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Analysis of Disclosures, Agency Investigation and Report, Whistleblower Comments, and Comments of the Special Counsel

Summary—OSC File No. DI-07-0367

Special Agent (SA) Jay Dobyns, the whistleblower in this case, alleged that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) did not have sufficient policies and procedures for the review and response to threats of violence made against its agents and their families. SA Dobyns also alleged that ATF failed to investigate threats made against him. The investigation, conducted by the Department of Justice (DOJ), Office of the Inspector General (OIG), partially substantiated SA Dobyns' allegations. OIG concluded that ATF's policies and procedures on threats of violence to its personnel were generally adequate, but that because of a misunderstanding among management officials in this case, SA Dobyns was relocated in September 2004, under the procedures for a standard Permanent Change of Station (PCS), rather than under emergency relocation procedures as had been recommended. Further, the OIG substantiated SA Dobyns' allegations regarding the inadequate response to threats against him finding that ATF failed to adequately investigate and "needlessly and inappropriately" delayed its response to additional threats made against him.

The Whistleblower's Disclosures

SA Dobyns disclosed that ATF management did not protect its agents and their families from verified and credible threats of violence. SA Dobyns, an ATF agent for approximately 22 years, alleged that management repeatedly failed to respond to credible threats to his life and to the well-being of his family from known criminals. SA Dobyns alleged that management's failure to promptly evaluate threats to agents, inform agents of the threats, and take appropriate action to ensure the safety of the agents and family members was the result of ATF's lack of procedures and protocols delineating the appropriate actions and responses. Mr. Dobyns alleged that ATF management's inaction constituted gross mismanagement resulting in a continued substantial and specific danger to public safety.

SA Dobyns contended that due to ATF's inaction and mismanagement of multiple, credible threats against him and his family, he was forced to take extraordinary measures for their protection. The threats stemmed from his undercover work on projects such as Operation Black Biscuit, for which SA Dobyns spent 21 months undercover infiltrating the Hells Angels biker gang,[1] Project Safe Neighborhood (an anti-gang and anti-violence project) and the Violent Crime Interdiction Team (VCIT) initiative. After the conclusion of Operation Black Biscuit,

[1]As a result of his work and the work of other agents on this case, thousands of pieces of evidence were seized and over 55 Hell's Angels members were arrested or subsequently surrendered to authorities. In recognition of his work and sacrifice on Operation Black Biscuit, SA Dobyns was awarded the "Top Cop" award by the National Association of Police Officers in 2004.

ATF's general threat assessments in July 2003 and January 2004 determined the threat level to be Critical. Because of the generalized nature of the threats, SA Dobyns stayed in Arizona, believing that the threats were speculative.

On August 31, 2004, SA Dobyns' view of the threats against him and his family changed. While working undercover on VCIT, SA Dobyns and a partner were at a local establishment known for illegal activity when he had a verbal confrontation with Robert McKay, a known member of the Hell's Angels. Mr. McKay told SA Dobyns that the Hell's Angels were following him, knew where he lived, where he worked, and that he had a wife and children. Mr. McKay finished by saying that SA Dobyns "would run from the Hell's Angels for the rest of his life" and that "he was going to get hurt."

He immediately reported this specific threat to ATF management and was told that he would have to leave the area. Notwithstanding the urgency of the circumstances, SA Dobyns reported that ATF did not move him until late December 2004, approximately 120 days later. In the interim, on September 20, 2004, SA Dobyns learned that Chris Duchette, a violent individual whose home invasion crew SA Dobyns infiltrated, had also threatened his life. An informant told investigators that Mr. Duchette personally wanted to kill SA Dobyns. Mr. Dobyns alleged that ATF never thoroughly investigated the threat or interviewed Mr. Duchette. Instead, ATF attempted to minimize the threats by telling SA Dobyns that Mr. Duchette was in jail even though ATF's report on Duchette stated that it was unknown if he was receiving any outside assistance. SA Dobyns was told that the agency was already going to relocate him and to maintain a heightened sense of awareness.

In December 2004, ATF finally moved SA Dobyns and his family to the Los Angeles area, because of the McKay threat. SA Dobyns alleged the Duchette threat was never thoroughly investigated. He also alleged that ATF relocated him to Los Angeles under standard PCS procedures for monetary reasons without providing any protection from future harm in the form of backstopping.[2] Thus, his contact information and home address were easily obtainable on the Internet. In order to protect his family, SA Dobyns moved several times at his own expense in the hopes of making any search for him and his family more difficult. After three moves, however, SA Dobyns purchased a home that required the use of his own name.

On November 3, 2005, Federal Bureau of Investigation (FBI) agents interviewed a member of the Mara Salvatrucha (MS-13) gang in prison in Virginia. The gang member informed the agents that the Hell's Angels and Aryan Brotherhood had offered him money several times to kill SA Dobyns and were actively "shopping" a contract to murder SA Dobyns and torture his daughter. According to information provided by SA Dobyns, the inmate described SA Dobyns' physical appearance, the spelling of his name, and details about his family even though SA Dobyns had never worked on any project involving MS-13. The inmate also informed the FBI of a "hit list" in the Arizona prison system and that SA Dobyns was on that list.

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[2]Backstopping is a term used to indicate methods and procedures used to protect an agent by breaking the continuity of information available about the agent, thereby making it difficult to locate the agent.

The risk assessment of ATF's Office of Operational Security (OPSEC) found the threat to be Critical, definite and made by parties (Hell's Angels, Aryan Brotherhood, and MS-13) with the capability, intent, and history to act upon it.

The same day the threat determination was made, November 3, 2005, ATF's Chief of Operational Security, Madison Townley, notified SA Dobyns and ATF management of the threat. Chief Townley also informed SA Dobyns that his contact information was easily locatable due to the lack of backstopping his relocation to California. SA Dobyns stated that Chief Townley expressed his concern about ATF's lack of caution.

After his November 3, 2005, conversation with Chief Townley, SA Dobyns explained that he did not hear from anyone in ATF management concerning the agency's plans to protect him and his family until two weeks later. In the interim, when he tried to obtain information about ATF's plans to protect him and his family, he was told to be patient. After waiting two weeks, SA Dobyns decided to move his family on his own. When James Crowell, Special Agent-in-Charge (SAC), finally contacted him on November 17, 2005, to tell him that ATF would place him in a hotel, SA Dobyns was already in the process of moving. He informed SAC Crowell of his decision to move. SAC Crowell told him that he had made a mistake and that ATF would not be responsible for his family's safety. SA Dobyns alleged that ATF's inconsistent approach and the agency's failure to communicate promptly and act was due to a lack of defined threat assessment and response procedures and left him with little recourse other than to take steps to protect his family on his own. Accordingly, he moved his family back to Arizona at his own expense, but continued working in Los Angeles.

In March 2006, after determining that the Los Angeles area was too dangerous for SA Dobyns, ATF detailed him for one year to Washington, D.C., despite the presence of some of the strongest and most violent membership of MS-13, the same gang that had been approached to kill SA Dobyns. In April 2006, SA Dobyns met with Chief Townley, who informed him that Security Staff had conducted a risk assessment and determined that, due to the threats against his life, it would be highly improbable that he would ever be able to return safely to the western United States.

Additionally, on November 16, 2006, OPSEC received an intercepted letter from an inmate in the Arizona prison system that detailed death threats against SA Dobyns' and threatened to rape his wife. The letter's author, Kevin Augustiniak, is a Hell's Angels member, incarcerated and awaiting trial for murder. Much of the evidence gathered against Mr. Augustiniak was obtained through Operation Black Biscuit and SA Dobyns was scheduled to testify as a witness for the prosecution in his murder trial. SA Dobyns alleged that ATF management was aware of these threats, but did not contact him about them or ATF's assessments.

The Report of the U.S. Department of Justice

Former Attorney General Alberto Gonzalez tasked DOJ's OIG with conducting the investigation and writing the report on these allegations. The OIG report concludes that ATF

policies and procedures governing the management of threats made against its agents are generally adequate. However, in this case, the report found that a series of miscommunications by ATF managers resulted in SA Dobyns' receiving a standard relocation in September 2004, in response to a threat against his life, instead of the recommended emergency relocation. As a result, neither SA Dobyns nor his family received the backstopping support and assistance to ensure their identities were protected. The report also concludes that ATF "needlessly and inappropriately" delayed its response to violent threats made against SA Dobyns and his family, and that ATF should have conducted timely and thorough investigations into those threats. The report describes the ATF policies and procedures at issue as well as the agency's response to the threats made against SA Dobyns. A brief summary of the OIG's report follows.

ATF Procedures

The OIG report describes the ATF policies which govern the agency's response to threats to its agents. Under ATF Order 3210.7C, on investigative priorities, and procedures, Special Agents are to report threats to the highest level in their field office, in most cases the SAC. The SAC is required to then immediately contact the Chief of the Special Operations Division (SOD) by a secure telephone and follow up the telephone call with a Significant Activity Report (SAR) sent by facsimile. Additionally, ATF's Joint Support Operations Center forwards the SAR to the Headquarters Division Chiefs whose programs are involved, including the Chief, Intelligence Division. The SOD Chief notifies the appropriate ATF Executive staff members of the threat. When an investigation is no longer considered sensitive, a final report is submitted to the SAC by the Special Agent assigned to the matter, and that report is forwarded to Headquarters.

ATF Order 3250.1A sets forth procedures regarding emergency moves in cases where a threat has been made against an undercover Special Agent. Under Order 3250.1A, threats are to be verified through a field division-initiated threat assessment. The OIG report describes the process stating that when a threat is verified, the SAC prepares a memorandum for the Deputy Assistant Director/Field Operations (DAD/FO), through the Chief of the Intelligence Division, outlining the threat and any action taken. The DAD/FO then determines whether to authorize an emergency move based on the threat. If an emergency move is authorized, the DAD/FO notifies the SOD Chief as well as additional ATF management staff. The agent being moved prepares a memorandum regarding his or her preferences for relocation. The policy did not state that the notification of the emergency move must be in writing.

In June 2005, ATF issued Order 3040.2 which includes additional policy on assessing threats made against its agents. According to the report, under this Order, OPSEC is the primary point of contact for threats against ATF employees. In brief, OPSEC is responsible for coordinating the information relevant to the threat, conducting a risk assessment, and recommending actions to reduce or negate the threat. The Order lays out a chain of command through which the threat is communicated to OPSEC: 1) employees must report threats to their first-line supervisor, 2) the first-line supervisor immediately reports the threat to the SAC or Division Chief, and 3) SACs and Division Chiefs report the threats to OPSEC. The report to OPSEC must be a memorandum and must include the information requirements set out by the

Order; those requirements are listed by the OIG in its report. OPSEC then conducts a risk assessment and prepares its response.

In the Summer of 2003, as the investigative phase of Operation Black Biscuit was concluding, ATF conducted a pre-emptive, routine threat assessment to determine if any ATF personnel were in danger because of their work on the case. OPSEC concluded generally that, in the case of SA Dobyns who was the lead undercover agent in Operation Black Biscuit, there was some potential for retaliation by Hell's Angels or their associates. Due to this risk assessment, OPSEC recommended that SA Dobyns move out of the area for a while and that he be given an assignment away from the West Coast which would allow him to maintain low visibility. Because the threat assessment was general in nature, and there was no evidence of any specific threats against him, SA Dobyns successfully argued with ATF that he should be allowed to remain in Tucson.

OIG reports that the first in a series of threats made against SA Dobyns was made by Mr. McKay on August 31, 2004. Mr. McKay, a Hell's Angels member, saw SA Dobyns at a Tucson bar while he was working on another case. Mr. McKay confronted SA Dobyns and told him that he was a "marked" man and that he would spend his life running from the Hell's Angels. SA Dobyns immediately reported the threat and Mr. McKay was arrested the next day on charges of threatening a federal agent. The McKay threat was also reported through the proper channels pursuant to ATF policy. SOD Chief Carlos Sanchez was informed of the threat and requested a risk assessment from OPSEC. OPSEC determined that the threat level was Critical and recommended that the Dobyns family receive an emergency move with full backstopping to protect their identities and new address.

SOD Chief Sanchez agreed with OPSEC's recommendation for an emergency relocation and recommended to the DAD/FO Dewey Webb, that after an assignment to ATF headquarters, SA Dobyns be transferred to an area outside the Western United States. DAD/FO Webb was responsible for authorizing an emergency move. The report notes that then-SAC of ATF's Undercover Branch, Kim Balog, stated that she and her supervisor, Deputy Chief John Cooper, participated in the discussions regarding the McKay threat and recommended an emergency relocation. She also reported that there were several meetings with SOD Chief Sanchez, Deputy Chief Cooper and DAD/FO Webb where they discussed the resources necessary to safely relocate the Dobyns family.

DAD/FO Webb told the OIG that he agreed with OPSEC's recommendation for an emergency move and that he had told Chief Sanchez a number of times that the move should be "covert." DAD/FO Webb confirmed for the OIG that he signed a memorandum authorizing a PCS for SA Dobyns, but explained that this document is required regardless of whether an agent's move is standard or emergency in nature. Under the procedures of Order 3250.1A, DAD/FO Webb was required to notify the SAC of the Undercover Branch, Kim Balog, and the SOD Chief of the emergency move. The investigation verified that he informed SOD Chief Sanchez of his decision, and although he could not specifically recall informing SAC Balog that

he authorized the emergency move, DAD/FO Webb felt that notification to SOD Chief Sanchez was sufficient because SAC Balog reported to him.

Both SOD Chief Sanchez and SAC Balog reported to the OIG that DAD/FO Webb did not inform them that he had authorized an emergency move. In fact, SOD Chief Sanchez informed OIG investigators that he interpreted the PCS memorandum as confirmation that an emergency relocation had been denied. DAD/FO Webb did not recall if he notified the Assistant Director or the Financial Manager/Deputy Chief Financial Officer that he had authorized an emergency move as required under ATF Order 3250.1A. He did, however, recall contacting the Financial Management Division about Dobyns' transfer and discussing the availability of approximately $200,000-$300,000 to SOD Chief Sanchez for backstopping. DAD/FO Webb assumed that the move was proceeding on an emergency basis and that Chief Sanchez would come to him if any difficulties arose. SOD Chief Sanchez, in turn, believed that DAD/FO Webb had disagreed with his recommendation and authorized only a standard move. Thus, he proceeded accordingly, advising SAC Balog and Deputy Chief John Cooper that SA Dobyns' move was to be handled as a standard transfer. The Dobyns family was relocated in September 2004.

The OIG also reviewed the management of SA Dobyns' move with Assistant Director of Field Operations (AD/FO) Michael Bouchard. AD/FO Bouchard reported that he had approved a transfer for SA Dobyns and that it was his understanding he would receive an emergency relocation. It was not until November 2005, during a meeting with SA Dobyns regarding threats made by Mr. Mallaburn that AD/FO Bouchard became aware that SA Dobyns had received a standard move. According to the report, AD/FO Bouchard ordered that SA Dobyns be transferred with full backstopping to Washington, D.C. for one year and, thereafter, that he be relocated to Los Angeles. Under the backstopping procedures, SA Dobyns received instruction on how to manage a wide range of personal information, including the purchase or sale of a home or car, how to register a vehicle, or register children for school. He also received from OPSEC a new Social Security card and credit card. In addition, his personal information on databases such as AutoTrack and Lexis/Nexis was to be monitored. AD/FO Bouchard informed OIG investigators that once OPSEC determined that SA Dobyns had been sufficiently backstopped in Los Angeles, he authorized a transfer back to the West Coast.

OIG concluded that the miscommunication among DAD/FO Webb, Chief Sanchez and AD/FO Bouchard caused the SA Dobyns' move to be mishandled. The report finds that these three ATF officials failed to follow-up with each other to ensure the relocation was properly carried out. Instead, they assumed their subordinates would effect the emergency relocation. In order to clarify the procedure and prevent future errors due to miscommunication, the OIG recommended that ATF revise its policy to require that notifications of an emergency relocation be made in writing by the DAD/FO and the AD/FO. The OIG also recommended that ATF ensure that officials handling emergency relocations understand that a PCS memorandum is required for all moves regardless of whether or not the agent is moved on an emergency basis.

ATF concurred with the recommendation to amend its policies to require that notifications of emergency relocations be in writing. ATF Order 3040.2 has been revised to require that any

actions taken by affected employees' directorates must be in writing. This revision was necessary to ensure that management decisions are fully understood and implemented. In addition, in January 2009, OPSEC began the process of updating all Special Agent/Industry Operations Investigator Basic, Supervisory, and Enhanced Undercover Operations training courses to ensure that all personnel affected by the revised policy are fully briefed and aware of the new requirements.

Response by ATF to the Threats

In September 2004, a convicted felon and source for SA Dobyns, reported to the Agent-in-Charge of the Tucson Field Office, Sigberto Celaya, that Chris Duchette, a recent cellmate of his, had described in detail how he wanted to shoot SA Dobyns. While working undercover, SA Dobyns had purchased firearms from Mr. Duchette and was scheduled to testify at his trial. The source believed the Duchette threat to be credible and expressed concern for SA Dobyns' safety. Agent Celaya verified that the source had recently shared a cell with Mr. Duchette and drafted an SAR documenting the threat and the confirmation of their contact in prison. He then briefed his supervisor, who forwarded the SAR to ATF's Intelligence Division, OPSEC and SOD Chief Sanchez. ATF did not investigate the threat further, nor interview Mr. Duchette. It was not until April 2005 that SA Dobyns discovered that Mr. Duchette had not been interviewed. He contacted OPSEC officials to express his frustration at the lack of investigation into the threat. In response to OPSEC's subsequent inquiry, Agent Celaya stated that he had not found the threat credible. During the OIG's investigation, however, Agent Celaya acknowledged that ATF should have interviewed Mr. Duchette and investigated the threat to determine whether he posed a threat to SA Dobyns. The OIG concluded that, indeed, ATF should have taken the threat more seriously but notes that at the time, ATF was already in the process of moving SA Dobyns in response to the McKay threat.

The OIG also found that ATF did not respond to the threat made by Dax Mallaburn in an appropriate or timely manner. On November 3, 2005, ATF's Washington Field Division was informed by Assistant Special Agent-in-Charge A.J. Turner, Federal Bureau of Investigation's (FBI) Washington Field Office, that the FBI had received information from a source that SA Dobyns' name was included on a "hit list" being circulated by a member of the Aryan Brotherhood named "Whitey" in the Florence Correctional Center, Florence, Arizona. The source had learned about the hit list during his incarceration in Florence.

ATF identified Mr. Mallaburn as the individual referred to as Whitey. Assistant Special Agent-in-Charge (ASAC), ATF Washington Field Office, Phillip Durham contacted supervisors in the Los Angeles and Phoenix Field Divisions to advise them of the threat. The OIG reported that the source was interviewed on November 4, 2005. Following the interview, ASAC Durham and Group Supervisor Daniel Machonis of the Phoenix Field Division were briefed by Group Supervisor Frank Haera of the Washington Field Office. Mr. Haera reported to the OIG investigators that he felt a sense of urgency about the situation because Mr. Mallaburn's membership in the Aryan Brotherhood and the detailed information received from the source, e.g., a physical description of SA Dobyns and information about his wife and daughter.

ASAC Durham reported that during a conference call with numerous ATF officials on November 7, 2005, it was determined that ATF's Phoenix Field Office would be responsible for interviewing Mr. Mallaburn. He stated that in mid-November, ASAC Richardson of the Phoenix Field Office agreed that Mr. Mallaburn would be interviewed by an ATF agent from Washington, D.C., and an ATF agent from Phoenix. Despite the repeated requests from ASAC Durham and ASAC Richardson's previous agreement to have Mr. Mallaburn interviewed, however, no interview took place. Instead, ASAC Richardson insisted that Mr. Mallaburn was not credible and would provide no useful information. The report points out that ASAC Richardson told OIG investigators that his decision was based on the information he received from ATF agents in the Phoenix Field Division. When OIG investigators interviewed the agents identified by ASAC Richardson, however, they denied any involvement in the matter.

Approximately 4 weeks later, the Washington Field Office assumed responsibility for interviewing Mr. Mallaburn and conducted the interview on November 30, 2005. The report on the Mallaburn interview was sent to OPSEC and the Phoenix Field Division. OPSEC completed its threat assessment the same day, concluding that there were significant factors present which supported relocation outside the Western United States with full backstopping measures. ATF decided two weeks later to transfer SA Dobyns to ATF headquarters for a 1-year temporary assignment to be followed by an emergency relocation to Los Angeles.

SA Dobyns explained to OIG investigators that he urged additional investigation into the Mallaburn threat in order to thoroughly review the allegations regarding the hit list and, if necessary, prosecute those associated with it. The report notes that because of SA Dobyns's continuing concerns he contacted ATF Special Agent Joseph Slatella, who had worked on Operation Black Biscuit, and requested additional investigation into the matter. Agent Slatella completed a report and provided it to OPSEC. However, because ATF was already in the process of arranging an emergency relocation, no additional protective measures were taken.

The OIG concluded that ATF did not handle the Mallaburn threat appropriately or in a timely manner. The OIG notes specifically the refusal of the Phoenix Field Office to conduct the interview and states that the failure of that office to act promptly and take the threat seriously unnecessarily delayed the completion of the risk assessment and the determination to move the Dobyns family.

In November 2006, ATF's New Orleans Field Division notified SA Dobyns of another threat made against him reportedly by Hell's Angel gang member Doug Wistrom. The source, had recently been incarcerated with Mr. Wistrom, and notified an agent of the New Orleans Field Office of his comments. SA Dobyns, in turn, contacted ATF officials informing them that Mr. Wistrom had been convicted of a firearms crime as a result of Operation Black Biscuit and that he was an associate of another Hells' Angel gang member, Kevin Augustiniak, who was facing first-degree murder charges as a result of SA Dobyns' undercover work.

Senior Operations Security Specialist Patrick Sullivan obtained a copy of the interview of the source as well as a letter in which Mr. Augustiniak members made "lewd" comments about SA Dobyns and his wife. Based on the information, OPSEC requested on November 20, 2006, that the New Orleans Field Division interview the source in order to complete a risk assessment.

OIG's report states when New Orleans did not respond to the request by November 28, 2006, OPSEC sent a second e-mail request for an interview to the New Orleans Field Division specifically noting that a risk assessment could not be completed without the information regarding the source's credibility. When New Orleans again failed to respond, OPSEC contacted the Phoenix Field Division on December 1, 2006, directly requesting that office to interview the source. Two weeks later, the interview was conducted by two Special Agents from Phoenix. The report of the interview, written by SA Adam Ging of the Phoenix Field Office, noted that, according to the source, there was no ongoing campaign to find and kill SA Dobyns. It described an alleged attempt by a Hell's Angels member to hire a member of the Aryan Brotherhood to kill SA Dobyns. SA Ging did not find the information plausible because the Aryan Brotherhood member had been incarcerated for a year and there was no information that he had been contacted by the Hell's Angels.

ATF records showed that the Hell's Angel member who was allegedly trying to contract for SA Dobyns' murder, had served time for manslaughter, among other things, had documented ties with the Aryan Brotherhood across Arizona, and was considered to have a strong influence on the most violent factions of both gangs. In addition, during Operation Black Biscuit he was identified as the individual spearheading the Hell's Angels effort to locate the residences of undercover officers and attack them.

SA Ging informed OIG investigators that he forwarded his report to his supervisor with the expectation that he would be instructed to follow-up on the information provided by the source. To the contrary, the OIG found that no such direction came from the SA Ging's supervisor or any ATF management officials from the Phoenix Field Office, and no additional interviews were conducted. Indeed, OPSEC concluded in its written risk assessment on December 28, 2006, that the information from the source could not be corroborated and that no specific threat against SA Dobyns was identified. Based on this assessment, OPSEC found that the protective countermeasures in place for SA Dobyns were sufficient. The OIG report notes that OPSEC considered documentary evidence, but did not interview the individuals involved in the alleged contract hit on SA Dobyns.

When OIG investigators questioned SA Ging about this conclusion, he expressed surprise and stated that he did not believe ATF could base its conclusion on his interview with the source. OIG asked OPSEC to explain the basis for its conclusions. The report sets forth OPSEC's response which states, in part, that the additional information provided by the source was not plausible.

The OIG reports that ATF reached this conclusion without gathering necessary relevant information. While the initial report from the New Orleans Field Office noted that, on occasion,

the source had provided unreliable information, recent information he provided was described as accurate and "right on the money." The New Orleans and Phoenix Field Offices failed to respond promptly to OPSEC's request for an interview. Thus, in very strong language OIG concluded that ATF's response to this potential threat was "inadequate, incomplete, and needlessly delayed." Given ATF's failure to interview the individuals allegedly involved in the murder-for-hire scheme, the OIG also calls into question OPSEC's conclusions that the information provided by the source was not credible and there was no threat to SA Dobyns.

In summary, the DOJ OIG found that ATF has adequate written policies and procedures in place which govern the agency's assessment and response to threats against its agents. In this case, a series of miscommunications resulted in ATF handling the relocation of the Dobyns family as a standard relocation rather than an emergency relocation as warranted. The latter would have included backstopping provisions for the protection of their identities. The DOJ OIG recommended that ATF amend it written procedures regarding emergency relocations to require that the notifications of emergency relocations by the DAD/FO and the AD/FO be made in writing to prevent similar missteps in the future. The ATF concurred with the recommendation and has amended its policies and updated all training materials to ensure that all personnel are aware of the new policy.

The OIG also concluded that ATF should have interviewed Mr. Duchette about his alleged threats. The report notes that ATF was already planning to relocate SA Dobyns based on the McKay threat, but states that interviewing Mr. Duchette could have yielded information relevant to the implementation of the move. Finally, the report concluded that ATF mismanaged the threats posed by Mallaburn, and Wistrom and Augustiniak. The failure to promptly interview Mallaburn delayed the agency's determination that Dobyns should be relocated due to the threat. With respect to Wistrom and Augustiniak, the OIG found that ATF reached the conclusion that they posed no viable threat to SA Dobyns without adequately investigation and without interviewing those allegedly involved in the contract hit on SA Dobyns.

The Whistleblower's Comments

SA Dobyns begins by stating that he is proud to have been an ATF agent for 22 years and that it has been an honor to work alongside the "most courageous law enforcement officers" of the nation, the agents of the ATF. The pride felt for colleagues and his service is offset by the disappointment in ATF leadership. According to SA Dobyns, the OIG report provides independent confirmation of the carelessness of ATF management. SA Dobyns comments that he reported his concerns internally, but they were ignored. He notes that many ATF officials, mid-level managers, senior leadership of three ATF Field Divisions, among others, were involved in the mismanagement of the threats leveled against him.

SA Dobyns contends that ATF's reckless behavior is not unique to his case, but is unfortunately a pattern of conduct which has been tolerated by the agency. He questions how ATF leaders can claim to be the "tip of the sword" in fighting crime when they ignore and dismiss violent crimes against their own agents. ATF agents accept, as part of their job, the very

real possibility that suspects may try to retaliate against them. The work of ATF agents targets some of the nation's worst criminals—those who use guns, bombs, and arson, in the commission of their crimes. The failure of ATF leadership to respond and address threats from those criminals made against its own agents is an embarrassment to the agency and an insult to its agents.

ATF agents will, Mr. Dobyns writes, continue their challenging investigative work. They will do so now, however, with confirmation that there are those in ATF management who will turn their backs on them at the first sign of trouble or controversy.

The Special Counsel's Comments and Conclusion

Based on the representations made in the agency report, I have determined that the agency report contains all of the information required by statute. I have also determined that the report's findings appear to be reasonable.

ATF is one of the nation's most important law enforcement agencies. The agency is dedicated to protecting the public from terrorism, reducing violent crime, enforcing federal criminal laws and regulating the firearms and explosives industries. ATF focuses its efforts on violent crimes involving firearms, explosives, arson, and the illegal trafficking of alcohol and tobacco. To carry out its mission of protecting the public, ATF asks its agents to undertake dangerous assignments in the regular course of their duties. Undercover work, in particular, targets those individuals and groups who are considered to be among the most dangerous to the public. As such, undercover work involves an inherent risk of danger to the agent. The support and protection of its own agents is critical to both the morale of ATF agents and to the success of the agency's public service mission. If ATF does not protect its agents, they, in turn, cannot protect the public.

Thus, notwithstanding my determination that the report's findings appear to be reasonable, I note with concern the absence of any corrective measures proposed to address the failure to conduct timely and thorough investigations into the death threats made against SA Dobyns. ATF does not appear to have held anyone accountable in this regard. Fully addressing the problems and failures identified in this case requires more than amending ATF policies and procedures. It requires that threats against ATF agents be taken seriously and pursued aggressively and that ATF officials at all levels cooperate to ensure the timely and comprehensive investigation of threats leveled against its own agents.