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Testimony

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U.S. FOREST SERVICE

Independence Still Lacking in  
Law Enforcement  
Organization

Statement by  
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Mr. Chairman and Members of the Subcommittee:

We are pleased to be here at your request to discuss briefly our review of investigative independence in the U.S. Forest Service's law enforcement function. During earlier work done at the Subcommittee's request, we learned of allegations that "interference" by program line managers in the investigative process occurred frequently and that law enforcement personnel are sometimes put in the position of investigating individuals to whom they report. Thus, our most recent work focused on three issues outlined in this Subcommittee's July 27, 1992, request and subsequent discussions:

- whether the Forest Service's reorganization proposals to implement the Quality Standards for Investigations from the President's Council on Integrity and Efficiency (PCIE) would provide organizational and investigative independence to the Forest Service's law enforcement function,
- whether the criminal investigators and law enforcement officers of the Forest Service have been hampered in their responsibility to detect and investigate wrongdoing by Forest Service personnel, and
- whether the lack of organizational independence makes criminal investigators and law enforcement officers vulnerable to possible management reprisal.

In summary, as you recall, in July 1988 the Department of Agriculture's Office of Inspector General (OIG) recommended that the Forest Service achieve organizational independence in its law enforcement function. The OIG had found the Forest Service deficient in meeting the PCIE Quality Standard for Independence. While the Forest Service has made some effort to address the OIG concern, the organizational structure of the Forest Service law enforcement function still lacks independence. Further, our review of the latest draft plans from the Forest Service regions revealed that organizational independence would not be achieved fully by any of the nine regions. Criminal investigators and law enforcement officers may still report to program line managers<sup>1</sup> who control law enforcement funding, have no law enforcement background, or believe law enforcement is incidental to good resource management.

In addition, senior Forest Service officials told the Congress that a new law enforcement structure, which was to be implemented by October 1, 1993, would comply with the PCIE Standard for Independence. Our review indicates otherwise. Further, the OIG in a September 27, 1993, reply to the Forest Service's Deputy Chief for Administration, stated that the latest proposed reorganization

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<sup>1</sup>The Forest Service calls individuals in such positions "line officers." For clarity, in this testimony we will use the term "line managers."

meets only "minimum PCIE standards." The OIG continues in its belief that a direct supervisory chain of command to Headquarters would "be the most effective organization."

Second, numerous criminal investigators and other law enforcement employees of the Forest Service--as well as some federal prosecutors--have voiced what they perceive as interference in the Forest Service's investigative efforts. They have alleged that the nonlaw-enforcement Forest Service officials who supervise or influence the investigative process have often impeded, or interfered with, investigations. The perception or actuality of such interference can easily occur because the Forest Service's criminal investigators and law enforcement officers have reported to program line managers who have little or no background in law enforcement but who control law enforcement resources.

Although the Forest Service now has a senior law enforcement official at Headquarters, the official does not manage the Forest Service's law enforcement function. Management, including its structure and methods of supervision, is instead left to the largely autonomous individual regions. The regions provide the emphasis that they believe is appropriate to building cooperation and coordination between the Forest Service's land, resource, and law enforcement functions.

Third, many Forest Service law enforcement employees perceive that they are vulnerable to management retaliation for doing their job, that is for investigating alleged violations of federal statutes by contractors and Forest Service program line managers. The criminal investigators have felt vulnerable because the current organizational structure can result in their investigating the very people they report to. We were further told that this perceived and/or actual interference and alleged retaliation have negatively affected the morale and effectiveness of the Forest Service's law enforcement professionals.

The Forest Service senior management has been reluctant to deviate from its practice of using program line managers--instead of law enforcement personnel--to supervise its law enforcement officers and criminal investigators. For example, the Chief of the Forest Service, F. Dale Robertson, told us in June 1993 that he believes that a "police state" mentality of some law enforcement staff will negatively affect the Forest Service mission of serving the public.

The Associate Chief and others also told us that some managers may have little respect for law enforcement staff who did not come up through the Forest Service's traditional ranks. This position--combined with the Forest Service's historic lack of law enforcement organizational independence--is largely responsible for the perception and/or actuality of management interference in investigative efforts and the beliefs that individuals have been retaliated against for those efforts. We expect these perceptions,

beliefs, and allegations to continue under the recently revised law enforcement directives and the new structure. In addition, the morale and effectiveness of the law enforcement professionals will, in all likelihood, continue to be negatively affected. Thus, today we are recommending that the Chief of the Forest Service create a senior law enforcement position with direct supervisory authority over the Forest Service's entire law enforcement function. We are further recommending that the Chief act to thoroughly integrate an independent law enforcement organization with the Forest Service's program functions, thus achieving needed cooperation and coordination.

#### BACKGROUND

The Forest Service, which is a component of the U.S. Department of Agriculture, was created in 1905. It has about 35,000 employees who participate in managing 156 national forests and other resource projects covering 191 million acres in 44 states, the Virgin Islands, and Puerto Rico. About 180 professional criminal investigators (special agents) and 600 law enforcement officers (uniformed officers) are responsible for enforcing federal laws and public safety within our national forests. Criminal investigators are located at various levels within the National Forest System--ranger districts within national forests, the Forest Supervisor's office, or the nine regional foresters' offices. The Forest Service has a Director of Law Enforcement and Investigations at its Headquarters. However, law enforcement personnel have typically been supervised by program line managers, such as District Rangers, Forest Supervisors, and Regional Foresters, as well as staff officials, such as Timber Management Officers, Fire Management Officers, Administrative Officers, and Directors for Fiscal and Public Safety. Consequently, those working in law enforcement have no separate reporting structure that would allow higher level law enforcement supervisors to oversee and ensure that appropriate knowledge, skills, and abilities are applied in the Forest Service's investigative activities. Further, the Director of Law Enforcement and Investigations does not report directly to the Chief of the Forest Service or the Associate Chief.

This organizational structure is the basis for the OIG's claim in its July 1988 report that the Forest Service failed to meet the second PCIE general standard for investigative organizations. That standard reads

"In all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; must be organizationally independent; and must maintain an independent attitude." [Emphasis provided.]

GAO's Office of Special Investigations was asked by this Subcommittee in February 1992 to determine the status of the

Agriculture OIG's 1988 recommendations concerning the operational activities of the Forest Service's law enforcement program. In November 1992, we reported that the Forest Service had not fully implemented any of the OIG's recommendations regarding the organizational independence of the law enforcement activity from Forest Service program line management. As of September 30, 1993, the Forest Service had not completed the necessary actions that would allow us to revise our earlier report.

#### METHODOLOGY

To determine the fact and/or perception of interference in the law enforcement process, we sent inquiries to 175 criminal investigators soliciting leads and information. We received responses from 60. We also received over 50 responses from law enforcement officers, retirees, other career staff within the Forest Service, and knowledgeable persons outside the Forest Service. In total, we received information from, or spoke with, over 110 individuals concerning law enforcement in the Forest Service. From these individuals, we obtained data on over 180 alleged incidents of interference and retaliation. We did not attempt to independently verify each allegation we received.

We interviewed law enforcement professionals throughout the Forest Service, as well as program line and senior managers. We discussed and examined the investigative process and files on selected cases with the OIG, the U.S. Attorney's Office for the District of Oregon, and Assistant U.S. Attorneys for several other districts. We also reviewed agency documentation that dealt with matters germane to law enforcement organizational independence. Numerous individuals within and outside the Forest Service contributed information to our effort.

#### PROPOSED LAW ENFORCEMENT REORGANIZATION DOES NOT ACHIEVE ORGANIZATIONAL INDEPENDENCE

The Forest Service's proposed law enforcement reorganization--scheduled for implementation a few days ago on October 1, 1993--does not satisfy the need for law enforcement operations to be organizationally independent of the Forest Service's line management. That reorganization is based on regional proposals and Headquarters directives.

The regional proposals were to address the PCIE standards in the regional law enforcement programs. However, our review revealed that all of the current regional plans--now scheduled for final submission by December 1, 1993--also fail to fully meet the PCIE standards. In addition, in a September 27, 1993, OIG reply to a recent Forest Service request for an evaluation, the OIG stated that the latest proposed reorganization met only "minimum PCIE standards" and that the reorganization did not provide adequate

professional guidance from experienced law enforcement supervisors throughout its entire organization.

Further, the Forest Service's recently revised law enforcement directives do not ensure law enforcement independence and, in fact, weaken the earlier Headquarters guidelines given to the regions. During September of this year, the Forest Service revised and reissued its law enforcement directive. Only 5 days later, that directive was changed, providing still different guidance on which the regions must again revise their plans. This indecisive and conflicting Headquarters direction, coupled with the regions' structure and autonomy, reinforces our determination that the Forest Service has failed to achieve organizational independence. This inability to achieve organizational independence will likely lead to continued allegations of management interference in and retaliation for law enforcement activities.

#### Regional Plans Do Not Fully Comply With PCIE on Independence

The Forest Service has become increasingly aware--as a result of scrutiny from the OIG, Office of Management and Budget, GAO, congressional committees, and others--that it needs to address the issue of independence in its law enforcement program. In July 1992, the Chief of the Forest Service requested each region to ". . . assess your law enforcement program with respect to the standards set by the PCIE." The Agriculture OIG reviewed the regional proposals and, in March 1993, stated that the proposals were "encouraging" but lacked "action." The OIG suggested a direct supervisory chain of command and reiterated that belief in a July 22, 1993, letter to the Forest Service's Deputy Chief for Administration.

Our review of all nine regional proposals--developed to reorganize the regional law enforcement structure--indicates a continued failure to comply with the PCIE independence standard. Those plans, now superseded in part by the most recent law enforcement directive, proposed various reporting structures for both criminal investigators and uniformed law enforcement officers. In all nine, the Regional Special Agent reports to the Regional Forester or the Deputy Regional Forester instead of the Director of Law Enforcement and Investigations at Headquarters. In addition, all nine continue to permit the performance of law enforcement officers to be directly appraised by district line managers. Such supervision gives the appearance that district line managers can directly control and influence law enforcement activities. This nonlaw-enforcement supervision violates the PCIE appearance-of-independence requirement, regardless of whether it actually affects the law enforcement officers' performance of duties.

The PCIE guidelines for the independence standard recognize that various circumstances and conditions--personal or external impairments--can affect, or give the appearance of affecting the

impartiality of investigators and the investigative organization. They can also restrict the organization's ability to produce independent, objective investigations. The guidelines, in part, cite the following as examples of such circumstances and conditions. We noted the existence or the perception of each of them during our investigation.

"Official, professional, [or] personal . . . relationships that might affect the extent of the inquiry; limit disclosure of information; or weaken the investigative work in any way;  
. . .

"Previous involvement in a decision-making or management capacity that would affect current operations of the entity or program being investigated; . . .

"Interference in the assignment of cases or investigative personnel;

"Restrictions on funds or other resources dedicated to the investigation or to investigative organizations; [and]

"Authority to overrule or to influence the extent and thoroughness of the investigative scope, how the investigation is conducted, who should be interviewed, what evidence should be obtained and the appropriate content of the investigative report. . . ."

Under all of the proposed regional reorganization plans, law enforcement officers will be supervised by criminal investigators when working on specific investigations but by program line managers when performing other duties related to public safety or law enforcement. This dual supervision has the potential to create a conflict of interest for both managers and law enforcement personnel. The law enforcement officer is often the first to detect potential criminal violations within our national forests. We believe that independence may be lost when a line manager responsible for resource programs supervises a law enforcement officer who is uncovering information that might lead to an investigation of criminal activity. That could easily be the case in such instances as timber theft or environmental violations by contractors.

Forest Service officials told us that some line managers object to adopting the direct chain-of-command structure recommended by the Agriculture OIG for the law enforcement function: They are concerned that a loss of direct control will hamper their ability to manage their district or forest. However, the loss of supervisory responsibility does not mean that line managers will lose their access to information about law enforcement activities. The critical element here is for Forest Service management to require and ensure that cooperation and coordination take place



between the law enforcement function and the land/resource management programs. Cooperation and coordination are as crucial to effective investigations as they are to effective land and resource management.

Agriculture's Assistant Inspector General for Investigations replied a week ago to the Forest Service concerning the proposed regional reorganization. While he found the proposals to be minimally acceptable, he restated the "belief that a supervisory structure all the way up to the national office may still be the most effective organization." He also described principal problems in the regions' proposed reporting structure as "a lack of proper technical and professional guidance from experienced law enforcement supervisors and a potential lack of coordination" between law enforcement officers and criminal investigators.

#### Conflicting/Indecisive Headquarters Directions

Our review suggests that a contributing problem in the Forest Service efforts to achieve law enforcement organizational independence is the lack of clear, unambiguous Headquarters direction. Indeed, Headquarters directions frequently conflict, showing its indecisiveness concerning the law enforcement function.

A Headquarters letter and its accompanying documents help illustrate the conflicting directions sent to the regions. The July 22, 1992, letter to the Regional Foresters was from the Chief of the Forest Service. In the letter, the Chief stated that the Headquarters "approach continues to be a delegation of investigative responsibility to each Regional Forester," thus leaving the decision on how to comply with the PCIE standards up to each region. However, in a conflicting signal to Forest Service personnel, the Associate Deputy Chief, Administration, had approved and included with the Chief's letter a set of nine "Forest Service Principles for a Responsive Law Enforcement Program," which were to be used in developing the revised regional plans. One principle stated, "In order to comply with the PCIE standards for independence, the technical supervision and direction of investigations must be vested in the chief law enforcement officer of the Agency." Another principle stated, "Independence in law enforcement principles must be applied to both investigations and enforcement activities."

Further, using Headquarters guidelines, the nine Forest Service regions drafted law enforcement reorganization plans designed to comply with PCIE standards. Although all regions received the same guidelines, nine different plans resulted. To illustrate, the guidelines stated, "Regional Special Agents will be responsible for the management of the regions['] law enforcement program." Some regions interpreted the guidelines to mean that a direct supervisory structure for criminal investigators was needed up to the Regional Special Agent; others decided that the guidelines

permitted criminal investigators to continue reporting to forest supervisors. After the regional plans had been submitted, the Forest Service issued its revised Law Enforcement Directive, Title 5300, on September 16, 1993. This revision clarified the regional guidelines by stating that criminal investigators could be supervised by a Regional Special Agent when conducting an investigation and a program line manager at other times. Five days later, however, Headquarters reissued this same directive, now requiring that criminal investigators in the region be supervised by the Regional Special Agent, who would still report to line management. We believe progress towards achieving law enforcement independence has been hindered by Headquarters' conflicting messages and indecisiveness.

ALLEGATIONS OF INTERFERENCE IN LAW ENFORCEMENT  
ARE NUMEROUS AND VARIED

We queried the Forest Service's criminal investigators by letter to gauge their perceptions of interference by program line managers in the law enforcement process. The solicited responses from about one-third of the criminal investigators--as well as responses from over 50 knowledgeable individuals from within and outside the Forest Service--resulted in more than 180 allegations of program management's interference in law enforcement activities. These allegations ranged from interference because of community social pressures to interference stemming from management's lack of law enforcement experience. We did not substantiate all of the allegations.

Allegations of Administrative Settlements  
Interfering With Criminal Investigations

Criminal investigators told us that the government's prosecution of potential criminal matters is sometimes undermined by the Forest Service's preference to settle timber theft cases administratively under the relevant timber sale contracts.

- A criminal investigator was told to "write off" the unauthorized cutting of some timber by a purchaser. When the same purchaser was later caught doing additional unauthorized harvesting, the Assistant U.S. Attorney informed the criminal investigator that the new case had been compromised by writing off the earlier theft.
- In a similar case, a criminal investigator investigating timber theft by a timber purchaser learned that a Forest Service official had settled the dispute contractually with the purchaser before the criminal investigator had thoroughly assessed the potential criminality of the case.

### Allegations of Inappropriate Management Disclosure of Case-Sensitive Details

We also learned of cases compromised because nonlaw-enforcement officials participate inappropriately in such activities as case selection, case planning and review, and the assignment of personnel and resources. Supervising law enforcement personnel while attempting to address the needs of other Forest Service programs places nonlaw-enforcement officials in a conflicting situation. We were told that the compromising management activities included disclosing confidential information and the identity of confidential sources, directing investigative strategy, and even unauthorized access to confidential grand jury information.

- A criminal investigator told us of a planned, joint covert operation with the National Park Service that was part of an investigation of the alleged theft of archeological artifacts from national forests. However, before the Regional Forester would approve the operation, he insisted upon calling every affected Forest Supervisor for approval. Both Forest Service and Park Service criminal investigators expressed concern that disseminating the information widely would likely breach the secrecy of the covert operation. Park Service investigators were further concerned about the safety of their undercover agents because of the widespread knowledge of the operation. Thus, the Park Service limited the sensitive information that it shared with the Forest Service.

### Allegations of Untrained and Inexperienced Supervision Causing Management Interference

The OIG reported that criminal investigators are supervised by program line managers who have limited or no law enforcement experience. As a result, untrained judgment about criminal matters can take precedence over an independent and thorough review by properly trained and experienced law enforcement personnel. A Regional Forester told us that he did not believe that the Forest Service had done an effective job in articulating clearly to its managers what constitutes an inappropriate activity during an ongoing criminal investigation. The following example illustrates how supervisors with little or no law enforcement training or experience have interfered with the Forest Service's law enforcement process.

- A Deputy Regional Forester inappropriately made a criminal investigator's affidavit--alleging interference by a Forest Supervisor in stopping a criminal timber theft case--available to the subject of the affidavit. The Deputy Regional Forester later told us that she had believed she was taking an appropriate management action and she had had

no intent to obstruct a criminal investigation. She admitted to us that, in hindsight, it was a poor decision.

Allegations of Community Concerns  
Causing Management Interference

Some criminal investigators stated that community concerns caused their supervisors to interfere in law enforcement activities. We were further told that Forest Service line managers living in small towns, as neighbors and friends of individuals accused of misconduct on forest lands, often place pressure on law enforcement personnel to drop criminal inquiries.

ALLEGATIONS OF MANAGEMENT REPRISALS

Many law enforcement officers perceive that because they are supervised by program line managers, their assertive law enforcement activities have resulted in management reprisals. These alleged reprisals can take a number of forms, including those that follow, which likely would have been avoided if the law enforcement function was organizationally independent.

- Criminal investigators told us that they felt intimidated by program management during a criminal investigation of a District Ranger for illegal and immoral activities. The criminal investigators also believed that their not being allowed to conduct investigations thereafter was in retaliation for the investigation. The District Ranger was suspended for 60 days and reassigned to a different forest, still with assigned oversight of the law enforcement function.
- One criminal investigator believed that his reassignment to an unfunded position with the Timber Theft Task Force was a management reprisal for his actions in gathering evidence of particular violations that the Forest Supervisor did not want investigated.
- Several criminal investigators said that their actions on internal investigations of Forest Service employees for criminal activities negatively affected their careers, including their reassignment and transfer to new and distant locations.
- Several criminal investigators also said that because of their fear of reprisal they had not pursued specific investigations or they had terminated their efforts on specific cases.

## CONCLUSIONS AND RECOMMENDATIONS

Given the Forest Service's 5-year history in addressing the OIG's recommendation for organizational independence, its management's stated views, and the form of its current regional reorganization plans, we believe the Forest Service's efforts for an independent law enforcement structure will continue to be unsuccessful. The Forest Service management's conflicting signals and indecisiveness have resulted in actual and perceived interference with law enforcement activities and a fear, by law enforcement employees, of reprisal for those activities. We believe that these problems could best be alleviated with a direct supervisory chain of command and integration of the Forest Service's land, resource, and law enforcement functions. Both would necessitate the law enforcement function's direct reporting to the Chief of the Forest Service, or Associate Chief, to ensure the function's independence and parity with other major Forest Service programs.

Thus, we recommend that, to achieve organizational independence, the Chief of the Forest Service

- ensure that supervisors of law enforcement personnel have demonstrated experience in conducting criminal investigations;
- create a senior executive-level law enforcement position reporting directly to the Chief or principal deputy;
- ensure that the senior law enforcement executive has line authority over all law enforcement personnel in the agency; and
- require senior law enforcement, regional, and program executives to ensure close coordination and cooperation at all levels between the Forest Service's land, resource, and law enforcement functions.

The model we have presented here today is a separate, but integrated, organizational structure within the Forest Service. It would enable the Forest Service to achieve organizational independence of its law enforcement function, while at the same time providing a means for essential cooperation and coordination between all Forest Service programs. The principal difference between the Forest Service's current integrated model and the model that we proposed here today is the degree of independence given the law enforcement program and the executive responsible for managing it. Ultimately, however, the success of any effort to achieve organizational independence is dependent on the degree to which Forest Service senior executives embrace the law enforcement function as one of equal importance to other programs in carrying out the mission of the Forest Service.

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This concludes our prepared testimony. At this time, we would be pleased to respond to any questions that you may have.

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