

7 November 2008

Public Commentary & Appeal

Mark S. Rey, USDA Under Secretary --
-- *Natural Resources and the Environment*
Room 217E – 1400 Independence Ave., SW
Washington, DC 20250

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attn: Abigail Kimbell, USFS Chief

**On Wyoming, the ACLU Report,
and the Timely Exit of John Twiss**

Dear Mr. Rey:

Last month the ACLU of Wyoming issued a scathing report on official conduct at the 2008 Rainbow Gathering in Bridger-Teton National Forest, under color of Forest Service authorities.

As Director of USFS Law Enforcement & Investigations (LEI), John Twiss deployed chilling police actions and misrepresented the facts to the press – then in retort to this cogent public critique, his irresponsible statements have embarrassed the Forest Service and his position.

This Appeal was first drafted weeks ago to demand his removal... then the news came of his imminent 'retirement'. *Still, the record is relevant: The rise of Twiss in Washington has wrought dark days for the gatherings, and weighs on any future public dialogues. If USFS policies on civil rights are to improve, his impacts must be understood and not replicated.*

D) The ACLU report put the now-notorious July 3 incident at Kid Village in high profile, criticizing the needless recourse to police violence. Of course the Incident Command spokesperson called it a "riot" by Rainbows, alleging that sticks and stones were thrown at officers, but first-hand accounts say otherwise: LEO's turned a routine pot bust into a conspicuous show of force and 'takedown' in front of children. Predictably this drew concerned attention and an observant crowd – and the cops foolishly escalated the situation, firing non-lethal weapons at unarmed people, targeting the "Shantisena" peacemakers in particular.

They were then escorted from the site and actually protected in the traditional 'Rainbow' way, yet they ignorantly reacted to a supposed threat of being surrounded, and persisted in a military posture of retreat with guns drawn. It was obvious that LEO actions were calculated to intimidate and create confrontation – to justify police force and political acrimony by circular logic – as in past provocations of this kind, which are well-documented.

However the ACLU Report also takes in the bigger picture of police conduct at the Wyoming Gathering, and the range of tactics used systematically against it:

"This type of harassment and general overzealous enforcement appear to have been the pattern in the USFS relationship with the Rainbow Family. ...The USFS has set up roadblocks, safety checkpoints, rolling gauntlets, and have searched and ticketed people on the narrowest of pretexts."
{<http://www.nytimes.com/2008/07/06/us/06rainbow.html>}

It's significant that an independent investigation has come to such conclusions, corroborating what gatherers and observers have said for years – and darkly ironic that it took the ACLU to finally raise these issues in high public profile. In past 'Rainbow' cases and other civil rights rulings, declaratory law clearly prohibits such chilling tactics against these expressive assemblies – yet Forest Service LEO's have ignored the courts and persisted in unconstitutional actions, targeting participants by various means with thinly-veiled animus and punitive intent.

II) It's most telling that the Forest Service's public responses came from Twiss, in his official capacity as head of LEI, and in substance rife with denial and hyperbole. He blithely dismisses the ACLU findings as "*nonsense*", as if hard facts and legal principles just don't matter, and resorts to drug hysteria ("*overdoses, violence and a tremendous amount of problems*") as if to trump any First Amendment and civil rights concerns.

We have documented continuing rights abuses at the gatherings, year after year, so these facts are unequivocal. It is then apparent that Twiss has never understood the liberty interests at stake, or cared about them – or that his deliberate agenda was to subvert them.

The 'drug scare' is disingenuous: In truth, the vast bulk of the busts are about marijuana – harmless and benign in expressive use, perilous only when pointless criminal charges ruin the prayers and lives of decent people (as even President Jimmy Carter has observed). Hard drugs and alcohol are kept out of the gatherings; the only "problems" are from a few boozers outside the gate, like many public events. In using the drug smear against Rainbows, Twiss betrays his ignorance of these issues... gatherers and most Americans are fed up with this cruel, juvenile game.

And we note that Twiss purported to speak unilaterally for Forest Service policy – *which he had no authority to do*. This is symptomatic of much deeper issues, going to the course of official actions, the heart of administrative law, and the very nature of democratic governance.

USFS-LEI is a separate agency, with its own chain of command and independent jurisdiction on NFS lands. It is connected to the Forest Service in name & official liaison to the Chief, and by certain enforcement duties under USFS authorities – but not part of it. And most pointedly, it is a *Police agency*, run on the premise of investigative secrecy – contrary to principles of transparency that must guide any Public agency vested by Congress.

In terse sum, cops are supposed to enforce the law, *not make policy*... yet as LEI Director, Twiss was elevated to unprecedented policy authority. In your Office's discussions with concerned Rainbows over the past few years, his role signaled an alarming shift of power:

It was the USFS Top Cop sitting next to the USDA Undersecretary in these policy negotiations, *not the Chief*. In effect, Twiss assumed a sub-Cabinet level position over the Forest Service, parallel to your own – with supervening policy discretion, but acting for a separate federal entity not mandated by Congress to decide National Forest affairs. By law, this is a core breach of jurisdiction, no matter what agencies are involved... but here it is a *Police agency* preempting civilian authorities and exceeding its own, stepping on public administrative matters in the shoes of John Twiss.

This is a dangerous precedent, unacceptable in any sane civic view. Yet it seems this was part of his core mission at the Washington Office, to establish this precedent in those shoes – altering public agency politics, making police control of policy a routine procedure.

III) In the wake of events in Wyoming, Twiss put out an ominous spin in the press, posturing that the Forest Service might ban future Rainbow Gatherings from the National Forests. *"I think we have to have that discussion within the agency"*, he told the press.¹

Twiss was 'sending a message' in several ways at once – to high-placed colleagues in Washington, through the ranks of LEI and allied police agencies, for the yahoo public hysteria he was riling up – *that it's high time and OK to put a stop to those riotous, defiant hippies once and for all.*

This was, as Goebbels might have called it, a 'Big Lie' – misrepresenting events, misdirecting blame, targeting official condemnation on a minority, and presuming new censorial powers. Of course, the right of expressive assembly on public forum lands is sacred and non-negotiable – and it is certainly not 'his call' to *abrogate that right* under color of Forest Service authorities.

However the record of John Twiss seems to be consistent with this intent:

- As a N.F. Supervisor Twiss was also on the *"National Noncommercial Group Use Steering Committee"* – which has directed the implementation and rigid enforcement of the permit rule. Under its 'guidance' the gatherings have endured intense harassment, thousands of specious prosecutions, and escalating police violence – all over the country for the past 12 years.²
- Through 2004 there were extensive citizen dialogues with your Office about changing the 'Group Use' regulation, and a formal petition was presented to resolve the permit problem afflicting 'Rainbow' events. Twiss intervened in July, and progress stopped... the staff policy review required by law did not proceed, and by late Fall he had derailed a year of negotiations.³
- Twiss was then attached to the USDA *"Office of Special Projects"* through early 2005. Its scope of work was obscure and his duties there are unknown – possibly related to political agendas of Federal enforcement agencies, and apparently preparation for his next job.⁴
- In July 2005, Twiss was named Director of USFS-LEI; since then, the situation of the Gatherings has deteriorated: In spite of good faith appeals and agreements with your Office, Twiss has used the 'Incident Command' scheme to circumvent policy accommodations, escalating pretextual enforcement, invasive tactics and provocations.⁵

In his tenure, legal breaches by LEO's have been blatant and systematic, with obvious *political* intent – to intimidate and deter gatherers, and create explosive incidents to justify police force and political reaction. Many people have been chilled and criminalized in First Amendment exercise, but the provocateur tactics have failed, due to 'Rainbow' nonviolence and mutual restraint. This time in Wyoming, Twiss resorted to public smear & fabrications – now exposed as fraud.

The Forest Service's integrity is compromised in the stark contradiction of stated vs. applied policy on public assembly, i.e. – official sanction in Washington vs. police attacks in the woods.

Many view this as a crude duplicity, or just blunderous – but it also reveals the deep rift within the agency itself, building up for years around these issues: As policy decisions are increasingly put in the hands of LEO's, and public contacts are left to their discretion, or at their mercy – qualified Resource Foresters rightly ask who is supposed to be running the show.

IV) The ACLU-Wyoming Report went to Congress & the national press, and changed the game: It found chronic civil rights abuses, and shattered the credibility of John Twiss on events at the 2008 Rainbow Gathering. In a bigger view, it marks a breakpoint in Forest Service policy on expressive use of public lands, and the undue powers of USFS-LEI in controlling it.

There may be other questions on the conduct of John Twiss at LEI, but we raise specific constitutional issues here: By his demonstrated animus toward 'Rainbows', his support for predatory police tactics and Fourth Amendment violations, Twiss was unfit for the job. Its responsibilities do NOT include waging counterinsurgency warfare against the First Amendment, imperiling public safety, and lying about it. These were grounds enough to call for his immediate dismissal as USFS-LEI Director – *and we were prepared to do so.*

Moreover with your expected departure as Under Secretary, Twiss seemed to be positioning himself as the center of continuity in USFS powers, and a prevailing policy voice in that role. A month ago it was a real concern that he might succeed, to the further detriment of public interests. Now Twiss is leaving DC, but the concern remains – where his LEI protégés & Incident Command cohorts may have similar ambitions, *and they will still be there.*

The Forest Service's public mandate is at stake, with unprecedented extensions of police power into its administrative affairs. These cannot be legitimized *by fiat* – they must be reversed.

Reportedly David Ferrell has been named Acting LEI Director: Then let him stand on his reputation as a fair officer of the law, and do the job with restraint and respect for the American public, and knowledge of the intrinsic constitutional limits to police powers.

At this crossroads, the next steps are defining for the Gatherings and the Forest Service – on the course of First Amendment policies, and the ability of civilian Foresters to make them without interference, upon broad public interests as Congress intended.

Mr. Rey, your outgoing influence can be significant: *We propose a final teleconference with concerned gatherers in the next two weeks, to explore remedies & worthy outcomes, and to encourage your last good-faith measures and best recommendations to your successor.*

Let us follow up on this, to bring our efforts to a most constructive closure.

in Candor & Respect,

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NOTES:

¹ "Federal officials say they are considering a crackdown on Rainbow Family events on federal property that could include a ban on meetings such as the arrest-marred event in Wyoming over the July 4th holiday weekend. John Twiss, chief of law enforcement and investigations for the U.S. Forest Service, said the event's participants were "non-compromising" and "arrogant" and a review and a ban may be needed. 'I think we have to have that discussion within the agency,' he told AP."

(*WorldNetDaily*, "Crackdown on Rainbows considered", 7/8/08)

² The "*National Noncommercial Group Use Steering Committee*" is an extraordinary policy body within the Forest Service, formed right after the new regulation was enacted in Fall 1995. It was composed as a cadre of OGC lawyers, U.S. Special Agents, and agency 'hardliners', to direct USFS personnel in implementing the rule and assuring rigid enforcement. Its adversarial posture was clear from the outset:

Enforcement commenced in February 1996, with a draconian Federal lawsuit against a regional gathering in Florida: *U.S. v. Rainbow Family, No. 96-183, M.Dist.Fla.* It failed to certify a 'Rainbow' defendant class or get an injunction, and was dismissed months later, but the Committee was undeterred. By that summer the "Incident Command" scheme was in-place for the 1996 Rainbow Gathering in Missouri, running massive interagency roadblocks in front of the gate – even with a signed permit in effect. These events in the first months set the harsh policy tone that has persisted and intensified under its continuing oversight – a war of attrition on the gatherings for the past 12 years, and court cases all over the country.

As Supervisor of Black Hills N.F., Twiss was also a designated member of the 'NGU Steering Committee', and was aligned with its agenda for several years before he came to Washington.

³ In the months leading into the 2004 Gathering in California – after 3 years of mass enforcement under 'Group Use' authorities -- public appeals and discussions with Under Secretary Mark Rey got more urgent. There was hope of amending the regulation as written and/or applied, to avert further confrontations that year and resolve the permit problem afflicting 'Rainbow' events. 'PCU_/FAP' proposed to allow application by individual volunteers, and authorization of public events on a cooperative basis. In early June, a formal petition to amend the regulation was presented by K. Zirk, and was properly accepted for review by the Recreation, Heritage, & Wilderness Resources (RHWR) policy staff. 5 USC §553(e)[1].

Curiously, the imminent crisis in California was defused when a fraudulent Permit was signed far away, under the auspices of a politically-connected third party in DC. In early July Mark Rey personally toured the Gathering, accompanied by John Twiss on the trail (*where we met cordially*). Thereafter Twiss showed up in DC as the new agency 'point-man' on these policy discussions, to whom inquiries were referred.

Our organization had urged an 'Interpretive Rule' process in accord with the petition; at Mr. Rey's invitation, I tried to work with Twiss in scoping the elements. However he stalled for many weeks, refusing to provide key documents & cites needed for the job. Then he said that the agency would not consider amendments to the regulation after all, and later told others the same. By November '04, his intervention had derailed a year of negotiations, and the RHWR policy review required by law never went forward.

⁴ We learned of Twiss's transfer to the USDA "*Office of Special Projects*" by phone inquiry in January 2005, but got no information on his activities there, nor on its scope of work. Concerns are roused by inference: It was reported publicly that in a namesake "OSP" in the Defense Dept., White House political operatives were embedded, and military intelligence was 'cooked' to justify the Iraq War. It is speculative that "Special Projects" at USDA were similarly linked to political agendas of Federal security and enforcement agencies – but plausible under the Bush administration, and in light of ensuing actions under his command.

⁵ It is unusual to appoint an LEI Director from outside police ranks; perhaps his 'Line Officer' credentials served to legitimize his hand in Forest Service policy. Note also – under Twiss, LEI has deployed aerial surveillance drones for DEA operations, and Tasers as a new use of force on the ground.