have an agent out there under this cloud of suspicion," Conrad says. "The agent should be cleared or (forced to resign) from the service. The individual is entitled to resolution with finality."

Customs spokesman Boyd counters that Mr. S has cleared every hurdle with respect to the allegations and that dragging the accusations up again only serves to unfairly "tarnish" the agent's reputation.

"I'd like to think there is still due process in the world," Boyd says.

The undercover portion of the Internal Affairs investigation into CNET's operations was in place for about two years, until the end of 1992, and involved a female undercover agent. The "overt" part of the case (ie. interviews and program audits) was not completed until 1997 or so, according to law-enforcement sources. The investigation was called "Operation Accountable."

Those leading the investigation allegedly were hampered by Customs headquarters in Washington, D.C. Conrad claims that agency brass took too long to make decisions and that they over-scrutinized every level of the investigation.

"Our hands were tied until we got the approvals, and usually by then it was too late," Conrad asserts.

Consequently, Conrad contends, the investigation of Mr. S could never succeed.

Customs sources confirm, though, that another agency employee was eventually convicted of bribery-related charges as a result of the investigation into the Houston CNET unit.

The CNET unit has an incentive to continue making cases as its operations are funded from money gathered through its stings, Customs sources explain. Drug money brought in the door as part of a CNET sting is deposited in a Houston bank, a cut taken by the government, and the balance moved into designated accounts that are controlled by the targets of the sting — such as drug traffickers. The goal is to follow the money trail and make cases against the kingpins.

Some sources contend that Customs' leadership wanted the Internal Affairs investigation into CNET to fail. A successful probe would have been embarrassing to the agency and would have put in jeopardy a lucrative cash-cow operation that served to generate positive media coverage.

Boyd discounts such reasoning as idle speculation, adding that "if someone does have hard evidence...we'd certainly like to see it."

Regardless of why the probe failed, Conrad argues that there is no excuse for Customs' failure to keep its promise to the agent who was put undercover to expose the alleged corruption within CNET.

That agent was brought on board by Internal Affairs with the guarantee that if the undercover operation, and her identity, were compromised, she would be transferred from the CNET unit to Internal Affairs. When the undercover operation was exposed in late 1992, however, Customs management dragged its feet on the transfer, according to sources familiar with the case. As a result, the agent found herself stranded in the CNET unit, exposing her to potential retribution from the targets of the Internal Affairs probe.

"She got shafted," Conrad claims.

In 1993, Customs personnel in Houston — out of concern for the agent's safety — ultimately intervened unilaterally and moved the agent over to the Internal Affairs unit.

Bouncing checks

The Internal Affairs probe in the 1990s was not the last time controversy would visit the Houston CNET unit. In 2000, the unit ran into another problem involving some \$600,000 in third-party checks put into play as part of an undercover money-laundering sting, sources reveal.

Mr. S allegedly served as one of the undercover agents in the check case.

"The (Customs) agents were apprised that...an alleged money launderer residing in Buenos Aires, Argentina, was in possession of bank checks drawn on U.S. banks and that these checks were in some form or fashion proceeds of drug trafficking," states an internal Customs memo. "(The individual) wanted these checks laundered and was willing to pay a fee for the laundering service."

The checks, with the help of confidential informants, were deposited in a Houston bank as part of the money-laundering sting, according to agency sources.

“Once the checks were deposited in (the operation’s) undercover account, and after the checks cleared, funds were wire transferred to a bank account, in Miami, Florida, controlled (by the money launderer),” the internal Customs memo states.

However, after the sting was played out, checks started bouncing. According to the internal Customs memo, the checks bounced due to “insufficient funds, altered amounts, and/or altered endorsements, and stop-payment procedures.”

In the end, the government was stuck with the bill to cover the bad checks, sources familiar with CNET contend.

A Customs insider characterized the loss of the proceeds as “sheer stupidity,” but no criminal charges were brought against anyone.

Boyd says the incident was thoroughly investigated, adding that to “characterize it as ‘sheer stupidity’ or in any way criminally negligent is simply inaccurate.”

“It was a learning experience for (those involved), but there was no finding of any criminal or administrative wrongdoing,” Boyd stresses.

Mr. S, who was at the center of attention in both the CNET Internal Affairs probe and the botched check sting, was subsequently bumped upstairs, to a supervisory role with the national Green Quest task force.

Boyd stresses that the agent was in no way “fast-tracked” into his post at Green Quest, but rather was chosen as the most qualified for the role after going through a competitive selection process.

Back on track

Independent of the concerns raised about Mr. S’s promotion, some law enforcement sources question whether units like CNET should even exist. Sources familiar with the Houston undercover unit allege that a lot of money was churned through its sting operations in the 1990s, with little to show in the way of major seizures or cases being made against drug-organization kingpins.

Backers of undercover units like CNET claim, though, that they play a key role in gathering intelligence on drug traffickers and in disrupting their money laundering schemes.

“It’s a controversial method of undercover work,” says Charles A. Intriago, a former federal prosecutor and director of *Moneylaundering.com*, an online publication. “...These operations (such as CNET) can result in money laundering going on longer than it needs to be.

“If the money laundered by the government through these operations is buried in some foreign country, and there’s no chance of getting it back, then it becomes a legitimate concern.”

In the wake of the check-bouncing fiasco in 2000, however, sources stress that the CNET unit in Houston did get back on track, as a result of staffing, bookkeeping and other operational reforms put in place following the scrutiny brought to bear on the unit.

Double standard

Still, CNET’s past woes and the promotion of the agent allegedly linked to those controversies prompts some observers to accuse Customs brass of fostering a double standard. They claim the management culture — even with Customs’ merger into the Department of Homeland Security — protects a chosen few, regardless of their actions, while penalizing others, regardless of their qualifications.

“I have seen this pattern over and over again,” alleges Washington, D.C.-based attorney Ron Schmidt, who has handled a number of lawsuits against federal law-enforcement agencies. “The motive is to protect the organization at all costs. To some degree, it seems, the more they have on you, the more they can control you. Some people who move up the ladder seem to have a lot of baggage.”

Schmidt is not the only attorney throwing darts at Customs’ management culture. Phoenix attorney Jeffrey Arbetman represents a Customs agent who claims he was removed from a counter-terrorism task force about a month after the Sept. 11

terror attacks. At the time, the task force was conducting a major investigation related to 9/11.

Customs asserts that the agent, who has years of counter-terrorism experience, was yanked from the FBI-led task force because he didn't follow procedures — a charge Arbetman says is bogus.

“Customs claims he (the agent) broke some rules, but we have documentation and testimony that shows that is not true, including testimony from the FBI,” says Arbetman, who is a former federal prosecutor.

Arbetman contends the real reason the Arizona Customs agent was removed from the task force is because his supervisors were retaliating against him for filing an age discrimination complaint.

“Whatever Customs' agenda was, the fact is that they took (this agent) off a critical counter-terrorism task force at a crucial time in this country's history,” Arbetman adds. “It was wrong morally and legally.”

CHAPTER 7

Quid Pro Quo

The fact that Customs upper management has a take-no-prisoners approach to battling Equal Employment Opportunity (EEO) discrimination lawsuits is not surprising, if the word of a former assistant commissioner of Customs is to be trusted. From 1993 through 1997, Walter Biondi served initially as Customs' assistant commissioner of Internal Affairs and then as assistant commissioner of Enforcement and Investigations — two of the highest posts in the service.

Under questioning in a 1999 legal deposition, Biondi describes the hardened attitude adopted by the upper ranks of Customs management with respect to EEO filings. In the deposition, Biondi recounts what then Deputy Commissioner of Customs Sam Banks told a group of Customs managers at a 1997 conference:

“He (Banks) told the senior managers present who were complaining about the EEO program and EEO complaints, who were complaining about the time it took to deal with EEO complaints, that things were going to change, that he was not going to be as easy as (the retiring Customs Commissioner George Weise) was in resolving EEO complaints. People were going to have to fight to the bitter end.... There was applause from the group that was there. It is what they wanted to hear.”

Biondi also testified about what Commissioner Weise had told him about another meeting, which Weise attended in late 1996 or early 1997 with then Treasury Undersecretary for Enforcement Raymond Kelly and Treasury Deputy Assistant Secretary Elizabeth Bresee. At this meeting, Kelly said that “anybody who filed an EEO complaint against their agency is a disloyal employee, should be shown no favor and treated accordingly,” Biondi states in the deposition, recounting what he was told by Weise.

Biondi went on to testify that when he asked Weise if anyone spoke up to point out that such a policy was not appropriate, Weise replied, "Given that he was the Undersecretary of the Treasury, nobody said anything."

In 1998, Kelly became commissioner of U.S. Customs; Bresee later became the Treasury Assistant Secretary for Enforcement.

"Thus, officials at the highest levels of the Department of Treasury, in effect, ordered retaliation throughout Treasury's law enforcement bureaus against those who filed EEO complaints," assert pleadings in the class-action lawsuit filed in May 2002 by Hispanic Customs agents.

Another glimpse of the attitude senior Customs officials have toward the agency's Hispanic employees can be found in a July 1999 report from the House Appropriations Committee. That report took issue with a portion of a U.S. Treasury Department report that stated the following:

"Most serious, however, is the belief that (Customs) inspectors who are hired locally, particularly along the Southwest border and assigned to the local ports of entry, could be at greater risk of being compromised by family members and friends who may exploit their relationships to facilitate criminal activities. Although they could not offer any solid evidence, Customs officials express a real apprehension over the possibility that individuals are attempting to infiltrate Customs by seeking jobs as inspectors for the sole purpose of engaging in corrupt and criminal behavior."

The members of the House Appropriations Committee blasted that passage, stating for the record that "the committee takes strong exception to any implication that individuals of Hispanic background are particularly susceptible to corruption and expects the Customs Service to address unsubstantiated bias by senior Customs officials...."

U.S. Customs spokesman Dennis Murphy stressed at the time that the report in question was drafted by Treasury, not Customs.

Until late 2002, the Customs Service was under the jurisdictional umbrella of the U.S. Treasury Department.

Although Murphy could not provide any specific details on how Customs dealt with the request by the Appropriations Committee to “address unsubstantiated bias,” he did say Customs formed some high-level committees “to address recruitment and retention, particularly of minorities.”

Murphy also added, “I know there were briefings provided for members (of Congress) who were interested in this issue with regard to what the facts are and what we are doing.”

Apparently, though, those briefings failed to satisfy the concerns of all members of the Appropriations Committee. In the summer of 2000, the House committee again revisited the issue, expressing continued concern with Customs’ efforts to address the implication that Hispanic Customs employees were somehow more prone to corruption.

In a July 2000 report to the entire House, the Appropriations Committee stated the following:

“Customs offered but failed to provide the committee evidence supporting these views, and statistics provided by Customs did not support the allegation described in the (Treasury) report. In addition, written responses from BATF, DEA, FBI and the Secret Service indicated that these agencies did not agree with the concern that such local hiring (along the Southwest border) posed a greater risk of individuals being compromised.

“Although Treasury and Customs now agree that the passage from the report did not reflect accurately their beliefs or practices, the committee is concerned that Treasury has been slow in taking steps to communicate this to senior managers and others involved with Customs integrity issues. The committee continues to take strong exception to any implication that individuals of Hispanic background are particularly susceptible to corruption and directs Treasury and Customs to contest any such unsubstantiated bias by senior Customs officials....”

The apparent inaction by Customs may betray an arrogance on the part of the agency's entrenched bureaucrats that makes them feel immune even to the edicts of Congress and other high-level government officials. A number of Customs insiders point to the fact that in the early 1990s a Blue Ribbon Panel was appointed by Carol Hallett, commissioner of Customs during the first Bush administration, to review integrity and management issues within the agency. The faults uncovered by that Blue Ribbon Panel are strikingly similar to the concerns that still plague Customs today with respect to cronyism and retaliation.

Among the panel's conclusions were the following:

We found that the Customs Service lacks a clear whistleblower policy. As a result, employees do not understand their rights and managers are confused and frustrated in dealing with the process. Our recommendations call for the issuance of clear whistleblower guidelines for employees and supervisors, expeditious investigation of allegations, and strong sanctions against supervisors who retaliate against those reporting wrongdoing.

The panel found a general sense among employees, supervisors and managers throughout the Southwest Region that discipline has been unevenly applied within the enforcement organization. Here again, the "old-boy" network was seen as responsible for either selective protection or harsh punishment. The panel's recommendations in this area call for new measures to: ensure and standardize the reporting of misconduct; provide for objectivity in the conduct of investigations; and, pinpoint managerial accountability in disciplinary actions.

In conclusion, the panel's findings cannot be mitigated or dismissed. They represent the unanimous opinion of its members. The recommendations contained in this report are intended to provide Customs with a comprehensive plan to correct problems that have been identified.

The brass ring

The U.S. General Accounting Office (GAO) issued a report in September 2001 that sheds additional light on the management culture within U.S. Customs. The report examined a 1998 request by the Department of Treasury that sought special permission for Customs to add up to 10 law enforcement positions under something called Schedule A hiring authority. These new positions were to be in addition to the 300 Schedule A posts already approved for Customs.

Schedule A hires are exempt from the competitive civil-service hiring mandates — which means management can choose who they want to appoint to these positions. Schedule A appointments are designed to allow an agency to appoint individuals to positions for which it is not practical to use a competitive hiring system.

However, Schedule A also can be subverted to perpetuate a good-ol'-boy hiring system if it is used by top management as a means of appointing their cronies to career civil-service jobs.

The Office of Personnel Management (OPM) approved Treasury's 1998 request for the additional Schedule A slots for Customs. Treasury had argued for the positions by telling OPM that "due to the sensitive nature" of the positions, it was not practical to fill them through the traditional merit-based approach.

"In using the Schedule A authority between September 1998 and January 2001, Customs made nine appointments to various positions — such as law enforcement and public affairs specialists and a strategic trade adviser," the GAO report states. "The circumstances surrounding five of the nine appointments can, in our opinion, give the appearance of inconsistency in the application of Schedule A appointment authority or possible favoritism toward former political employees."

In the case of three of the supposedly unique Schedule A appointments, "identical positions were ultimately advertised and examined in the competitive service," the GAO report states. This occurred despite the fact that the 10 Schedule A positions

requested for Customs were promoted as being “impracticable to advertise and competitively examine.”

Two other Schedule A appointments went to noncareer personnel in Customs’ Senior Executive Service (SES) “several days before the Presidential transition,” the GAO report states. “The timing of such actions can give the appearance of political favoritism,” the report adds.

Greasing the wheels

In some circles, political favoritism is viewed as the grease on the wheels of U.S. democracy. It should be no surprise then, to discover that in a federal agency as large as Customs, there is plenty of grease to go around.

That principle appears, to some observers, to have played itself out in the case of one former Customs executive, Charles Winwood.

Winwood spent 30 years with Customs, reaching the top spot in the agency as acting commissioner for eight months in 2001.

Winwood retired from Customs as deputy commissioner in early May 2002. A couple of weeks later, he landed a job as senior vice president of border security with Sandler & Travis Trade Advisory Services Inc. (STTAS) — a Washington, D.C.-based consulting firm specializing in customs issues and international trade.

“Winwood joins a number of former senior Customs officials at the firm, including three other past deputy commissioners (of the U.S. Customs Service) — Samuel H. Banks, Michael H. Lane and Alfred R. De Angelus,” states a press release by STTAS announcing Winwood’s hiring. “This seasoned team of customs experts, combined with STTAS’ proven business procedures and proprietary technology, will ensure that governments’ and companies’ supply chains operate efficiently.”

The STTAS press announcement is actually modest in outlining the firm’s track record of hiring former U.S. Customs employees.

According to the consulting company's Web site (<http://www.strtrade.com>), as of late 2002, some 24 former Customs employees, including Winwood, Banks, Lane and De Angelos, worked for STTAS or its sister firm — Sandler, Travis & Rosenberg P.A., an international trade and customs law firm.

In addition, in 2001, two individuals from the affiliated firms were part of the 20-member Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service. Those individuals were De Angelus of STTAS and Gilbert Lee Sandler, a senior partner in the Sandler, Travis law firm.

The advisory committee members are appointed by the Secretary of Treasury. The committee's charge is to advise the Secretary on matters related to Customs' commercial operations.

Also in 2001, coincidentally, Customs made a billion dollar-plus decision with respect to its commercial operations. In April of that year, then Acting Commissioner of Customs Winwood announced that the agency was awarding a \$1.7 billion Customs Modernization Prime Integration Contract to a group of companies led by IBM Global Services. Included in that group of companies was STTAS, which will provide "global trade and customs expertise" to the contract team — dubbed the e-Customs Partnership, according to a press announcement issued by Customs at the time.

The e-Customs Partnership is charged with developing an Automated Commercial Environment (ACE) system for Customs "to dramatically streamline Customs' commercial processing systems," the press announcement states. Essentially, the modernization project involves developing and implementing a new tech infrastructure for Customs, including computer systems and software, that can more effectively handle the agency's growing commercial, enforcement and administrative duties.

Winwood counts his work on the ACE contract while at Customs as among his most important achievements, according to a mini-profile of the former acting commissioner published in the April 2002 agency-sponsored newsletter *U.S. Customs*

Today. That pride bubbled forth in testimony Winwood gave on July 17, 2001, before the Subcommittee on Trade of the House Committee on Ways and Means.

“The e-Customs Partnership is a team of top-notch companies and highly qualified professionals who have successfully executed large information systems projects similar to this one in the past,” Winwood told the House subcommittee.

Winwood’s career track definitely qualifies him as an expert in customs issues who might be an attractive hire for a firm like STTAS. But not everyone shares Winwood’s enthusiasm over the ACE contract.

A May 2002 report by the U.S. Government Accounting Office described the \$1.7 billion ACE investment as a “high-risk endeavor.”

The major reasons are as follows, according to the GAO report:

- “The system’s size, performance parameters and organizational impact make it technically and managerially complex.”
- “Customs fell far short of key commitments in its first spending plan (for ACE) because it severely underestimated costs. (Actual costs were 90 percent higher than projected.) This track record casts doubt on Customs’ ability to meet future commitments.”
- “Despite progress, Customs still lacks important acquisition management controls.”
- “Customs recently decided to compress the time frame for delivering the system from 5 to 4 years.”

Robert Bonner, who was confirmed as commissioner of Customs in September 2001, only a few months prior to the GAO report’s release, described ACE as “an important project for Customs and an important project for the business community,” in testimony before a House Appropriations subcommittee.

“The successful and timely design, implementation and funding of ACE is a priority of the U.S. Customs Service,”

Bonner stated in his Feb. 27, 2002, testimony. "I believe that ACE is so important to our country's security and the future of trade facilitation that I have set a goal that the system be completed within 4 years...."

In the wake of the GAO's spring 2002 report on ACE, the watchdog agency reports that Customs did make efforts to address some of the concerns raised over the information systems project. But Customs is still not out of the woods, according to the GAO.

"Customs has made progress in implementing some, but not all, of our recommendations," GAO spokesman Richard Stana told a House subcommittee in June 2003. "Moreover, because Customs is in the early stages of acquiring ACE, many challenging tasks remain before Customs will have implemented full ACE capability."

Regardless of the GAO's scrutiny of ACE, any suggestion that a quid pro quo relationship exists between Customs and STTAS and its affiliated law firm is dead wrong, according to Ron Gerdes, a senior member of Sandler, Travis & Rosenberg and a former assistant chief counsel for the U.S. Customs Service.

To set the record straight, Gerdes stresses that De Angelus was appointed to the Treasury Advisory Committee prior to joining STTAS. In addition, the committee membership for 2002 did not include De Angelus or Sandler.

(However, Thomas G. Travis of Sandler, Travis & Rosenberg was a member of the committee in 2002.)

Gerdes also contends that the former Customs employees hired by STTAS and Sandler, Travis, Rosenberg have been brought on board because they are the best people for the job.

"When I was there at Customs, I made the best decisions I could given the facts," he explains. "My point of view here is the same. If you're looking to hire someone (from the government side), do you want an individual who rolled over for you or someone who impressed you with their abilities? I want someone who can think and analyze a situation."

CHAPTER 8

Reckless Driving

The desert sky was clear, the temperature a mild 66 degrees at half past high noon on Tuesday, March 3, 1998. A slight breeze was blowing out of the southwest as Customs agent Allan Sperling piloted a green 1996 Jeep over the wash-board surface of the packed-dirt road. Sperling's passenger, Customs agent Gary Friedli, was in the front seat, belted in snugly.

Ahead of them was a cloud of dust and the tail end of an 18-wheeler, a grey Kenworth hauling a belly-dump trailer eastbound on Geronimo Trail Road. The two federal agents were en route to a ranch just outside Douglas, Ariz. — a desert border town of about 15,000 people located some 120 miles south of Tucson and just north of Agua Prieta in Mexico. The agents were responding to a report of drug-smuggling activity in the area.

"(Sperling) stated as they got through the 'S' curves, he told Gary (Friedli) to look up at the crest of this hill and look up ahead of them real well, and make sure nobody is coming so they could pass (the truck)," states a 1998 report prepared by the Cochise County Sheriff's Department. "They both looked and saw nothing was coming...."

Sperling pulled the Jeep into the left lane to pass. The tractor-trailer veered to the right slightly, opening up a wider passing lane for the Jeep. Sperling punched the gas pedal. Suddenly, the truck swung back to the left, heading for a private drive on the other side of Geronimo Trail.

Sperling had run out of road.

The Jeep smashed into the turning truck's gas tank. The SUV's right side crashed into the trailer. Friedli's head slammed against the window frame, creasing the metal. The truck dragged the contorted Jeep some 70 feet before coming to rest.

"The 1996 Jeep Cherokee received extensive front-end damage, particularly at the right side," the Sheriff's Department

accident report states. "The windshield was completely cracked. (The Jeep's) roof received induced damage as it impacted the tractor. (The Jeep) also received damage to its rear passenger door as the tractor trailer (dragged) it in a northerly direction. The outer portion of this door was torn off partially by the trailer pushing northbound."

Later in the accident report:

"(Sperling) recalled impacting the vehicle and the next recollection he had was being stopped and him looking over at Gary (Friedli). ...He recalled being in the vehicle; Gary is lying down in the seat in a position where his head was between the driver and passenger's seat. (Sperling) was able to hear him breathing and his chest was rising and falling...."

Friedli was carried on a gurney to an ambulance and later airlifted to University Medical Center in Tucson, where he died the next day due to his massive head injuries. He never regained consciousness.

Sperling was saved by the vehicle's lone airbag, suffering a dislocated shoulder and some cuts and bruises. There were no third-party witnesses to the accident.

The Cochise County Sheriff's Department accident report determined that the Jeep was traveling at about 63 mph when it collided with the semi-truck, which was traveling at an estimated 10 mph. That's quite a stretch from what Sperling told the Sheriff's Department deputy investigating the accident.

When the investigating deputy asked for an estimate of speed at the time he started passing the truck, "Sperling advised that he was doing approximately 40 to 45 miles per hour when he was coming up through the 'S' curves," the Sheriff's Department report states. "Allan (Sperling) applied his brakes to pace behind (the truck) until he was sure it was clear to pass him and estimated (his speed at) approximately 25 to 30 miles per hour."

Sperling told Customs Internal Affairs investigators later that "a flying object inside the (vehicle) struck him on the head during the collision and caused a laceration requiring approximately 14 stitches to close," according to an Internal

Affairs report of investigation. "Special Agent Sperling said this blow to his head might have affected his perception of the events before and after the collision."

The Sheriff's Department investigation concluded that Sperling had "exceeded the lawful speed limit as per the state and county mandates." The report indicated that the Jeep had surpassed the "45 mph" speed limit at the site of the crash by about 18 mph.

The Sheriff's Department submitted the findings to the Cochise County Attorney for enforcement. No citations were issued. The County Attorney's office declined to prosecute the case.

Friedli's wife, Dorene Kulpa-Friedli, a senior intelligence analyst with Customs in Douglas at the time, was suspicious of the events surrounding the accident and what she perceived as inconsistencies in the Sheriff's Department accident report. For example, the Sheriff's Department report reflected that the speed limit at the accident site was 45 mph. However, Kulpa-Friedli discovered that a road sign posted at the stretch of Geronimo Trail Road where the collision occurred showed the speed limit to be 35 mph.

Kulpa-Friedli also knew there was no love lost between her husband and Sperling.

"I know exactly how my husband (Gary Friedli) felt about Allan Sperling," Kulpa-Friedli later told a Customs Internal Affairs investigator. "And he did not like the way Allan Sperling treated him....Allan would say, you know, kind of treat him like he was the junior, you-don't-know-nothing agent, you know....Gary did not appreciate somebody patronizing him...."

Kulpa-Friedli told the investigator that she didn't believe the rocky relationship between her husband and Sperling had anything to do with the accident. However, she did raise several concerns with Customs Internal Affairs concerning the accident, among them that Sperling's reckless driving might have caused her husband's death.

“Because of this (Sheriff’s Department) report, the way it’s written...it does look like Allan Sperling holds a large amount of responsibility for the accident,” Kulpa-Friedli asserted during an interview with a Customs Internal Affairs agent.

Kulpa-Friedli was interviewed on June 11, 1998, at her request, as part the initial Customs Internal Affairs investigation into the accident that killed her husband. As head of the Customs Office of Internal Affairs in Arizona, James “Breck” Ellis oversaw that investigation, which was concluded in October 1998, about six months after the accident.

But Kulpa-Friedli wasn’t made privy to the findings of that investigation at the time. In fact, she waited another a year for Customs to provide her with some answers, but all she got, in her view, was a runaround. Finally, she took her concerns to Congressman Frank Wolf, R-Va., writing him a letter to bring the issues surrounding her husband's death to his attention. Kulpa-Friedli's letter to Congressman Wolf is dated May 25, 1999.

The letter to Wolf

Dear Congressman Wolf,

On March 3, 1998, my husband, U.S. Customs Service Special Agent Gary P. Friedli, assigned to the resident agent in charge (RAIC), Douglas, Arizona, was a passenger in a vehicle driven by another Customs agent, Allan Sperling. Agent Sperling made several fateful choices that day which resulted in the death of my husband. On a dry, two-lane dirt road east of Douglas, Agent Sperling tried to pass, at a high rate of speed, an 18-wheel gravel tractor-trailer that was making a left hand turn into a driveway. Agent Sperling was arrogant and reckless — he gambled with my husband's life and lost. Agent Sperling drove right into the cab of the tractor trailer. As I came to know, there was no lights, no siren, no emergency, and no rush.

While I watched my husband of six and a half months die in the hospital on March 4, I received very little information about what happened. Gary's parents were visiting in Arizona at the time, so they saw their son die. This was a life-destroying and life-altering experience for me, our daughter, and for Gary's family and friends.

In the weeks and months afterward, as the Cochise County Sheriff's Office conducted its investigation and the Customs Service conducted its own Internal Affairs investigation, we continued to receive bits and pieces of information about the car crash from the head of the RAIC (Customs' resident agent in charge) office, Greg Rabeler — in retrospect, the alarm bells started to go off even back then.

After approximately six weeks of waiting, we received a copy of the official Sheriff's Office report of the car crash. As Gary's parents and I read the report, we could not believe what we were reading! The story that was in the police report was not the story that Mr. Rabeler had told me at the hospital. Mr. Rabeler told me [as he and I were sitting alongside Gary in the Intensive Care Unit]...Mr. Rabeler told me that Agent Sperling was going 50 miles per hour and that they were not doing an enforcement action. [I understood this to mean they were not involved in a high speed chase.] Mr. Rabeler did not tell me or my in-laws at the time, or later, that Agent Sperling ran into the tractor trailer. Also, Mr. Rabeler later denied telling me that Agent Sperling was driving 50 miles per hour. The truth about the car crash was already being pushed to the side. And a further note, when the Customs Service announced Gary's death and the surrounding circumstances, the agency indicated that they were responding to possible smuggling activity and that the tractor trailer turned into Agent Sperling's government vehicle.

As we continued to read the report, specifically, the crash reconstruction information and the interview of Agent Sperling,

we were outraged! Even with the multitudes of questions raised in the police report, the responsibility for the car crash was crystal clear. I attempted to contact the Sheriff's investigator...to ask questions about the information so that we were not misreading the report, but he never returned the telephone messages that I left. I have attached a copy of the report without any of my notations or any further commentary on the report information as I would like you to draw your own conclusions. [Once you have read the report, I am available to discuss the discrepancies and questions raised throughout the report.]

After I went back to work [I am a senior intelligence analyst with the Customs Service] in Arizona, I began receiving information from other Customs employees about Agent Sperling's past driving history. I was told even by my own husband before he was killed that Agent Sperling was in other car crashes. I contacted the Customs Internal Affairs Office and insisted that I be interviewed because I wanted all of this information on the record and investigated. I was not interviewed until June 1998, after I was transferred back to the Washington, D.C., area.

On May 16, 1998, my in-laws and I had a meeting with the Customs special agent in charge (SAIC), Tucson, Awilda Villafane, just prior to leaving Arizona. Mr. Greg Rabeler was also in attendance at the meeting. [He had recently received a promotion to associate SAIC, second in command to Ms. Villafane, and now worked in Tucson.] We wanted to discuss the Internal Affairs process and to voice our concerns about the contents of the official police report. Ms. Villafane admitted that she had not read the report, only a synopsis. When discussing the circumstances of the car crash, Ms. Villafane indicated that Gary had a choice of getting into the car or not; that he should have said that he had a report to get finished or that he had a meeting to go to. In other words, Ms. Villafane told us that Gary was responsible for his own death; he should have lied to get out of going with Agent Sperling. Ms. Villafane also had the audacity to

say that this was "God's will." It was obvious that Ms. Villafane, as the head of the Arizona district, wanted no responsibility for the death of my husband.

Towards the end of the meeting, I asked Ms. Villafane to disseminate a memorandum to the Arizona district offices to remind the agents, and others, that they are to follow the Customs' driving policy and to make safety a top priority. Ms. Villafane declined to do so. I then asked her to help us contact the state of Arizona about putting "Do Not Pass" signs at the designated "Truck Cross" areas. She declined and said that we were on our own. Lastly, I asked her if she could look into driver retraining courses for the agents. [This is due to the high-speed chases that the agents become involved in from time to time.] Ms. Villafane was noncommittal on this subject.

After I was transferred back to Virginia on May 20, 1998 [where Gary and I both lived for several years], I periodically checked throughout the summer on the status of the Customs investigation with the Internal Affairs investigator in Tucson. When Raymond Kelly became commissioner of Customs on Aug. 5, I spoke with the commissioner about making sure that the best possible investigation was conducted by the Customs Service. The commissioner indicated that he would look into the matter and would get back to me.

In October 1998, Gary's parents received a telephone call from Mr. William Keefer, the assistant commissioner of the Office of Internal Affairs. According to my in-laws, Mr. Keefer said that he was given the responsibility of looking into the Customs investigation of the car crash. Mr. Keefer agreed with my father-in-law's, indeed all of ours, assessment that the reconstruction facts and Agent Sperling's official interview did not match.

In December 1998, I contacted Mr. Keefer, introduced myself as Gary's wife and that I wanted to know the status of the

investigation. Mr. Keefer also indicated that he received no derogatory information regarding Agent Sperling's past driving record. I indicated that I was told differently and that there was supposed to be documentation to that effect. Mr. Keefer said that he would look into it and if there was no documentation for prior incidents, that would be a different "can of worms." Mr. Keefer asked me to give him time to check into this matter.

On May 7, 1999, my in-laws and I met with Mr. Keefer at Customs Headquarters to discuss the death of my husband. Due to the Privacy Act, Mr. Keefer indicated that the only thing he could tell us was that "administrative action has been taken." To explain the process, Mr. Keefer said that once Headquarters reviewed the completed field investigation, the report would go to a three-member Discipline Review board for a recommendation, and then a "senior official" would make the final disciplinary decision. He also said that we could write a Freedom of Information Act (FOIA) letter to request a copy of the (Internal Affairs) investigation, including requesting Agent Sperling's...disciplinary records. However, Mr. Keefer warned us that we may or may not be able to receive any or all of the report. He said to send the FOIA letter directly to him and that he would send it to the Office of Chief Counsel for processing. Furthermore, I asked if I was able to get a copy of the investigative report and if I found something wrong or missing, do I have the right to appeal. He said yes. If we found any new information, Customs could reopen its investigation into the matter.

My in-laws and myself gave the U.S. Customs Service ample time to conduct a thorough investigation and to mete out the appropriate disciplinary action — terminate Agent Sperling as a Customs Service employee. Based on our opinion of the original police report, Agent Sperling is responsible for my husband's death [based on recklessness and negligence], he seemingly violated Customs' driving policy and misused a government

vehicle, and he violated Arizona traffic laws. According to my sources, Agent Sperling is still on the job.

With regards to the state of Arizona, I am appalled that Agent Sperling was not charged with violating ANY Arizona criminal and/or traffic laws: reckless and/or negligence (in driving), causing the death of another person, speeding, disobeying traffic signs, and operating a vehicle in an unsafe manner. A law enforcement officer is not above the law and is accountable just like the rest of us are if we break the law.

... Congressman Wolf, as a constituent in your district, I am requesting you and your staff to please inquire and investigate into the circumstances surrounding the death of my husband, Gary P. Friedli. I am greatly concerned that the Customs Service has not or will not hold Agent Sperling accountable or responsible for Gary's death, and will not give Agent Sperling the corresponding punishment — the loss of his job. It is the ONLY punishment that is acceptable to us. As they were on duty, I cannot even hold Agent Sperling civilly liable because of workers' compensation laws.

...My husband, as a federal law enforcement officer killed in the line of duty [and one of the officers honored at the 1999 National Police Week], deserves justice. The truth needs to be told and it is not there. Gary died unnecessarily and for absolutely no reason other than Agent Sperling's arrogant, reckless and negligent driving.

Thank you for your time and attention.

Sincerely,
Dorene A. Kulpa-Friedli

Congressman Wolf took Kulpa-Friedli's plea seriously. He wrote a letter on July 19, 1999, to David Williams, the Inspector General for the Department of Treasury. It is the job of the Office of the Inspector General (OIG) to investigate cases of alleged mismanagement and corruption within the Department of Treasury's ranks.

"I am writing on behalf of one of my constituents, Mrs. Dorene Kulpa-Friedli, regarding the death of her husband, Special Agent Gary P. Friedli," Wolf states in the letter. "Mr. Friedli was killed in an automobile accident (that occurred on March 3, 1998) in Arizona. The nature and ramifications surrounding his death are extremely troubling....

"I have contacted many agencies in regard to this matter, and feel that your office may be helpful in bringing forth some form of resolution and closure."

Internal affairs

By the end of July 1999, about two months after Kulpa-Friedli had sent her letter to Congressman Wolf, Treasury OIG had launched an investigation. That probe was concluded in January 2000.

After the OIG report was completed, Customs launched a second investigation into the accident, conducted by its Internal Affairs Special Investigative Unit. That second Customs probe was completed in July 2000. Customs provided a copy of that report to Kulpa-Friedli. She obtained the initial Customs Internal Affairs report on the accident, as well as the Treasury OIG report, through Freedom of Information Act requests.

As a result, by December 2000, nearly three years after her husband's death, Kulpa-Friedli, with the help of a U.S. congressman, had the truth unfolded before her. What she discovered was like a plot line for a Shakespearean tragedy.

The initial Customs Internal Affairs investigation into Friedli's death, the one completed in October 1998 and overseen by James "Breck" Ellis, found that Sperling had done nothing wrong. The report also indicated that Sperling's blood was not

tested for the presence of alcohol or drugs after the accident because it "was not warranted."

Sperling was allowed to return to work.

"The Cochise County Sheriff's Department found that SA (Sperling), the driver of the government-owned vehicle, exceeded the posted speed limit by approximately 18 miles per hour and that the driver of the truck had moved to the right side of the roadway just prior to making a left turn," states a synopsis of the initial Internal Affairs report findings. "No citations were issued. The Cochise County Attorney's Office declined criminal prosecution. No additional evidence was found to substantiate misconduct on behalf of the Customs employees involved."

However, both of the follow-up investigations, which were prompted by Kulpa-Friedli's persistence in seeking out the truth, found that Sperling was to blame for the accident that caused Gary Friedli's death.

"...The preponderance of evidence indicates that Allan Sperling, who has a documented history of reckless and aggressive driving, operated his GOV (government vehicle) in an unsafe manner at the time of the subject accident. Sperling's actions would have significantly contributed to the death of Special Agent Friedli," states the Treasury OIG report.

The findings of the second Customs Internal Affairs investigation were equally damning of Sperling's actions. The report concluded that "Sperling's excessive speed was the primary cause of the fatal collision.

"Consequently, the allegation that Special Agent Sperling, as the operator of the GOV, negligently and improperly operated his GOV, by failing to maintain necessary control, is substantiated," the second Customs report states.

Both investigations also made note of Sperling's prior bad driving record.

"From 1992 to 1997, while employed by the USCS (U.S. Customs Service), Sperling was involved in five documented vehicle accidents, four of which were on duty," states a report of investigation prepared by Treasury OIG. "In one accident, which

occurred at night on Geronimo Trail Road (also the location of the Friedli accident), Sperling was traveling at approximately 80 mph when he struck a cow.”

The second Customs probe stated that of the 15 agents and law enforcement personnel questioned about Sperling’s driving history, 11 said he was “a very aggressive driver.” Nine of those 11, according to the report, indicated that Sperling “routinely drove extremely fast during work-related situations that did not require an emergency response.”

During the course of the OIG investigation, Greg Rabeler, the resident agent in charge of the Douglas office at the time of the accident, denied knowing that Sperling had a history of reckless driving. Rabeler also denied that he helped to cover up another of Sperling’s alleged blunders.

From the Treasury OIG report:

During the course of the subject investigation, several U.S. Customs Service (USCS) sources advised OIG agents that Sperling had “lost” a government-owned horse while on a “camping trip.” Further, the sources stated that the incident was inaccurately documented by supervisory personnel as a “training exercise” to cover the loss by Sperling.

When questioned regarding the purpose, authorization and circumstances that pertained to the above incident, Sperling provided the following information.

Sperling stated that during May of 1996, he was in charge of the office “horse program.” Sperling explained that the Douglas RA (resident agent office) had four horses which “were not used in some time,” and that he felt the animals needed “conditioning.” **Without authorization** (emphasis added), utilizing his personally owned truck and trailer, Sperling said he transported two of the horses to Lake Knoll, Payson, AZ, approximately six hours from the Douglas RA. ...Sperling claimed to be

accompanied by three friends, and said that there were no USCS personnel on the trip. Sperling said that the horse became “tangled” in its leadline, and that he cut the rope to prevent the animal from injuring itself. At that point, Sperling said the horse “took off running” and that he spent the rest of the day attempting to locate the animal.

Sperling stated that upon his return to Douglas, he notified RAIC (Resident Agent in Charge) Rabeler of the above incident, at which time he (Sperling) received a “good ass-chewing.” Sperling could not recall submitting a memorandum at the time of the incident, but did recall completing a “board of survey” on a later date, claiming the horse as lost. ...When questioned why he did not submit a memorandum reporting the incident, Sperling replied, “I don't know.” Further, when questioned about the report that a memorandum he submitted regarding the incident had been destroyed and rewritten by RAIC Rabeler, Sperling replied, “I have no knowledge of that.”

Contradiction

Rabeler's version of the story was a bit different, however. Rabeler told the OIG investigators that he had approved Sperling's “request to train the subject horse,” and denied rewriting a report to cover for Sperling.

“When informed that Sperling had contradicted his statement about receiving authorization to use the subject horse, Rabeler replied, ‘If that's all you got, take your best shot,’ ” the OIG report states.

The OIG report concluded that Sperling did use a government-owned horse without permission, lost the animal, and then failed to document the incident properly. The report also concluded that “USCS (U.S. Customs Service) supervisory personnel gave Sperling preferential treatment, to include providing misleading statements to the USCS Office of Internal Affairs.”

For his part, Ellis explained away the shortcomings of the initial Internal Affairs investigation into Friedli's death, which he oversaw, by saying that personnel in the Douglas Customs office "were not forthcoming," according to the Treasury OIG report. "Ellis also said his office began to feel 'pressure from headquarters' to complete the investigation."

OIG did refer its findings to the U.S. Attorney's Office in Tucson. However, the U.S. Attorney declined to prosecute "in lieu of administrative action by the USCS."

And that was the rub for Kulpa-Friedli. Despite all the findings of wrongdoing in three of the four investigations, Sperling kept his job.

On December 5, 2000, Kulpa-Friedli received a letter from Customs Commissioner Raymond Kelly.

"As you are aware, Treasury's Office of the Inspector General conducted an additional investigation into the circumstances surrounding the death of your husband, U.S. Customs Special Agent Gary Friedli," Kelly states in the letter. "Subsequent to the receipt of the Inspector General's report, I requested a thorough review of that report. These results were provided to the Discipline Review Board (DRB) along with all the previous investigative materials. The DRB was tasked to review and assess the entire case. However, after consultation with the Office of Chief Counsel, it was found that further action in this matter was prohibited because disciplinary action had already been taken.

"... While this may be of little comfort to you and your family, I can assure you that we've done everything possible to review all the evidence and the decisions made in the case. In the end, I am constrained by the law to take no further action," Kelly's letter concludes.

When contacted, Sperling declined to comment on the case.

Kulpa-Friedli says she was never told what type of "disciplinary action" was meted out to Sperling. "I did get an anonymous call from someone who said Sperling was issued a letter of reprimand," Kulpa-Friedli adds.

Pressing on

Kulpa-Friedli refused to give up. She decided to go public with her husband's case.

"Family members deserve to know the truth, no matter what that truth is," says Kulpa-Friedli. "To have a cover-up or people lie to you just adds to the pain."

The media picked up the Friedli story in the spring of 2001, which helped prompt a congressional inquiry by Sen. Chuck Grassley, R-Iowa, who was then chairman of the Senate Finance Committee.

"I plan to look into this (Arizona) case and into the broader questions it raises," said Grassley in a prepared statement at the time. "The broader questions are whether Customs agents are adequately investigated for allegations of wrongdoing in the course of duty and whether they're adequately disciplined when wrongdoing is substantiated."

In late April 2001, Grassley's office fired off a letter to Acting Customs Commissioner Charles Winwood and to Paul O'Neill, the secretary of the Treasury, asking for a full accounting of the investigation into Agent Friedli's death. However, by June of 2001, Grassley's office had backed off the case.

"Senator Grassley has pretty much closed his involvement with the Friedli case, unless there are any new developments that warrant his attention," says Jill Gerber, a spokeswoman for the senator.

Grassley sent a letter to Acting Customs Commissioner Winwood on June 26, 2001, reflecting the senator's intention to put the Friedli case on the back burner.

Grassley's letter

Dear Acting Commissioner Winwood:

The Senate Committee on Finance [Committee] is committed to overseeing the United States Customs Service [Customs] to ensure that it performs its responsibilities efficiently and

effectively. In discharging the Committee's oversight responsibilities, I have written to you on two occasions [April 30 and May 24, 2001] to request information from Customs regarding its investigation of the recent and unfortunate death of Special Agent Gary P. Friedli.

As you are aware, Special Agent Friedli was on a non-emergency assignment when the government car in which he was the passenger and which was driven by Customs Special Agent Allan Sperling crashed into a tractor trailer it was trying to pass while speeding in excess of 20 mph over the speed limit at the time of the accident on a dirt road with limited visibility. The Committee's investigation sought to determine whether Customs followed its internal procedures in investigating this fatal car accident and in recommending disciplining for Special Agent Sperling.

In conducting congressional oversight, the Committee has endeavored to hear several perspectives on the underlying facts of the accident and subsequent investigations of those facts. The Committee's efforts include meetings with representatives from the Department of the Treasury, Inspector General's Office and Customs' Office of Internal Affairs. The Committee has also reviewed numerous written materials from various sources, to include documentation that Customs produced in response to the Committee's requests for information relating to the underlying car accident as well as Customs' subsequent investigations, disciplinary procedures, and penalty guidelines.

The Committee's review of the information, considered in its entirety, leads me to form two primary conclusions. First, I believe that Customs has undertaken great efforts to ensure the integrity of its internal investigations, beginning in 1999 when it fundamentally restructured Internal Affairs, and I applaud Customs' efforts in this regard. In addition, I believe that Customs must remain vigilant in conducting its internal

investigations to ensure that no agent receives preferential treatment, and in maintaining consistency in its disciplinary recommendations.

Accordingly, I request written annual reports from Customs beginning for the present fiscal year [i.e., the first report will cover that period between Oct. 1, 2000 and Sept. 30, 2001] and for the next fiscal year [i.e., the second report will cover that period between Oct. 1, 2001 and Sept. 30, 2002] regarding the status of closed cases involving allegations of misconduct and criminal activity within Customs and any discipline imposed. I am only interested in those cases that are investigated by Internal Affairs and dealt with by the Disciplinary Review Board. I request that these reports contain the following information: the grade level, work address, and a general description of the primary work responsibilities of the Customs employee at issue; the general nature of the allegations; the internal guideline or criminal statute at issue; the recommended discipline, where applicable; and the discipline imposed, where applicable. These reports should also include any modifications to Customs' disciplinary rules, regulations or internal guidelines and the reason for such modification from this date forward, or since the date of the last periodic update.

In closing, I want to reiterate my appreciation of Customs' commitment to judicious and timely internal investigations of allegations of misconduct and criminal activity. I look forward to receiving Customs' initial report by the end of November 2001. Also, I look forward to continuing to work with you and Customs to help fulfill this commitment.

Sincerely,
Charles E. Grassley, Ranking Member

U.S. Rep. Frank Wolf likewise backed off the Friedli case, pending any new developments, according to Judy McCary, director of constituent services for the congressman.

McCary concedes that she remains puzzled as to why Customs appears to have gone to such great lengths to protect a field agent like Sperling — when other agents around the country have received harsh discipline for far less serious offenses.

“I always thought there was something odd about this case,” she says.

McCary adds that given the current environment, with the war on terror, “to a certain extent, we have to keep people in place” in government.

“We can’t have a Saturday night massacre,” she adds. “But long-term, we have to change the culture and weed out the bad apples.”

Kulpa-Friedli exhibits far less patience with the whole affair.

“All this stuff going on at the time (of my husband’s death), it just sickens me that it’s only starting to come out all these years later,” she says. “I think Gary’s death is only the tip of the iceberg.”

Kulpa-Friedli adds that it troubled her even more to learn that in the fall of 2003, according to the Army News Service, Sperling was among a team of special agents dispatched to Iraq to help U.S. soldiers train Iraqi border guards in investigative techniques and ethics.

“It surely was something to read that he is teaching ethics...,” Kulpa-Friedli adds.

CHAPTER 9

Firestorm

Steve Shelly claims that the battle to ferret out law-enforcement corruption along the U.S./Mexico border cost him his job.

Shelly, a former U.S. Customs Service agent, served as a member of a multi-agency task force called Firestorm that was created to target public corruption in Arizona.

The task force was dismantled suddenly in late December 1990. About a month and a half later, Shelly's boss and the task-force founder, John William Juhasz, was removed from his post as the head of Internal Affairs for the U.S. Customs Service in Arizona and transferred out of state without explanation.

Some three years later, in July 1994, Shelly was out of a job — forced, he claims, into involuntary retirement after suffering years of harassment from an abusive boss.

The perpetrator of that hostile work environment, Shelly claims, was James “Breck” Ellis — the same person who oversaw the initial Customs investigation that cleared Allan Sperling of any responsibility in the death of Gary Friedli.

After Juhasz was removed from his post in early 1991, Ellis stepped in to fill his shoes as top gun for Internal Affairs in Arizona. Ellis had served previously under Juhasz as a group supervisor and as a task-force member.

Shelly alleges that he has uncovered evidence that shows Ellis committed perjury in sworn testimony in a Merit Systems Protection Board (MSPB) legal proceeding.

Shelly sought to get his Customs job back by bringing suit in 1995 through the MSPB, a quasi-judicial review body set up for federal employees.

In his MSPB proceedings, Shelly alleged that he was the victim of a hostile work environment and that he was retaliated against because of his whistleblowing activity — which included

cooperating with a congressional investigation into the demise of the Firestorm task force.

Shelly claims his supervisor, Ellis, allegedly engaged in a pattern of abusive behavior in an effort to drive him out of his job in the wake of the task force being busted up.

Shelly's psychologist — who testified in a workers' compensation hearing on Shelly's behalf — in a letter dated March 2, 1994, stated that Shelly was subjected to "constant and unrelenting disparagement and belittlement...by his supervisors." The psychologist added that "the criticism appeared to be deliberate for the purpose of engendering constant anxiety.

"In short, exposure to these conditions ground down Mr. Shelly's morale and coping resources to the point where he became so significantly depressed that he could no longer function," the psychologist's letter concludes.

Shelly — an 11-year veteran of the Customs Service — ultimately had little choice but to resign from his job, due to the psychological duress, he says.

Customs, on the other hand, claims Shelly left his job in July 1994 of his own free will due to "personal factors," which included concern for the health of his parents and other family-related problems. The judge in Shelly's 1995 MSPB case agreed with Customs.

Shelly appealed, and in 1996 lost again.

"What the evidence does reveal in this case...is that at or about the time preceding (Shelly's) resignation, he was undergoing significant personal stress," states the judge's ruling in Shelly's MSPB appeal. "The evidence of record does not support any findings that any agency officials engaged in any reprisals against (Shelly) for any whistleblowing."

However, in 2001, Shelly says he came across evidence that Ellis committed perjury during a 1996 MSPB hearing. The alleged perjury, Shelly claims, played a critical role in the judge's ruling against him.

Prior to resigning in 1994 at the age of 45, Shelly says he attempted to get transferred out of the Office of Internal Affairs

in Tucson, Ariz., which Ellis oversaw. Shelly claims Customs approved that transfer in 1991, agreeing to move him to the Office of Enforcement (OE) — which was later renamed the Office of Investigations.

In testimony from the 1996 MSPB hearing, Ellis denied, under oath, that he had knowledge of any such transfer being approved.

“I never knew that OE had...had accepted,” Ellis states in the testimony — in response to a question about Shelly’s transfer. “This sounds like an issue that never occurred.”

Shelly counters, though, that he has obtained a signed statement indicating that Ellis in fact had a conversation with a senior special agent in Customs about that very transfer.

“I recall speaking with...Ellis regarding...Shelly’s release date (for his transfer),” states senior Special Agent Louie R. Garcia in a signed statement dated March 29, 2001. “... Ellis provided me with the release date (for the transfer)...and instructed me to call...Shelly...and confirm the suggested release date recommended by Ellis.”

Ellis stepped down unexpectedly from his Customs post in the spring of 2001, according to Shelly and other sources within Customs. Ellis could not be reached for comment.

Shelly sent off a series of letters during the last half of 2001 to the U.S. Attorney’s Office, the U.S. Office of Special Counsel, the Department of Treasury’s Office of Inspector General, Customs Internal Affairs as well as to members of Congress attempting to get someone to investigate the perjury charge.

“Mr. Ashcroft, is perjury by a high level U.S. Customs manager not a crime?” states Shelly in a letter dated August 1, 2001, that was sent to U.S. Attorney General John Ashcroft. “I am not seeking vengeance, nor am I trying to retaliate. I am simply seeking justice.

“... However, in order to protect my family and my integrity and my honor, I will not cease in my quest to right this wrong.”

No one in the government did anything about his case, Shelly says.

As a result, Shelly decided to go public with his story, to shine a light on a sordid tale of alleged law-enforcement corruption, cover-ups, drug trafficking and suspected murder.

Rerun

Shelly's story sounds like a bad rerun of history — a repeat of the rampant police corruption that wracked gangland Chicago during the height of Prohibition. This time, though, the location was the U.S./Mexican border, and the backdrop for the corruption was the so-called war on drugs.

Shelly traces his troubles to his involvement in a task force whose members were dubbed by its founder as modern-day "Untouchables."

In Shelly's version of the story, though, it is the G-men, not the crooks, who take it on the chin. The Customs Internal Affairs special agent in charge (SAC) who spearheaded the formation of the task force, John William Juhasz, claims that it was shut down abruptly because it got too close to the truth. The task force, called Firestorm, included members of the U.S. Customs Service, the Department of Justice's Office of Inspector General, the IRS, the FBI and the U.S. Attorney's Office.

Firestorm, prior to being dismantled, was actively investigating some 19 cases of alleged law-enforcement corruption in Arizona, according to public records.

Juhasz asserts in a statement made under oath during a legal proceeding that all of the key players in the torpedoed Firestorm task force were subsequently targeted by the government for retaliation and had their careers ruined — including Shelly.

Shelly's story begins in early 1990 in Arizona, with the creation of the Firestorm task force. Although rooted in history, the tale has an edge to it that cuts a direct path into the present.

Shelly claims that the type of corruption uncovered by the Tucson, Ariz.-based task force poses a real threat to our national security in the wake of the 9/11 terror attacks.

Shelly also alleges that Ellis committed the perjury as part of the effort to silence him in the wake of Firestorm's demise in late 1990.

Documents provided by Shelly show that the Firestorm task force had unearthed evidence linking two Customs inspectors working along the Arizona border to drug traffickers. The documents also allege that a supervisor with the Department of Justice's Office of Inspector General (OIG) — who was suspected of having ties to drug traffickers — worked to derail the investigation into the inspectors' activities.

The OIG supervisor still worked for the government as of late 2001, according to Shelly and other sources. After that date, his whereabouts could not be confirmed. The two Customs inspectors were still stationed on the U.S./Mexican border in 2005, Shelly adds.

Also outlined in the documents are the details of the task force's investigation into the mysterious death of a former Customs supervisor in Douglas, Ariz., who Juhasz suspected might have been "involved in a circle of corruption in Douglas," according to an affidavit Juhasz submitted to the Department of Treasury's OIG.

The documents include testimony, notes and records provided to the House Commerce, Consumer and Monetary Affairs Subcommittee in 1992. Other documents include workers' compensation hearing testimony, Merit Systems Protection Board depositions, internal reports of investigation, various legal affidavits, statements and Customs Service memoranda.

The account that follows is based on those documents, which total hundreds of pages, as well as interviews with numerous former and current Customs agents.

Looking inward

Among the initial cases on the Firestorm task force's agenda centered on one of its own: Javier Dibene, special agent in charge of Arizona for the Department of Justice's OIG — which

is charged with investigating cases of alleged mismanagement and corruption within the Justice Department's ranks.

Dibene, who was based in the Tucson office, was being eyed due to his alleged links to drug trafficking operations.

"I suspect that...Javier Dibene...(is) involved in narcotics activities," states Juhasz in a 1991 affidavit provided to a Treasury-OIG investigator.

The FBI had investigated Javier Dibene in 1990 and cleared him. However, the FBI agent on the case admitted, according to congressional records, that he had been given such narrow case parameters by his supervisors that the "investigation had no chance of success."

As a result, nagging questions remained as to Dibene's activities. Stephen McSpadden, senior counsel to the House Commerce, Consumer and Monetary Affairs Subcommittee, draws out some of those concerns in testimony he submitted to the congressional body in July 1992.

"There was another incident of Dibene quashing or not pursuing an investigation. Rudy Molina is a Douglas, Ariz., INS inspector who is suspected of money laundering and drug trafficking. Dibene takes his resignation and closes the case against Molina. This was before the (Firestorm) task force came into existence.

"...(Juhasz) suspects that Dibene was looking for an easy way to get rid of this matter, and obtaining Molina's resignation was the way to do it. There is no further investigation of Molina until the Firestorm task force opens another case on Molina....

"The task force becomes aware that Molina had become involved with Customs Inspector (Donald) Simpson and that they are actually importing narcotics into the country. Molina was involved in trying to import and deliver 500 pounds of cocaine. Molina was eventually convicted in this new case, together with Simpson. Molina was sentenced to 30 years and Simpson to life in prison."

Further suspicion was drawn to Dibene when tapes surfaced fingering two Customs inspectors in Nogales for allegedly

allowing loads of dope to pass across the border through an arrangement with a drug trafficker.

The tapes, which were in Spanish, were provided to the DEA initially through an attorney for a criminal defendant. The attorney was seeking to cut a deal for his client using the tapes as leverage.

“The (two audio) tapes were made during the kidnapping by a major drug trafficker of small-time drug trafficker,” states McSpadden in 1992 congressional testimony. “Once this individual was kidnapped, the major trafficker put a gun to the kidnappee’s head, who was then ordered to tell everything he knew. He agreed to do so for obvious reasons.”

Congressional testimony from Milan Tesanovich, the assistant U.S. attorney who served as coordinator for the Firestorm task force, indicates that Dibene — who speaks Spanish — was provided with copies of the tapes for review in the fall of 1990. However, a few days later, DEA Agent Alejandro Vasquez was told that Dibene had found nothing of value on the tapes.

Vasquez, who also had listened to the tapes, became suspicious as “he realized the tapes referred to large-scale narcotics trafficking...,” congressional records state.

Several days after turning copies of the tapes over to Dibene’s office, Vasquez passed the original tapes on to Customs Agent Shelly, who also speaks Spanish. Shelly then brought the tapes to Juhasz’s attention.

“The tapes contained the unequivocal identification and implication of Customs border inspectors, by name, in corruption that involved the deliberate ‘passing’ of large (600 pounds) and numerous periodic (alleged to be weekly) loads of cocaine by the inspectors ...,” Juhasz states in a letter sent to the Commissioner of Customs in 1991.

Dibene’s lack of interest in the tapes also led Juhasz to begin to suspect that Dibene was obstructing the investigation.

“To fully and properly evaluate Javier Dibene’s actions and statements in this matter, it is important to know that he was

born in Mexico, moved to Douglas, Ariz., at age 10, and later moved to Nogales, Ariz., where he grew up with the Customs inspectors named in the tapes, and therefore arguably knew them intimately,” Juhasz writes in the letter. “For him to state that there was nothing of value on the tapes was at best ludicrous, and more probably criminally obstructive. I feel that Javier Dibene’s actions concerning the audio tapes serve to confirm my nagging fear that he was actively suppressing corruption investigations.”

Border politics

In the drug trafficking game, death is not a random card, explains one Customs agent who did his time on the border. In the wake of one seizure of drug-cartel assets in Arizona, the agent recalls, 18 people were murdered; 13 of the bodies were discovered at the bottom of a shaft — some with a finger missing.

“They (the drug traffickers) were trying to find the informants,” the agent explains. A missing finger is a sign of a snitch.

The investigators on the case also received death threats, the agent says. “These people play for real,” the agent stresses.

One source who claimed to have first-hand knowledge of the 13 bodies discovered at the bottom of the shaft offered the following gruesome details of the murders via an e-mail correspondence:

“First, the finger was (taken) off by torture. ...Then one of the bodies was a woman with a hole in (her) stomach. That is because she was pregnant and they cut it open and took it out, in order to get back (at) the father of the baby who snitched.”

In that context, it is not surprising that Juhasz and the Firestorm task force would cross paths with a case involving a suspicious death in 1990 in Douglas, Ariz. — the same small border town where Customs Agent Gary Friedli would be killed in a car accident some eight years later.

The case centered on Jake Price, a well-known and well-connected public figure who had lived in Douglas for more than a decade. He served as the resident agent in charge (RAC) of the U.S. Customs Office of Enforcement in Douglas before retiring in the late 1980s to become a city magistrate.

Among Price's connections was real-estate speculator and Douglas Justice of the Peace Ronald J. (Joe) Borane, according to documents provided to the congressional subcommittee.

In February 1990, Price unexpectedly became ill. He was transported to Tucson Medical Center after falling into a coma, congressional records state.

James "Breck" Ellis, who at the time was a Customs Internal Affairs group supervisor and a member of the Firestorm task force, was dispatched by Juhasz to investigate the situation.

Ellis had worked in the Douglas Customs office with Price prior to becoming a Customs Internal Affairs agent in Tucson. Ellis would later go on to head Customs Internal Affairs office in Arizona, a post he held during the Gary Friedli accident investigation.

Ellis found Price at the hospital that winter day in 1990 under the watch of "two to three Douglas police officers" who appeared to be guarding him and who had "apparently traveled with him," congressional records state. Price's son, Justin "Clay" Price, also was at the hospital.

"Jake Price was still suspected of being involved in a circle of corruption in Douglas, Az.," states Juhasz in his 1991 Treasury-OIG affidavit. "Tucson Internal Affairs Group Supervisor Ellis met with Justin Clay Price (Jake's son), a DEA agent from New York, at the hospital in Tucson where Jake Price was in a coma and not expected to live.

"An agreement was made between Justin Clay Price and Group Supervisor Ellis that Tucson Internal Affairs would have access to Jake Price's personal papers at such time as Jake should die. ..."

Then things got stranger.

“...In February 1990, the former RAC in Douglas, Az. (Jake Price) died under mysterious circumstances,” Juhasz states in the Treasury-OIG affidavit.

Even though Price’s son, Clay, allegedly promised Customs Agent Ellis access to his father’s papers, Clay later hooked up with a Douglas Customs officer, and together the two burned Jake Price’s papers in the furnace at the Douglas Port of Entry, congressional records state.

Congressional documents also indicate that those papers, “including probable bank records, would have helped expose (words blacked out) involvement in the drug trafficking and public corruption in Douglas.”

When interviewed by DEA Internal Affairs about the destroyed papers, Clay Price “reportedly told them that he just destroyed some of his father’s personal records, like checks, but nothing that was relevant to Customs,” documents submitted to the congressional subcommittee state.

The records were not the only disappearing act associated with Jake Price’s death. His body was shipped to Texas, according to congressional documents. No autopsy was performed.

The strange circumstances surrounding Jake Price’s death, though, led Juhasz to a dark conclusion.

“I believe, that the former agent in charge of the Douglas office was murdered by — by political figures in the Douglas area....,” Juhasz opined when queried about Price’s death in a legal deposition related to a workers’ compensation case filed by Shelly.

Underground economy

The trail of coincidences didn’t end with Price. About three months after Price died in February 1990, Customs investigators unearthed an underground tunnel stretching from Agua Prieta in Mexico, to Douglas, Ariz. The tunnel, it was ultimately discovered, connected a suspected drug trafficker’s house in Mexico to his warehouse in Douglas.

According to Arizona Assistant Attorney General John R. Evans, Joe Borane sold the land where the warehouse was located to the suspected drug trafficker: Mexican businessman Francisco Rafael Camarena-Macias. Evans adds that Borane also is the godfather of one of Camarena's children — a fact Borane confirmed as well.

In addition, Borane rented space to Customs for its Douglas office while Price was the resident agent in charge, according to congressional documents.

"No corruption investigation in (the) Douglas area would be able to avoid Price, former resident agent in charge of the Customs Office of Enforcement (OE) office in Douglas...who retired and was given a job as a magistrate by Joe Borane," state notes prepared by prosecutors in the Tucson U.S. Attorney's Office in February 1990 and submitted to the congressional subcommittee investigating Firestorm's demise.

"Long history between Price and Borane," the notes continue. "Price leased the OE office from Borane under questionable circumstances. Price recently died, perhaps under suspicious circumstances. When he left Customs, he (Price) took a lot of government records with him, including, it is believed, the Douglas informant registry. ...Price was buried without an autopsy."

Borane confirmed that he knew Price, when interviewed. However, Borane said he had never heard anything about Price's death being "mysterious."

Borane also explained that he owns a lot of real estate in Douglas. He added that it was a real estate agency in town that actually handled the sale of the land to Camarena.

"I owned the land and leased it to a ready-mix plant, and I think they had a trailer on it," Borane said. "Later on, the warehouse was built, if I recall."

In addition to the land he acquired in Douglas, Camarena also owned a residence in Agua Prieta. The tunnel connected his home in Mexico to the warehouse on his Douglas property.

According to a statement released by Customs, Camarena is believed to have hired an architect to design the tunnel.

Sources within Customs confirm that the investigation into the drug-running tunnel was launched in November 1989. The concrete-lined, air-conditioned 200-foot-long tunnel, which was used to smuggle tons of cocaine from Mexico into the United States, was finally found and shut down in May 1990.

However, what happened after the hunt to find the tunnel was launched in late fall of 1989 plays out like an episode of the *Keystone Cops* — although with much darker overtones.

The resident agent in charge of the Douglas field office at the time was Stephan Mercado. Mercado's office was the first to discover evidence of the tunnel's existence. Mercado even contacted Customs' Tucson office in the fall of 1989 to get information about where to find equipment that could be used to locate hidden tunnels.

The following is extracted from testimony provided to the House Commerce, Consumer and Monetary Affairs Subcommittee in July 1992 as part of hearings examining alleged misconduct and mismanagement within the Customs Service. The testimony was submitted by the subcommittee's senior counsel, Stephen McSpadden:

"According to John Juhasz (JJ), 'This is one of the most amazing stories of mismanagement that he has ever seen.' On a couple of occasions, Mercado passed information to Special Agent in Charge (Tom) McDermott's office about an alleged tunnel under the Mexican border to Douglas, Az. McDermott ignores this information and does not respond to Mercado's request for technical equipment [sounding equipment to look for the tunnel]. So nothing happens. Then (William) Gately (resident agent in charge, or RAC, of the Phoenix Customs field office) starts passing on the same information, but it is inaccurate; it relates to the wrong location of the tunnel. Because Gately is close with McDermott, McDermott begins to take it seriously."

(Gately would later go on to spearhead the major money laundering sting targeting Mexican banks: Operation Casablanca — which he alleged was shut down prematurely in 1998.)

McSpadden's testimony continues:

“Even though McDermott (in Tucson) is the Office of Enforcement (OE) special agent in charge for the entire state, (David) Hayes is the Nogales RAC for OE, and Gately is the Phoenix RAC — all with supervisory responsibilities for their own offices, which they now disregard, they take over the (tunnel) investigation. They travel to Douglas (in the spring of 1990), obtain the equipment which Mercado had requested months before, then literally physically take over the RAC offices and usurp the chain of command, and treat the rest of the (Douglas) staff very poorly.

“Mercado is unofficially demoted and made a wire-room translator in Tucson. Mercado was talented and had good people. Mercado felt that OE management in Tucson never supported his operations in Douglas. JJ believes that it was because of discrimination towards Hispanics, which Hayes had been previously investigated for [the civil rights violations]. Mercado alleged this in a complaint with the Customs EEO officer.”

(Customs Special Agent Mercado — who years later became a group supervisor in the Office of Investigation in El Centro, Calif — is also a named plaintiff in the class-action lawsuit filed by Hispanic Customs agents in May of 2002.)

House subcommittee Senior Counsel McSpadden goes on to detail in his testimony, which is based on an interview with Juhasz, how the drug traffickers behind the Douglas tunnel essentially escaped under the watch of Arizona's top Customs cops.

More McSpadden testimony

Mercado took a downgrade and went back to his home in Yuma. ...According to sources, these individuals, McDermott, Gately and Hayes, took over the surveillance of the load vehicle leaving the tunnel warehouse in Douglas; they followed the vehicle, a

large flatbed truck, in which the drugs were stored in a hidden compartment in the bed. They followed the vehicle, which was being escorted by one or two other trafficker vehicles, all the way to a Phoenix suburb. The receivers and distributors of the drugs, several people, approached the vehicle location.

The (Customs) OE sources told JJ (Juhasz) that some people at the site were ultimately arrested, but they had to be released because there was insufficient evidence to hold them. Once the vehicle was safely at the drop site, the main players — the major trafficker — is stopped by the police, asked for identification, and then allowed on instructions from McDermott to leave the area.

The main target was a Mexican national and presumably returned to Mexico. And as the major players left the area where the truck was situated, Customs moved in on the minor players, who are subsequently released. These three Customs officials are directing the investigation, and the local police are providing some support by asking for IDs.

It was highly unusual for these managers (McDermott, Gately and Hayes) to be directly involved. But they know they would get the glory. They manipulated the media to make the operation look like a real success. McDermott made the press release himself, failing to follow the instructions of his chain of command. The U.S. Attorney's office for Arizona "regarded Operation Catacomb (as it was dubbed) as more of a media event than an investigation." At the very least, this was gross mismanagement.

JJ's (Juhasz's) final comments, "Why the hell were these senior officials running this investigation?" This incident made Ralph Garcia, the Treasury Office of Inspector General official (who investigated the demise of Firestorm) very suspicious of McDermott.

More dots

In the 1991 affidavit provided by Juhasz to the Treasury OIG investigator, another familiar name surfaces: John Hensley, the same person who allegedly worked to shut down Operation Casablanca and former Customs Agent Darlene Fitzgerald's railcar investigation. At the time of Firestorm, Hensley was the assistant commissioner for Customs' Office of Enforcement (OE) in Washington, D.C.

"It should be noted that Hensley had McDermott transferred to OE headquarters in the fall of 1990," Juhasz states in his affidavit. "Hensley made McDermott one of his key deputies and gave him an SES (Senior Executive Service rank). McDermott then took Hayes to Washington OE headquarters. ..."

A Customs insider, who asked not to be named, claims, though, that serious questions concerning the handling of the tunnel investigation did not surface until after McDermott was moved to headquarters.

In his Treasury OIG affidavit, Juhasz also describes a case that the Firestorm task force was working in Yuma in which most of the OE field office there, including its top gun, Rick Ashby, were under investigation for embezzling money from a fund used to pay informants. That investigation eventually imploded.

"The Yuma scandal was going to involve embezzlement and conspiracy among agents in the OE office and forgery of over a hundred informant payment documents," states McSpadden in his congressional testimony. "Juhasz now strongly suspects that high-level Customs and Treasury management made a deliberate and calculated decision to cover up the Ashby/Yuma scandal."

After Juhasz was removed as special agent in charge of Internal Affairs in Arizona in early 1991, according to his

affidavit, he discovered Gately, McDermott, Hensley and others had been “added to the grand jury list” for the Yuma case.

“I asked the case agent, Steven Gintz, who was putting these people on the grand jury list for the Yuma case,” Juhasz states in the Treasury OIG affidavit. “He said he didn’t know. I asked him if he felt that the Office of Enforcement (OE) was trying to obstruct the Internal Affairs investigation (in the case). Gintz said yes.

“... It is now quite apparent that Customs OE has the power in Arizona to do as they wish ...,” Juhasz concludes in the affidavit.

The alleged trafficking kingpin behind the Douglas tunnel, Camarena, was eventually indicted in 1995 — some five years after the tunnel was discovered in the spring of 1990 — but he disappeared in Mexico, according to U.S. Customs. The long arm of the law finally caught up with him in the summer of 2001, when he was turned over to U.S. authorities by the Mexican government to face conspiracy and cocaine trafficking charges.

In February 2003, as part of a plea agreement, a U.S. District judge in Arizona handed down a 10-year prison sentence to Camarena. A year later, the man suspected of designing the Douglas tunnel, Felipe de Jesus Corona-Verbera, was arrested in Mexico and sent back to the United States to stand trial, according to a press report in the Arizona Daily Star.

Although law enforcement officials did investigate the property transaction between Borane and Camarena after the tunnel was discovered, no charges were ever brought against Borane, according to Arizona Assistant Attorney General Evans and other sources.

However, Borane was arrested years later, in 1999, on drug-running, money laundering and traffic-ticket-fixing charges. Evans, who coordinated that prosecution, says Borane was ultimately convicted of two felonies related to the ticket-fixing charges and served 90 days in jail.

“He (Borane) is...no longer a justice of the peace,” Evans adds.

Although Borane was forced to step down as justice of the peace in Douglas, he said in an interview that he still owns a significant amount of real estate in the area.

When asked why he was subjected to so much law-enforcement scrutiny, Borane said, “When you’re in a small community and you’re considered politically active, which I was, and you own a lot of real-estate holdings, they (the authorities) tend to look at you.”

CHAPTER 10

Swept Under the Rug

John William Juhasz's efforts to expose law-enforcement corruption through the Firestorm task force sparked a major turf war among the federal agencies involved with the task force.

Juhasz, who founded Firestorm while head of Customs Internal Affairs in Arizona, was labeled "a loose cannon who was only trying to build an empire," by the FBI special agent in charge in Phoenix, congressional documents state.

Juhasz retired from Customs in 1994, some four years after Firestorm was dismantled. He could not be located for comment on the fate of the task force. His statements have been drawn from public records.

Although Juhasz has his detractors, he is a bit of a legend in some corners of the Customs Service. One federal agent who knows him pointed to his handling of the Charlie Jordan case as evidence of Juhasz's daring and brains.

Jordan was a Customs agent in South Florida who was allegedly corrupted by drug traffickers. When Jordan discovered he had been found out, he went on the lam, threatening never to be taken alive, according to the agent, who asked to remain anonymous.

Juhasz recounts the Jordan case in testimony he provided in former Customs agent Steve Shelly's 1994 workers' compensation hearing:

"I traveled to Colorado (in the summer of 1989) and conducted a manhunt that covered five Rocky Mountain states involving dozens of law enforcement from various agencies, and captured Charlie Jordan, one of America's Most Wanted on Fox Television."

According to the anonymous agent, Juhasz found Jordan in Wyoming.

“Juhasz taped a machine gun to his arm under his coat and knocked on the door,” the agent says. “He told Jordan he was having battery trouble with his car and asked him for help.

“Juhasz let Jordan get in front of him and then said, ‘I have a machine gun taped to my arm. If you don’t do exactly what I say, I’ll cut you in half.’

“Jordan surrendered,” the agent says.

Other former federal agents interviewed who know Juhasz describe him as an excellent agent of impeccable integrity who has no tolerance for corruption or political games — kind of like the Eliot Ness of Customs.

And it appears the comparison to Eliot Ness is not out of bounds, based on statements Juhasz himself made during Shelly’s workers’ compensation deposition:

“As the depth and breadth of corruption (in Arizona) within the government agencies, and especially within Customs, was becoming in focus, being uncovered...I think that there were a lot of people that were very afraid of us — because we, in effect, were the untouchables.”

However, Juhasz would soon discover that he and the task force were far from “untouchable.”

The interagency tiff set off by the handling of the tapes exposing two Customs inspectors as being in league with drug traffickers, as well as other ongoing case-related tensions among the task force members, prompted the U.S. Attorney’s Office to withdraw from Firestorm in early December 1990, according to congressional documents. By the end of the month, the task force was dead in the water.

In February 1991, Juhasz was relieved of his duty as special agent in charge of the Customs Internal Affairs office in Tucson and subsequently transferred out of Arizona without explanation.

“It became quite evident that it was purely political (the task force being shut down), that we were too effective, that we were getting too close,” Juhasz states in the workers’ compensation deposition. “We’d already toppled the Justice Department’s Inspector General’s office for covering up drug trafficking by

Customs Inspectors. And I think that they were terrified as to what we were going to find.”

According to the commissioner of Customs at the time, Carol Hallett, Juhasz was not removed from his position in Arizona, but rather reassigned “on a lateral basis.”

“Although there may be a question only of terminology, we would like to clarify the fact that Mr. Juhasz was not ‘removed’ from his position,” Hallett states in a 1992 letter to U.S. Rep. Doug Barnard Jr., D-Ga., chairman of the House subcommittee on Commerce, Consumer and Monetary Affairs. “His reassignment (to San Diego) was on a lateral basis [i.e., a transfer] from one position to another without a break in services. ...The decision to reassign Mr. Juhasz was made by (then) Assistant Commissioner for Internal Affairs, Mr. George Heavey.

“...We would also like to point out that during the first nine months of calendar year 1991, Mr. Heavey initiated numerous actions similar to the reassignment of Mr. Juhasz in order to realign and strengthen the staffing of Internal Affairs.”

But Juhasz was not the only Firestorm task force member to get his wings clipped. In addition to Juhasz, others on the task force also were subjected to retaliation by their employers in the wake of Firestorm’s demise, according to congressional documents. Those individuals included Steve Shelly, his wife (also a Customs agent and task force member), DEA Agent Vasquez, an unnamed FBI agent, a special agent with the Department of Justice’s Office of Inspector General (OIG) in Tucson, and the assistant U.S. attorney who served as coordinator for the Firestorm task force.

“The careers of all the people on the task force have been either damaged or destroyed,” Juhasz states in the workers’ compensation deposition.

As for Javier Dibene — the man in charge for Justice OIG in Arizona who was suspected of complicity with drug traffickers — he, too, was transferred out of state. Dibene ultimately took a job with the Immigration and Naturalization Service (INS) in

California, according to congressional records. As of late 2001, he still worked for the federal government in the investigations division of the San Diego District of INS. After that time, his whereabouts could not be confirmed.

And what happened to the two Customs inspectors fingered on tape-recordings for allegedly allowing loads of dope to cross the border on their watch? According to Shelly, as of 2005, they were still on the job, patrolling the same stretch of border in Arizona. The irony of that fact is not lost on Shelly, who considers the inability or unwillingness of the government to address the issues of alleged corruption uncovered by Firestorm as a serious threat to national security.

“If I wanted to sneak some kind of bioterror or other weapon into the country, I’d go to the dope smugglers to get it across the border, because they have the connections,” Shelly explains. “The individuals involved in the smuggling don’t know what’s in those cars or packages, and they don’t care.”

The fallout

With the demise of the Firestorm task force in December 1990 and the jettison of Juhasz about a month and a half later, Group Supervisor James “Breck” Ellis took on the lead role in the Customs Office of Internal Affairs in Tucson. At that point, Shelly says, the cases opened by Firestorm were allowed to go cold.

Juhasz claims that Ellis used his new-found power to undermine investigations that had been launched by the task force.

“Now from the point — the time that I left, no significant investigation was conducted. And I believe, based on what I’m aware of, that it was sabotaged from within and principally — starting with Breck Ellis,” Juhasz states in the workers’ compensation deposition provided in Shelly’s case.

Ellis, who could not be reached for comment, reportedly retired from Customs in 2001.

Customs insiders familiar with the task force's operations in Arizona in 1990 say the whole affair was effectively buried by the agencies involved.

Juhasz did file complaints through Treasury Department channels. They went nowhere. Juhasz even testified in 1992 before the House Subcommittee on Commerce, Consumer and Monetary Affairs about the circumstances surrounding the demise of the task force.

But the congressional investigation was never crystallized into a final report for the full House committee.

A letter signed by the chairman of the House subcommittee was delivered in November 1992 to Warren Christopher, head of President Bill Clinton's transition team. The letter — also co-signed by Charlie Rose, D-N.C., of the House Committee on Agriculture — urged that a special prosecutor be appointed to look into alleged law-enforcement corruption within Customs and Treasury.

An investigation never occurred because the enabling legislation for special prosecutors had already lapsed when Clinton took office.

An agent with Treasury OIG did attempt to probe the Arizona corruption charges, but "his investigation was shut down by the U.S. Attorney's office in Phoenix, as well as the (Treasury) Inspector General's Office in Washington," Juhasz states in testimony at Shelly's 1994 workers' compensation hearing.

Juhasz adds in the same testimony that President Bill Clinton did, as requested by the House subcommittee, remove the Commissioner of Customs, the Assistant Secretary of Treasury and the Inspector General for the Department of Treasury.

"The day he took office, they left," Juhasz states in the workers' compensation testimony.

Following is the text of the Nov. 18, 1992, letter sent by congressmen Rose and Barnard to Warren Christopher and Susan Brophy — who was assistant director for congressional relations for then President-elect Bill Clinton's transition board.

The letter

Dear Mr. Christopher and Ms. Brophy,

We are writing to direct the Transition Board's attention to serious problems which have arisen in the Customs Service and Treasury's Office of the Inspector General during the previous Administration and to urge that your team docket the Service and the OIG as a high priority area for corrective treatment. Our reasons for pressing such action are as follows.

First, in September and August of this year, the General Accounting Office [GAO] issued two reports which were highly critical of the (Customs) Service's ability both to collect duties due to the U.S. and to find violations of various import laws relating to unfair trade practices and unsafe goods.

Second, the Commerce, Consumer and Monetary Affairs Subcommittee [CC&MA] — chaired by one co-signatory of this letter, Congressman Doug Barnard of Georgia — has conducted a two-year investigation of serious misconduct and mismanagement by officials and employees of the (Customs) Service, and, in relation to that investigation, officials in its parent, the Department of Treasury. While the allegations, which we believe are supported by credible evidence, arising out of the investigation center around difficulties along the U.S.-Mexico border and have serious negative implications for the war on drugs, they also concern other parts of the country and non-drug related areas. As discussed in more detail at various points below, the misconduct and mismanagement have not been isolated to political appointees and encompasses senior career personnel.

Third, the Chairman of the Subcommittee on Department Operations, Research and Foreign Agriculture of the Committee on Agriculture [DORFA], Congressman Charlie Rose of North Carolina — the other co-signatory of this letter — has been

extremely concerned about recent plans for moving certain Customs (Office of) Enforcement management at Washington Headquarters to field positions which have been recently upgraded to Senior Executive Service positions. Some of these personnel have been implicated in misconduct situations. Both signatories have reason to believe some such promotions may be a reward for “stonewalling” the Congress in connection with the Banca Nazionale del Lavoro [BNL] case. In review of recent developments concerning misleading information supplied by the CIA and the Justice Department to the court trying the BNL case in Atlanta, the allegations of a role by the Customs Service in this whole affair require some immediate probing.

(Note: BNL was an Italian bank that was accused of providing Iraq with billions of dollars in illicit financing in the 1980s. The Department of Agriculture, through an export credit program, had issued guarantees for a portion of the loans extended by BNL to Iraq. Just prior to the start of the 1990 Gulf War, Iraq defaulted on its foreign debt, triggering the U.S. guarantees — and giving the first Bush administration a bit of a political black eye. In 1995, according to the U.S. Department of Justice, the U.S. government agreed to pay BNL \$400 million to settle the claims. BNL’s branch manager in Atlanta also pled guilty in 1993 to improperly lending to Iraq billions of dollars — most not guaranteed by the U.S. government — and was sentenced to 37 months in prison.)

Continuing the letter

Some special comment is warranted concerning CC&MA’s (the House subcommittee’s) aforementioned two-year investigation. Because of Chairman Barnard’s ill-health just prior to adjournment of the 102nd Congress and other extenuating circumstances at that time, the subcommittee was not able to perfect and consider a draft report prepared by the subcommittee’s staff. In turn, the Government Operations Committee was unable to vote on a report for presentation to the

Committee of the Whole House. However, a lengthy hearing transcript on the subject of misconduct and mismanagement in the (Customs) Service has been printed. That transcript and appendixes of documents and other material [including a sworn statement by a Customs inspector indicating corruption] set forth a large body of evidence. This information in varying degrees substantiates serious mismanagement and misconduct within the Customs Service, the Treasury Inspector General's Office and the Office of the Assistant Secretary for Enforcement of the Treasury Department. [CC&MA Subcommittee staff would be glad to make available to you or other transition board members this public transcript or any other relevant information in our possession.] This documentation and material discloses the following examples.

The evidence seems to indicate that Commissioner Carol Hallett has allowed officials in the Office of Enforcement — some of whom are implicated in gross mismanagement or misconduct — to interfere in Customs Office of Internal Affairs (IA). Further, there are strong indications the Commissioner's office has allowed violations of Treasury and other regulations to occur without bringing to bear appropriate disciplinary measures. A significant factor in this lack of disciplinary action might well be laid to the existence of an "old-boy" network which a recent Customs

Blue Ribbon panel found to exist, but which has proven remarkably resilient to effective control dissolution. We are concerned that this indicates a shortcoming of necessary management skills and the lack of an aggressive commitment to replacing or disciplining responsible individuals by the Commissioner.

Preliminary evidence also indicates that Treasury Inspector General Donald Kirkendall and his former Assistant Inspector General for Investigations, Charles Fowler, prematurely killed uncompleted investigations of senior Customs officials. OIG

also refused CC&MA Subcommittee requests for timely investigation of a senior Customs official in Texas and then provided highly inaccurate information about that investigative activity during a subcommittee hearing. OIG allowed others, including an Assistant Treasury Secretary, named below, to improperly obtain information on one of its investigations. Further, the OIG has refused to adequately staff its investigative unit by staying below authorized levels. In sum, investigations of Customs officials have been given low priority. One informant within the OIG told the Subcommittee that the Treasury Office Inspector General is repeatedly made “subservient” to the wishes of Treasury officials as to whom and what to investigate.

On another front, the CC&MA Subcommittee has amassed information, some of it by sworn statements and agency documentation, indicating that Assistant Secretary of the Treasury [Enforcement] Peter Nunez and/or his staff have interfered in one grand jury investigation of a senior Customs official [in Arizona] and improperly obtained information in another investigation in Chicago. There are also indications he used Government funds to travel to Chicago where Customs personnel and cars were employed to escort him to at least three sporting events in Chicago — which Treasury OIG refused to investigate until pressed by the CC&MA Subcommittee. Assistant Secretary Nunez may have unsuccessfully attempted to interfere in another grand jury investigation in Florida — which interference was partly prevented by the U.S. Attorney. He also apparently directed Customs Internal Affairs to cede some of its investigative jurisdiction in Customs corruption cases to Customs’ Office of Enforcement, even if Customs Enforcement agents might be involved, directly violating recommendations in a Treasury OIG audit report and the August 1991 Blue Ribbon Panel Committee Report concerning integrity of criminal investigations of Customs personnel.

If the subcommittee draft report had been considered and voted out of subcommittee and the full committee, it would have likely recommended further investigation by an independent counsel or, alternatively, a special prosecutor, to fully examine much of the preceding information.

Given all the foregoing, we believe there is a very serious situation in the Customs Service and Treasury OIG which needs early rectification in the new Administration. In a limited respect, we are writing this letter simply because of the importance of taking all appropriate corrective action with respect to the above named senior individuals as soon as possible. While persons at the assistant secretary level will undoubtedly terminate by Jan. 22, 1993, caretaker status for others should not, in our opinion, be permitted.

However, more importantly, the Customs Service as a whole is in bad need of attention. Not only is it a key component of the drug war, it is also the second most important revenue-raising unit for a strapped government.

In order to preserve the Customs Service's integrity and effectiveness, President-elect Clinton needs to choose a new Commissioner of Customs capable of carrying out the dramatic internal reforms which are required and of holding individuals accountable....

Sincerely,

Charlie Rose, Chairman, Subcommittee on Department
Operations, Research and Foreign Agriculture of the Committee
on Agriculture

Doug Barnard Jr., Chairman, Subcommittee on Commerce,
Consumer and Monetary Affairs of the Committee on
Government Operations

CHAPTER 11

Politically Connected

Although the Firestorm task force and its work in ferreting out law-enforcement corruption may have been effectively swept under the rug of history, the controversy surrounding Customs' operations in Arizona did not go away.

In early 2002, former Customs agent and Firestorm task-force member Steven Shelly — as well as other sources — advanced information alleging that a former U.S. Senator was a target of the task force.

Firestorm, which was composed of agents from several federal agencies, was shut down abruptly in late 1990 because it was getting too close to the truth, according to members of the Arizona-based task force.

“The ‘Firestorm’ task force that was shut down overnight, was shut down as a result of one phone call, because the list of suspects included a former United States Senator...,” claims Shelly. He makes that claim in a letter sent in March 2002 to several U.S. senators and a congressman.

Several other sources familiar with Firestorm's operations also confirm that the former senator was in the task force's investigative sights.

The former senator says he knew of the task force, but stresses he was not aware that he was being targeted for investigation by the G-man unit. He adds that any such probe would have been politically motivated, not based on any credible evidence.

Shelly says Firestorm's “target” was former U.S. Senator Dennis DeConcini, D-Ariz. — who, at the time of the task force, was still serving in the Senate.

Shelly concedes that he does not know the specifics of why DeConcini was a Firestorm target. DeConcini served in the U.S. Senate for three terms, from 1977 to 1995 — when he retired

after choosing not to seek re-election. As of 2005, he was working in Washington, D.C., as an attorney and a lobbyist.

Sources familiar with the Firestorm task force also point to an internal government document that likely put DeConcini on the task force's radar screen. That document is a written summary of an interview conducted with an "informant" over a two-day period in July 1990 by FBI Special Agent Bradley Doucette and Customs Internal Affairs Special Agent John W. Colledge III.

The document is referred to in the public record of the 1992 congressional hearings that explored the demise of Firestorm.

Following is an entry from a diary included in the congressional record. The diary was maintained by Milan Tesanovich, the assistant U.S. Attorney assigned to the Firestorm task force. The diary entry is dated "July 12 & 13, 1990."

"FBI S/A Doucette and Customs Internal Affairs S/A John W. Colledge, III, meet with an informant who provided detailed historical data concerning corruption in the Douglas, Arizona, area," the diary entry states.

Among the allegations made in the document summarizing the interview with the informant is that DeConcini used his position as a U.S. Senator to back federal agents off of investigating Douglas real-estate magnate and political power broker Ronald "Joe" Borane, according to sources. The identity of the informant was not disclosed.

When confronted with the claim that he was a target of the Firestorm task force, DeConcini characterized it as "a serious allegation" that runs counter to everything he worked to do while in the Senate.

DeConcini points out that as a senator he was a champion of the U.S. Customs Service and worked to bolster the agency's resources to better fight corruption and the war on drugs. While senator, he says he was often briefed on corruption issues related to the border.

"There were problems with Customs, such as inspectors allegedly waiving people through," he says. "I was made aware of those things because I was chair of the subcommittee that

appropriated money for Customs. And then I later served as chair of the Senate Intelligence Committee, so I would get weekly briefings on corruption issues related to the border and drugs — particularly along the Arizona border. So I was immersed in this issue while in office.”

DeConcini stresses that if the Firestorm task force was investigating him, it was politically motivated.

“If I was a target of Firestorm, it was done out of malice,” he stresses, “because as a senator I tried to get rid of corruption in Customs, that’s what I devoted my time to, to funding law enforcement and trying to make it more responsible.”

DeConcini may well have been drawn into the scope of Firestorm due to politics, according to some sources in law enforcement. In particular, the former senator’s political connections to controversial Douglas, Ariz., businessman Ronald “Joe” Borane could have triggered the task force’s interest, they explain.

Entering Arizona

Sen. DeConcini says he made it a priority while in office to give Customs the muscle it needed to fight drug trafficking and the corruption it breeds.

Those efforts included ushering through legislation to expand the agency’s border presence and air-interdiction forces. As a result, DeConcini questions why the very same agency would make him the target of a task-force investigation.

What could have opened the door to Firestorm task-force excesses, according to DeConcini, is the internal problems at Customs during the early 1990s — which is when Firestorm came on line. He adds that efforts were made to reform Customs under the leadership of Raymond Kelly, who served as commissioner of Customs from 1998 until early 2001.

However, DeConcini concedes that even Kelly’s efforts may not have been successful, as some critics of Kelly’s Customs’ reign contend. “There may be some truth to the argument that the problems never really were completely fixed,” DeConcini adds.

The bottom line, according to some law enforcement sources familiar with Firestorm, is that it was Customs' internal problems — which included task-force information leaks — along with turf wars between federal agencies participating in Firestorm that led to the unit's demise.

“That task force (Firestorm) was shut down at a time when Customs was a very weak organization internally,” DeConcini explains.

Officials with U.S. Customs headquarters in Washington, D.C., failed to provide a comment on why Firestorm was shut down.

Still, Shelly says the speed with which the task force was dismantled, the fact that its leader was stripped of his command and transferred out of state, and the contention that the unit's ongoing investigations were torpedoed and key task-force members targeted for retaliation lead him to believe there was more to the situation than bad management and agency egos.

Some clues as to what might have happened can be gleaned from an internal Customs memorandum, dated January 29, 1990. The memorandum was written by Juhasz and directed to Customs' Southwest Regional Director for Internal Affairs.

“At the present time, it is an accepted fact among federal law enforcement agencies and the U.S. Attorney's Office [Tucson] that law enforcement corruption in the border communities of Arizona has reached a crisis state,” the memorandum states. “It is the opinion of the SAC/IA (special agent in charge of Internal Affairs) Tucson that attacking only the Customs corruption is like putting a Band-Aid on cancer.

“The solution is the establishment of a multi-agency task force, to be co-located with Customs Internal Affairs, Tucson, Ariz., to deal directly and immediately with all aspects of law enforcement corruption on the Arizona border.”

The memorandum then goes on to identify some potential targets for the proposed task force.

“Current investigative information in this office indicates heavy involvement in the corruption of two Customs employees

by an organization in Cochise County (Arizona) which is believed to include law enforcement and court officials,” the memorandum states. “There are strong indications of the same type of activity in Santa Cruz County, which, like Cochise County, is adjacent to the Mexican border.

“Other Federal agencies in Arizona implicate the same organizations as being part of the drug smuggling problem. The members of these organizations include....”

Listed among the credits in the memorandum are a number of high-ranking police and judicial officers in Douglas and Nogales, Ariz. — including the Justice of the Peace in Douglas.

In 1990, that individual was Ronald “Joe” Borane.

“Borane was a target of the task force,” Shelly confirms.

“All this is nonsense, Arizona politics,” Borane asserted in an interview.

According to observers familiar with Arizona politics, Borane has a reputation as a major political player.

“Borane is an influential Democratic politician, and any statewide politician would be foolish not to develop a relationship with him,” says Clarence Dupnik, who as of 2005 served as the sheriff of Pima County, where Tucson is located.

And it is politics that connects Borane to DeConcini.

In fact, DeConcini describes Borane as a “friend.” He says his relationship with Borane dates back to the mid-1970s, when DeConcini first met him while working on the gubernatorial campaign of Raul Castro, who served as governor of Arizona from 1975 to 1977.

“I wrote a letter on his behalf to the judge at his sentencing,” DeConcini says, referring to Borane’s felony conviction on ticket-fixing charges. “... Joe (Borane) is one of the best politicians in southern Arizona.

“... He knows how to make friends and deals, but I never knew of anything he did that was illegal.”

As for the ticket-fixing conviction, DeConcini says Borane got caught up in a sting operation and was convicted. “The record speaks for itself,” DeConcini adds.

Some sources in law enforcement and observers of Arizona politics indicate that DeConcini's friendship with Borane, and the fact that Borane was a Firestorm target, may account, in part, for the Firestorm task force's interest in the former senator.

In addition, in 1990, when Firestorm was heating up, DeConcini also was under fire for his role in the multi-billion dollar collapse of Charles Keating's Lincoln Savings and Loan Association.

DeConcini, along with four other senators — dubbed the Keating Five — were accused of improperly intervening with federal regulators investigating the thrift's collapse. The five senators received more than \$1 million in campaign contributions from Keating.

In the summer of 1991, the Senate Ethics Committee cited DeConcini for questionable conduct. DeConcini, for his part, claimed at the time that he had done nothing wrong. Still, the scandal made him vulnerable politically and opened the door for further scrutiny, political observers contend.

DeConcini supporters stress, though, that any claim linking the former senator to illegal activities is way out of bounds and likely politically motivated.

Sheriff Dupnik says he knows DeConcini well and finds it hard to believe he was being targeted by Firestorm. In fact, his initial reaction to the claim was that it was "absurd."

"There has never been the slightest inkling that he (DeConcini) has ever been involved in anything criminal," Dupnik adds.

Borane describes DeConcini as "a very honorable man."

"This whole thing is a political assassination," Borane said. "Someone (like DeConcini) becomes a politician with influence, and all of sudden people take after him. It's an unbelievable situation; it's a nightmare."

However, Shelly is unflinching in his claim that DeConcini was a target of Firestorm. He concedes that he does not know for a fact that DeConcini was responsible for pulling the plug on

Firestorm, but adds “if anyone had the power to shut it down so quickly and completely, he had that power.”

In the end, though, it is the unanswered questions, more than anything else, that have brought the Firestorm task force back from the ashes.

Juhasz puts some of those questions to the Commissioner of Customs in a letter he drafted in 1991, shortly after the demise of Firestorm:

“I was recently told that I cannot participate in any activities in Arizona. I was told that to do so would ‘violate the agreement,’” Juhasz states in the letter. “I ask: What agreement? Certainly none that I am a party to. The specter of some back-room, smoke-filled meeting that culminated in an agreement to ‘call off the bulldog Juhasz’ smacks of improprieties, unethical behavior and possibly illegal action.

“The final question is: Who can exert so much political pressure in Washington, D.C., that I am not only removed from my position as (Internal Affairs/special agent in charge) in Tucson, but prohibited from participating in any capacity in law enforcement activities in Arizona?”

Former Customs Agent Shelly characterizes the government’s efforts to battle corruption within its ranks as more show than go. In his March 2002 letter to the senators and congressman, he says “for the past 10 years, the corrupt employees have not had much to fear as far as being exposed and prosecuted.

“Our government is aware of and tolerates corruption...,” he adds in the letter.

In an interview, Shelly conceded that we may not be able to eliminate all corruption in law enforcement.

“But we can eliminate the corruption that we know about,” he stressed. “Those who know and refuse to act become just as culpable as the crooked cops. Politics aside, something has to be done.”

And, time is of the essence, particularly when it comes to corruption along the U.S./Mexican border. U.S. Rep. Bill

McCollum, R-Fla., made a chilling prediction in a December 13, 2000, statement before the House Subcommittee on Crime, which he chaired at the time.

“In Russia, organized crime groups have developed strategic alliances globally with drug traffickers,” McCollum stated. “What is alarming is that these strategic alliances may not be limited to narcotics. One especially disturbing, and not unrealistic, scenario is the possibility of a strategic alliance between Russian criminals and a terrorist group related to the supply and shipment of weapons to be used in an attack here in the United States.”

Far out? Unfortunately, no. Ralph Mutschke, assistant director of the criminal intelligence directorate of the International Criminal Police Organization (Interpol), told McCollum’s subcommittee on December 13, 2000, that, South American drug cartels have been forming alliances with Eastern European and Russian organized crime groups. These Russian and Eastern European mafia groups “have offered drug cartels access to sophisticated weapons that were previously not available,” Mutschke said.

He added, “Helicopters, surface-to-air missiles, rocket-propelled grenades, and even submarines are on the drug cartels’ shopping list.”

And the drug cartels are not the only bad guys with an interest in acquiring high-powered weapons. The publication *Money Laundering Alert* published a report in December 2002 detailing an alleged drugs-for-arms deal involving the Autodefensas Unidas de Colombia (AUC) — which is a Colombian paramilitary group that the United States considers a terrorist organization. The investigation resulted in the arrest of several individuals in Costa Rica.

“An undercover agent from the Ukraine recruited to help the U.S. FBI and DEA posed as a source of Russian-made weapons,” the *Money Laundering Alert* reports. “High-ranking AUC officials wanted to purchase ‘five shipping containers of

Warsaw Pact weapons' in exchange for \$25 million in cocaine and cash."

Information supplied by the U.S. Drug Enforcement Administration indicates that in 2000 alone, the AUC "conducted (during the first 10 months of the year) 804 assassinations, 203 kidnappings and 75 massacres with 507 victims, and is considered by international human rights groups and the U.S. Department of State to be responsible for 70 percent of the human rights violations in Colombia."

In yet another drugs-for-arms case, an indictment was unsealed in November 2002 in San Diego that accuses three individuals there of plotting to "exchange five metric tons of hashish and 600 kilograms of heroin for four 'Stinger' anti-aircraft missiles," the *Money Laundering Alert* reports in its December 2002 issue.

"... The three men met in mid-September 2002 with the U.S. (undercover) agents in Hong Kong, where they allegedly told the agents 'they intended to sell the missiles to the Taliban, an organization which the defendants indicated was the same as al-Qaeda,'" the *Money Laundering Alert* reports. "They are charged with conspiracy to provide material support and resources to a foreign terrorist organization."

That brings us back to former Customs agent Fitzgerald's allegations. Remember, she claims the Tijuana cartel controls a large rail yard in Guadalajara, Mexico. If true, then how much Afghan heroin would it take to convince the leaders of the cartel to open up the rail yard to al-Qaeda? How much heroin would it take to convince the Russian mafia to provide al-Qaeda with a shipment of Humvees and bazookas, or even a misplaced nuclear device from the fallen Soviet Empire?

The whole terror connection to the drug trade is complicated even further by the influence of U.S. intelligence agencies, which historically have played covert roles in propping up the narco- and arms-trafficking activities of parties deemed to be acting in the "interest" of the United States. Such covert activity on the part of U.S. intelligence operatives has already backfired

in the past, unleashing our own dragons on us – i.e. Osama Bin Laden.

Lok Thye Lau, a former FBI agent who drew national attention after revealing he spied on China for the Bureau, says organized crime, including drug trafficking, has corrupted the governments of many countries, such as China. Lau says the United States would be "stupid" not to take advantage of this fact in the intelligence game.

"I was dealing with life and death stuff on a pretty regular basis," Lau says, referring to his overseas intelligence assignment. "If I got killed, and they do kill people, the day I died they would not want my family to know. That way, my family would not be pulled in. Every day, intelligence operatives are killed, but the government is not going to say, 'Oh, that was one of ours.' It's all covert."

Although Lau is prohibited from discussing the specifics of his spying mission due to national security concerns, his assignment did provide him with the expertise to brief CIA agents on the topics of "Chinese alien smuggling, Asian organized crime and Asian cultural issues in general," according to government documents.

"Until 9/11, the government was saying the FBI can't conduct undercover work overseas and the CIA can't do domestic surveillance. Look at me and you know that it was not true," Lau says. "I'm like one of the first to do what I did for the FBI, and I assure you there have been a lot of people after me."

Lau, who claims the FBI discarded him after he had served his purpose, stresses that in the underworld of covert operations, the legal and moral norms of society often give way to the law of the jungle. If left unchecked, he warns that can lead to some dire consequences for the soul of the individual and society.

"They taught me to be ruthless, and for a while I was immersed in that," Lau says. "Thank God for a conscience, which is why I pulled back. But if you become a dragon slayer, you can't help becoming a dragon yourself."

CHAPTER 12

Tactical Intelligence

As the end of 2002 approached, in the wake of elections giving Republicans control of the White House and Congress, the Senate and House took quick action to approve expansive legislation creating the Department of Homeland Security. The measure was signed into law by President Bush in late November 2002.

The formation of the Department of Homeland Security represents the largest restructuring of the federal government since the creation of the Department of Defense in 1947. Seventy-two years earlier, in 1875, the U.S. Customs Service officially became part the U.S. Treasury Department. And now, as part of the effort to enhance homefront security in the wake of the 9/11 terrorist attacks, Customs is being rebranded as part of the fledgling Department of Homeland Security.

But the culture of the Customs Service, which was established in 1789 as one of the nation's first federal agencies, is not likely to be easily transformed by simply shuffling the agency into some new juggernaut bureaucracy — any more than putting a baseball team in a new division would alter the underlying chemistry of that team.

That supposition has huge implications for national security.

For example, the nation's intelligence agencies were criticized heavily for failing to piece together a series of clues that, in hindsight, appear to have been threads in the tapestry of planning for the 9/11 terrorist attacks on the World Trade Center and the Pentagon.

To prevent such communication and analysis lapses in the future, the intelligence community has assured members of Congress that new information-sharing and warning systems have been put in place.

But what if the intelligence shortcomings have deeper roots than poor coordination and bureaucratic bumbling? What if those

roots spring forth from the very culture of the government agencies involved in gathering, analyzing and disseminating critical information?

That concern appears to be given some weight by whistleblowers in at least one sector of the nation's intelligence community: the Tactical Intelligence Center, or TIC, located at Stennis Space Center in Bay St. Louis, Miss.

TIC is part of U.S. Customs' intelligence operations and is charged with conducting counter-narcotics and counter-terrorism missions.

The curtain is drawn back on the inner workings of the clandestine intelligence unit in a series of legal filings and internal letters that have surfaced involving TIC personnel. The documents, as well as sources within Customs, depict a scene of bitter office politics at TIC that have bred charges of discrimination, falsification of documents, budget manipulation, cronyism and abuse of power. These alleged activities have been so disruptive, and created such a hostile workplace, that they threaten to compromise TIC's overall effectiveness as an intelligence unit, according to observers familiar with TIC.

"From the outside, I look at all the crap going on in this place (TIC), well, I thought federal employees were supposed to protect us," says Miguel Elias, a New Orleans-based attorney who agreed to take on the discrimination claims of five TIC employees. "The higher-ups are simply writing their own ticket, and covering each others' backs. And you're either part of that clique, or you're out."

In that type of atmosphere, workplace morale becomes abysmal. As one former Customs agent points out, "Do you think you're safe if morale (in law enforcement) is down? Do you think anyone wants to work under those conditions?"

Litigation

The TIC employees represented by Elias filed discrimination complaints charging Customs with engaging in age, gender and ethnic discrimination. Elias says all of the cases had wound their

way through the administrative process of the Equal Employment Opportunity Commission (EEOC) by 2002, with each of the five employees involved being granted the right to file a lawsuit in federal court.

One of those cases made its way into U.S. District Court for the Eastern District of Louisiana that same year. The case involves a high-ranking intelligence officer who alleges that the director of TIC systematically discriminated against Hispanic employees — resulting in less-qualified individuals being promoted to supervisory positions.

Carmen M. Leon served as a supervisory intelligence operations specialist-chief of analysis for eight years before being demoted in June 1999 to program manager.

“Leon’s position...was taken away from her, without cause, and given to Pete Hallock, an untrained Caucasian male with less experience and seniority than Leon,” her lawsuit alleges. “And to add insult to injury, Tim Burke (the TIC director at the time) assigned Leon to work for Pete Hallock.”

Leon applied for a higher-level supervisory position in November 2000, but failed to get the promotion, even though, according to her complaint, she was “the most qualified candidate and ‘next in line’ for the promotion.”

“(Leon) alleges that the true reason she was not promoted is on account of her sex and national origin: Hispanic female,” Leon’s lawsuit asserts.

Leon goes on to claim that TIC Director Burke engaged in a “pattern and practice of harassing and applying unequal treatment toward Leon” and other Hispanic employees. She contends further, that since at least 1997, “Customs has engaged in unlawful employment practices at their facilities,” including creating a hostile work environment for Hispanic employees “by harassment and retaliatory tactics.”

Those tactics, Leon alleges in her lawsuit, included “taking away necessary items, i.e., laptop computers and digital pagers; having to submit paperwork several times because original

paperwork conveniently gets lost; having to submit reasons for use of a cellular telephone; and not giving earned awards.”

Leon claims in the litigation that the emotional distress inflicted on her as a result of the hostile work environment at TIC “caused (her) to prematurely deliver a baby in July 2001, resulting in a miscarriage.”

Customs denied Leon’s charges in its response to her complaint and asked the judge to grant judgment in the agency’s favor, “dismissing (Leon’s) complaint with prejudice, with (Leon) to bear the costs of this litigation.”

Leon’s case never made it before a jury. The federal judge hearing her case in New Orleans granted Customs’ request, and dismissed the litigation on summary judgment in September 2003.

Grievance, affidavits

Leon may have lost her battle in court, but she is not alone in speaking out about the problems at TIC. In yet another round of allegations, an administrative grievance filed by a former TIC supervisor in January 2002 claims the unit’s parent agency, the Office of Intelligence, tried to “disrupt management at TIC, with the use of threats and abuse of powers....”

By way of example, the former supervisor — who filed the grievance after being demoted — claims that TIC’s budget was slashed to the point where it was having difficulty paying rent to its landlord. TIC was leasing building space at Stennis from NASA.

“Our administrative staff is often instructed by HQ to move existing money around between various accounts in order to pay different bills with the same money...,” states the grievance, which is directed to the U.S. Customs Office of Investigations. “It can’t be done; it is ludicrous. This is the extent of the incompetence...and NASA is going to be furious when they learn we can’t pay the rent.”

The rent was, in fact, eventually paid, according to a source familiar with TIC's operations, who adds, "There is a lot of fraud, waste and abuse going on at TIC."

A draft of an undated letter prepared by the same former supervisor sometime after December 18, 2001, and addressed to a U.S. congressman, adds credence to the source's assertion. The letter charges that a TIC employee was sent to Kosovo as a U.S. Customs representative "and then had his payroll records falsified...in order to avoid the congressionally mandated GS-15 pay cap."

"The unit file on this situation is three to four inches thick," the letter continues. "It is filled with numerous memos and e-mails demonstrating our repeated objections and refusal to take these actions that were categorized as 'against the law' by the senior Customs finance specialist in Indianapolis."

The former supervisor, who was still with TIC as of 2003, declined comment.

A series of affidavits also were obtained that are related to another discrimination action against TIC management. In one of those affidavits, a high-level director in Customs intelligence operations stresses that age, race and national origin are not factors in determining promotions or treatment of employees.

However, a half dozen TIC employees claim in their affidavits that the unit's management has subjected them to some form of unfair treatment.

In one of those affidavits, a Hispanic TIC intelligence analyst echoes the comments made by attorney Elias concerning the cliquish atmosphere within TIC:

"It is common knowledge that management...have in the past and are presently discriminating against individuals in Bay St. Louis, Miss. The main issues are traversed around the good-ol'-boy network. If you are not a member of the elite group, you will not get the equal opportunity to participate in areas such as cash awards, travel to special locations, overtime, promotions and training. The majority of discrimination has been directed toward older, Hispanic employees."

The analyst goes on to claim that individuals involved in the Equal Employment Opportunity process have been retaliated against.

“One of the most common practices is requesting an Internal Affairs investigation on petty subjects that may have happened 1 to 3 years ago,” the analyst claims in the affidavit.

Mirror image

The issues being raised by Hispanic employees at TIC mirror discrimination complaints raised in the federal class-action lawsuit filed in May 2002 by Hispanic Customs agents.

In fact, the seemingly pervasive pattern of racial bias has started to command the attention of the Hispanic law enforcement community nationwide. The mounting tension was focused in late 2002 on a nominee for a high-level post at the new Department of Homeland Security (DHS). That nominee was Asa Hutchinson, who at the time was the administrator of the Drug Enforcement Administration (DEA)— which is part of the Department of Justice.

Hutchinson is a former Republican congressman from Arkansas and a graduate of Bob Jones University in South Carolina — which, until 2000, maintained an open policy of prohibiting inter-racial dating among students. Hutchinson was tapped in late November 2002 by President George W. Bush to serve as Undersecretary for Border and Transportation Security within DHS. The undersecretary post is charged with overseeing U.S. Customs, the Transportation Security Administration, Border Patrol and a number of other federal agencies that have been reshuffled and/or reorganized as part of the creation of the new bureaucracy.

The Hispanic American Police Command Officers Association (HAPCOA) raised some serious concerns about Hutchinson’s track record at DEA, particularly as it relates to minorities. HAPCOA, which has about 1,100 members in the United States and Puerto Rico, represents command-level Hispanic law enforcement officers working on the local, state

and federal level. One of the charges made in a 2002 resolution adopted by HAPCOA is that Hutchinson, as DEA administrator, was “party to continuing an insidious ‘good-old-boy’ network (in DEA) thus perpetuating an atmosphere of distrust, reprisal and retaliation against minority employees....”

When interviewed in December 2002, Gordon Johndroe, spokesman for Homeland Security Director Tom Ridge — who at the time had only been recently nominated by Bush to serve as secretary of DHS — said he was not aware of HAPCOA’s charges against Hutchinson.

However, Johndroe stressed that “Mr. Hutchinson is a man of integrity and has done an excellent job at DEA.”

Regardless, several federal law enforcement sources say failure to address racial tensions in the workplace inevitably hurts morale, which, particularly in the case of the new DHS, could pose a risk to national security.

“Morale goes down if people feel they’re being treated like garbage,” stresses one federal agent — who asked not to be named because he feared he would be retaliated against for talking to the media. “Does that (poor morale) jeopardize the safety of the country? Yes.

“No one would blow a case, such as a terrorist investigation, on purpose, but you can be so demoralized that you’re not working at 100 percent.”

The resolutions

In late August 2002, HAPCOA adopted a resolution in support of the Hispanic agents who are pursuing a class-action discrimination lawsuit against U.S. Customs. The federal lawsuit, filed originally against the Secretary of Treasury, has since been redrafted to name the Secretary of DHS to reflect Customs merger into the new department.

Customs is fighting the litigation, claiming the allegations are without merit and not supported by the statistical evidence. The case was still pending in federal court in Washington, D.C., as of mid-2005.

The HAPCOA resolution calls on the President of the United States and Customs leadership to “take quick and effective action to ensure justice and equal and fair treatment in promotions, training, transfers and disciplinary actions for all Hispanic special agents in the Customs Service.”

A similar resolution also was adopted in the summer of 2002 by HAPCOA in relation to DEA. In particular, the resolution singles out Hutchinson, alleging that he has failed to live up to his promises to Hispanic agents.

The resolution follows:

At the 29th Annual Conference of the Hispanic American Police Command Officers Association (HAPCOA), the members assembled here in Albuquerque, New Mexico, Aug. 19-24, 2002, strongly take exception to the institutional racism that has been allowed to continue under the current Administrator of the Drug Enforcement Administration (DEA) Asa Hutchinson.

The men and women of HAPCOA listened to Mr. Hutchinson’s keynote speech in Sacramento, California, at their annual conference in 2001 wherein Hutchinson led the members to believe that he supported fair and equal treatment of Hispanics in the DEA, and that he would change the culture in DEA that is notorious for discriminatory practices and disparate treatment of Hispanics.

WHEREAS, in the year since Administrator Hutchinson addressed the HAPCOA members, treatment of DEA Hispanic employees has further deteriorated;

WHEREAS, the DEA Hispanic Advisory Committee was formed as part of the settlement of a discrimination class action filed by Hispanic DEA special agents in the 1980s for the specific purpose of bringing Hispanic issues of concern directly to the DEA Administrator;

WHEREAS, following Hutchinson's keynote address in Sacramento, under his management the DEA Hispanic Advisory Committee (HAC) charter has not been extended;

WHEREAS, under the current senior management of the DEA, three former chairpersons of the Hispanic Advisory Committee, all members of the Senior Executive Service of the United States and members in good standing of HAPCOA, including two National Presidents, have been involuntarily reassigned, demoted, retaliated against, denied promotions for which they are qualified or denied due process;

WHEREAS, Administrator Hutchinson has ignored the advice and counsel of minority senior managers in both DEA Headquarters and the DEA Field Divisions;

WHEREAS, Administrator Hutchinson has been a party to continuing an insidious "good-old-boy" network thus perpetuating an atmosphere of distrust, reprisal and retaliation against minority employees for exercising their rights under the laws of the land, thereby continuing a hostile work environment for minority employees in the Drug Enforcement Administration.

THEREFORE, BE IT RESOLVED that the members of the Hispanic American Police Command Officers Association at their annual national conference in Albuquerque, New Mexico, Aug. 19-24, 2002, strongly recommend that the Attorney General appoint an oversight committee to ensure that minority concerns in the DEA are properly and expeditiously addressed and resolved. HAPCOA also calls upon the President of the United States and the Attorney General to exercise appropriate and firm oversight over the Administrator of the DEA in order to end the institutional racism at the DEA and thus ensure equal treatment and equal employment opportunities for qualified Hispanics in our nation's lead federal drug enforcement agency.

The President

HAPCOA also sent a letter to President George W. Bush in early September 2002, which was signed by HAPCOA President Arthur R. Parra Sr. — a captain in the Chicago Police Department. The purpose of HAPCOA's letter to the President was to make him aware of the group's resolutions concerning Customs and DEA and to also seek his help in bringing about needed changes to address the discrimination confronted by Hispanic federal agents.

Parra says HAPCOA members adopted the resolutions and sent the letter to Bush out of a sense of "frustration." He says Hispanic federal agents have tried to cultivate a working relationship with their agencies, but "it hasn't worked."

"We have made numerous pleas to get a resolution to this problem, which has been going on for years, but we're at a stalemate," adds Parra, speaking for HAPCOA. "We wish we could do this another way. These agents love their country. They are only asking to be treated fairly."

As 2002 drew to a close, HAPCOA also took its case to the media. That move seemed finally to attract some attention to their issues in Washington, D.C. In mid-December 2002, the chairman of the Congressional Hispanic Caucus (CHC), U.S. Rep. Ciro D. Rodriguez, D-Texas, issued a statement weighing in on the issue:

The CHC is concerned about these issues because they affect Hispanic employees, but also because they affect the work of the Federal government....

The previous administration recognized this problem and directed the Office of Personnel Management (OPM), which is the Federal Government's Human Resources Office, to develop a plan to deal with this problem. On October 2000, President

Clinton issued an Executive Order (13171) directing the heads of executive departments and agencies to establish and maintain a program for the recruitment and career development of Hispanics in federal government. Under President Bush, who has talked about the inclusion of all Americans in his Administration, we have yet to see how this Executive Order is utilized and to see an improvement in the number of Latinos in the federal workforce. Even an OPM report issued earlier this year (January 2002), highlights that the government's overall diversity numbers are very encouraging for minorities, with the exception of Hispanics.

How does the Federal government hope to attract Hispanic employees if it appears that current workers are being treated unfairly?

Sandalio Gonzalez, special agent in charge of the DEA's El Paso, Texas, Field Division, says the letter sent to the President in September 2002 took on even greater relevance with Hutchinson's nomination a few months later to the undersecretary post at the new DHS.

"One of the resolutions (the DEA's) hits Hutchinson pretty hard, and he is going to be over Customs (at DHS)," Gonzalez explains.

Gonzalez, who was president of HAPCOA when the Customs and DEA resolutions were drafted in August 2002, says the White House did not respond to HAPCOA's letter.

"Our association (HAPCOA) is on the White House guest list, and I've been to two meetings at the White House as head of HAPCOA," Gonzalez says. "It's kind of like they use us when it's convenient, but when HAPCOA raises an issue that is ugly, then they want us to go away. But this issue is not going away."

Gonzalez also served for a number of years as chairperson of DEA's Hispanic Advisory Committee, or HAC, which was

established as part of a 1992 settlement agreement in an employment-related class-action lawsuit filed against DEA on behalf of Hispanic agents. HAC was created to bring the concerns of Hispanic employees directly to the attention of the DEA Administrator.

HAC's charter, as the HAPCOA resolution points out, was allowed to lapse in 2001 under Hutchinson's reign at DEA. However, after the HAPCOA resolutions garnered some media attention in late December 2002, Hutchinson issued an internal memo reinstating HAC. At the time, Hutchinson's nomination to the new DHS post was awaiting confirmation by the U.S. Senate. His nomination was approved several weeks after he reauthorized HAC. (Hutchinson eventually resigned from his undersecretary position at DHS in January 2005, after President Bush passed him over twice for the role of secretary the department.)

"Whenever a minority agent files a complaint against the government, they always fight it," Gonzalez says, referring to the way Hispanic and other minority agents are put through the wringer when they seek to address alleged discrimination. "Never do they say, 'You're right; let's fix it.' Are we always wrong?"

HAPCOA's September 3, 2002, letter to President Bush is printed below:

Dear Mr. President:

The following letter serves to transmit the most recent resolutions passed by the Hispanic American Police Command Officers Association on behalf of their Hispanic colleagues in the United States Customs Service and the United States Drug Enforcement Administration. The association's membership feels that the institutional racism and rampant discriminatory practices continually directed against Hispanic Americans by federal law enforcement agencies will no longer be tolerated,

and based on your relationship with Hispanic Americans should be addressed at your level.

The Hispanic American Police Command Officers Association (HAPCOA) is the oldest Hispanic command level law enforcement association in the nation. Its membership represents Hispanic command officers throughout the United States and Puerto Rico at every level of government.

It is disturbing for us to find that in addition to the above referenced class action against the Secretary of the Treasury, and the discrimination affecting Hispanics in the Drug Enforcement Administration, Hispanic Americans in the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury as well as in the Immigration and Naturalization Service within the Department of Justice, are also seeking resolution to class action complaints charging violations of their civil rights.

Following the September 11, 2001, simultaneous terrorist attacks in New York City and Washington, D.C., a new chapter in law enforcement was forged: national security. Having been tasked by the Executive Office of the President, demands for more vigorous and proactive involvement by law enforcement in protecting our nation became a necessity.

The Hispanic American Police Command Officers Association is aware that our Hispanic colleagues in law enforcement have continued to rise to the call formidably, but they cannot and should not continue to be violated and their efforts individually and collectively ignored at this time when law enforcement reform and community relationship are at an all-time critical stage.

On behalf of our National Executive Board and our members I ask that you and your office intervene and accelerate the necessary changes to bring about a more united America.

Respectfully,
Arthur R. Parra, Sr.
National President

Beyond the charges of discrimination and reprisal bubbling up within the Tactical Intelligence Center (TIC), U.S. Customs as a whole and other federal agencies, there is the broader issue of their disruptive effect on national security and the ability of the intelligence community — and the law enforcement community in general — to work efficiently and productively. With respect to that grave issue, failure to address endemic management and workplace-culture problems can literally become a life and death matter for citizens of the United States.

Unfortunately, the dysfunction within the workplace at agencies like Customs and DEA appears to have very deep roots — as the HAPCOA letter to President Bush illustrates. The following statement from a TIC analyst further drives home that point.

“Unsound personnel decisions, which were made many years ago (and some more recently) have haunted this project (TIC) and will inevitably continue to do so,” states a TIC analyst in a legal affidavit. “This is most unfortunate, not only for the project in general, but for all the affected individuals [management included], their families, and the Customs Service as a whole. We waste time, energy, assets and funds attempting to settle irreconcilable disputes such as this, when they should never occur....”

CHAPTER 13

Nexus

U.S. Customs does not have eminent domain over the battleground of the so-called war on drugs. Customs must share that turf with a host of other federal agencies, including the major-domo of counter-narcotics enforcement, the U.S. Drug Enforcement Administration.

This shared mission fosters a mutual tension, both within and between agencies, over who will define the battle lines of the conflict. In the shadows of this turf war, the distinction between right and wrong can sometimes bleed into a gray zone where strange alliances are struck.

It is also in this gray zone where the table of corruption is set and the high-stakes players from both sides of the drug war come to place their bets. Some walk away winners; others wind up dead.

That backdrop to the war on drugs helps to explain how agents from both Customs and DEA have become intertwined in what appears to be a pattern of corruption that is centered on JFK International Airport in New York City.

In order to adequately convey the context of the intricate web of corruption charges linking the two federal law enforcement agencies, it is necessary to explore an intriguing legal case that dates back to the early 1990s.

Although the trail of the case leads into the past, the litigation has serious implications for the fate of the war on drugs and the war on terror — both missions that DEA and Customs share.

Exploring the nexus

The airline industry put its thrusters on full bore in an effort to comply with government demands to beef up security in the wake of the 9/11 terror attacks.

But the same government that feverishly spun out new legislation to strengthen the airline industry's security web in the war on terrorism may also be the source of a major flaw in that safety network.

According to a Yale Law School professor, that flaw may have already played a role in the destruction of at least one commercial airliner — which was blown up in mid-air, resulting in the loss of hundreds of lives.

The law professor, Steven B. Duke, wrote to numerous federal agencies concerning this flaw as part of his efforts to prove the innocence of one of his clients. His efforts produced little more than agency finger-pointing and a cryptic picture of the shadowy world of undercover law enforcement.

The flaw being exposed by Duke relates to a practice called “controlled delivery.” The practice is used by law enforcement to snare high-ranking members of drug trafficking organizations. In such a delivery, a law enforcement agency allows a shipment of drugs to be transported from one location to its destination, under close surveillance, in an effort to catch drug-syndicate kingpins with their hands in the cookie jar.

In the case of Duke's client, Gaetano DiGirolamo, some 20 kilos (44 pounds) of heroin were transported on commercial airlines from Pakistan to New York City in an alleged controlled delivery undertaken to advance a major undercover drug operation. Agents with the DEA transported the heroin in December 1990 from Pakistan to Paris, via Air France; and then from Paris to New York City, via the now-defunct airline TWA.

The drugs were then purportedly used to set up a series of stings, one netting DiGirolamo, who was ultimately convicted in 1994 of drug conspiracy charges in federal court in New York and sentenced to life in prison. Duke later took on DiGirolamo's case, seeking to prove he was wrongfully convicted.

The case

Gaetano DiGirolamo is no saint.

According to DEA records, DiGirolamo is a “known associate of the Cotroni organized crime family based in Canada, and has an extensive narcotics background.”

And DiGirolamo has paid a price for his career choice. He spent much of the 1980s (1984-1990) in federal prison in Danbury, Conn.

So it should not be a big surprise to most people that he again found himself on the wrong end of the law in the early 1990s, shortly after his release from prison.

That run-in with the system — the DEA specifically — led to his indictment in 1991 and conviction in 1994 on drug conspiracy charges in U.S. District Court for the Eastern District of New York.

The conspiracy charges against DiGirolamo stemmed from a meeting he arranged between a DEA informant and another individual who eventually purchased heroin from the informant.

However, DiGirolamo claims he had nothing to do with the drug deal. Despite what people might assume about him, he contends that he is not guilty of the charges brought against him in 1991; in fact, he claims he was framed by DEA agents seeking to use his case as a cover for their own illegal drug-smuggling activities.

DiGirolamo appealed his conviction, only to lose again in 1995. At that point, Steven B. Duke, a professor of law at Yale Law School in New Haven, Conn., stepped in, taking on DiGirolamo’s case pro bono. In 1997, Duke filed a post-conviction petition with the federal court seeking to vacate DiGirolamo’s conviction.

Among the claims raised in the post-conviction petition were that DiGirolamo was convicted “based upon perjury of three DEA agents” and that his court-appointed lawyer provided inadequate legal representation.

“(The DEA agents) testified that they were involved in importing drugs for use in ‘stings’ against me and others when in truth and in fact they were doing so for their own personal,

criminal enrichment,” states DiGirolamo in his post-conviction petition.

According to court pleadings, the DEA agents transported the heroin from Pakistan to New York City allegedly for the purpose of setting up undercover stings.

The petition goes on to raise major doubts about the veracity of the DEA agents’ purported sting against DiGirolamo — such as the fact that the alleged heroin brought in from Pakistan was never tested to assure it was the same heroin used in the sting, nor was the heroin ever produced at trial.

In addition, despite claims by the DEA agents involved in transporting the heroin that their operation had been sanctioned by DEA headquarters in Washington, D.C., as well as the French and Pakistani governments, Duke says those approvals were never produced.

“Where are they?” Duke asks in a court filing. “Where are the applications for such approvals? Where is the evidence that any of these approvals were sought, much less obtained?”

The DEA agents, of course, contend Duke’s allegations are baseless.

Jan connection

DiGirolamo and others were being targeted, according to the testimony of DEA agents, because they were believed to be distributors for a major heroin trafficking syndicate headed by a mysterious Pakistani figure named Jan. The 20 kilos of heroin imported from Pakistan by the DEA agents allegedly were acquired through undercover purchases from the Jan organization, legal filings in the DiGirolamo case state.

From the fall of 1991 to the summer of 1992, there were a total of nine other prosecutions related to the Jan syndicate sting. In each of those cases, the DEA agents tell the same story, according to court filings made by DiGirolamo’s defense team.

Despite this fact, the court filings claim, Jan and the drug syndicate being targeted by the DEA operation never figured out that repeated stings and arrests were occurring — even though

the heroin involved in the nine prosecutions adds up to 50 kilos, 30 kilos more than was provided by the Jan organization.

“How could any organization think it had any of the 20 kilograms of heroin (left) to sell after the first few arrests?” Dukes states in a legal brief in the DiGirolamo case. “Moreover, Jan was an informant for the DEA.”

Duke was even able to track down a witness who claims to have purchased heroin from individuals fitting the description of the DEA agents in the DiGirolamo case. The witness, who is serving a life sentence on drug conspiracy charges in a federal prison in Pennsylvania, claims the drugs he and his partner acquired in those deals in Queens, N.Y. (some 40 ounces a week at \$6,000 an ounce) were in turn sold on the streets of Philadelphia.

Duke made numerous requests of prosecutors in both Philadelphia and New York for various records that would help substantiate or disprove the claims being made by the witness, but “all those requests were ignored,” he claims.

In a letter to the judge in DiGirolamo’s case, Duke alleges that the DEA agents were, in reality, engaged in their own smuggling operation “for the purpose of selling the drugs and using ‘stings’ as a cover for their operation.”

The DEA agents characterized the claims raised by Duke as “untrue and absurd,” according to court records.

The judge in the case also dismissed Duke’s arguments, contending instead that DiGirolamo was convicted on overwhelming evidence that he conspired to possess heroin.

In addition, according to court records, the judge found there was insufficient evidence to support the claim that the DEA agents were illegally importing heroin for their own drug trafficking operation. And even if those allegations were true, the judge reasoned, it would simply make DiGirolamo a co-conspirator with the DEA agents.

“In December 1999, (the judge) dismissed the entire case in one of the most bizarre opinions I have ever seen,” Duke says.

“... Essentially, (the judge) said it didn’t matter if the DEA agents were corrupt smugglers.”

Duke has continued to pursue the DiGirolamo case, and in 2002 uncovered a possible connection between his case and allegations of corruption centered on U.S. Customs operations at JFK International Airport. Diane Kleiman, a former federal agent turned whistleblower, brought forth those Customs-related allegations. Kleiman claims that she was targeted for retaliation and finally fired after attempting to expose the allegedly corrupt practices at Customs’ JFK office.

DiGirolamo recounts his version of what happened to him in a letter dated September 3, 2003, which he wrote from federal prison. (With the exception of DiGirolamo’s attorney, Professor Steven B. Duke, the names of individuals mentioned in the letter have been withheld to protect their real identities.)

The prison letter:

Inmate Name: Gaetano DiGirolamo
Register Number: 07853-014 Unit F105
United States Penitentiary
P.O. Box 1000
Lewisburg, PA 17837

Dear Mr. Conroy,

My name is Gaetano DiGirolamo. A couple of years ago you did a story about me. It concerned DEA Agents using commercial airlines to import drugs into the U.S. I know you remember the story.

The reason I am writing is because I am desperate for help. I need some sort of publicity to explain my plight. I have been contemplating for some time as to whether I should write to you. From the heading of your article you seem to think that I was some sort of king pin.

Let me give you some background about myself. I am not no kingpin in the drug business. The government has created this myth. Let me tell you that I was a gambler and a bookmaker. My adventure in the drug business took place in 1982. I was involved with trafficking cocaine. My indictment for that crime was that from the year 1982 thru 1984 I distributed 164 grams of cocaine. That is the case I pled to and that is what I went away for. I deserved to go away. They were not satisfied with taking me and my sons, They also took my wife who had nothing to do with anything. She too was put away. I do not have to tell you why they took my wife I am sure that you can figure that out yourself. They play dirty. They wanted me to be informant on certain people. I won't go into the whole story I just wanted you to know what I did.

I was sentenced to 16 years. The judge gave me two consecutive sentences of 8 years. I pled to this because I wanted my wife to remain home with our two remaining sons. Instead they sent her away for 4 years and she maxed that term out.

I was released from Danbury on Oct. 26, 1990. I got a job with the XX fish company in December of 1990. This was owned by a Mr. AA and Mr. BB.

While I was serving time at Danbury, I met a Pakistani named CC. I befriended him. In 1986, February to be exact, Mr. CC was taken to INS to be deported back to Pakistan. I was instrumental in securing a bond for him to remain here to fight the extradition. I had a lawyer friend of mine put up the bond for which I stood behind.

As it turned out CC skipped out leaving me owing this money. Over the next 4 years I may have heard from via mail about 4 to 6 times. Each time he would say that he would pay attorney DD the money he owed. I kept DD informed each and everytime I heard from him.

In January of 1991 it was the last week of the month I received an MCI cable from this CC. I went to Mr. DD's office and we tried to call the number that Mr. CC wrote in the cable. We were unable to make a connection. I next hear from Mr. CC by letter. This was the end of February of 1991. Mr. CC informed me that he had a friend who was here in the U.S. that would contact me concerning the money Mr. CC owed Mr. DD. I was later contacted by a person known as EE.

I did meet this EE, which was the mistake of my life. He informed me that Mr. CC had sent me 12 kilos of heroin and that I was to pay him \$150,000 for courier fees. I swore at this guy and cursed him. I told him that I was not there for the purpose of any drug deal. I want the money that Mr. CC owes Mr. DD.

As you can figure out this was a setup. The person I met wore a wire. When we asked for the wire it turned out to be inaudible. The DEA said that the recorder was working prior to my entry into the motel and then went off and all you could hear is static. This tape would have shown that I had nothing to do with drugs.

What happens is next is that I finally speak to Mr. CC on Mar. 25, 1991. I reigned terror on him for what he did. He told me that it was all a mistake and that EE was suppose to see a friend about some other deal. He mentioned the name and I knew he was. We were all friends at the Danbury facility. He wanted me to introduce EE to him. I did put the two people together but it was for some deal that involved gems. I wasn't involved in any deal with either of the people. I only made the introduction for Mr. CC with the understanding that he would pay Mr. DD. I was concerned about our home which was in foreclosure.

As you can guess they supposedly made a deal for the drugs. My friend was arrested and two days later they arrested me for introducing them. I received a Life sentence plus 10 years. He

received 22 years. They enhanced me for the convictions I had in 1984.

Mr. Conroy I have been inside prison since 1984. This November I will have spent 19 years away from my family. I will be 71 years old on September 22. On September 21 I will be married 46 years. My wife will be 68 years old on September 19. My life is over. I would like to die around my family. I would like to spend a few years with them.

This case was a coverup from the outset for the DEA to smuggle drugs and sell drugs in the inner cities across this country. I have proof of the smuggling operation. I have people who dealt with the agents. As you know they will not give us the opportunity to show the buyer the photo array of the agents.

I do not know what you can do or if you want to help me. I am a desperate man. Each day that goes by I wish that something happens. It hasn't. I have spoken to my lawyer about going to the Judge and asking that I be given a lethal injection. I do not want my family to suffer any longer. I figure that with me gone they can go on with their lives. But Prof. Duke will not hear of it and doubts the Judge would ever do that.

I sit hear in prison for the crimes of others. What I have done in the past I have paid for. I was never a Kingpin drug dealer. I know a lot of people but does that mean that I am a drug dealer. I admit to what I have done. I pled guilty to it. There was nobody involved with me. I am ashamed for what I have done to my family.

I will close for now. If you will answer me as soon as possible I would greatly appreciate. Time is running out for me. God Bless You.

Dire impact

The twists and turns of DiGirolamo's legal case expose the rough underbelly of the U.S. justice system. But his case also raises another frightening specter in the realm of airline security.

Controlled delivery may well be an effective law-enforcement tool in combating drug cartels, when all goes as planned. However, when the system breaks down, or is corrupted, the consequences can be serious, even deadly, according to Duke.

A letter written in December 1999 by Duke to Jane Garvey, then administrator of the Federal Aviation Administration (FAA), elucidates those concerns:

"The DEA agents who brought the heroin to this country were allegedly linking up Pakistani drug producers and American dealers, through the assistance of informers working both in Pakistan and the United States. The drug dealers' discovery that the distribution network had been infiltrated by informers was therefore an omnipresent possibility, which they might choose to defend against by blowing up the airplane. There is ample precedent for drug organizations planting bombs in airplanes occupied by passengers who are informants. In 1989, a commercial airliner headed for the United States was blown up in flight because the Medellin Cartel believed an informant was aboard. All 107 passengers and crew were killed. ..."

In a June 8, 2000 letter to the FAA's chief counsel, Duke also contends that negligence in a U.S. government-sponsored drug-sting operation may have played a key role in the destruction of Pan Am Flight 103 in 1988. The airliner exploded over Lockerbie, Scotland, snuffing out the lives of 259 people on board and another 11 people on the ground.

A Libyan intelligence officer was subsequently convicted of the bombing and Libya has since agreed to pay the families of the victims a total of some \$2.7 billion. However, Duke provided the FAA's chief counsel with a 1991 news story from the

London Times and a copy of an affidavit from a U.S. intelligence officer that points to a potential security flaw that may have facilitated the terrorist plot to place explosives on Flight 103.

The intelligence officer, who was assigned to the Defense Intelligence Agency (DIA) and stationed in the Middle East in 1988, contends that Flight 103 was being used as a “controlled” flight as part of a DEA drug-sting operation. The *London Times* story states that the DIA agent believed the DEA operation was compromised, allowing terrorists to plant a bomb on Flight 103 through an airport bag switch.

The DEA claims it was not running a drug sting on the ill-fated flight. A spokesman for Pan Am, however, said the DEA’s claim is “simply false,” according to the *London Times* story.

“In addition to the drug-related bombing of the Colombian jetliner in 1989...it now appears that DEA’s smuggling of drugs on another passenger airplane may have contributed to the destruction of Pan Am Flight 103 over Lockerbie,” states Duke in his letter to the FAA’s chief counsel. “... Perhaps the Congress can be persuaded to rectify that deficiency. One may hope that a tragedy is not required to produce a recognition of the problem in that venue.”

The Customs link

Although the letter Duke wrote to FAA Administrator Garvey argues hypothetically from the assumption that the DEA agents in DiGirolamo’s case were telling the truth about the Pakistan-to-New York controlled delivery of heroin, Duke’s real position in his client’s case is quite the opposite.

In addition to failing to produce documents to show that the operation had been approved by DEA and the foreign governments affected, Duke points out that the agents transporting the heroin did not find buyers for the drugs until some five months after bringing the contraband back to New York. He also stresses that the agents involved in the transport never pretended to be anything other than federal agents — so they weren’t acting undercover.

Several former federal law enforcement officials who were contacted about the DiGirolamo case also agree that what occurred — as asserted by Duke in the litigation — does not appear to qualify as a controlled delivery.

“A controlled delivery requires the coordination of numerous affected offices, such as U.S. Customs, the DEA and the U.S. Attorney’s Office prosecuting the case,” explains one former undercover agent. “And there has to be surveillance on it from start to finish, someone eyeballing it all the way — which makes the operations very expensive because they involve a lot of man hours. This operation (the one in the DiGirolamo case) doesn’t sound normal; it’s not the way it works.”

Duke has made efforts to discover if the Pakistan-to-New York heroin shipment was sanctioned by a government agency. Between 1997 and 2000, he wrote a series of letters to the FAA, the Department of Transportation and the U.S. Customs Service seeking information on their policies concerning controlled deliveries — and more specifically about their knowledge of the heroin transported by DEA agents from Pakistan to New York in December 1990 via commercial airlines.

The Department of Transportation referred his letter to the FAA, which replied by informing Duke that the FAA “does not have authority...to prohibit DEA from transporting narcotics on commercial airlines. ...”

Duke’s letter to Customs, dated March 3, 2000, was addressed to Commissioner Raymond Kelly.

Duke’s letter to Customs:

Dear Mr. Kelly,

In a criminal prosecution in the Eastern District of New York in 1993, a DEA agent named Derek Maltz testified that he personally brought 20 kilos of heroin to New York from Pakistan on a commercial passenger airline and that he did so with the approval of not only DEA headquarters in Washington but the United States Customs Service. I enclose a copy of his

testimony on the subject. *United States v. Salerno and DiGirolamo*, 91, CR. 0395, tr. 514-15. In subsequent proceedings in that case, another DEA agent stated that such importations of contraband for use in sting operations is commonplace.

I find that testimony both incredible and incomprehensible. There can be no legitimate law enforcement need to bring large quantities of heroin into this country when we are already awash in it, and more is surely not needed for sting operations. There is a substantial risk that such shipments of multi-million dollar packages of drugs will encourage corruption of the agents involved in bringing it here. Moreover, carrying such contraband as a passenger on a commercial airliner risks the safety of passengers, crew and ground personnel, since it is a likely target for robbery and also since the consignors, if they suspect betrayal or law enforcement involvement, may blow up the airplane, as was done to another jetliner headed for New York in 1989. [See “107 Dead in Bogata Jetliner Crash, Los Angeles Times, 11/27/89; *United States v. Escobar et al.*, 842 F. Supp. 1519 (E.D.N.Y., 1994) — prosecution for blowing up plane headed to New York.]

As I read the law, secretly importing large quantities of illicit drugs on commercial passenger airliner is a serious felony, even if conducted by law enforcement officers. ...I can find no statute or regulation authorizing it.

Please tell me whether Mr. Maltz’s claim about Customs authorization is true or false and, in any event, whether you think there is any legal justification for the practices he describes.

The U.S. Customs Service sent Duke a reply on May 2, 2000. Bonnie Tischler, assistant commissioner for Customs' Office of Investigations, prepared the response.

Tischler's letter to Duke:

Dear Mr. Duke,

Thank you for your March 3, 2000, letter regarding the importation of narcotics into the United States by law enforcement officers.

In your letter you cite the judicial testimony of a special agent of the Drug Enforcement Administration (DEA) who received approval from DEA and the U.S. Customs Service to conduct an international controlled delivery. An international controlled delivery is one of many investigative techniques utilized by law enforcement officials to investigate and infiltrate narcotics smuggling organizations. More specifically, they are a highly effective tool used to further identify and ultimately arrest the high-level members of those organizations. The U.S. Customs Service has specific guidelines that grant such importations provided all precautions have been taken to ensure the security of the controlled substances, the law enforcement officers involved and members of the public.

The specific incident you cite involved the international controlled delivery of 20 kilograms of heroin at the John F. Kennedy (JFK) Airport on Dec. 4, 1990. Our records indicate that while our agency provided assistance in facilitating that delivery through JFK, the entire operation was initiated and coordinated solely by the DEA. Therefore, I would refer any further questions you may have regarding this matter to DEA Headquarters, 600 Army Navy Drive, Arlington, Virginia 22202.

I appreciate your interest in the Customs Service. If we may be of any further assistance, please contact me

The response from Customs does not indicate who within the federal law-enforcement agency facilitated the delivery. However, at that time, Customs was dealing with some issues itself in relation to its JFK operations, according to former JFK Customs Agent Diane Kleiman — who claims she was fired in 1999 after blowing the whistle on alleged corrupt activity on the part of Customs officials at the New York City airport.

Kleiman's case was accepted for investigation in the spring of 2002 by the U.S. Office of Special Counsel (OSC), an independent federal agency that is empowered to investigate and prosecute cases of alleged governmental misconduct and mismanagement. In a letter Kleiman sent to the OSC in July 2001, she alleges that in the early 1990s, three federal agents assigned to a drug unit at JFK died under unusual circumstances. Two died of heroin overdoses and one committed suicide — allegedly after stealing drugs from an evidence room.

Duke says he is investigating whether there is any connection between the JFK drug-unit agents and the DEA agents involved in the DiGirolamo case, but adds “we don't have the connection yet.”

“We do know that Customs at JFK ‘facilitated’ the (alleged) smuggling by our DEA agents and were aware of it,” he adds. “Whether they were corruptly involved remains to be determined.”

In the fall of 2002, Kleiman, who is Jewish, also filed a lawsuit against Customs in U.S. District Court in Washington, D.C.

Among the charges in Kleiman's lawsuit are that Customs management at JFK International Airport discriminated against her because of her gender and religious background and that she was retaliated against by the same managers for shining a light

on the alleged dysfunction and corruption within Customs' JFK operations. Customs denies Kleiman's allegations in its answer to her legal complaint and asks the court to dismiss the case.

In the dark

The U.S. Attorney's Office for the Eastern District of New York in Brooklyn declined to comment on the DiGirolamo case or on its policies concerning controlled deliveries.

The same questions were posed to DEA headquarters in Washington, D.C. Will Glaspy, a DEA agent and spokesman for the agency, says he cannot comment on the specifics of ongoing litigation, such as the DiGirolamo case. However, he provided the following general comments concerning international controlled deliveries involving commercial airlines:

"Yes, there are procedures that allow for this type of operation....We have policies with checks and balances in place to make sure everything operates smoothly (with respect to potential dangers to passengers)."

Glaspy adds that the DEA cannot operate unilaterally in a foreign country, so it would need to obtain approvals from any foreign countries affected by an international controlled delivery — such as France and Pakistan in the case of the delivery made in the DiGirolamo case.

In addition, Glaspy stresses that "there are numerous people who need to sign off on the details of the operational plan (for a controlled delivery) from the beginning to the end. (DEA) Headquarters plays a big part in that." He adds that there are also procedures in place to assure that agents transporting the contraband do not steal drugs from the shipment.

In terms of whether the airlines would be made aware of such an operation:

"It is possible that the commercial airlines involved (in a controlled delivery) would be made aware, but it is also possible that they would not be aware," Glaspy explains. "It's done as the need dictates with respect to the security of the operation and the safety of the agents."

That might explain why Air France stated in a March 9, 1998, letter to Duke that it had no record of having been notified by the DEA of the 1990 shipment of 20 kilos of heroin from Pakistan to Paris via Air France.

“We are not permitting such a transportation on our lines,” the letter states. “Should we learn that a quantity of drugs, heroin or other, large or small, is loaded on board one of our aircrafts, we would immediately report to the local police as well as our national authorities.”

TWA, which was the commercial carrier that was used by the DEA agents to move the heroin from Paris to New York City, sent a letter to Duke in January 1998 declining to comment on the incident.

TWA’s assets have since been acquired by Fort Worth-based American Airlines. When asked about its policy concerning controlled deliveries, American Airlines spokesman John Hotard provided the following reply:

“American Airlines often cooperates with federal law enforcement agencies in the fight against drug smuggling. We have a vast network of our own security agents throughout our route system to ensure that American Airlines flights are safe and secure. That said, we are not aware of any illegal drugs ever being placed on any of our aircraft by federal law enforcement officers.”

Risky business

Although American Airlines may not be aware of such activity, according to a February 1999 affidavit submitted in the DiGirolamo case by DEA Agent Charles Graham, international controlled deliveries of illegal drugs are standard fare for the DEA. Graham was assigned to the DEA’s Karachi, Pakistan, resident office (KRO) from 1989 to 1993.

“It is standard operating procedure for the DEA to transfer drugs seized by the DEA in Pakistan to the DEA in the United States for the purpose of doing controlled deliveries,” Graham states in the affidavit. “In my estimation, during the course of my

tenure at the KRO, DEA performed at least 30 such controlled deliveries. Drugs have been transferred under those circumstances to a number of DEA offices, including those in Long Island, Miami, Los Angeles and Philadelphia.”

These revelations take on an even more ominous tone post-September 11 and with the rise of global terrorism. Consider that, according to an analysis of public records, of the 35-plus groups that are designated as terrorist organizations by the U.S. State Department, at least 10 (including al-Qaeda) have known ties to drug trafficking or drug cartels.

In that light, Duke’s legal efforts reveal some startling information concerning the U.S. government’s policy on controlled deliveries, including the fact that the airlines and passengers are often kept in the dark with respect to these undercover drug shipments.

Duke spells out his concerns with the practice in his December 1999 letter to FAA Administrator Garvey:

“When I first learned of an agent’s testimony that he brought multi-kilo quantities of heroin into this country on commercial flights, I concluded that the agents were probably using the cover of their jobs to smuggle drugs for their own private, corrupt purposes,” Duke states in the letter. “I still suspect that was the case. The U.S. Attorney’s office for the Eastern District of New York contends, however, that such activities are a common practice of the DEA.”

Duke goes on in the letter to again question why the government is importing more drugs into the country — given the fact that there are already plenty of drugs in the United States that could be used for sting operations.

“Since there can be no compelling law enforcement purpose for bringing such drugs into the country,” Duke continues, “... something is seriously awry in the DEA that, among other things, threatens the lives of innocent airline passengers.”

CHAPTER 14

Looking into the Void

Federal agents, whether they are with Customs, the DEA or some other agency, have to confront not only crooks, but also their own consciences. The allure of easy money is all about them, often in the form of piles of dope and cash. That temptation proves to be too much for some, and they choose to cross the line, for many reasons — an extra house, a kid's education, the dream vacation, or vindication for putting up with a dysfunctional bureaucracy.

Bad cops can do real damage to the integrity of the justice system, but an even bigger problem is the cover-up that frequently occurs after someone blows the whistle on corruption — a fact of life Sandalio Gonzalez knows first-hand.

Sandalio Gonzalez is a 30-year-plus veteran of law enforcement. He worked for the Drug Enforcement Agency (DEA) for a quarter of a century prior to retiring in 2005.

With his appointment in September 1998 to associate special agent in charge in Miami, Fla., he became the highest-ranking Cuban-American in DEA and the second in command of the Miami Field Division.

Over the course of his career with DEA, Gonzalez has taken on a number of domestic and foreign assignments, including a stint in Washington, D.C., as chief of South American Operations, just prior to coming to Miami.

But Gonzalez' move to Miami would prove to be career altering. It was there that he ran head-first into a suspected cover-up that thrust him into a major legal battle with the DEA.

Following a November 1998 search of a suburban Miami house, a joint DEA/Miami-Dade Police team came up short on a stash of cocaine. Prior surveillance of the house indicated there should have been about 32 kilograms of cocaine on the premises, but the total amount accounted for after the search fell 10 kilos short of that mark.

Enrique Bover and his wife, Gisela, who each had prior drug convictions, were the targets of the raid. After their arrest, the Bovers agreed to become confidential informants in a play for leniency in their case. Their cooperation did lead to several arrests.

The Bovers assert that they informed DEA agents about the missing cocaine immediately after their arrest and that the information was ignored. Months later, the Bovers found themselves being accused of taking the 10 kilos of coke.

Gonzalez, though, suspected a set-up. He says the same Miami-Dade Police team involved in the Bover raid was responsible for “compromising three prior drug cases.”

Gonzalez was clued into the potential corruption after receiving a memo from one of his agents outlining “apparent official misconduct...and violations of federal law,” according to a discrimination lawsuit Gonzalez filed in federal court in Miami.

“It was alleged that police officers may have taken the cocaine,” Gonzalez asserts in the lawsuit.

However, the fix was in, according to Gonzalez, who claims in his lawsuit that the “good ol’ boys” within DEA and the U.S. Attorney’s Office closed ranks to protect the “non-Hispanic/non-minority” DEA agents involved in the Bover raid.

The goal of the alleged cover-up, Gonzalez claims in his litigation, was to prevent “any type of scrutiny regarding the Bover allegations” of police misconduct. Specifically, the lawsuit asserts that DEA brass wanted to ward off scrutiny of the DEA agents’ “association with the Miami-Dade Police Department squad” that was involved in the Bover raid.

“The Bovers were deactivated as...informants in January 1999, following the arrest of Enrique Bover,” Gonzalez’s lawsuit states. “This arrest was based on what was clearly questionable information and evidence produced by a Miami-Dade detective who worked closely with (the suspect DEA agents and) who Gonzalez subsequently learned was under investigation by his own police department’s Internal Affairs Office, as well as by

the Miami-Dade County State Attorney's Office. The January 1999 case against Enrique Bover was consequently dismissed for lack of evidence."

However, Gonzalez's problems were only beginning.

"I took a stand on the missing 10 kilos of cocaine, and insisted that that they (DEA) do an investigation," Gonzalez says. "And that was it."

In the wake of pushing for that investigation into the missing coke, Gonzalez found himself the target of a series of actions by his superiors that he claims were designed to intimidate, embarrass and ultimately silence him. Gonzalez subsequently filed Equal Employment Opportunity claims against his superiors for their actions and ultimately took his case into federal district court in Miami.

In addition to suffering retaliation and discrimination designed to "harass and humiliate (him) and slander his character and damage his reputation," Gonzalez asserts in his lawsuit that in January 2001 he was transferred involuntarily to the less prestigious post of special agent in charge of the El Paso, Texas, Field Division.

"The prohibited actions cited...were undertaken by the Department of Justice-Drug Enforcement Administration and the U.S. Attorney's Office for the Southern District of Florida personnel, all sanctioned and encouraged by management officials of the DEA, who also participated in the prohibited actions, and furthered an entrenched DEA policy or philosophy of racial profiling and retaliatory actions against minorities, specifically Hispanics," Gonzalez alleges in his lawsuit.

Gonzalez's legal case was dismissed on a technicality by a federal judge in the spring of 2003. However, a federal appeals court later reversed the decision and Gonzalez's case was sent back to the federal district court, where it was still pending in late 2006.

The Department of Justice, the defendant in Gonzalez's lawsuit, contends the charges made in the case are without merit. Gonzalez, though, says his career did not merit being turned

upside-down for blowing the whistle on suspected corruption within DEA.

“The missing cocaine is definitely the catalyst of my problems,” he says. “The cover-up (since then) has been amazing. They (his superiors) look at you blank-face and then look the other way.”

The Big Apple

A decision to stare down a cover-up is also what former Customs Agent Diane Kleiman claims brought the heat down on her. Kleiman asserts that she was asked to commit perjury by her supervisor as part of an effort to conceal the success of a drug-smuggling scheme that allegedly involved employees of a major airline. Kleiman says she refused to go along with the cover-up and was subsequently fired as a result.

Kleiman — who worked as a Customs agent at JFK International Airport — says she attempted to make officials within Customs, as well as other federal agencies, aware of the alleged cover-up and the potential security risks it posed prior to the September 11 terrorist attacks on the Twin Towers in New York. However, Kleiman claims her warnings were ignored.

In the spring of 2002, the U.S. Office of Special Council (OSC) accepted Kleiman’s case for investigation. OSC is an independent federal agency that is empowered to investigate and prosecute cases of alleged governmental misconduct and mismanagement.

“You allege that (your supervisor) took unfavorable personal actions against you in reprisal for engaging in whistleblower activity and refusing to provide false testimony before the grand jury,” states a March 18, 2002, letter from the OSC to Kleiman. “You also believe (your supervisor’s) actions were motivated by discrimination on the bases of race, sex and religion.

“Based on the information you submitted, we have decided to refer your complaint for an investigation....”

Janet Rapaport, spokesman for U.S. Customs in New York, declined to comment on Kleiman's case "since this is an open administrative matter that U.S. Customs is looking into."

Kleiman also filed a lawsuit in federal district court in Washington, D.C., in November 2002. The charges in the lawsuit are similar to those raised in her OSC complaint. Kleiman's attorney is Ronald Tonkin of Houston — who also represented Laredo Customs Agent Romeo Salinas in his lawsuit against the agency.

Kleiman's story

Kleiman was the new kid on the block when she arrived in late 1998 as special agent at the U.S. Customs office at JFK International Airport in New York.

Kleiman, a former assistant district attorney in New York for six years, says in the spring of 1998 she decided to trade in her law books for a badge in order to become a special agent and to "fulfill her desire to serve her country."

After about four months of training for the special agents' job in Georgia, Kleiman was assigned initially to the World Trade Center in New York and later to U.S. Customs' office at JFK. According to Kleiman, that's when her troubles started.

"Immediately after arriving at JFK, I was called to a meeting by my supervisor," states Kleiman in a July 25, 2001, letter that she sent to the OSC. "... The first comment that he made to me was the following: 'Customs is like the Irish Mafia. Our form of affirmative action is hiring an Italian, so understand what your place is in this agency.' This statement was made in regards to me being a female, a Jew and an attorney."

Kleiman's litigation spells out the extent of the alleged discrimination. Following is a section of Kleiman's pleadings filed in U.S. District Court in New York. (Kleiman's name has been substituted for the word plaintiff in the passages below.)

From the lawsuit

Kleiman was assigned to the “currency group” of the U.S. Customs Service at JFK Airport, with Supervisory Criminal Investigator Thomas Flood [SCI Flood is a non-Jewish white male] assigned as her supervisor on Dec. 22, 1998.

Kleiman was subjected to harassing comments upon her first meeting with SCI Flood. The harassing comments made by Flood related to Kleiman’s Jewish descent and her being a woman. SCI Flood pointed out that Kleiman was one of only a few Jews in the office and stated that he and a few other co-workers, Rich Dallasandro [non-Jewish white male] and Don Hughes [non-Jewish white male] were taking bets as to how long it would take before Kleiman resigned. SCI Flood told Kleiman that U.S Customs Service had been all Irish in the past and that U.S. Customs’ form of affirmative action was hiring an Italian, and that Kleiman should have an understanding of her place in the Agency.

SCI Flood told Kleiman that he could never understand why the people with the most money, meaning Jews, care about those who had nothing, meaning the blacks. SCI Flood assigned Kleiman to a desk in the “Ghetto,” a cubicle area, where four desks were together. SCI Flood told Kleiman he was putting her in this location because three out of the four Jews in the office were in this area and this way, “he could keep an eye on all of us.”

SCI Flood stated that he was assigning Kleiman an old car for the first three months and that if Kleiman didn’t get into an accident, he would assign her a better car. Flood stated that U.S. Customs was plagued with women who can’t drive. Flood stated that none of the men had been involved with accidents, which goes to “prove his theory that men are better drivers than women.” Flood said maybe it’s because they put their makeup on and get ready for work in the car.

SCI Flood called Kleiman into the office on a daily basis, subjecting her to malicious comments pertaining to her being incompetent because she was a woman and to having to keep “an eye on the Jew in the office.”

Kleiman was in a co-worker’s office with several other men present. One man loudly stated that he had a friend at the Bureau of Alcohol, Tobacco and Firearms (ATF), an agency where Kleiman previously worked, who told him that Kleiman had some plastic surgery while at ATF. Then he pointed to his chest and he asked Kleiman if “she had her tits done.” After that, a rumor was spread that Kleiman had breast implants. Thereafter, male agents would make rude comments regarding Kleiman’s breasts.

SCI Flood assigned Agent Rich Dallasandro to be Kleiman’s training officer. Kleiman repeatedly asked Dallasandro for work. Dallasandro never gave Kleiman the time of day and refused to talk to her. One day, Kleiman walked up to Dallasandro and Dallasandro put his hand in Kleiman’s face and said “talk to the hand.” Kleiman asked Dallasandro what the problem was and he stated that he has a short time to retirement, that he has been in the group for a long time, and that the last thing he needed was to be a training officer, “especially to a female.”

Dallasandro never explained to Kleiman her duties. Dallasandro was required to teach Kleiman the procedures and mechanisms of the U.S. Customs Service. However, Dallasandro refused to train Kleiman. Dallasandro openly humiliated Kleiman on a daily basis either by yelling, cursing or using crude language (as when he told Kleiman to report for a “piss test” in front of 8-10 other male police officers and agents). Every time Kleiman asked Dallasandro a question, he told her he was too busy or that Kleiman was “a stupid bitch.” Dallasandro constantly cursed and referred to Kleiman in four-letter terms. When Kleiman

asked Dallasandro to stop, he called Kleiman a “prissy fucking bitch.” On numerous times, Dallasandro became irritated and suggested that Kleiman take a Valium or “get laid.” Kleiman was continuously subjected to a hostile work environment.

Around the middle to the end of January 1999, SCI Flood stated that he was making up a duty roster and said that he was assigning Kleiman the weekend duty because Kleiman’s people (meaning Jews) were always having holidays, which was a great excuse to get out of work, but still get paid. Flood, Dallasandro and Hughes always made fun of Kleiman by calling her “Keinberg, (or) ”Kleinstein.” (And adding,) “You know, they all sound the same.”

Shooting the messenger

Despite the alleged discrimination and harassment, Kleiman pressed on. Over the first few months of 1999, she made a series of disclosures to her supervisor that were met with harsh reactions.

In her OSC complaint, Kleiman reveals that she reported to her supervisor at JFK the use of excessive force on a suspect, several incidents of improperly handled evidence, an office gambling operation involving payouts exceeding \$5,000, and the fact that there was some \$300,000 unaccounted for in a case involving a large cash seizure.

“When I raised my concerns with (my boss), I was told to shut up and was virtually told that if I didn’t listen, I was finished,” Kleiman says.

Kleiman still wasn’t about to stand down, though. During the winter of 1999, she began to work a case involving an American Airlines baggage handler, a non-citizen, who was caught twice within a few months attempting to smuggle about \$30,000 in currency out of the country.

“This baggage handler makes minimum wage, and after interviewing him, I felt he was engaging in criminal activity,”

Kleiman states in her OSC complaint. "I reported this to (my supervisor) and recommended that either we cultivate this man as an informant and watch him, or report him to American Airlines security. (My supervisor) told me to keep my mouth shut and told me if I didn't, he would make sure I was fired."

By early spring of 1999, Kleiman would find herself jumping from the frying pan into the fire. In March, with the assistance of a DEA agent, Kleiman scored a major investigative coup that led to the arrest of a man attempting to smuggle 46.2 pounds of cocaine into the country, Kleiman states in her OSC complaint.

The case involved a smuggling scheme whereby an American Airlines employee was allegedly being used to assist the smuggler to bypass airline and airport security.

"... The method used by the smugglers usually involved a second individual, who customarily was seated behind the courier," Kleiman states in a July 2001 letter to OSC. "This second individual would most likely be an employee of (the airline) and would have a key to the gate at the airport. According to DEA, this was how the drugs could enter the country, bypassing a Customs check point."

The former agent claims a lack of security and the failure by airlines to perform thorough employee background checks make these schemes possible to pull off.

Again, in this case, Kleiman's boss allegedly told her to withhold information.

"(My supervisor) ordered me to perjure my testimony before a grand jury because the defendant stated to me that he had smuggled drugs into JFK on prior occasions," Kleiman states in her OSC complaint. "(He) wanted me to omit that information from the statement because it would look like Customs wasn't doing its job, and it would embarrass the agency."

Tangled up in turf

Kleiman claims the cocaine smuggling case was considered a very complex investigation, particularly for a rookie like her. In fact, Kleiman alleges in her lawsuit that her supervisor, Flood,

gave her the case in order to set her “up to fail in her first important case.”

However, Kleiman surprised everybody when she played a key role in the March 1999 bust.

After news of the arrest reached Flood, Kleiman was called into a conference room and interrogated for more than two hours by Flood and his boss, the assistant special agent in charge at JFK.

“(They) wanted to know what information (Kleiman) had given to the Drug Enforcement Administration,” the lawsuit alleges, because they knew a DEA agent had assisted Kleiman in the case.

“Flood stated that U.S. Customs was afraid that the DEA was going to break the case and that U.S. Customs would be embarrassed because drugs were smuggled into the United States right under U.S. Customs’ nose,” Kleiman’s lawsuit asserts.

Kleiman says Flood even went as far as to orchestrate the destruction of evidence related to the smuggling case.

(Again, in the following passage from her lawsuit, Kleiman’s name has been substituted for the word plaintiff.)

More from the lawsuit

On March 16, 1999, Flood called Kleiman at home and told her to give the smuggling case file to Don Hughes the next day, and told her to keep her mouth shut about the case. On March 17, 1999 [Flood was not in the U.S. Customs office] Kleiman gave the smuggling case file to Agent Don Hughes and Kleiman observed Agent Hughes remove all the notes which she had placed in the case file and shred them, thereby sanitizing the file, and she further observed Agent Don Hughes making changes to the Treasury Enforcement Communications System II computer system.

On March 18, 1999, Kleiman had a meeting with agents Flood and Twomey regarding the smuggling case. On March 22, 1999, SCI Flood called Kleiman into his office and told her that her “hell” had just begun; that U.S. Customs did not want DEA taking credit for

the case; and that he wanted Kleiman to lie to the Grand Jury that the DEA had nothing to do with the case; as well as state that it was senior U.S. Customs agents that had assisted Kleiman in the investigation. When Kleiman refused, the case was taken away from her and Flood stated that he was not going to let some “junior Jew bitch agent” take credit for such a big case.

Flood told Kleiman that he was going to retroactively withdraw permission for Kleiman to use the Government car on several occasions in the past several months and now he was citing Kleiman for these usage violations. Flood also threatened that he would place retroactive evaluations in Kleiman’s file and have Kleiman fired. Flood stated that since Kleiman’s mother lives alone, bad things could happen to her, like she could get killed. Kleiman again refused to provide false information on her reports (or) perjure herself before the federal Grand Jury.

Double trouble

Kleiman says she never was allowed to appear before the grand jury in the cocaine-smuggling case. In July 1999, she was fired.

Kleiman then filed an Equal Employment Opportunity (EEO) complaint — after having attempted to file such complaints unsuccessfully while employed at JFK.

“(Kleiman) attempted to file EEO complaints,” her lawsuit alleges. “However, Flood told (Kleiman) that she had to file EEO complaints through the chain of command.

“For months, (Kleiman) gave Flood her EEO complaints.... Flood did not pass on (Kleiman’s) complaints to be processed by the proper authorities.”

When Kleiman’s EEO case was finally acted on after she was terminated, the investigation revealed that two sets of job-performance evaluations did exist for her — and one of them had been altered, Kleiman’s OSC complaint states. The altered

evaluation was prepared on March 22, 1999, the same day Kleiman's supervisor had threatened to fire her.

When contacted, Flood declined to comment on Kleiman's allegations.

However, Marvin Walker, the supervisor in charge of Customs agents at JFK, is outraged by Kleiman's allegations.

Walker claims in a memo to his staff that Kleiman's charges are bogus and a blatant attempt to capitalize on the 9/11 tragedy in order to bolster her weak legal case. Although Walker's intention in writing the memo is to refute Kleiman's allegations, in the process he has raised some serious questions about his own management judgment that, according to Kleiman, are proof he is "out of control."

Walker's memo was written in response to an article about Kleiman's case that appeared in New York Magazine in June 2003 — more than a year after a Texas paper broke the initial story about Kleiman's case.

"Many of you have, no doubt, seen the New York Magazine article of June 2, 2003, concerning the allegations of former Customs Special Agent Diane Kleiman of rampant mismanagement, malfeasance, sexism and anti-Semitism in the management of this office," states Walker, in a June 5 memo he addressed to his subordinates at JFK. "While Ms. Kleiman has sought Whistleblower status by attempting to contort these allegations (which remain unfounded) into issues impacting national security, I wanted you, the workforce of this office, to understand that none of these allegations have any merit. ..."

Attached to the internal Customs memo is a letter to the writer of the New York Magazine article. That letter was never sent because Walker was "advised not to send it," the memo states.

In that letter to the magazine, Walker accuses Kleiman of attempting to inflict "multiple professional and personal injuries," and he thanks the magazine writer "for taking the time to characterize the behavior and the appearance of former Special Agent Diane Kleiman...as it at least gives one pause to consider why she is no longer employed as a Customs special agent."

In addition, Walker concedes in the memo that official Customs policy prevents him from responding publicly to Kleiman's charges.

Walker writes the following in the memo:

"I write to each of you, because everyone has the right to defend themselves in the court of public opinion. Sadly, we here, the maligned, who have been living with this sordid tale since June 1999, are precluded by Agency policy from responding to the New York Magazine article, predicated upon the pending litigation of Ms. Kleiman in U.S. District Court. Yes, that's where we are headed. I also write to each of you, because this missive has the potential for sustaining a corrosive effect on the morale of this office. Sensational allegations such as these, unrefuted by an agency spokesperson, and allowed to linger, even in the face of pending litigation, could cause one to infer that silence equals acquiescence.

"As that is not the case, we are constrained by official policy from responding, and we will abide by that policy. However, I have attached a rebuttal letter, which I wrote to the author of the article, Mr. Craig Horowitz, to attempt to refute these allegations, as well as to thank him for a balanced article. ...I was wisely advised NOT to send it, and I did not. As this memorandum, and the attached letter is for INTERNAL CONSUMPTION ONLY, I ask that you read it, and then either shred it, or secure it."

Kleiman's attorney, Tonkin, says the memo is a demonstration of Walker's "animus" toward Kleiman and represents a not-too-subtle attempt to pressure his staff to stick to the company line should they be questioned about her case. Tonkin, a former federal prosecutor, also says that by issuing orders to shred the memo, Walker was pressuring his staff to destroy evidence in a pending legal case.

"His constant barrage in the letter demeaning her character also goes to his motive," Tonkin adds.

Walker, when contacted by phone, said he wrote the memo as an "attempt to do some internal damage control."

"People are entitled to their opinions, but they are not entitled to their version of the facts," he said.

Walker claimed that Kleiman is attempting to portray him as a supervisor who "presided over a corrupt enterprise." He said he "is not that type of person," stressing that he would never turn a blind eye to such corruption if it did exist.

Walker added, "Any supervisor who stands up nowadays and says, 'Well, gee, you know I didn't know what was going on,' they're either lying or a fool. ..."

For its part, Customs has denied Kleiman's allegations in court pleadings filed in her case. One source within Customs, who asked not to be named, indicated that the real reason Kleiman was fired was because she misused a government car.

Kleiman agrees that among the stated grounds for her termination was that she allegedly misused a government vehicle. However, she says the charge is a deliberate attempt to distort the truth.

"I had turned in vehicle reports in January and February (of 1999) that were approved," she asserts. "Why was there all of a sudden a problem (with my use of the government car) after March 22, the same day I refused to commit perjury and the same date that the phony evaluation was prepared?...They were doing damage control."

Thin air

There have been some high-profile busts of smuggling operations involving airline employees in the past. But what makes Kleiman's story unique is the alleged cover-up by a Customs supervisor that ensued after suspects were apprehended. John Hotard, a spokesman for American Airlines, said in a prepared statement in April 2002 that the airline is "on schedule to comply with the government's (post 9/11) mandate that all employees and vendors with access to secured areas...undergo a criminal background check."

Hotard added:

"We notified employees about the background checks and have begun the fingerprinting process. Additionally, even though we are not required to, American Airlines is performing 10-year

background checks on all new hires and verifying the most recent five years. American has revalidated the badge of every American Airlines employee who has one. Anyone who does not pass the criminal background check will have his or her badge revoked. Prior to 9/11 and the passage of the new Aviation and Transportation Security Act, American was in full compliance with FAA regulations regarding the badging of airport employees.

“American cooperates daily, both at the headquarters and the field levels, with Customs and other law enforcement agencies on issues of a criminal nature, working with the various agencies in sting and/or surveillance activities to root out criminal activity. Many times it is the airline that brings such activity to the attention of the law enforcement agencies.”

However, according to Kleiman, all the background checks in the world will not protect the American public from potential harm if Customs management continues to cover up information in order to bolster careers, protect agency turf, or to prevent the agency’s image from being tarnished.

Kleiman points to the fact that in late fall of 2002, more than a year after the September 11, 2001, terrorist attacks, about 120 current and former workers who had been issued security clearances at La Guardia or JFK International airports in New York were arrested or facing arrest.

Why? Because they had lied about past criminal records, immigration status or otherwise provided deceptive information about their identities. In some of those arrest cases, according to a press release issued by the U.S. Department of Justice on November 19, 2002, U.S. Customs authorized the security clearances in question.

A year later, trouble struck JFK again, when some 19 airport employees were charged in the fall of 2003 with participating in a large-scale narcotics importation conspiracy that involved the seizure of some 400 kilos of cocaine and hundreds of pounds of marijuana. The employees included baggage and cargo handlers as well as supervisors.

“... The defendants capitalized on their status as airport employees to circumvent inspection procedures as a means to import massive quantities of narcotics into the United States,” states a press release issued by federal law enforcement officials in the wake of the bust. “Utilizing their knowledge of international airline schedules, cargo unloading procedures and airline personnel assignments, the defendants and their associates conducted a decade-long narcotics importation ring.”

The government’s investigation into the importation ring began in the fall of 2002, “following several seizures of cocaine on Universal Airlines flights from Guyana,” according to the press release.

“Customs is not doing its job,” Kleiman says. “Anything that gets in the country goes through Customs. And people in the agency are not saying anything when they see problems, because they know if they rock the boat, they will get fired, or possibly even killed.”

Kleiman adds that in addition to filing an EEO complaint, she reported the alleged corruption and cover-ups by her supervisor to Customs Internal Affairs, the Treasury Department’s Office of Inspector General and the U.S. Attorney’s Office in New York. Those reports were made months prior to the September 11 terrorist attacks. She claims none of those agencies did anything to address the problems at JFK.

“It’s not an issue of putting more money into the agency, or combining it with some other agency,” Kleiman says. “It’s an issue of hiring highly qualified people who care. That’s the whole point. Since 9/11, people have gone back to going about their lives like it never happened. But it will happen again, unless something is changed.”

In fact, Kleiman, in a prepared statement, contends that four months prior to 9/11 she warned the U.S. Attorney’s Office in specific terms that the lack of security at JFK and the corruption within Customs could lead to a major tragedy.

“I told them (the U.S. Attorney’s Office) that if these (airline) employees had such easy access to the planes, they could place bombs and weapons on the planes,” Kleiman asserts in the prepared

statement. “I further informed them that the airlines were not doing background checks on employees and many that were hired were illegals.

“I showed them the perjured evaluations (her job reviews) and they admitted that there were problems with Customs. ...The U.S. Attorney’s Office dismissed me by saying they would look into it and never got back to me. Customs fired me for raising these issues.”

For some two years, Kleiman’s charges were before the U.S. Office of Special Counsel. However, Kleiman says in August of 2003 she withdrew her case from that agency out of frustration with its failure to address her charges in a timely manner.

“After...years of investigation, with no closing date in sight, I decided to withdraw the OSC case and to put all of my energies into my federal court case,” Kleiman says. Kleiman’s federal litigation — still pending as of late 2006 — assures that her corruption and discrimination allegations are not going away anytime soon. Her allegations also have attracted the attention of several congressional leaders who are not prone to subscribe to conspiracy theories. They include U.S. senators Joseph Lieberman, Charles W. Grassley, Susan Collins and Richard Shelby — all of whom have made inquiries on her behalf.

“Based on our review of Ms. Kleiman’s case and various news reports, we are deeply concerned about the specific accusations against JFK Airport security and U.S. Customs’ Special Agents,” states a January 8, 2004, letter co-written by Shelby and Collins and directed to Robert Bonner, commissioner of Customs and Border Protection, which is part of the Department of Homeland Security. “Ever since, 1999, Ms. Kleiman has made assertions of incompetence, wrongdoing and possible criminal activity by law enforcement officials. We believe these accusations are too troubling to dismiss.

“Understanding the importance and significant steps your agency is undertaking to ensure the security and safety of our nation’s borders, we want to make you aware of this case and ask you to take a closer look at Ms. Kleiman’s allegations, particularly

focusing on the conduct and operations of the U.S. Customs officials at JFK airport and what changes have been made.”

Lieberman’s interest in Kleiman’s case led him to look into her allegations that three federal agents at JFK died under suspicious circumstances in the early 1990s.

The agents were assigned to a drug unit at the airport that, Kleiman alleges, was overseen at the time by Thomas Flood — who would later become Kleiman’s supervisor. In a letter Kleiman sent to the OSC in July 2001, she claims that two of the federal agents died of heroin overdoses and the third committed suicide — allegedly after all three had been implicated in stealing drugs from their unit.

Kleiman says the deaths demonstrate how deeply rooted the problems are at JFK.

Customs responded in writing in April 2003 to Sen. Lieberman’s official inquiry into the matter as follows:

“In her letter, Ms. Kleiman raised issues regarding the deaths of former Customs Special Agents Thomas Sullivan and Thomas Calamia. Mr. Sullivan was arrested during June 1991 after it was determined he was involved in the theft of drugs from Customs’ custody. In February 1992, subsequent to his conviction in federal court, Mr. Sullivan took his own life.

“Mr. Calamia died in September 1992 while he was a Customs employee. Mr. Calamia’s death was investigated by Nassau County Police Department and ruled a drug overdose. Customs employees were not involved in the discovery of Mr. Calamia’s body and were not implicated in Mr. Calamia’s death. A subsequent investigation conducted by the Office of Internal Affairs determined that Mr. Calamia was involved in the theft of drugs from Customs’ custody.

“Special Agent Gary St. Hillaire was an employee of the Drug Enforcement Administration. Accordingly, BICE (the Bureau of Immigration and Customs Enforcement, also part of DHS) possesses no records regarding the allegations of misconduct on the part of Mr. St. Hillaire....”

Kleiman claims that at a minimum, the drug-thefts and deaths are evidence that her corruption charges are not out of bounds when it comes to Customs' operations at JFK.

She adds, "Three agents died, all within about a year of each other, and they were stealing drugs from their unit."

Not alone

Kleiman is not the only one to blow the whistle on the good-ol'-boy club at JFK International Airport.

During the same time frame that Kleiman was dealing with her turmoil at the airport, Frank Almonte, a special agent at Customs JFK office, also was dealing with his own set of problems stemming, he alleges, from the fact that he is Hispanic.

Almonte is among the named plaintiffs in the class-action discrimination lawsuit filed in federal court in May 2002 on behalf of some 400 former and current Hispanic Customs agents.

Among the claims made by Almonte in the class-action litigation is that over the course of his career he "has constantly been asked by his Customs supervisors to work an undercover, monitor a wiretap, debrief a defendant, transcribe tapes and translate documents."

As a result, the lawsuit charges, "case agents who are typically white non-Hispanic have benefited from Agent Almonte's language and undercover skills, but Almonte has not in terms of his career progression."

Almonte alleges he applied for numerous promotions between 1993 to 2000, but was never promoted. In each of those cases where Almonte sought and failed to get a promotion, a white non-Hispanic was chosen for the position, the class-action lawsuit alleges.

In October 2000, Almonte filed an EEO complaint regarding his failure to be granted a promotion. In January of the next year, Almonte finally was promoted, from a GS-12 grade to GS-13.

On top of failing to offer him a fair chance to advance his career, Almonte charges in the lawsuit that his contributions to

Customs are seemingly not appreciated and, in fact, are undervalued by his Anglo supervisors.

“In 1992, after Almonte had transferred to the Financial Division of the New York/special agent in charge (SAIC) office, a group supervisor and senior special agent (both white non-Hispanics) called him into an office to convince him to perform undercover money-pickups from Colombian drug smugglers,” the class-action lawsuit states. “Senior Special Agent Robert McCrossen told Almonte, ‘This is so easy, I would have my teenage kids do it if I could.’ In 1997, a Hispanic undercover agent was shot and wounded and two suspects were killed during a money pickup involving New York/SAIC personnel and the Drug Enforcement Administration.”

Beyond having his career stunted and his work undervalued, Almonte, while working as an agent at JFK International Airport in the late 1990s, also was forced to endure the same type of racism and discrimination that Kleiman confronted, according to the lawsuit.

From the May 2002 class-action litigation:

“In February 1998, when Agent Almonte told narcotics smuggling Associate Special Agent in Charge (ASAIC) John Saldino that he had arrested several Dominican nationals on a controlled delivery involving 4 kilograms of heroin, Saldino’s response was ‘Those fucking people.’ On another occasion, Almonte was in the office gym listening to a Spanish music radio station. Saldino said to Agent Brian Aryai, ‘There he goes with that fucking music again. Does he think this is a foreign country?’ Agent Aryai also heard Customs Supervisor Tom Lorreto say that, ‘Ever since they let Hispanics in here, this job has gone downhill.’”

Don’t rock the boat

Gary Aldrich, founder of the Patrick Henry Center for Individual Liberty and a former FBI agent who specialized in investigating political corruption, says the underlying problem with federal agencies like Customs is that they “are so big, there is

no way Washington can really manage them, beyond relying on hope and trust.”

If that is true, then the prospects for the newly created Department of Homeland Security are exceedingly dim. DEA’s Gonzalez echoes that concern, explaining that the creation of the new super bureaucracy is likely to magnify the already severe management dysfunction within the federal government.

“I personally believe the new department, absent appropriate protections for employees, will be a disaster,” Gonzalez says. “We have seen what happens (at agencies like DEA) with civil service protections. Without those protections (which are scaled back drastically in the new department), it will lead to a lot of abuse by managers.”

Former FBI Agent Aldridge adds:

“We spend millions of dollars making sure we hire good people, and then we ship them off to field offices where they run smack into corruption. Then those agents are told, ‘Shut up or we’ll kill (your career),’...(while others simply) don’t want to rock the boat. And in the meantime, these (bad) guys are out there with guns and handcuffs.”

Kleiman has a slightly different take on Customs’ woes — one tied to the events of September 11. Kleiman says she is reminded of that “don’t rock the boat” mentality every time she looks into the void that once was the World Trade Center.

Well before the World Trade Center was attacked, Kleiman claims she “knew something bad like that was going to happen” because of the indifference she encountered within the federal government in relation to the problems at Customs.

“When that second jet came right over my apartment, I said, ‘Fuck Customs!’” recalls Kleiman, who lives a block and a half away from what is now Ground Zero. “Maybe now people will start to listen, but 3,000 people are already dead.”

EPILOG

Threshold of Conscience

So what does this all mean? That ultimately is for you, the reader, to determine.

Some might argue that the charges and allegations laid out in this book, in many cases, are based on litigation that is still unresolved. As a result, the Customs agents who have filed the legal actions may, in the end, lose their cases — thereby absolving U.S. Customs.

For the sake of argument, let's go down that path a bit. Let's set aside cases like those involving Customs agents Ricardo Sandoval and Romeo Salinas, where juries have already found wrongdoing on the part of Customs; let's set aside the congressional probe of the torpedoed Firestorm task force that resulted in a letter to President Clinton's transition team recommending that top Treasury officials be removed from office; and let's set aside the Freedom of Information documents that expose the blunders in Customs' investigation of Agent Gary Friedli's death and the mishandling of the "racist manifesto" incident in El Paso, Texas.

Even with those cases off the table, we are still left with one daunting question: What is prompting so many Customs employees to put their careers on the line to step forward as whistleblowers?

A letter sent to Customs Commissioner Robert Bonner in August 2002 lays out in clear terms what one former Customs employee believes is at the root of the problems. The letter, written by Jack M. Bigler — a former Customs agent and supervisor who worked in California, Texas and New Mexico — states the following:

...Let me tell you that the good old boys in the Southwest region use the same tactics as the good old boys on the Pacific Coast.

- Promote the little morons of whatever race/gender that kiss your ass and model themselves after you.
- Ignore the good police work that is done by special agents that don't kiss your ass.
- Harass those agents unmercifully that dare to speak out, and do your level best to ruin their careers and lives.

Joe Silva, an attorney in El Paso who has represented FBI and Customs agents in discrimination and retaliation cases, offers the following insight into what is at stake for the whistleblowers in this struggle:

"The Customs Service has not shown any desire to resolve the underlying issues. They've dug their heels in.... They are using taxpayers' resources in a horrible way.

"...At some point, the tide will turn. But that won't happen unless courageous people like these agents stand up, and lot of times they are standing up even when they realize it's a dead-end street for them."

We as a nation can choose to ignore what these whistleblowers are saying, but it is at our own peril. We need to make some hard choices with respect to government reform and the so-called "war on drugs," which arguably plays a lead role in fueling the corruption within law enforcement agencies like Customs.

Customs is like a fast train on bad track. We can be content with attaching the agency to a bigger bureaucracy — the Department of Homeland Security (DHS) — in the hope that somehow that will solve the problem. But that's like adding more cars to the train; it will only make the train do more damage when it does crash.

"If you simply paper over the problems of these agencies and shove them into a new department (DHS), the underlying problems will still exist," stresses Ron Schmidt, one of the attorneys involved

with the Hispanic Customs agents' class-action lawsuit — which was still pending in U.S. District Court in Washington, D.C. as of late 2006.

A former high-ranking Customs official, who still fears the agency will retaliate against him if his name appears in print, says the problems within Customs can best be understood in terms of what he calls “the threshold of conscience.”

He explains that if the culture of an agency is to “wink and look the other way” when it comes to the small misdeeds of a chosen few — for those being groomed by upper management for higher posts — then lowering the “threshold of conscience” another notch when more serious infractions occur becomes easier to justify. And, if left unchecked over time, you eventually have a powerful clique in control of an organization whose members all have dirt on each other, and who all have an incentive to protect and perpetuate that “brotherhood” at all costs.

“It becomes a culture built on cronyism and favoritism instead of putting the law first, values first, ethics first,” the former Customs official says. “We have to break that cycle....”

On a personal level, if this chronicle of Customs has taught me anything, it is that evil does exist, and that it's at war with the good in this world, and that the battlefield is in our hearts. The borderline in that war may move one way or another over time, but the war doesn't end, and the nature of the enemy doesn't change. Like it or not, someone in society has to pull duty on that borderline, which is a task we have given to law enforcement.

But as participants in this grand experiment in democracy, we have a responsibility to those we put on the frontlines, a duty to ensure the laws they are asked to enforce are just, measured and in the enlightened best interest of society. In that light, the only way to stop an agency like Customs from derailing is to put it on a new track by creating a better, not a Big Brother, government.

The first casualty in that struggle to keep our democracy alive must be the war on drugs, which, in the final analysis, is really nothing more than a politically expedient excuse for perpetuating a culture of corruption. There is no easy fix here as far as I can see —

short of drastic reform. And time is not on our side, because like an addict with a real bad habit, the poison (injected in daily doses of restricted civil liberties, decreased public security, bureaucratic dysfunction and malfeasance) is already coursing through the veins of our fragile republic, threatening to shut down its heart.

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<http://www.narconews.com/Issue32/article893.html>