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REPORT OF INVESTIGATION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION OFFICE OF INSPECTOR GENERAL

Case No. OIG-514

Possession of a Dangerous Weapon in a Federal Facility By Division of Enforcement SK-14 Employee

Introduction and Summary of Results of Investigation

The Office of Inspector General ("OIG") opened this investigation on Friday, March 27, 2009, after receiving certain information from (b)(7)(C) of the Securities and Exchange Commission's ("SEC") Security Branch. The information concerned a potential threat allegedly made by (b)(7)(C) against his supervisor, Associate Chief Accountant (b)(7)(C) (b)(7)(C) is a grade SK-14 Assistant Chief Accountant in the SEC's Division of Enforcement ("Enforcement").

On Friday, March 20, 2009, (b)(7)(C) received an e-mail from (b)(7)(C).¹ That e-mail related to a disagreement between (b)(7)(C) and (b)(7)(C) over a professional matter and stated, "(b)(7)(C) I am saddened by your response. There is no argument against nonsensical logic. Please try to remember, For what a man sows, this he will also reap."²

On March 24, 2009, (b)(7)(C) met with (b)(7)(C) and Office of Human Resources ("OHR") Human Resource Specialist (b)(7)(C) to discuss (b)(7)(C) concerns about (b)(7)(C) March 20, 2009 e-mail.³ At the March 24th meeting, (b)(7)(C) stated that he was not sure whether the email was a threat of physical harm, but that "the situation needed to be addressed."⁴

¹ Testimony Transcript of (b)(7)(C) attached hereto as Exhibit 1 at 25.

² *Id.*

³ SEC Offense/Incident Report attached hereto as Exhibit 2.

⁴ *Id.*

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On March 25, 2009, (b)(7)(C) at his request, met again with (b)(7)(C) and OHR Human Resource Specialist (b)(7)(C).⁵ During this meeting (b)(7)(C) stated that, after consulting with senior Enforcement managers, he wished to proceed with a formal complaint.⁶ (b)(7)(C) stated that he feared for his safety and the personal safety of other Enforcement staff.⁷ (b)(7)(C) informed (b)(7)(C) and (b)(7)(C) that (b)(7)(C) is (b)(7)(C).⁸ (b)(7)(C) also told (b)(7)(C) and (b)(7)(C) that he had heard from other SEC employees that (b)(7)(C) brought a "large buck knife" to work.⁹

As discussed in detail below, on Wednesday, April 1, 2009, the OIG interviewed (b)(7)(C) concerning the allegation that he routinely brought a large knife to his SEC office and discovered that (b)(7)(C) was carrying a folding knife with a 3½ to 4-inch blade. Immediately after this discovery, an OIG investigator accompanied (b)(7)(C) to his office and discovered two other, similar knives in a backpack.

(b)(7)(C) knives were immediately confiscated by the OIG investigator and turned over to the Security Branch for safekeeping. The D.C. Metropolitan Police were alerted by the Security Branch and they responded to SEC Station Place headquarters. The same day, April 1, 2009, (b)(7)(C) was placed in a non-duty status with pay (administrative leave), effective immediately. The notice of his administrative leave stated that he was not allowed access to the worksite and must immediately surrender his building pass and SEC ID card. As of the issuance of this report, (b)(7)(C) remains on administrative leave.

The OIG found that (b)(7)(C) violated Title 18 U.S.C. §930 of the federal criminal statutes by knowingly carrying dangerous weapons into a federal facility. In the course of this investigation, the OIG also discovered evidence suggesting that (b)(7)(C) was not completely truthful in his testimony and in his Declaration for Federal Employment regarding his (b)(7)(C).
(b)(7)(C)

Relevant Statutes, Regulations and Precedents Regarding the Possession of Dangerous Weapons in Federal Facilities

It is a violation of federal law to knowingly carry a dangerous weapon into a federal facility. Specifically, Title 18 U.S.C. §930 provides in relevant part:

⁵ *Id.* See also, Testimony Transcript of (b)(7)(C) attached hereto as Exhibit 1 at 32-34.

⁶ See Exhibit 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

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(a) ... whoever knowingly possesses or causes to be present a firearm or other dangerous weapon in a Federal facility (other than a Federal court facility), or attempts to do so, shall be fined under this title or imprisoned not more than 1 year, or both.

(g) As used in this section:

(1) The term "Federal facility" means a building or part thereof owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.

(2) The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

(h) Notice of the provisions of subsection (a) ... shall be posted conspicuously at each public entrance to each Federal facility ... and no person shall be convicted of an offense under subsection (a) ... with respect to a Federal facility if such notice is not so posted at such facility, unless such person had actual notice of subsection (a)...

The Standards of Ethical Conduct for the Executive Branch ("Standards of Conduct") requires that "[e]mployees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."¹⁰

The Merit Systems Protection Board ("MSPB" or "Board") and U.S. Court of Appeals for the Federal Circuit have sustained the removal and suspension of employees from Federal service where they were charged with, *inter alia*, possession of a dangerous weapon in a Federal facility in violation of 18 U.S.C. § 930. The decision to remove or suspend the employee in question was affirmed notwithstanding the fact that the Federal facilities in question did not have signs posted at each public entrance regarding the

¹⁰ 5 C.F.R. § 2635.101 (b) (14).

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prohibition against possession of dangerous weapons in a Federal facility.¹¹ *Haver v. Dep't of Agriculture*, 103 FMSR 118, 02-3315 Unpublished, (Fed. Cir. 2002). *McCloy v. Dep't of Transportation*, 101 FMSR 83533, MSPB, Aug. 29, 2001.

In *McCloy*, the appellant, a Department of Transportation employee, brought a BB gun to work. *Id.* He stated that he was going to shoot rats with it and that he was unaware that he was not permitted to bring a BB gun on the premises. *Id.* "He acknowledged, however, that he was aware that there was a rule against bringing firearms on the property." *Id.* A member of the Federal Protective Service testified that four individuals per year are killed by BB's or pellets, and that bringing such a dangerous weapon onto a Federal facility was a violation of 18 U.S.C. § 930. *Id.* The fact that the Federal facility did not have signs posted regarding the prohibition against firearms and dangerous weapons was, according to the proposing and deciding official, the reason why he only proposed a 30-day suspension and not a removal action. *Id.* In affirming the employee's 30-day suspension, the MSPB found that, "The 30-day suspension [was] within the tolerable bounds of reasonableness." *Id.*

In *Haver*, the U.S. Department of Agriculture removed the petitioner, a range management specialist, from employment for, among other things, having a firearm in a government office. The administrative law judge found that Haver knew that he was not permitted to bring firearms to work. On appeal, Haver argued that the charge of bringing a firearm to work could not be sustained because there were no notices regarding the prohibition against firearms and dangerous weapons at the front and rear exits of the office where he worked in accordance with 18 U.S.C. § 930. The U.S. Court of Appeals, however, disagreed with Haver noting that the administrative judge found that he had actual knowledge of the ban and that the government need not demonstrate that Haver violated a criminal law in order to discipline him.

Scope of the OIG Investigation

In conducting its investigation, the OIG reviewed:

- a) (b)(7)(C) Official Personnel Folder ("OPF") and his conduct folder;¹²
- b) Security Branch "SEC Offense/Incident Reports" and a Security Branch "Chain of Custody Document for Credible Threats";
- c) e-mails between (b)(7)(C) and (b)(7)(C) and e-mails between (b)(7)(C) and other SEC personnel;

¹¹ According to (b)(7)(C) there have never been any signs posted at the SEC's Station Place Headquarters regarding the prohibition under 18 U.S.C. § 930 against possession of dangerous weapons in the building.

¹² (b)(7)(C) OPF disclosed that he has no prior disciplinary history.

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- d) a memorandum to (b)(7)(C) file from (b)(7)(C) and Associate Chief Accountant (b)(7)(C) memorializing a March 25, 2009 meeting with (b)(7)(C) and
- e) an NCIC criminal background report for (b)(7)(C)

We took sworn, on-the-record testimony of the following SEC personnel:

- a) (b)(7)(C) Enforcement Assistant Chief Accountant, on April 1, 2009;
- b) (b)(7)(C) Enforcement IT Specialist, on April 9, 2009;
- c) (b)(7)(C) Enforcement Assistant Chief Accountant, on April 9, 2009;
- d) (b)(7)(C) Enforcement Acting Chief Accountant, on April 10, 2009;
- e) (b)(7)(C) Enforcement Associate Chief Accountant, on April 20, 2009; and
- f) (b)(7)(C) Enforcement Assistant Chief Accountant, on April 21, 2009.

We also interviewed (b)(7)(C) of the Security Branch (b)(7)(C) and Enforcement IT Specialists (b)(7)(C) and (b)(7)(C)

Results of the OIG Investigation

In early to mid-March 2009, (b)(7)(C) of Enforcement's Office of Technical Services approached (b)(7)(C) to discuss a series of requests (b)(7)(C) staff received from (b)(7)(C) to enable and disable access to various network directories.¹³ In the course of their conversation, (b)(7)(C) told (b)(7)(C) that a member of (b)(7)(C) staff, (b)(7)(C) had reported seeing a knife in (b)(7)(C) office.¹⁴ (b)(7)(C) encouraged (b)(7)(C) to discuss the incident with (b)(7)(C) which (b)(7)(C) did during early to mid-March 2009.¹⁵ According to (b)(7)(C) told

¹³ See Exhibit 1 at 11, 13.

¹⁴ Id. at 11-13.

¹⁵ Id. at 13.

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him that the knife "...was sitting out in public display. It was a rather large buck knife."¹⁶ (b)(7)(C) told (b)(7)(C) that when he asked (b)(7)(C) about the knife, (b)(7)(C) picked it up and opened it.¹⁷ (b)(7)(C) also told (b)(7)(C) that he did not feel threatened by (b)(7)(C).¹⁸ Nonetheless, (b)(7)(C) believed that (b)(7)(C) and (b)(7)(C) "communicated unease" about (b)(7)(C) knife.¹⁹

On Friday, March 20, 2009, (b)(7)(C) received an e-mail from (b)(7)(C).²⁰ That e-mail related to a disagreement between (b)(7)(C) and (b)(7)(C) over a professional matter and stated, "(b)(7)(C) I am saddened by your response. There is no argument against nonsensical logic. Please try to remember, For what a man sows, this he will also reap."²¹

On Monday, March 23, 2009, (b)(7)(C) met privately with Acting Enforcement Chief Accountant (b)(7)(C) and Associate Chief Accountant (b)(7)(C) to discuss (b)(7)(C) March 20th e-mail and to solicit their feedback.²² Following that meeting with (b)(7)(C) and (b)(7)(C) contacted (b)(7)(C) a Human Resource Specialist in OHR's Labor and Employee Relations Branch, and forwarded (b)(7)(C) March 20th e-mail to her. A conference call among (b)(7)(C) and (b)(7)(C) another Human Resource Specialist in OHR's Labor and Employee Relations Branch, followed.²³

On March 24, 2009, (b)(7)(C) met with (b)(7)(C) and (b)(7)(C) to discuss (b)(7)(C) concerns about (b)(7)(C) March 20, 2009 e-mail.²⁴ At the March 24th meeting, (b)(7)(C) stated that he was not sure whether the email was a threat of physical harm, but that "the situation needed to be addressed."²⁵

¹⁶ *Id.* at 14.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 15.

²⁰ *Id.* at 25.

²¹ *Id.*

²² *Id.* at 28-29.

²³ *Id.* at 29-30.

²⁴ Exhibit 2.

²⁵ *Id.*

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After (b)(7)(C) March 24, 2009 meeting with (b)(7)(C) and (b)(7)(C) met with Enforcement Chief Counsel (b)(7)(C) and informed her that the (b)(7)(C) matter had been referred to the Security Branch and that if it were to proceed further, the Security Branch would be compelled to notify the OIG about it.²⁶ Before proceeding further with the matter, (b)(7)(C) wanted to first be certain that (b)(7)(C) “or another senior officer in the division, was onboard with (b)(7)(C) referral of this.”²⁷ (b)(7)(C) testified that (b)(7)(C) “... immediately responded, you know, yes. This is serious and you should go forward.”²⁸

On March 25, 2009, (b)(7)(C) at his request, met again with (b)(7)(C) and (b)(7)(C).²⁹ During this meeting (b)(7)(C) stated that, after consulting with senior Enforcement managers, he wished to proceed with a formal complaint.³⁰ (b)(7)(C) stated that he feared for his safety and the personal safety of other Enforcement staff.³¹ (b)(7)(C) informed (b)(7)(C) and (b)(7)(C) that (b)(7)(C) (b)(7)(C) also told (b)(7)(C) and (b)(7)(C) that he had heard from other SEC employees that (b)(7)(C) brought a “large buck knife” to work.³³

On March 26, 2009, (b)(7)(C) sent an e-mail to (b)(7)(C) and Ethics Counsel (b)(7)(C) entitled, “Referral Process – Another Unpleasant Experience.”³⁴ In it, (b)(7)(C) complained that on the previous day he was questioned by (b)(7)(C) and Associate Chief Accountant (b)(7)(C) in “an interrogation like fashion, in an attempt to gain knowledge regarding (b)(7)(C) March 20th email to (b)(7)(C).”³⁵ (b)(7)(C) argued that (b)(7)(C) attempt to equate his March 20th e-mail reference to “Galatians 6:7-10” with a threat of potential harm befalling (b)(7)(C) was an overreaction on (b)(7)(C) part and “...nothing short of total absurdity.”³⁶

²⁶ Exhibit 1 at 31-32.

²⁷ *Id.*

²⁸ *Id.* at 32.

²⁹ *See* Exhibit 2. *See also*, Exhibit 1 at 32-34.

³⁰ Exhibit 2.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *See* Exhibit 3.

³⁵ *Id.* at 3.

³⁶ *Id.*

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(b)(7)(C) testified that he feared for his physical safety after receiving (b)(7)(C) March 20th e-mail.³⁷ (b)(7)(C) also testified that after he asked (b)(7)(C) whether he "...was going to be the subject of some sort of retribution...", (b)(7)(C) told him, "I am not saying there will be retribution, but I'm not saying there won't be, either."³⁸ (b)(7)(C) response made (b)(7)(C) feel "probably more threatened than [he] did when [he] initially got the e-mail."³⁹

On April 1, 2009, the OIG located (b)(7)(C) and took his sworn, on-the-record testimony. During his testimony, (b)(7)(C) was asked whether he was armed with any type of weapon or dangerous instrument.⁴⁰ In response, (b)(7)(C) admitted that he had a "pen knife."⁴¹ (b)(7)(C) was asked to produce the pen knife, and he removed a black, tactical type folding knife with a 3 ½ to 4-inch blade from his trouser pocket.⁴² (b)(7)(C) testified that he had additional weapons in a backpack located in his SEC office.⁴³

Directly following the completion of (b)(7)(C) investigative testimony, the OIG investigator and (b)(7)(C) proceeded to (b)(7)(C) SEC office. When they arrived, the OIG investigator conducted a consensual search of (b)(7)(C) backpack. Inside (b)(7)(C) backpack, the OIG investigator found another tactical type folding knife identical to the one (b)(7)(C) had removed from his trouser pocket during testimony, a Swiss army knife, a multipurpose tool containing two blades – one of which was between 3 ½ and 4 inches long – and a 1-foot long, 3-D cell Maglite®-type flashlight.⁴⁴ All of the aforementioned items were confiscated by the OIG investigator and turned over to the Security Branch for safekeeping.⁴⁵

The Security Branch contacted the DC Metropolitan Police. DC Metropolitan Police officers responded and after conferring with Security Branch personnel, DC Metropolitan Police declined to lodge criminal charges against (b)(7)(C) because the

37 Exhibit 1 at 24-26.

38 *Id.* at 40.

39 *Id.*

40 See Testimony Transcript of (b)(7)(C) attached hereto as Exhibit 4 at 10.

41 *Id.*

42 *Id.* at 11; Declaration of (b)(7)(C) attached hereto as Exhibit 5.

43 Exhibit 4 at 11.

44 See Exhibit 5.

45 See Exhibit 2.

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confiscated knives did not meet DC Metropolitan Police's threshold for dangerous weapons.⁴⁶

The same day, April 1, 2009, (b)(7)(C) was placed in a non-duty status with pay (administrative leave), effective immediately. The notice of his administrative leave stated that he was not allowed access to the worksite and must immediately surrender his building pass and SEC ID card. As of the issuance of this report, (b)(7)(C) remains on administrative leave.

In his testimony, (b)(7)(C) acknowledged that he was aware of the prohibition against possession of weapons in federal buildings.⁴⁷ However, he claimed that he did not consider the knives at issue to be weapons because he was from Texas and he "...always carried a knife, being from Texas."⁴⁸ Contrary to his stated belief that the knives were not weapons, (b)(7)(C) also claimed that he carried them for his own protection because of two incidents that had occurred within the past seven years.⁴⁹ According to (b)(7)(C) the first incident involved his being accosted by a group of three African-American youths outside Pentagon City.⁵⁰ The second incident purportedly involved his being "threatened" and "shoved" by four African-American youths at the Union Station McDonald's restaurant.⁵¹ There was no evidence that (b)(7)(C) was physically harmed in either incident.⁵²

(b)(7)(C) testified that he sought guidance from another SEC employee, (b)(7)(C) about whether it was legal for him to carry a knife in the Station Place

⁴⁶ *Id.* Under Title 22 of the District of Columbia Code (Criminal Offenses and Penalties), it is unlawful for someone to possess a knife with a blade longer than 3 inches if that person possesses such knife within the District of Columbia with the "intent to use unlawfully against another." DC ST § 22-4514(b). [Emphasis supplied.] Here, there was no evidence to show that (b)(7)(C) possessed the knives in question with the intent of using them unlawfully against another. Under the United States Code, however, (*i.e.*, Title 18 U.S.C. §930) there is no requirement that the accused knowingly possess a dangerous weapon with the intent to use it unlawfully against another. Thus, knowing possession of a dangerous weapon in a federal facility coupled with the knowledge that it is unlawful to do so is all that is necessary to establish a *prima facie* violation of Title 18 U.S.C. §930. In addition, the District of Columbia Code requires that the knife blade be longer than 3 inches, while the U.S. Code only requires that the blade be greater than 2 ½ inches in length.

⁴⁷ Exhibit 4 at 14-15.

⁴⁸ *Id.* at 15.

⁴⁹ *Id.* at 12, 24-25.

⁵⁰ *Id.* at 24.

⁵¹ *Id.* at 12, 24.

⁵² *Id.*

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building⁵³ (b)(7)(C) claimed that (b)(7)(C) was a part-time Prince George's County police officer.⁵⁴ (b)(7)(C) testified that he asked (b)(7)(C) whether he would be violating the laws of the District of Columbia or the Commonwealth of Virginia if he carried a knife concealed on his person.⁵⁵ According to (b)(7)(C) advised him that "it depended on the officer, if they stopped you, depending on what you were doing."⁵⁶ (b)(7)(C) also claimed that (b)(7)(C) "... being a law officer, ... informed (b)(7)(C) that he didn't think, based on the type of man (b)(7)(C) was and the fact that (b)(7)(C) doesn't] get into trouble and (b)(7)(C) is] not looking for trouble, that it would not be perceived as a problem other than a means of defense if needed while (b)(7)(C) was coming to and from [his] home."⁵⁷

(b)(7)(C) testimony, however, contradicted (b)(7)(C) testimony in a number of critical ways. Specifically, (b)(7)(C) testified that he was not employed as a part-time Prince George's County police officer, but rather that he worked on the weekends as an armed security guard and fugitive task force agent for a bail bondsman in (b)(7)(C).⁵⁸ (b)(7)(C) testified that as an Enforcement IT Specialist, he became acquainted with (b)(7)(C) when he made repairs to (b)(7)(C) SEC computer.⁵⁹ According to (b)(7)(C) testimony, on one occasion approximately six months before (b)(7)(C) testified in this investigation, (b)(7)(C) stopped by (b)(7)(C) office and jokingly asked him whether he could discuss something off-the-record.⁶⁰ (b)(7)(C) then asked (b)(7)(C) the following question: "If I am in the street and a police officer approaches me and I have a knife on me, will I be in trouble?"⁶¹ In response, (b)(7)(C) laughed and told (b)(7)(C) "If a police officer is approaching you, you are probably already in trouble."⁶²

Although (b)(7)(C) testified that he told (b)(7)(C) that the question of whether (b)(7)(C) could get into trouble for carrying a knife on the street depended on the particular officer, he testified that he also advised (b)(7)(C) not to carry a knife at all, especially if he was

⁵³ *Id.* at 13, 29.

⁵⁴ *Id.*

⁵⁵ *Id.* at 12-14.

⁵⁶ *Id.* at 12.

⁵⁷ *Id.* at 30.

⁵⁸ See Testimony Transcript of (b)(7)(C) attached hereto as Exhibit 6 at 10-13.

⁵⁹ *Id.* at 7, 13-14.

⁶⁰ *Id.* at 14, 16.

⁶¹ *Id.*

⁶² *Id.* at 14-15.

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passing through Union Station.⁶³ Although (b)(7)(C) testified that he had shown his knife to (b)(7)(C) in the office, (b)(7)(C) denied ever seeing it.⁶⁴

(b)(7)(C)

Testimony and interviews of some of (b)(7)(C) co-workers established that (b)(7)(C) possession of the knives in his SEC office was open and in plain view.⁶⁸ In fact, most of the staff members who knew about (b)(7)(C) possession of knives did not feel (b)(7)(C) posed a threat.⁶⁹ For instance, (b)(7)(C) testified that he had known (b)(7)(C) for six or seven years since (b)(7)(C) first came to work at the Commission.⁷⁰ (b)(7)(C) further testified that he never felt threatened by (b)(7)(C) knife or when (b)(7)(C) had shown it to him.⁷¹ (b)(7)(C) remarked, "The whole thing is absurd in my view."⁷² Referring to (b)(7)(C) questioned why, if (b)(7)(C) felt threatened by (b)(7)(C) "...it took a week for (b)(7)(C) to figure out he was threatened and have (b)(7)(C) escorted from the building. I thought that was somewhat odd, too."⁷³ (b)(7)(C) also stated that he "...thought it was a sad day for the SEC when people are escorted out of the building for sending bible verses to their supervisors."⁷⁴

⁶³ *Id.* at 15.

⁶⁴ Exhibit 4 at 29; Exhibit 6 at 17.

⁶⁵ Exhibit 4 at 19.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Memorandum of Interview of (b)(7)(C) (annexed hereto as Exhibit 9); memorandum of Interview of (b)(7)(C) (annexed hereto as Exhibit 10); Testimony Transcript of (b)(7)(C) (attached hereto as Exhibit 11) at 6-8; Testimony Transcript of (b)(7)(C) (attached hereto as Exhibit 12) at 9-10, 12, 21. For example, approximately one year before this investigation, (b)(7)(C) and (b)(7)(C) observed a large knife on top of (b)(7)(C) office desk while they were making repairs to (b)(7)(C) SEC workstation computer. See Exhibit 9; Exhibit 10.

⁶⁹ The only witness who testified that (b)(7)(C) made him fear for his safety was (b)(7)(C)

⁷⁰ Exhibit 11 at 5-6.

⁷¹ *Id.* at 8.

⁷² *Id.* at 10.

⁷³ *Id.*

⁷⁴ *Id.*

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(b)(7)(C) testified that he, too, had known (b)(7)(C) for six or seven years since (b)(7)(C) had joined Enforcement.⁷⁵ (b)(7)(C) showed (b)(7)(C) his knives and when (b)(7)(C) asked why he had them, (b)(7)(C) told him there were a couple of incidents – one in Pentagon City and the other at the Union Station McDonalds restaurant – where some kids harassed (b)(7)(C).⁷⁶ (b)(7)(C) had observed (b)(7)(C) knives in plain view on (b)(7)(C) office desk or credenza, and believed that (b)(7)(C) had also put them inside his backpack.⁷⁷ (b)(7)(C) also demonstrated for (b)(7)(C) how his knife worked by opening it.⁷⁸ (b)(7)(C) never did anything with the knives to make (b)(7)(C) feel uncomfortable; nor did (b)(7)(C) ever feel threatened by (b)(7)(C).⁷⁹

However, a violation of 18 U.S.C. § 930 does not require that a person actually threaten someone with a dangerous weapon or even that someone feel threatened. (b)(7)(C) knowingly brought knives that are defined in the statute as dangerous weapons into a federal facility. Under 18 U.S.C. § 930(g)(2) “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length. (b)(7)(C) knives had blades exceeding 2 ½ inches in length. He also knew that it was against the law to bring dangerous weapons into a federal facility. Those two facts are sufficient to establish a violation of 18 U.S.C. § 930.

During testimony, (b)(7)(C) also acknowledged (b)(7)(C).

(b)(7)(C)

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- 75 Exhibit 12 at 8.
76 *Id.* at 10-11.
77 *Id.* at 12-14.
78 *Id.* at 15
79 *Id.* at 14-15, 19.
80 Exhibit 4 at 50-51.
81 *Id.* at 51.
82 *See* Exhibit 10 at 5.

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The fact that (b)(7)(C) was (b)(7)(C) as he testified, and that he (b)(7)(C) of his Declaration for Federal Employment form false. (b)(7)(C) 83 (b)(7)(C) answered "NO" to this question on June 18, 2002. (b)(7)(C) probationary period ended on July 18, 1992; ten years from that date was July 18, 2002; (b)(7)(C) answered "NO" to (b)(7)(C) on June 18, 2002.⁸⁴

Conclusion

The OIG found that on April 1, 2009, (b)(7)(C) knowingly possessed at least three "dangerous weapons" (to wit, knives containing blades greater than 2 ½ inches in length) in a "Federal facility" as those terms are defined in Title 18 U.S.C. §930(g) and had routinely been in possession of dangerous weapons within the SEC building for several years despite his own admission that he knew it was unlawful to do so. Consequently, (b)(7)(C) violated Title 18 U.S.C. §930, or created the appearance of such a violation.⁸⁵ He also did not answer truthfully to a question he was asked in testimony about (b)(7)(C) (b)(7)(C) of his Declaration for Federal Employment regarding his (b)(7)(C). The matter is being referred to the Director of Enforcement, the Associate Executive Director for Human Resources, the Associate General Counsel for Litigation and Administrative Practice, the Branch Chief of the Security Branch, and Ethics Counsel for consideration of disciplinary action against (b)(7)(C) up to and including dismissal.

⁸³ See Exhibit 8.

⁸⁴ *Id.*

⁸⁵ On April 21, 2009, the OIG referred the allegations and factual findings herein to the Office of the United States Attorney for the District of Columbia ("U.S. Attorney") for its consideration of a possible criminal prosecution of (b)(7)(C) under Title 18 U.S.C. §930(a). The following day, the U.S. Attorney issued a declination of prosecution stating that the matter was more appropriately suited for an administrative proceeding. The U.S. Attorney added that if people were concerned for their safety, they could apply for a civil protective order or have (b)(7)(C) banned from the building.

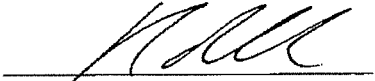
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Submitted: (b)(7)(C)

Date: 7/9/09

Concur: (b)(7)(C)

Date: 7/9/09

Approved: 
H. David Kotz

Date: 7/9/09