

Memorandum



Subject Request for Review of Performance Rating (FFS: 560-03)	Date August 27, 2004
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To
Michele M. Leonhart
Deputy Administrator

From [REDACTED]
Sandalio González
Special Agent in Charge
El Paso Field Division

This memorandum responds to the 2003-04 Performance Appraisal you recently gave me dated August 20, 2004, and it serves to request that you consider raising the ratings of critical elements 1, 2, 4, and 5. If you do not agree that these ratings should be raised, please submit this package to the SES Performance Review Board for their review.

While an Excellent performance appraisal is not something I would normally question, what became abundantly clear to me in reading my 2003-04 appraisal is that there was a concerted effort to insert a number of trivial negative comments about the Division all throughout the narrative portion of the appraisal in order to justify lowering my rating from last year's level, even though the accomplishments listed in this appraisal far outweigh those listed in last year's appraisal. Last year I was rated Outstanding overall, specifically in critical elements 1, 2, 3 and 5, with considerable less documented accomplishments than were documented this year (please see the attached 2002-03 appraisal and consider that the narrative part consists of just over four pages, while the narrative in the 2003-04 appraisal is eleven and a half pages long - Attachment A). I must take issue with a number of statements contained in this appraisal, and also with regard to the [REDACTED] issue, which is an issue that does not belong in a performance appraisal, and given the fact that you and I have never met to discuss your expectations of me as a Special Agent in Charge (SAC).

DIRECTING AND ORGANIZING -

The figures you quoted for Title IIIs in the Division (9 thus far in FY04 down from 26 in all of FY03) do not coincide with the figures provided to me by the Division's Technical Operations Group. We show 14 Title IIIs and 113 pen registers in FY03, with an increase to 23 Title IIIs and 169 pen registers thus far in FY04. You also chose to stress a decrease in agent and Task Force Officer (TFO) investigative workhours and in analyst workhours towards Priority Target Organizations (PTOs) even though the El Paso PTARRS data provided by Headquarters indicates a 32% increase in active PTOs from the 3rd Quarter FY03 to the 3rd Quarter FY04. Most important, however, you failed to mention that the Division significantly increased the workhours in Consolidated Priority Organizational Targets (CPOT), Regional Priority Organizational Targets (RPOT), and Special Operations Division (SOD) supported cases which are the priorities of the Administrator. For example during this rating period CPOT workhours in the Division increased from

6,397 to 22,176, RPOT workhours increased from 1,476 to 4,663, and SOD workhours increased from 9,050 to 18,501 (see attached documents at Attachment B showing El Paso PTARRS data provided by a representative of OMBP during our management conference last month). The appraisal focused on the negative workhour statistics that even if correct, the more important numbers are the 32% increase in active PTOs and the increase in workhours in CPOT, RPOT, and SOD supported investigations.

The negative comment about the percentage of agent and TFO workhours towards PTOs ("lowest of all divisions") fails to take into account that this is a border Division, and that twenty-one agent and/or TFO positions are dedicated exclusively to Border Patrol checkpoint response cases. The Division must handle a great number of checkpoint referral cases that don't rise to the level of PTOs or even simple conspiracies. The comment "lowest of all divisions" in this regard is, in my opinion, unnecessary because as you well know (a), [REDACTED] is unique in that it is located on the border with Mexico and as such should not be compared to any other Field Division, and (b), I have no choice in the matter, I simply cannot assign more agents to work PTOs because we are obligated to respond to Border Patrol checkpoint seizures. The twenty-one Special Agents in [REDACTED], [REDACTED], and [REDACTED] dedicated exclusively to checkpoint responses constitute approximately 20% of the Division's criminal investigator workforce, excluding supervisory personnel. These individuals normally do not work on PTO, CPOT, RPOT, or SOD supported cases, and that is the main reason why it is unfair to compare this Division to others not located along or near the Southwest border.

Along the same lines, the comment regarding analyst workhours is also patently unfair because this Division has only one Intelligence Group as opposed to the majority of the other Divisions that have two groups. In the Division office we have six analysts, with one of the six dedicated solely to the West Texas HIDTA Intelligence Support Center (ISC). The remaining five analysts must support eight enforcement groups, including the checkpoint response group, and as you know, along the border we do not have the luxury of concentrating all our efforts on PTOs. In the Resident Offices I've managed to assign one analyst per office, with the analyst in Las Cruces having to devote at least half his time to the New Mexico HIDTA ISC.

I find it particularly disturbing for you to mention "no diversion investigative workhours towards PTOs in both FY04 and FY03" because the Operations Division was responsible for the almost total dismantling of the Division's Diversion Program when, over my objections, they got rid of the Diversion Program Manager (DMP) position and other overhire positions shortly after my arrival here in April 2001. The Office of Diversion Control then tried to leave the Division with only one Diversion Investigator in [REDACTED], which shows the extremely low level of priority they assigned to us (please see memoranda at Attachment C). The bottom line is that we have no DMP, and we did not get a Diversion Supervisor until November of last year. There was no real Diversion Group in the Division until last April, a mere four months ago. Under these circumstances, taking a shot at me in my annual performance rating for having no diversion workhours towards PTOs is just plain wrong.

In the area of financial investigations, you should know that this Division focused its efforts in this field even before [REDACTED] came to DEA, and we've been quite successful at it. A rating of "Fully Successful" by the Operations Division indicates they're not up to speed about what we do, and I find it amazing that in the same sentence you wrote that our currency seizures were substantially up from 2003, "but that due to the geographic location of [REDACTED], these statistics should be higher." A more accurate and fair statement would have been that [REDACTED]'s currency seizures were substantially up from 2003, and higher than those

of other Divisions along the southwest border (Dallas, Phoenix, and San Diego), as well as higher than the San Francisco and Newark Divisions (see attached document prepared by the Office of Financial Investigations at Attachment D).

We have no money laundering Attorney General Exempted Operations (AGEO) because we're right on the border with Mexico and traffickers simply drive the money across. Mexican organizations have institutionalized bulk shipments of currency across the border, and past analysis have shown that traffickers prefer this method because it lends itself to greater anonymity and leaves no paper trail. Unfortunately Headquarters' only focus so far has been on the placement of drug proceeds and not on the layering and integration of those proceeds. Why would we have an AGEO and offer to wire funds charging a commission when the traffickers can drive bulk amounts of cash across the border, which is much easier for them and a lot less expensive? DEA has historically conducted AGEOs in large metropolitan and drug consumer areas of the country, where the traffickers collect large amounts of currency on a daily basis, and not in proximity to the border. I believe you are well aware that the ████████/West Texas area is considered a drug transportation corridor and not a large drug consumer area.

If our currency seizures were up substantially from 2003, it is irrational to say that the Division "needed to pay more attention to the major threat of bulk currency and less to forensic accounting." More so when you and I discussed our proposal to establish a forensic accounting unit to support other offices and you told me you were supportive of that proposal. I've spoken to ████████ who told me that he would support it also. It is absurd for the Operations Division to insinuate that this Division does not pay enough attention to the bulk currency threat when our currency seizures are up substantially from last year, and we seized more currency than the other so-called border Divisions. As a result of my directed focus for the Division, our Financial Investigations Task Force has achieved great success in supporting our enforcement groups and other DEA offices with financial investigations and forensic accounting work.

Forensic accounting does not take up any significant amount of special agent workhours because the work is performed by civilian accountants hired by our Financial Investigations Task Force, thus our efforts in other cases are not negatively affected by forensic accounting work. You should also know that over the last four weeks we've received requests for forensic accounting assistance from U.S. Attorneys in Los Angeles and Oklahoma, and that it is a source of comfort and pride for us to know that federal prosecutors throughout the country value and appreciate our work in this regard, even though our own Headquarters apparently does not. In light of the Division's outstanding efforts in the field of forensic accounting, giving these efforts a negative connotation in my performance appraisal is not only unfair and inappropriate, but demoralizing as well. I am shocked at the level of subtle yet negative hairsplitting scrutiny I was subjected to during this rating period.

To "get into the weeds" and note, as the Operations Division did, that we have "minor" involvement in the HIDTA Stash House Initiative is so unbelievably trivial that it defies logic and common sense, and is indicative of the depths to which DEA will go in order to retaliate against me. You failed to articulate what "minor" means, and you have not raised this issue with me in the past. If our participation in Stash House was of any real concern to the Operations Division, someone should have picked up the phone and called me. The ████████ Police Department leads the Stash House initiative and we have had one agent assigned full-time there for quite some time, and this gives the initiative the federal participation required by the HIDTA. We are working extremely well with our counterparts in the initiative, and I have received no complaints whatsoever from the Chief of Police regarding our so-called "minor" participation in this

initiative. I find it astonishing that you mentioned this in my annual performance appraisal because this Division leads a total of five initiatives of the West Texas HIDTA, and I simply cannot afford to assign more agents to initiatives such as Stash House that do not work on CPOT, RPOT, or SOD cases and where we're not the lead agency. Raising the issue of "minor" participation in the Stash House Initiative as a negative in my performance rating smacks of vindictiveness and is indicative of the now not-so-hidden agenda against me.

Mentioning that we are not involved in a major Mexican money pick-up operation being conducted by the FBI is another example of a cheap shot at me without the facts. This case is strictly a FBI operation to which we were not invited to participate. I have been informed that even DEA SOD has been unable to coordinate this case with the FBI because they refuse to do so. As you know, we simply cannot insert ourselves into another agency's investigation when we're not wanted. The FBI supervisor in charge of this case is one of the most uncooperative individuals we've come across in El Paso, and he does not like working with DEA. This is another issue we should have discussed before you decided to include it in my performance appraisal.

ADMINISTERING AND CONTROLLING -

Your review of Division Operations Funds showing that \$47, 492 in Division funding was left unspent at the end of 2003 may be inaccurate. Our inquiries show that in 2003 the Division used 99.87% of the total obligations, with only \$1,115.56 left unspent at the end of the year (please see the FFS printout at Attachment E). The rating of Unacceptable by the Office of Resource Management in Undelivered Orders and on-board staffing reporting is disconcerting to say the least. I have never been contacted by the Deputy Assistant Administrator for the Office of Resource Management to inform me that I was Unacceptable in any area involving the functions of that office. I do know that my staff has taken a proactive approach to ensure compliance with the preparation of the Time and Attendance Reports and records by bringing in a staff member from that office to conduct training of Division personnel. Also, the Division's Program Analyst and Administrative Officer have been in contact with staff members in the Office of Resource Management to resolve any issues dealing with on-board staffing reporting.

The KPMG Site Review of the Division conducted in August 2003 found no errors in Undelivered Orders, and methodology errors in Accounts Payable, which were immediately addressed. The last DEA Procurement Review was conducted in February of this year, and the Administrative Officer has informed me that no major discrepancies were found, and no mention was made by the auditors of any problems with the Undelivered Orders or Accounts Payable processes. Even if problems had been discovered in February, my performance appraisal should not be the avenue by which the agency informs me of those problems.

LIAISON/COLLABORATION -

Your comments regarding the [REDACTED] issue were expected but disappointing nevertheless. The threat contained in the letter sent to my attorney by the Office of Chief Counsel during the settlement negotiations of my whistleblower and discrimination complaints was carried out in this appraisal as expected, and this of necessity had to be approved by you (see letter at Attachment E). I therefore must respectfully question your impartiality in writing this appraisal given the blatant retaliation I've been subjected to by the agency over the past five or so years, as well as your participation in the settlement

negotiations and approval of the aforementioned letter, which amounted to nothing more than an inappropriate attempt to force me into an early retirement. I am appalled, astounded, and at a loss to understand this most recent action where you have included derogatory information knowing that my actions in reporting this matter were proper.

To reiterate, this is an issue that does not belong in my performance appraisal because the record clearly shows that the individuals that showed poor judgement in this matter are employed by other agencies and not the DEA. However, since you've chosen to make this an issue with me, you have left me no alternative but to defend myself.

To begin with, the [REDACTED] issue was not a liaison/collaboration matter, and it had nothing to do with developing partnerships or resolving baggage as written in the appraisal. This was a threat against the life of a DEA agent and his family, stemming from a criminal matter involving multiple murders perpetrated by drug traffickers in Mexico, who were aided and abetted by a U.S. informant working for the Bureau of Immigration and Customs Enforcement (ICE) with the apparent knowledge of his control agents. These illegal actions were conducted under color of law, on foreign soil, against foreign nationals and U.S. citizens alike, without any authority but with the possible knowledge of a federal prosecutor. This was not about the evacuation of our agents from [REDACTED] as you stated, and the sensitive issue here was not so much the evacuation of our personnel, but rather the possible misconduct of U.S. officials.

The letter came about as a result of information I learned following a conversation with the Chief of Operations during which he asked me if I was making any headway as far as getting information from my ICE counterpart. I replied to [REDACTED] that I was deferring all action in the investigation of the threat to the Mexico City office, and that the Division was engaged only in supporting the personnel and families that had been evacuated from [REDACTED]. [REDACTED] then suggested that as SAC of the Division, I should get more involved in a fact-finding role and I of course followed his suggestion. It is unclear to me what you meant by the statement "relationships with the Mexican government were a serious concern". What relationships? Ours? ICE's? The U.S. Attorney's Office? If relationships with the Mexican government were a serious concern to ICE and the U.S. Attorney's Office this was difficult to discern at the time because all of the actions perpetrated by the ICE informant were being conducted without the knowledge of our Mexican counterparts, and intentionally being perpetrated without admitting any wrongdoing. In fact ICE officials wrote a misleading letter to Mexican officials where they clearly misrepresented the role of their informant.

To say there was tension is an understatement. When ICE officials and a federal prosecutor stand in the way of an investigation of a threat against a DEA agent's life, there's bound to be tension. Their actions prevented Mexican federal officials from attempting to capture one of the principal suspects whom was identified as a supervisor in the Chihuahua State Police. This did not go over well with us or with the Mexican Federal Police supervisor who had arrived in [REDACTED] with 80 federal agents to effect the arrest of the state policeman as well as to arrest others. The so-called independent fact-finding review conducted by DEA and ICE ASACs was an accommodation to ICE and a mockery to those of us who knew the facts. I'm still puzzled by this fact-finding team, and given the present circumstances I must question its independence. An independent fact-finding team would have consisted of Inspectors from the Office of Inspections and not personnel from the Operations Division simply because personnel from Operations (my Division and the Mexico City office), to include myself and Assistant Regional Director Alfredo Ortega, were already reporting facts to Headquarters on a daily basis as soon as they became known.

It is worthy of note that neither I nor the Regional Director in Mexico City was allowed to review the results of the so-called independent fact finding team. I have been denied the opportunity to review the report, and as a result I've been prevented from making the appropriate comments to which I'm entitled to because the review dealt with issues in my area of responsibility. What is the purpose of a fact-finding or management review if the managers involved aren't allowed to see the results? Please inform me of how many other SACs have been denied access to so-called management or fact-finding reviews conducted in their areas of responsibility. I want to know if I am being treated differently from other similarly situated Senior Executives in the DEA.

My letter holding the ICE SAC responsible for the actions of his agents and their informant, after [REDACTED] human beings had been found dead and buried in the backyard of a house in [REDACTED], was most appropriate under the circumstances because I was exercising my sworn duty to enforce the law and my obligation to report alleged misconduct and protect my agency and its employees. Your statement that my letter fueled animosity is nothing more than speculation and self-benefiting conjecture at the behest of the U.S. Attorney clearly for his own reasons. Mexican officials are not upset with the letter because they have not seen it. They are upset for having been misled by ICE and because several Mexican citizens died unnecessarily as a result. I had every right to express my outrage with the situation, and what I wrote to my counterpart at ICE was the truth, and if telling the truth caused animosity at ICE and the U.S. Attorney's Office so be it. Your belief that my letter was responsible for bringing on press and outside inquiries does not constitute fact, nor does it parallel close to any fact. My letter could not possibly have brought on press inquiries because the press has not seen it. If they had, it would have been printed in its entirety by now.

How does the truth jeopardize a federal prosecution? Are we not supposed to tell the truth? I recall you, the Chief of Operations, and the Administrator being outraged with ICE and this whole situation until the U.S. Attorney protested. After that the three of you were suddenly outraged at me. Amazing! To say that my letter jeopardized a federal prosecution is ludicrous because the information in the letter is also contained in many other documents generated during the investigation that are discoverable anyway. For example, if my letter is discoverable so is the time line of events prepared by the Juarez Resident Office, as well as the report prepared by the fact-finding team. Additionally, at what point does the alleged outrage prompted by my letter becomes more important than the outrage that should have been caused by the actions of the ICE informant, the threat against our agent and his family, and the murder of human beings under these circumstances? What was of foremost importance at the time was resolving the threat against our agent and his family, which had a higher overriding interest than any pending prosecution matter. In light of the facts in this matter, your characterization of my writing of the letter as "extremely poor judgement" is out of line considering that I reported crimes and procedures that ultimately had an adverse impact on the safety of our agents as well as on the lives of human beings.

If my actions made relations with ICE and the U.S. Attorney's Office worse it wasn't because I did anything wrong but rather because I stood up for our agency and refused to go along with a facade.

RECRUITMENT -

There are discrepancies between the figures you quoted in the appraisal, and the figures provided to me by the Division's recruiter. The Division referred 68 applicants instead of 62, and of the 62 a total of 40, not 35, were rated most competitive. Instead of 3 Conditional Letters of Employment being sent out each

month, the recruiter informed me that the average is 4 per month. There are currently 42 applicants from the Division being processed instead of 19.

I must take issue with your comment about the Division ranking last against the other Divisions because of its obvious negative flavor, and the fact that it is unfair to compare this Division with others when it comes to recruiting core series personnel. Before making such a negative comment based on unfair comparisons I believe you must consider that there is a much smaller applicant pool in our area of responsibility than in other Divisions such as Miami, New York, Chicago, Los Angeles, Houston, etc. You should also consider that a sizable percentage of the general and student (college level) populations in this area do not hold U.S. citizenship, and there are fewer applicants meeting the minimum DEA requirements as a result of there being only three universities in the area. In addition, the [REDACTED] police and sheriff's departments and the Border Patrol, from which we receive the bulk of our applicants, are in large part staffed by officers without college degrees (a basic requirement to apply to DEA) who are for the most part unwilling to relocate.

Our applicant pool is further diminished due to aggressive recruiting on the part of large law enforcement agencies from among others Phoenix, Dallas, Houston, Salt Lake City, and Las Vegas, seeking to expand their diversity with bilingual officers. These agencies routinely test, check backgrounds, and hire candidates in three to six months as opposed to DEA's more cumbersome and bureaucratic process which frequently requires over a year to complete. These delays often prevent us from hiring candidates who look at other available law enforcement opportunities. Given all of the above, our recruiting figures are outstanding in my opinion.

To summarize, the trivial negative comments mentioned throughout the narrative portion of the appraisal, when compared with the listed accomplishments, do not justify a lower rating than the previous year. Also, my letter to the ICE SAC should not have been included as part of this appraisal.