U.S. Department of Justice

Office of the Inspector General

September 22, 2008

The Honorable Scott J. Bloch
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW, Suite 300
Washington, D.C. 20036

Re: OSC File No. DI-07-0367

Dear Mr. Bloch:

Enclosed is a copy of the Office of the Inspector General (OIG) report entitled, *OIG Report On Allegations by Bureau of Alcohol, Tobacco, Firearms, and Explosives Special Agent Jay Dobyns.* The Office of Special Counsel (OSC) referred this matter to Attorney General Alberto Gonzales and requested that the Department of Justice investigate allegations by Special Agent Dobyns that the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) system for assessing and responding to threats made against its agents is inconsistent, unreliable, and inadequate to protect its agents and their families and that ATF had severely mismanaged a series of threats made against him. Attorney General Gonzales delegated his authority to review and sign this report to the OIG, and we have been in regular communication with OSC about the timing of this investigation.

The enclosed report summarizes the results of our investigation. We are also providing a copy of the report to ATF.

If you have any questions about the report, please contact me or Special Agent in Charge Glenn Powell, at (202) 616-4760.

Sincerely,

Glenn A. Fine
Inspector General

Enclosure
Cc: Catherine McMullen

U.S. Department of Justice
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OIG Report on Allegations by Bureau of Alcohol, Tobacco, Firearms and Explosives Special Agent Jay Dobyns

September 22, 2008

Introduction

By a letter to Attorney General Gonzales, the United States Office of Special Counsel (OSC) referred for investigation the allegations raised by Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Special Agent Jay Dobyns. In summary, Dobyns alleged that ATF's system for assessing and responding to threats made against its agents is inconsistent, unreliable, and inadequate to protect its agents and their families. He further alleged that ATF severely mismanaged a series of threats that were made against him.

The Attorney General requested that the Office of the Inspector General (OIG) investigate Dobyns's allegations and provide a report to the OSC. The OIG interviewed ATF managers and other ATF employees regarding ATF's policies and procedures for handling threats against ATF employees, the specific threats against Dobyns, and ATF's actions in response to those threats. The OIG also reviewed relevant ATF policies, an ATF Office of Professional Responsibility Fact Finding Investigation relating to Dobyns's allegations, and relevant e-mail exchanges among ATF management, Dobyns, and others. The OIG also interviewed Dobyns.

This report describes the findings of our investigation. We first provide a brief factual background and then analyze the evidence regarding Dobyns's allegations.

In summary, we conclude that ATF has written policies and procedures that govern the treatment of threats made against its agents and that these policies are generally adequate. With regard to ATF's response to specific threats against Dobyns, we found that ATF appropriately decided to relocate Dobyns and his family to Santa Maria, California, in September 2004, following the receipt of the first of four specific threats made against him. However, due to a series of miscommunications among the ATF managers responsible for implementing this decision, the transfer was handled as a standard change of duty station rather than an emergency relocation. As a result, Dobyns and his family were not provided appropriate support and resources to protect their identities and location that normally accompany an emergency relocation. Upon receipt of another threat, ATF became aware that the move to Santa Maria had been mishandled. As a result, ATF relocated Dobyns and his family to Los Angeles with the appropriate safeguards in place.

With regard to the three other threats, we found that ATF needlessly and inappropriately delayed its responses to two of the threats. We also concluded that ATF should have done more to investigate two of the threats.

Factual Background

Dobyns has been employed as a Special Agent with ATF since 1987. Between early 2001 and July 2003, he was the lead undercover agent in an investigation known as Operation Black Biscuit, which targeted members and associates of the Hell's Angels Motorcycle Club (Hell's Angels). During this period, Dobyns was stationed in ATF's Tucson Field Office and lived in the Tucson area with his family.

In the summer of 2003, as the investigative stage of Operation Black Biscuit was drawing to a close, ATF's Office of Operations Security (OPSEC) conducted a routine risk assessment to identify whether any ATF personnel associated with the Black Biscuit operation were in danger as a result of their work on that case. This assessment was pre-emptive and was not based on the receipt of any particular threat against Dobyns or other ATF personnel.

OPSEC concluded that there was some threat to Dobyns at that time and recommended that he and his family be afforded a cooling off period away from the Tucson area and that he be considered for an assignment in a new location away from the West Coast that would limit his visibility and enable him to keep a low profile. When Dobyns was informed of OPSEC's recommendation, he argued against being relocated on the ground that no specific threat had been made against him. ATF ultimately agreed to let Dobyns remain in Tucson.

On August 31, 2004, Dobyns was the subject of a specific threat by Robert McKay, a member of the Hell's Angels who had been indicted on criminal charges as a result of Operation Black Biscuit. As a result, McKay was arrested on charges of threatening a federal officer and, on September 17, 2004, after conducting an assessment of the risk faced by Dobyns and his family, ATF moved them out of Tucson to Santa Maria, California.

Michael Bouchard, then the Assistant Director Field Operations (AD/FO), and Dewey Webb, then the Deputy Assistant Director for Field Operations (DAD/FO), were the ATF officials with decision-making authority regarding the move to Santa Maria. Although both Bouchard and Webb believed that they had authorized an emergency relocation, their subordinates understood that only a standard permanent change of duty station had been authorized. Accordingly, when they were moved to Santa Maria, Dobyns and his family were not provided the support and resources to protect their identities and location that normally accompany an emergency relocation.

When ATF undertakes an emergency relocation of one of its agents, it takes certain steps to "backstop" the agent's identity. Backstopping is essentially the covert establishment of a fictitious identity for the agent. For example, the agent may be provided a fictitious driver's license, a fictitious

credit card, and other fictitious items of identification; fictitious identities may be established for family members; and fictitious information regarding the agent's credit history, real estate records, ownership of motor vehicles, school records of children, voter registration information, and other vital records may be created. Backstopping may also include flagging the employee's personal records in various databases so that ATF would be alerted to any inquiries made regarding the employee or his or her family. As noted above, none of this happened with regard to Dobyns's relocation to Santa Maria because it was erroneously treated as a standard change of duty station, not an emergency relocation.

In September 2004, ATF learned that Curtis Duchette, an inmate who had been the subject of another of Dobyns's undercover investigations, had allegedly made threatening statements against Dobyns. At this time, ATF was already dealing with the McKay threat and had decided to transfer Dobyns and his family out of Tucson based on that threat. We found that ATF did not conduct any significant investigation of Duchette's alleged statements.

In November 2005, ATF was informed of another alleged threat against Dobyns, by Dax Mallaburn, a known associate of the Arizona Aryan Brotherhood. As a result of a review of the Mallaburn threat, Bouchard became aware that Dobyns's transfer to Santa Maria had not been handled as an emergency relocation, and ATF updated its risk assessment relating to Dobyns. Thereafter, in December 2005, ATF relocated Dobyns again – first for 1 year to Washington, D.C., and then to Los Angeles. We found that ATF took appropriate steps to backstop Dobyns's identity in connection with these moves.

In November 2006, an ATF agent reported that a Hell's Angels member incarcerated in Phoenix told him that another Hell's Angels member had said that the Hell's Angels were "going to start our campaign against Dobyns." After assessing this information, however, ATF concluded that "no specific or direct threat toward [Special Agent] Dobyns was identified."

ATF's Policies and Procedures for Assessing, Evaluating, and Responding to Threats Against Agents

At the time ATF learned of the first specific threat against Dobyns in August 31, 2004, ATF policy regarding how to respond to threats against its agents was memorialized in two orders: ATF Order 3210.7C, Investigative Priorities, Procedures, and Techniques, dated February 25, 1999, and ATF Order 3250.1A, Informant Use and Undercover Operations, dated October 26, 2001.

According to the Order 3210.7C, ATF Special Agents are to report threats

against agents and other "sensitive situations" to the highest level manager in their field office, which in most instances is the Special Agent in Charge (SAC). The Order further provides, "when threats . . . against [ATF] employees occur, the [SAC] will immediately contact the Chief of the Special Operations Division (SOD), by secure telephone and will follow up with a SAR [Significant Activity Report] by facsimile." In addition, the Order instructs the ATF National Communications Center (now called the Joint Support Operations Center)[1] to forward the SAR to other Headquarters division chiefs whose program areas may be involved, including the Chief, Intelligence Division. The SOD Chief is responsible for notifying the appropriate ATF executive staff members of the threat. Finally, the Order states that when an investigation into a threat has lost its sensitive status, a final report will be submitted to the SAC by the assigned Special Agent, for forwarding to Headquarters.

Order 3250.1A sets forth emergency move procedures when a Special Agent receives a threat during an undercover operation. According to DAD/FO Webb, however, ATF managers understand the policy to apply to all threats made against ATF agents, whether or not an undercover operation is actually underway at the time the threat is received.

According to Order 3250.1A, threats are to be verified through a field division-initiated threat assessment. Once a threat has been verified, the SAC should prepare a memorandum for the DAD/FO, through the Chief, Intelligence Division, outlining the circumstances surrounding the threat and any action taken. The DAD/FO then makes the decision regarding whether to authorize an emergency move on the basis of the threat. The Order provides that if the DAD/FO authorizes an emergency move, the DAD/FO shall notify the Chief, SOD; the Special Agent in Charge of the Undercover Branch (UCB); the Assistant Director (Management); and the Financial Manager/Deputy Chief Financial Officer, Financial Management Division. The policy does not specifically require that any of these notifications be made in writing.

The policy further provides that the threatened Special Agent must prepare a memorandum outlining his or her offices of preference, including a brief justification for these locations. The AD/FO then decides to where the agent will be relocated, based upon an assessment of the risk, the available staffing needs, and the agent's stated preferences.

In June 2005, ATF issued Order 3040.2, which provides additional guidance regarding assessing threats against ATF agents. Pursuant to this Order, OPSEC is the primary point of contact on all matters relating to threats against ATF employees. Specifically, OPSEC is responsible for

- coordinating and evaluating all information and conducting all threat

[1] The Joint Support Operations Center is the broadcast center for all ATF communications traffic.

assessments required to determine the validity of the threat;

- conducting a risk assessment to determine the risk or loss of the agency asset; and

- recommending countermeasures to reduce or negate the risk whenever possible.

Order 3040.2 instructs employees to "immediately" report threats to their first-line supervisors, instructs supervisors to "immediately" report threats to the Special Agent in Charge or Division Chief, and instructs SACS and Division Chiefs to report threats to OPSEC. Notification to OPSEC is to be made in the form of a memorandum containing:

- the name of the agent who has been threatened;

- the case agent assigned to conduct the initial assessment of the threat;

- the date of the threat and all background information, such as possible motivation;

- the nature of the threat, that is, who made it, any information known about that individual, who reported the threat, and the reliability of the source;

- a description of any countermeasures that have been taken;

- the initial assessment, if completed; and

- any other relevant information, that is, other Bureau or law enforcement agencies involved.

OPSEC then must conduct a risk assessment, which the Order defines as "[a] process of determining the likelihood of an adversary successfully exploiting a vulnerability and the resulting degree of damage or impact on an asset." This assessment consists of:

- obtaining a full briefing from the case agent who conducted the initial assessment;

- interviewing the threatened employee regarding issues surrounding the threat;

- evaluating the current conditions surrounding the assets and those

directly affected by the threat;

- making recommendations to the SAC or Division Chief regarding the safety and security of the threatened employee;
- determining any risk associated with the threat, including to family members;
- assessing risk to others associated with the threatened asset; and
- preparing a written report outlining the actual threat level, risk associated with the asset based on the degree of threat, observations, recommendations, and countermeasures.

At the time of the McKay threat, Order 3040.2 had not yet been issued. However, as discussed in more detail below, OPSEC was involved in evaluating and assessing the McKay threat, and the steps ATF took in response to that threat were largely based on OPSEC's assessment that the threat was "critical."

ATF's Response to Specific Threats Against Dobyns

August 2004 – Robert McKay

On August 31, 2004, Dobyns encountered Robert McKay, a member of the Hell's Angels, at a Tucson bar. According to Dobyns, McKay told him he was "a marked man" and that he was "going to spend the rest of [his] life on the run from [the Hell's Angels]." Dobyns reported McKay's statements to his SAC, who reported the matter up the ATF chain of command. McKay was arrested the next day on charges of threatening a federal agent.

Consistent with ATF policy, Carlos Sanchez, then the SOD Chief, was promptly notified of McKay's statements to Dobyns. Sanchez requested that OPSEC conduct a risk assessment relating to Dobyns. As a result, OPSEC elevated the threat level of Dobyns and his family to "critical" and recommended that an emergency relocation with full backstopping be implemented. According to OPSEC's report, "all information pertaining to residential relocation of [Special Agent] Dobyns and his family must be fully masked to prevent direct linkage."

Sanchez told the OIG that he agreed with OPSEC's recommendation for an emergency relocation for Dobyns and therefore recommended to DAD/FO Webb that Dobyns be transferred on an emergency basis to an area outside the western United States after an assignment to ATF Headquarters. As the

DAD/FO, Webb had responsibility for determining whether to authorize the emergency move.

Also consistent with ATF policy, Kim Balog, then the SAC of the ATF Undercover Branch (UCB), participated in the discussions regarding the McKay threat. Balog told the OIG that she and her immediate supervisor, Deputy Chief John Cooper, also recommended an emergency relocation for Dobyns and his family. Balog said that she attended several meetings with Cooper, Sanchez, and Webb during which they discussed the resources available to provide a safe relocation for Dobyns and his family.

Webb told the OIG that he, too, agreed with OPSEC's recommendation that Dobyns receive an emergency transfer. Webb said that he told Sanchez during a face-to-face meeting that Dobyns's move was to be "covert." Webb said that he expected this instruction would result in the complete backstopping of Dobyns and his family. Webb told the OIG that he spoke with Sanchez on more than one occasion regarding Dobyns's transfer and that he told Sanchez that he did not want ATF to repeat certain mistakes that had been made during the emergency relocation of another ATF agent. Webb acknowledged signing a "Permanent Change of Duty Station" (PCS) memorandum, dated September 17, 2004, relating to Dobyns's transfer. Webb told the OIG that the PCS memorandum he approved was required regardless of whether the associated transfer was standard or emergency in nature. The OIG confirmed that Webb was correct on this point.

According to ATF Order 3250.1A, Webb was required to notify both Sanchez and Balog that he was authorizing an emergency relocation for Dobyns. As discussed above, Webb said he orally communicated this information to Sanchez. He could not recall whether he specifically notified Balog of his decision. However, according to Webb, because Balog reported to Sanchez, notifying Sanchez should have been sufficient.

Both Sanchez and Balog denied that Webb ever clearly communicated to either of them that he had authorized an emergency transfer for Dobyns. Moreover, Sanchez told the OIG that he interpreted the PCS memorandum that Webb had signed as an indication that Webb had authorized only a permanent change of duty station and had rejected the idea of an emergency move for Dobyns.

Webb told the OIG that he did not recall notifying either the Assistant Director (Management) or the Financial Manager/Deputy Chief Financial Officer, Financial Management Division (FMD), of his decision to authorize an emergency transfer as required by ATF Order 3250.1A. However, he said he did recall contacting the Financial Management Division in connection with Dobyns's transfer and being told that there was between $200,000 and $300,000 available to Sanchez to spend on backstopping. Webb said that he

would have expected Sanchez to come to him if there was an issue with respect to financing the emergency relocation of Dobyns and his family and that Sanchez did not do so. Webb told the OIG that he did not fully understand until January 2007, when he was ordered to meet with Dobyns regarding a grievance Dobyns later filed against the ATF, that Dobyns's transfer to Santa Maria had not been handled as an emergency relocation.

Sanchez told the OIG that he did not question Webb as to why he was not authorizing an emergency relocation for Dobyns. He said that his superiors do not always follow his advice and that he simply assumed that Webb had disagreed with his recommendation for an emergency transfer. Balog told the OIG that she learned from Deputy Chief Cooper that the move would not be an emergency relocation. She said she discussed the matter with Sanchez, who told her Webb had not approved an emergency transfer. Cooper told the OIG that he learned from either Sanchez or Balog that Dobyns's move to Santa Maria would be handled as a standard transfer. He said that at no point was he ever instructed to handle the move as an emergency relocation.

The OIG also discussed Dobyns's transfer with Bouchard, who was the Assistant Director of Field Operations during the relevant time period and was responsible for making the final determination regarding the location to which Dobyns would be transferred. Bouchard told the OIG that he was familiar with Dobyns's undercover work in Operation Black Biscuit and with the McKay threat. He said he had approved the transfer of Dobyns and his family to Santa Maria as a result of the McKay threat and that it was his understanding at that time that the move would be an emergency relocation. Bouchard said it was not until Dobyns was the subject of the Dax Mallaburn threat in November 2005 that he learned that the move to Santa Maria had been handled as a standard change of duty station and not an emergency relocation. Bouchard said that although he never gave a direct order that the move to Santa Maria be handled as an emergency relocation, he assumed that an emergency relocation would be done. Bouchard stated that Webb had been the former Chief of SOD and that Sanchez "knew the circumstances of the threats better than [he] did." Bouchard said he relied on Webb and Sanchez to handle the move appropriately.

As noted above, Bouchard became aware in November 2005 that Dobyns's transfer to Santa Maria had not been an emergency relocation. Bouchard thereafter met with Dobyns and personally apologized to him for the manner in which ATF had handled the transfer to Santa Maria. He also asked Dobyns to extend an apology on behalf of ATF to his family. At this meeting, Dobyns requested that he and his family be relocated to the Los Angeles area.

Following this meeting, Bouchard ordered that Dobyns and his family be transferred with full backstopping, first to Washington, D.C., for a 1-year period and then to Los Angeles. In connection with this move, ATF provided

Dobyns with a document entitled Relocation Guidelines. These guidelines provided direction and instruction regarding the precautions Dobyns should take and the manner in which he should handle the sale of his existing home, the purchase of a new home, the registration of any vehicles, the registration of his children at school and of pets with a veterinarian, the filing of his income tax statements, and the information he should provide to his new field office so that any inquiries regarding him could be handled appropriately. The document also advised Dobyns that he should keep a low profile with respect to where he went in public, what he wore, and the manner in which he traveled and instructed him to obtain from OPSEC an undercover identity, including a new Social Security number and credit card, and to request that his personal information be monitored in databases such as AutoTrack and LexisNexis. Finally, the document instructed Dobyns that in the event he encountered any difficulties implementing any of the recommendations contained in the guidelines, he should immediately contact OPSEC to obtain assistance.

Once Bouchard approved the emergency relocation, ATF's SOD assisted Dobyns with obtaining a covert apartment in Washington, D.C., where he lived temporarily for several months for purposes of backstopping his location and eventual move to Los Angeles. Bouchard told the OIG that once OPSEC agreed that Dobyns had been appropriately backstopped in Los Angeles, he authorized Dobyns's transfer back to the West Coast.

In sum, the OIG found that due to miscommunications among Bouchard, Webb, and Sanchez, ATF treated Dobyns's transfer from Tucson to Santa Maria as a standard, rather than an emergency, relocation. Both Bouchard and Webb believed they had authorized an emergency relocation, and Webb recalled telling Sanchez that the move should be "covert." However, Sanchez denied that Webb told him he had approved an emergency relocation for Dobyns. In addition, Sanchez mistakenly interpreted the PCS memorandum Webb had signed in connection with the transfer as an indication that Webb had approved only a standard change of duty station. We found that Bouchard, Webb, and Sanchez failed to follow-up with each other regarding the implementation of Dobyns's transfer. Bouchard and Webb assumed that their subordinates would handle the transfer appropriately, and Sanchez did not question Webb about what he perceived to be Webb's rejection of the recommendation that Dobyns be afforded an emergency transfer.

In November 2005, after Bouchard learned that the transfer to Santa Maria had been mishandled, he ordered, and ATF implemented, an emergency transfer for Dobyns and his family to Los Angeles. After that point, ATF handled Dobyns's relocation as an emergency transfer, as it should have in the first place.

As noted above, ATF policy did not require Webb and Bouchard to memorialize their decisions regarding Dobyns's transfer in writing. The OIG believes that had ATF policy required them to do so, the miscommunications that resulted in the mishandling of the move to Santa Maria would likely not have occurred. Accordingly, we recommend that ATF revise its policy regarding emergency relocations to require that the required notifications by the DAD/FO and the AD/FO be memorialized in writing. We also recommend that ATF ensure that all officials responsible for implementing emergency moves understand that a PCS memorandum is required whether a particular move is emergency in nature or connected with a standard permanent change of duty station.

September 2004 – Curtis Duchette

On September 20, 2004, a convicted felon and previous source for Dobyns visited the Tucson Field Office and reported to the Resident Agent in Charge, Sigberto Celaya, that he had recently shared a jail cell with Curtis Duchette and that Duchette had told him that he wanted to put a gun to the back of Dobyns's head and pull the trigger. Earlier that month, Dobyns had purchased firearms from Duchette during an undercover operation, and Duchette had subsequently been arrested on an unrelated probation violation. The source told Celaya that he believed the threats were viable and expressed concern for Dobyns's safety. The Tucson Field Office subsequently confirmed that the source had shared a cell with Duchette as recently as September 17, 2004.

In accordance with ATF procedures, Celaya drafted a SAR documenting the source's statements and noting that the Tucson Field Office had confirmed that the source and Duchette had shared a jail cell. Celaya also stated that he had no information indicating that Duchette had the means or outside assistance to carryout the threat. Celaya briefed his supervisor, Marvin Richardson, Assistant Special Agent in Charge (ASAC), Phoenix Field Division, regarding the source's statements and provided him with a copy of the SAR. Richardson forwarded the SAR to ATF's Intelligence Division, to OPSEC, and to Sanchez. ATF did not take any further steps at that time to investigate the source's allegation regarding Duchette.

Dobyns told the OIG that in April 2005, while reviewing the case file in preparation for testifying against Duchette at trial, he discovered that ATF had not interviewed Duchette regarding his alleged statement. Accordingly, Dobyns contacted Madison Townley, then the Chief of OPSEC, and expressed frustration with what he perceived to be ATF's lack of attention to the Duchette threat.

In response to Dobyns's inquiry, OPSEC contacted Celaya. Celaya advised OPSEC that, in his view, the threat was not credible. Based on

Celaya's assessment, OPSEC took no further action regarding the Duchette threat.

As discussed in more detail below, in November 2005, ATF learned of the Mallaburn threat. As a result, OPSEC completed an updated risk assessment regarding Dobyns. In this assessment, OPSEC stated that Celaya had "expressed doubts about the credibility of the Duchette threat and encouraged deferment of any action until after Federal prosecution of the case [against Duchette in which Dobyns was to testify]." OPSEC did not recommend that Duchette be interviewed or that any further action be taken regarding his alleged statements. However, based on its assessment of the Mallaburn threat, OPSEC concluded that Dobyns should be permanently relocated outside of the western region of the United States with full backstopping.

In November 2005, Bouchard authorized an emergency relocation for Dobyns to Los Angeles. Although OPSEC had originally recommended that Dobyns be relocated outside of the western region, Bouchard authorized the move to Los Angeles after receiving assurances from OPSEC that Dobyns could be adequately protected there and in light of Dobyns's preference for that location.

However, ATF never interviewed Duchette about his alleged statements to the source. Celaya told the OIG that at the time the source made the report, Celaya's understanding was that Dobyns was already receiving an emergency relocation as a result of the McKay threat and that he believed that this move would be sufficient to protect Dobyns from any threat Duchette might pose. Celaya acknowledged to the OIG, however, that in retrospect ATF should have interviewed Duchette to determine whether or not he actually posed a threat to Dobyns.

We concluded that ATF should have taken the threat more seriously and at least interviewed Duchette about his alleged statements.

November 2005 – Dax Mallaburn

On November 3, 2005, Phillip Durham, Assistant Special Agent in Charge of ATF's Washington Field Division, received a call from A.J. Turner, then the Assistant Special Agent in Charge of the Federal Bureau of Investigation's (FBI) Washington Field Division. Turner told Durham that an FBI confidential source had provided information regarding a threat against Dobyns. According to Turner, the source had told the FBI that while incarcerated at the Florence Correctional Center in Florence, Arizona, he had contact with a white male he knew as "Whitey." Whitey, who the source believed was a member of the Aryan Brotherhood, was seeking someone to carry out a contract hit on several individuals on behalf of the Brotherhood. The source said that Whitey had shown him a list containing the names of

individuals the Brotherhood was targeting and that Dobyns's name was on the list.

Durham said he immediately contacted supervisors in the Phoenix and Los Angeles Field Divisions to advise them of this information. The following day, November 4, two ATF agents interviewed the source.

The source told the ATF agents that he was aware that Dobyns had recently worked undercover in an investigation that targeted the Hell's Angels. The source also indicated that Whitey had told him that Dobyns had a wife and a daughter. In addition, the source described Dobyns's tattoos and his physical appearance, based upon information he said he had received from Whitey. Within several days, ATF identified Whitey as Dax Mallaburn.

Group Supervisor Frank Haera, of the Washington Field Division, told the OIG that after the interview of the source, he immediately briefed Durham and Group Supervisor Daniel Machonis of the Phoenix Field Division. On November 7, 2005, Haera sent an e-mail message to Durham and OPSEC, attaching a written report on the interview. Haera told the OIG that he felt a sense of urgency about the matter because the source was a member of a violent gang and had provided an accurate description of Dobyns and his family.

According to Durham, on November 7, 2005, he participated in a conference call with Phoenix ASAC Richardson, ASAC James Crowell of the Los Angeles Field Division, OPSEC Chief Townley, and Deputy Assistant Director for Field Operations Webb. Durham told the OIG that, during the conference call, it was decided that the Phoenix Field Division would assign an agent to interview Mallaburn. However, Phoenix did not conduct the requested interview. Later that day, Richardson contacted OPSEC and advised that, in his view, "the threats have very little credibility considering the source." Richardson told the OIG that he based this assessment on information he received from agents within the Phoenix Field Division. But when the OIG interviewed the agents identified by Richardson as having provided him with this information, they denied having any involvement in the matter.

According to Durham, in the weeks following the November 7 conference call, he had several conversations with Townley about the status of the investigation of the Mallaburn threat. Durham said he spoke with Townley in November 2005 "every other day or so" and that Townley complained each time that no one was doing anything to resolve the Mallaburn threat.

Durham said he told Townley during each conversation that Phoenix was responsible for interviewing Mallaburn and that he had no further information to report until that interview occurred. Durham said that he also spoke with Richardson during this time period and that Richardson told him that Phoenix

agents who were familiar with Mallaburn would be conducting the interview. Durham said that sometime in mid-November Richardson agreed to send a Phoenix agent and a Washington agent to interview Mallaburn. However, according to Durham, Richardson never followed through with this plan.

Durham told the OIG that near the end of November, he once again called Richardson and asked why Mallaburn had not yet been interviewed. Durham told the OIG that Richardson told him that Mallaburn was not credible, that Mallaburn was not reliable, and that any information Mallaburn had would be of no use. Richardson did not tell Durham on what he based this assessment. Durham said that he then told Richardson that the Washington Field Division would interview Mallaburn and that no assistance from Phoenix would be necessary.

Accordingly, on November 30, almost 4 weeks after ATF learned of the alleged threat, two agents from the Washington Field Division interviewed Mallaburn. Mallaburn told the agents that while incarcerated in Florence, Arizona, he had been given a "hit list" or "green light list" by a member of the Hell's Angels. He said that Dobyns and two other undercover law enforcement officers who worked with Dobyns during Operation Black Biscuit were on the list and that the list contained a physical description of Dobyns. Mallaburn told the agents that he knew the Hell's Angels member as Rob and provided a physical description of him. Mallaburn said he was supposed to make a copy of the list and provide it to members of the Aryan Brotherhood but that he did not do so. He claimed that he later destroyed the list by flushing it down the toilet to avoid it being discovered during an impending search of his cell.

The Washington Field Division completed a report of the Mallaburn interview and forwarded it to OPSEC and the Phoenix Field Division. OPSEC completed a threat assessment dated November 30, 2005. In its assessment, OPSEC concluded that although key elements pertaining to the credibility of the underlying threats Mallaburn had described remained unknown, sufficient potential risk factors existed to support the relocation of Dobyns and his family. Accordingly, OPSEC recommended permanent relocation outside of the western United States with full backstopping for Dobyns and his family.

Two weeks after the Mallaburn interview, ATF made the decision to transfer Dobyns to ATF headquarters for a 1-year temporary assignment after which he and his family would receive an emergency relocation to Los Angeles.

Dobyns told the OIG that in late November 2005, he had become frustrated with what he perceived as the lack of investigative effort on the part of ATF regarding the Mallaburn threat. Although Dobyns was aware of his impending move to Los Angeles and the results of the Washington Field Division's interview of Mallaburn, he believed that ATF should investigate the matter further in order to confirm the existence of the "hit list" and the identity

of those associated with it so that appropriate actions could be taken, including possible prosecution of the offenders.

On December 6, 2005, Dobyns contacted ATF Special Agent Joseph Slatella, the case agent for Operation Black Biscuit, and asked that he investigate the matter further. Slatella subsequently contacted Group Supervisor Machonis and requested permission to conduct additional investigation of the Mallaburn threat. Machonis and Richardson approved Slatella's request, and Slatella conducted an investigation of the Mallaburn threat. On March 7, 2006, Slatella completed a 14-page report of investigation.

Slatella's investigation consisted of interviews of Mallaburn, an Intelligence Investigator working at the prison in Florence, an undocumented source knowledgeable about the affairs of the Aryan Brotherhood, two Arizona Department of Corrections officials, a documented ATF informant, and an inmate. Mallaburn told Slatella that he had misled the Washington Field Division agents who had previously interviewed him. He said he lied about what he did with the hit list because he did not want to get involved in the investigation. He said that rather than destroying it, he had, in fact, passed it on to an undetermined number of violent criminals in an attempt to instigate violent action against Dobyns.

Slatella identified Art Dominguez as the primary source of the hit list. Dominguez, who is reputed to have contacts with armed drug traffickers and members of the Aryan Brotherhood, had been arrested and jailed after selling guns and drugs to Dobyns during an undercover operation. Slatella concluded that Dominguez likely passed information about Dobyns to an undetermined number of violent criminals with the intent to have that information used for violent retaliation against Dobyns. In his report Slatella stated, "Although it is believed that the [Aryan Brotherhood] membership as a whole has not accepted or sanctioned any such 'hit' or 'contract' against Special Agent Dobyns, individual associates and members of the [Brotherhood] directly associated with and linked to Dominguez are believed to have the information, resources and wherewithal to complete an ambush assault against Agent Dobyns if afforded the opportunity through their own efforts or through happenstance."

Slatella's report was immediately sent to the Chief of OPSEC, the Special Agent in Charge of the Operations Security Program, the Field Management Staff of the Operations Support Branch, the Special Agent in Charge of the Undercover Branch, and the SAC and ASAC of the Phoenix Field Division. ATF was already in the process of arranging an emergency relocation of Dobyns and his family, and no further action was taken based on Slatella's report.

Our investigation found that ATF did not handle the Mallaburn threat appropriately or in a timely manner. ATF learned of the alleged threat on November 3, immediately made a decision to interview Mallaburn, and

assigned this task to the Phoenix Field Division. However, despite repeated prodding from the Washington Field Division, Phoenix failed to conduct the interview. Consequently, ATF did not interview Mallaburn until nearly a month after it became aware of the possible threat. Although ATF thereafter conducted a risk assessment and determined to move Dobyns based on the threat, this decision was unnecessarily delayed by the Phoenix Field Division's failure to act more promptly and take the threat seriously enough.

November 2006 – Doug Wistrom/Kevin Augustiniak

On November 15, 2006, Special Agent Daniel Hebert, of ATF's New Orleans Field Division, sent an e-mail message to Dobyns relating a conversation he had recently had with a Hell's Angels member who was incarcerated in Arizona. According to Hebert, the inmate had spoken with Hell's Angels member Doug Wistrom, who had told him, "We're going to start our campaign against Dobyns, we know where he is . . . ." Hebert said that the inmate had indicated that the campaign he was referring to "was more of a legal nature, such as law suits and all." He described the inmate as "often full of crap" but also acknowledged that he had contact with known members of the Hell's Angels, including Kevin Augustiniak, and that he recently provided several things that were "right on the money."

Upon receipt of Hebert's e-mail, Dobyns contacted several ATF officials and informed them about the information Hebert had provided. Dobyns told them that the Hell's Angels member the inmate spoke to had been convicted of firearms crimes as a result of Operation Black Biscuit and that Augustiniak was facing first degree murder charges as a result of Dobyns's investigative efforts.

ATF immediately began to investigate the matter. On November 16, 2006, Senior Operations Security Specialist Patrick Sullivan sent Hebert an e-mail message requesting copies of the e-mails between Hebert and Dobyns, as well as a synopsis of Hebert's interview of the source. Hebert responded that same day, telling Sullivan:

> [The source] is the son of [a Hell's Angels member], a historical figure in the Hells Angels. He is a known con man and has no problems using anyone, including Law Enforcement for personal gain. That being said, he has provided me with correspondence between himself and several inmates which will be available upon request. Some of the information he has provided has been bogus, but a greater amount of information has been independently confirmed. As a clarification let me note that he was going to be a witness in a case against several bikers who burned down a historical courthouse in Plaquemine Parish, Louisiana. [The source] claimed to be around the target's motorcycle shop since he

> was a kid when he and his father and the [Hell's Angels] passed through. As it turns out all of the information was accurate however, not because he was there, but because he was a cellmate of the guy who shared the information with him. The information is without question accurate, but we can't use him as a witness because he lied about how he obtained it, by claiming information obtained from conversations was in fact personal observations.

Hebert also wrote that the source had provided him with a letter written by Augustiniak in which Augustiniak made lewd comments about Dobyns and his wife.

On November 20, OPSEC requested that the New Orleans Field Division interview Hebert's source so that a risk assessment could be completed.

According to a timeline prepared by OPSEC, as of November 27, 2006, the New Orleans Field Division had not responded to its request for an interview of the source. Accordingly, on November 28, OPSEC sent an e-mail to the New Orleans Field Division, noting that a risk assessment could not be completed until the credibility of the source was determined.

Because New Orleans had not responded to OPSEC's request, on December 1, 2006, OPSEC contacted the Phoenix Field Division directly and requested that it assign an agent to interview the source. Two weeks later, on December 14, 2006, Phoenix Special Agents Ging and Shuster conducted the interview of the source.

Ging reported that the source stated that the "[Hell's Angels] had no ongoing 'campaign' to kill [Special Agent] Dobyns nor discover his whereabouts." However, Ging also reported that the source had recounted an alleged attempt by a member of the Hell's Angels to contract with a member of the Aryan Brotherhood to kill Dobyns. Ging reported that he "did not believe this information to be very plausible" because the Aryan Brotherhood member had been incarcerated for a year and the intelligence officer at the jail in which he was being held was unaware of any contact between him and the Hell's Angels member. Ging's report was forwarded to OPSEC.

According to ATF records, the Hell's Angels member who had allegedly contracted to kill Dobyns had served time in prison for manslaughter and narcotics conspiracy violations, had documented close ties with members of the Aryan Brotherhood prison gang across the state of Arizona, and was considered to have a strong influence on the most violent factions of the Hell's Angels and the Aryan Brotherhood. During Operation Black Biscuit, the individual was the ringleader behind a plot to locate the undercover residence of undercover officers and agents, including Dobyns, and attack them.

Ging told the OIG that he forwarded his report of investigation regarding the interview to his group supervisor. Ging said that although he expected to be instructed to further investigate the source's allegations, he was not asked to take any additional investigative steps regarding the matter. Ging told the OIG that he assumed his supervisor had asked another agent to conduct additional interviews. However, we determined that no further interviews were conducted.

Ging's report was provided to OPSEC on or about December 15, 2006. On December 28, 2006, OPSEC issued a written risk assessment regarding the information provided by the source. In its assessment, OPSEC stated, "[i]t has been determined that the information provided by [the source] can not be corroborated and no specific or direct threat toward [Special Agent] Dobyns was identified." OPSEC noted that before reaching this conclusion, it had considered "all e-mails, letter correspondence, documented details of an interview with the source conducted by special agents of the Phoenix Field Division, and background information provided by multiple individuals with knowledge of the source's history." OPSEC further stated that the "protective countermeasures" currently in place for Dobyns should remain but that it had "no additional recommendations at this time." However, OPSEC reached this conclusion without ATF interviewing the individuals involved in the alleged attempt to put a contract hit on Dobyns.

The OIG asked Ging about OPSEC's conclusions, that "It has been determined that the information provided by [the source] can not be corroborated and no specific or direct threat toward [Special Agent] Dobyns was identified." Ging said that he had not previously seen OPSEC's report and expressed surprise regarding the conclusions. Ging said that, in his view, ATF could not have reached this conclusion based solely on his interview of the source.

As a result of Ging's statements, the OIG asked OPSEC to explain its conclusions that the information provided by the source could not be corroborated and that no specific or direct threat toward Dobyns was identified. In response OPSEC stated:

> In this instance, we received notification from the New Orleans FD that an individual who was incarcerated had provided information that the Hells Angels wanted to start a legal campaign against [Special Agent] Dobyns. This office immediately initiated a multiple source inquiry beginning with the Special Agent who was the contact for this source [Hebert]. We examined copies of the original information and found that no specific threat was mentioned. In addition, during the discussions with the Special Agent who received the information, it was revealed that the individual was not credible and had a long history of supplying

bogus information to not only ATF but other Federal Law Enforcement Agencies.

Further discussions with the Assistant Special Agent in Charge of the New Orleans FD confirmed that he had direct knowledge that the source was not credible. At this point in an initial assessment of any possible threat information, with multiple individuals stating that the information source was not credible and that no specific threat was conveyed, the normal course of action would be to monitor the situation. If additional information was received, all involved would initiate a reassessment.

Despite the lack of any specific threat indicators in this case, a proactive consensus was reached to interview the information source to determine if any hidden threat toward [Special Agent] Dobyns truly exists. The OPSEC office contacted the Special Agent in Charge of the Phoenix Field Division and requested that an interview of the source be conducted and results forwarded to our office for evaluation. The OPSEC office shared all of the background information we had on the situation with the Phoenix FD, which included discussions with the Group Supervisor. It should be noted that the Group Supervisor had knowledge confirming that the source was not credible.

The Lead Special Agent [Ging] who conducted the interview of the source issued a memorandum confirming that the source stated that no "hits" or retribution were in the making by the Hells Angels against [Special Agent] Dobyns. The source also provided unsolicited information during the interview that the agent did not believe was plausible. Additional follow-up was done with the FBI Special Agent and CCI Intelligence Officer who had direct knowledge of the source and his associate.

The Office of Operations Security conducted an assessment of all the information provided including e-mail, letter correspondence, documented details of the interview and background information provided by multiple individuals and concluded that the information provided by the source could not be corroborated and no specific threat toward [Special Agent] Dobyns was identified at that time.

However, we believe that ATF reached this conclusion before gathering relevant information. Although Hebert, the agent who was the original source of the allegation, had expressed some doubt about the source's credibility, he also told OPSEC that "[s]ome of the information [the source] has provided . . . has been independently confirmed." In addition, in an e-mail to Dobyns, which

OPSEC also had in its possession, Hebert had written "[the source] recently told me several things that were right on the money." Further, when the source was interviewed, he reported that two individuals with ties to the Hell's Angels and the Aryan Brotherhood were plotting to kill Dobyns.

We concluded that ATF's response was inadequate, incomplete, and needlessly delayed. Although OPSEC immediately requested that the source be interviewed, neither the New Orleans nor Phoenix Field Divisions responded promptly to OPSEC's requests. In addition, we question whether it was appropriate for ATF to conclude that that the information the source had provided was not credible and that Dobyns faced no threat without first interviewing the individuals who, according to the source, had tried to arrange a contract hit on Dobyns. In our view, ATF should have conducted these interviews before reaching this conclusion.

Summary

We found that ATF has written policies and procedures that govern the treatment of threats made against its agents and that these policies are generally adequate. However, due to a series of miscommunications among the ATF managers responsible for implementing the transfer of Dobyns and his family following the receipt of the first of four specific threats, ATF handled his relocation as a standard change of duty station rather than an emergency relocation. As a result, Dobyns and his family were not provided the support and resources to protect their identities and location that they should have been and that normally accompany an emergency relocation. However, in November 2005, ATF relocated Dobyns and his family again, this time with full backstopping. We are recommending that ATF amend its written procedures to minimize the chance that similar problems occur in the future.

With regard to the Duchette incident, the OIG believes ATF should have interviewed Duchette about his alleged statements. Although at the time ATF learned of the threat, it was already planning to relocate Dobyns based on the McKay threat, interviewing Duchette could have provided ATF with information pertinent to implementation of the planned move.

With regard to the Mallaburn threat, ATF failed to conduct the interview of Mallaburn in a timely manner. This, in turn, needlessly delayed ATF's ultimate decision to relocate Dobyns in response to this threat.

Finally, ATF's interview of the source in the Augustiniak matter was not timely. In addition, we believe that ATF reached conclusions regarding this threat without adequate investigation, and it should have at least interviewed the individuals allegedly involved in the contract hit on Dobyns before concluding that he faced no viable threat.