



**U.S. Department of Justice  
Office of the Inspector General  
Evaluation and Inspections Division**

# **Review of the Bureau of Alcohol, Tobacco, Firearms and Explosives' Disciplinary System**

**September 2005**

**I-2005-009**

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## EXECUTIVE DIGEST

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### INTRODUCTION

The Department of Justice's (Department) Office of the Inspector General (OIG) conducted this review to assess the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) disciplinary system. This is the fourth in a series of OIG reviews of the Department components' disciplinary systems.<sup>1</sup> In this review, we examined the consistency and reasonableness of the reporting and investigation of alleged misconduct, adjudication of misconduct cases, and implementation of the discipline imposed by the ATF. We also reviewed the timeliness of the ATF's disciplinary system for processing misconduct cases. We examined the case files for 230 closed ATF employee misconduct cases from fiscal year (FY) 2002 through FY 2004, reviewed discipline-related policies and procedures, interviewed ATF officials, and surveyed 860 ATF employees. Finally, at the request of the ATF, we also evaluated a pilot project intended to improve the adjudication of misconduct cases.

All ATF employees are required to promptly report any allegations or information concerning misconduct to the ATF Investigations Division. After the alleged misconduct is reported, the ATF uses one of two separate processes to investigate and adjudicate the allegation – a centralized process intended to address more serious misconduct and a decentralized process intended only for minor misconduct.<sup>2</sup> In the centralized process, allegations of misconduct are investigated by the ATF Investigations Division or the OIG, which document the results in a formal report of investigation. The report of investigation is reviewed by the ATF's Professional Review Board, which proposes a letter of clearance or discipline consistent with discipline proposed in similar past cases. Since June 2003, the ATF has been operating a pilot project, under the centralized process, in which final decisions on proposed discipline have been made by the "Bureau Deciding

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<sup>1</sup> The three previous OIG reports are *Review of the Federal Bureau of Prisons' Disciplinary System*, I-2004-008, September 2004; *Review of the Drug Enforcement Administration's Disciplinary System*, I-2004-002, January 2004; and *Review of the United States Marshals Service Discipline Process*, I-2001-011, September 2001.

<sup>2</sup> Although the ATF does not define serious or minor misconduct, based on ATF Orders 2130.1, 2750.1C, and 8610.1A, we understand more serious misconduct to include theft of government property, misconduct related to attendance or leave (such as false statements or fraud), and misuse of government-owned vehicles. In contrast, minor misconduct includes tardiness for work, insubordination, and failure to complete work assignments. The ATF refers to more serious misconduct as "integrity issues."

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Official.” Prior to June 2003, the Professional Review Board proposed discipline and local managers made the final decisions. Of the 230 disciplinary case files we reviewed, 154 were investigated and adjudicated under the centralized process (77 by the Bureau Deciding Official and 77 by local management officials).

In contrast to the centralized process for more serious misconduct, minor misconduct is handled through the decentralized process in which local managers are responsible for investigating and adjudicating allegations of misconduct. The ATF’s Employee Labor Relations Team (ELRT) provides support and advice to the local managers in these cases. Of the 230 disciplinary case files we reviewed, 76 were investigated and adjudicated under the decentralized process.

Under both processes, any discipline that involves suspension, reduction in pay, or removal is documented on an Office of Personnel Management Standard Form-50 (SF-50) that is permanently retained in the employee's official personnel folder.

## **RESULTS IN BRIEF**

Our review found deficiencies in the reporting, investigation, adjudication, and implementation of the ATF’s disciplinary system that reduce its ability to ensure that misconduct is consistently, reasonably, and timely addressed.<sup>3</sup> Specifically, we found that misconduct was not always properly reported, and misconduct investigations handled in the decentralized process were not thorough. We also found that errors in the ATF’s disciplinary database reduced the reliability of the database for use in identifying prior discipline imposed in similar cases. In some cases, the ATF could not demonstrate that the discipline imposed had been implemented. Further, the ATF has not established standards to measure the performance of the timeliness of disciplinary actions. Even so, the average time the ATF took to investigate and adjudicate misconduct cases was within the range of the processing times for the other three Department components we have reviewed. Our findings are discussed in greater detail below.

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<sup>3</sup> We defined timeliness as whether policies and procedures in place ensured timely disciplinary results and how often the disciplinary system met formally established time and performance standards. We defined consistency as whether the policies and procedures in place were followed; whether the disciplinary system processed similar misconduct cases using uniform standards; and whether the disciplinary system imposed uniform penalties for similar misconduct across the ATF and within the same location. We defined reasonableness as how thorough the investigations and adjudications appeared; how objective and independent the process for investigating and adjudicating misconduct cases appeared; and how logical or appropriate the penalties for the misconduct appeared.

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## **Reporting and Investigation of Misconduct Allegations**

We found that ATF employees did not consistently report allegations of misconduct to the ATF Investigations Division, as required by ATF Order 2130.1. We also found that the ATF did not consistently report allegations of misconduct to the OIG, as required. In response to our employee survey, 75 out of 345 respondents stated that they had observed misconduct that they did not report to the Investigations Division or the OIG. We also found that in 59 of 230 disciplinary case files we reviewed, the allegations of misconduct were not reported to the ATF Investigations Division. Instead, these allegations of misconduct were reported to local managers or ELRT staff.

In addition, of the 230 case files we reviewed, 47 misconduct allegations were not reported to the OIG for review as required. Six of the cases that were not reported to the OIG involved allegations of serious misconduct, but these cases were investigated and adjudicated through the decentralized process without the benefit of a review by the ATF Investigations Division or the OIG.

We also found that the ATF did not thoroughly investigate each allegation of misconduct. Our review of the case files for the 76 cases handled under the decentralized process found no evidence of any investigation having been conducted in 16 of the files. Documentation in the remaining 60 files appeared inadequate to ensure a reasonable investigative result. An ELRT specialist we interviewed stated that there are no standards or guidance for the decentralized investigative process. In contrast, all of the 154 misconduct allegations investigated under the centralized process resulted in formal reports of investigation. We reviewed 17 of these reports and concluded that these investigations were thorough and complete.

### **Adjudication of Misconduct Cases**

We found that the ATF did not reasonably and consistently adjudicate misconduct cases. Under the decentralized process, a local manager can propose and decide the penalty for the same case.<sup>4</sup> This occurred in 13 of the 76 decentralized cases we examined. We believe that allowing the same local manager to propose the discipline and decide the penalty for a case removes the checks and balances necessary to ensure reasonable results.

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<sup>4</sup> This can only occur for cases resulting in discipline of a 14-day suspension or less.

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The ATF has not established a time limit on the consideration of prior misconduct in adjudicating discipline cases. This results in inconsistent consideration of prior misconduct to adjudicate the penalty for new misconduct. For example, in one case, the proposing official considered misconduct that resulted in discipline 6 years prior to the current misconduct. In another case, the proposing official did not consider prior misconduct that resulted in discipline less than 2 years before the new misconduct. In contrast, each of the other three Department components whose disciplinary systems we reviewed have established time periods to ensure that the consideration of prior misconduct is consistent.

We also identified errors in the ATF's disciplinary database that reduced the ATF's ability to identify accurately discipline imposed in similar prior cases. The ELRT and the Professional Review Board rely on the database to identify discipline imposed in similar prior cases to ensure consistency. However, we found that in 52 of 230 disciplinary case files we reviewed, the charge or discipline recorded in the case file (specifically in the proposal and the decision letters) did not match the charge or discipline recorded in the ATF's disciplinary database. As a result, the data on prior misconduct cases used as part of the ATF's process for determining proposed discipline was not always complete or accurate. Consequently, the ATF could not ensure the consistency or reasonableness of discipline proposed for similar misconduct.

We also found that the ATF incorrectly categorized misconduct in some cases, which resulted in inconsistent disciplinary actions. In 31 of the 230 disciplinary case files we reviewed, an offense for which a specific charge was available (such as misuse of a government vehicle or granting prohibited persons access to firearms) was instead labeled as the non-specific offense "poor judgment." In addition, the ATF has no guidance to establish the specific types of misconduct that may be included in the broad charge of poor judgment. Because less stringent penalties were imposed for the general offense category of "poor judgment," we found that in some cases individuals who committed similar misconduct received inconsistent discipline.

The deciding official has the authority to mitigate (reduce) the proposed discipline based on the applicable Douglas Factors or information in the response to the proposed discipline provided by the employee.<sup>5</sup> We

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<sup>5</sup> The 12 Douglas Factors can be used to mitigate a proposed penalty and include information such as the employee's past disciplinary record and the nature and seriousness of the offense. For example, a long-term employee with no prior disciplinary history and an excellent performance record may receive a mitigated penalty, while an

(Cont'd.)

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found that the ATF's deciding officials mitigated proposed discipline in 38 of the 230 disciplinary case files we reviewed. However, in 21 of those 38 mitigations, the deciding official did not adequately detail the reasons for mitigating the proposed discipline in the decision letter, as required. This occurred under both the centralized process (18 cases) and the decentralized process (3 cases). Because the deciding official did not adequately document the reasons to mitigate the proposed discipline, we could not assess whether the reductions were reasonable.

### **Implementation of Discipline Imposed**

The ATF could not demonstrate that the discipline imposed in the decision letter had been carried out in every case. Discipline that includes suspension, reduction in pay, or removal ordered by a local deciding official or by the Bureau Deciding Official is implemented with an SF-50 that is permanently retained in the employee's official personnel folder. However, the ATF could not provide the required SF-50 in 14 cases, involving 12 suspensions and 2 removals. Consequently, the ATF could not demonstrate that the employees had been disciplined or that the employees' pay had been withheld for the 12 suspension cases. Although the ATF did not provide SF-50s for the two cases involving removals, we subsequently verified, with the assistance of an ATF official, that the two employees had been removed from service.

### **Timeliness of the ATF's Disciplinary System**

Overall, the ATF has not established timeliness standards or goals to measure the performance of its disciplinary system. However, we found that the average time the ATF took to process misconduct cases was within the range of the average time for the other three Department components whose disciplinary systems we have reviewed. The ATF averaged 277 days to investigate and adjudicate allegations of misconduct. In comparison, the Federal Bureau of Prisons averaged 198 days and the Drug Enforcement Administration averaged 334 days.

### **Review of the Bureau Deciding Official Pilot Project**

At the request of the ATF, we also reviewed the pilot project it has operated since June 2003 to assess whether using a single Bureau Deciding Official improved the consistency, reasonableness, and timeliness of disciplinary decisions under the centralized process. We concluded that

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employee committing the same offense who has been disciplined previously and has a poor work record would not. See Appendix I for a description of the Douglas Factors.

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discipline imposed by the Bureau Deciding Official was more consistent, reasonable, and timely than the discipline imposed by local managers. While the Bureau Deciding Official ensured consistency with his prior decisions in all similar ATF cases, local managers were required only to ensure consistency with their own prior decisions, not with decisions made by other numerous managers located throughout the ATF. Thus, we found that the Bureau Deciding Official (one individual) is more likely to produce consistent decisions.

Additionally, we found that the Bureau Deciding Official's decisions were more reasonable and timely. The Bureau Deciding Official more thoroughly documented his reasons for mitigating proposed penalties. Prior to the pilot project, local managers reduced the proposed penalty in 15 of 77 cases without adequately documenting the reasons for the mitigation in their decision letters. The Bureau Deciding Official reduced the proposed penalty in only 3 of 77 cases without adequate explanation in the decision letter. The Bureau Deciding Official also adjudicated his cases more quickly, averaging 63 days from proposal to decision, compared to the local managers' average of 111 days.

## **CONCLUSION AND RECOMMENDATIONS**

We concluded that improvements are needed to address the problems we found in the ATF's disciplinary system. The ATF did not ensure that all misconduct was properly reported and thoroughly investigated. The documentation and tracking of misconduct cases was incomplete and inconsistent, which prevented the ATF from ensuring that consistent penalties were proposed. In addition, the decision to mitigate proposed discipline was not always sufficiently justified, and the implementation of penalties for misconduct was not always documented. Because of these deficiencies, we concluded that the ATF system is less effective than it should be for ensuring that discipline is consistent and reasonable.

Although the ATF lacks timeliness goals or standards to measure the discipline system's performance, the average time the ATF took to investigate and adjudicate misconduct cases was within the range of the average processing times of other Department components we have reviewed.

Based on our review of the ATF's pilot project using a Bureau Deciding Official, we believe that the use of the single official would produce more consistent, reasonable, and timely disciplinary results, and that establishment of a permanent Bureau Deciding Official is warranted.

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To help improve the ATF's disciplinary system, we make nine recommendations. We recommend that the ATF:

1. Remind all employees on an annual basis, particularly local managers and ELRT staff, that any allegation or information concerning misconduct must be promptly reported to the ATF Investigations Division or the OIG.
2. Require that all investigations of alleged misconduct be conducted or reviewed by the ATF Investigations Division before the misconduct case can be adjudicated.
3. Properly categorize misconduct to accurately reflect the underlying misconduct, rather than applying generic charges such as "poor judgment."
4. Establish data entry and quality control standards and procedures for all information entered in its automated disciplinary database and for all documentation collected and maintained in the disciplinary case files.
5. Require that each decision letter that reduces the proposed discipline adequately document the reasons for the mitigation.
6. Establish a time period for how far back prior discipline should be considered.
7. Prohibit the same individual from serving as the proposing and deciding official for the same misconduct case.
8. Establish policies and procedures, including management reviews, to ensure that discipline imposed is consistently implemented.
9. Establish time standards and performance measures for the investigation and adjudication phases for the centralized and decentralized disciplinary processes.



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**TABLE OF CONTENTS**

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<b>EXECUTIVE DIGEST .....</b>	<b>i</b>
<b>BACKGROUND .....</b>	<b>1</b>
<b>PURPOSE, SCOPE, AND METHODOLOGY.....</b>	<b>17</b>
<b>RESULTS OF THE REVIEW.....</b>	<b>21</b>
Reporting and Investigation of Misconduct Allegations.....	21
Adjudication of Misconduct Cases .....	28
Implementation of Discipline Imposed .....	34
Timeliness of the ATF’s Disciplinary System .....	35
Review of the Bureau Deciding Official Pilot Project .....	40
<b>CONCLUSION AND RECOMMENDATIONS .....</b>	<b>43</b>
<b>APPENDIX I: Douglas Factors.....</b>	<b>45</b>
<b>APPENDIX II: ATF’s Response to Draft Report.....</b>	<b>47</b>
<b>APPENDIX III: OIG Analysis of ATF’s Response .....</b>	<b>52</b>

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## BACKGROUND

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A federal agency may impose discipline when an employee's misconduct interferes with the agency's ability to carry out its mission. Laws and regulations governing the discipline of federal employees are found in the Civil Service Reform Act of 1978; Title 5, Code of Federal Regulations, Part 752, Adverse Actions; and 5 United States Code, Chapter 75, Section 7501-7504, 7511-7514. These laws and regulations establish the legal framework for federal agencies to address employee misconduct through *disciplinary actions* (penalties ranging from letters of reprimand to suspensions of 14 days and less) and *adverse actions* (suspensions of greater than 14 days, demotions, and removals).<sup>6</sup> In addition to formal disciplinary action, agencies may also impose informal discipline, such as letters of caution.

Agencies have discretion in determining disciplinary penalties; the only requirement is that the penalty be reasonable. To help determine reasonableness, in a 1981 decision the Merit Systems Protection Board established 12 factors, known as the Douglas Factors, for agency officials to consider when determining disciplinary actions.<sup>7</sup> The Douglas Factors include information such as the employee's past disciplinary record and the nature and seriousness of the offense. The Douglas Factors may be used to mitigate (reduce) a proposed penalty. For example, a long-term employee with no prior disciplinary history and an excellent performance record may receive a mitigated penalty, while another employee committing the same offense who has been disciplined previously and has a poor work record would not. See Appendix I for a description of the Douglas Factors.

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<sup>6</sup> In the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), letters of admonishment and reprimand or any suspension of 14 days or less are defined as *disciplinary actions*. Furloughs of 30 days, reductions in pay or grade, suspensions more than 14 days, or removals are defined as *adverse actions*.

<sup>7</sup> The Merit Systems Protection Board is an independent, quasi-judicial agency in the executive branch that was established by Reorganization Plan No. 2 of 1978, which was codified by the Civil Service Reform Act of 1978, Public Law 95-454. The Civil Service Reform Act which became effective January 11, 1979, replaced the Civil Service Commission with three independent agencies: (1) the Office of Personnel Management, which manages the federal work force; (2) the Federal Labor Relations Authority, which oversees federal labor-management relations; and (3) the Merit Systems Protection Board. The Merit Systems Protection Board assumed the employee appeals function of the Civil Service Commission and was given new responsibilities to perform merit systems studies and to review the significant actions of the Office of Personnel Management.

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## **Overview of the ATF**

The ATF's mission is "to conduct criminal investigations, regulate the firearms and explosives industries, and assist other law enforcement agencies" as part of the U.S. government's effort to counter terrorism, reduce violent crime, and protect the public.<sup>8</sup> To support its mission, the ATF employs approximately 5,000 staff, each assigned to one of the ATF's seven directorates. Field Operations is the largest directorate and has primary responsibility for administering the ATF's 23 Field Divisions.<sup>9</sup>

## **Overview of the ATF's Disciplinary System**

The ATF currently uses two separate processes to investigate and adjudicate employee misconduct cases. The first is a centralized process, administered by headquarters officials. This process routes relatively serious misconduct cases through the Investigations Division, the Professional Review Board, and the "Bureau Deciding Official" for investigation and adjudication. The second process is decentralized in which local managers investigate and adjudicate minor misconduct cases, with the assistance of the Employee Labor Relations Team (ELRT) located in headquarters.

Prior to June 2003, the ATF relied on local managers to decide discipline for misconduct cases in the centralized process. Since June 2003, the ATF has been testing a pilot project in which a single Bureau Deciding Official decides discipline for all misconduct cases in the centralized process. The ATF modeled this disciplinary process on the Drug Enforcement Administration's centralized process for handling employee misconduct cases.<sup>10</sup> The use of local deciding officials in the centralized process has been temporarily suspended until ATF management determines whether it will formally implement the Bureau Deciding Official pilot project. Figure 1 provides a general overview of the ATF's disciplinary system.

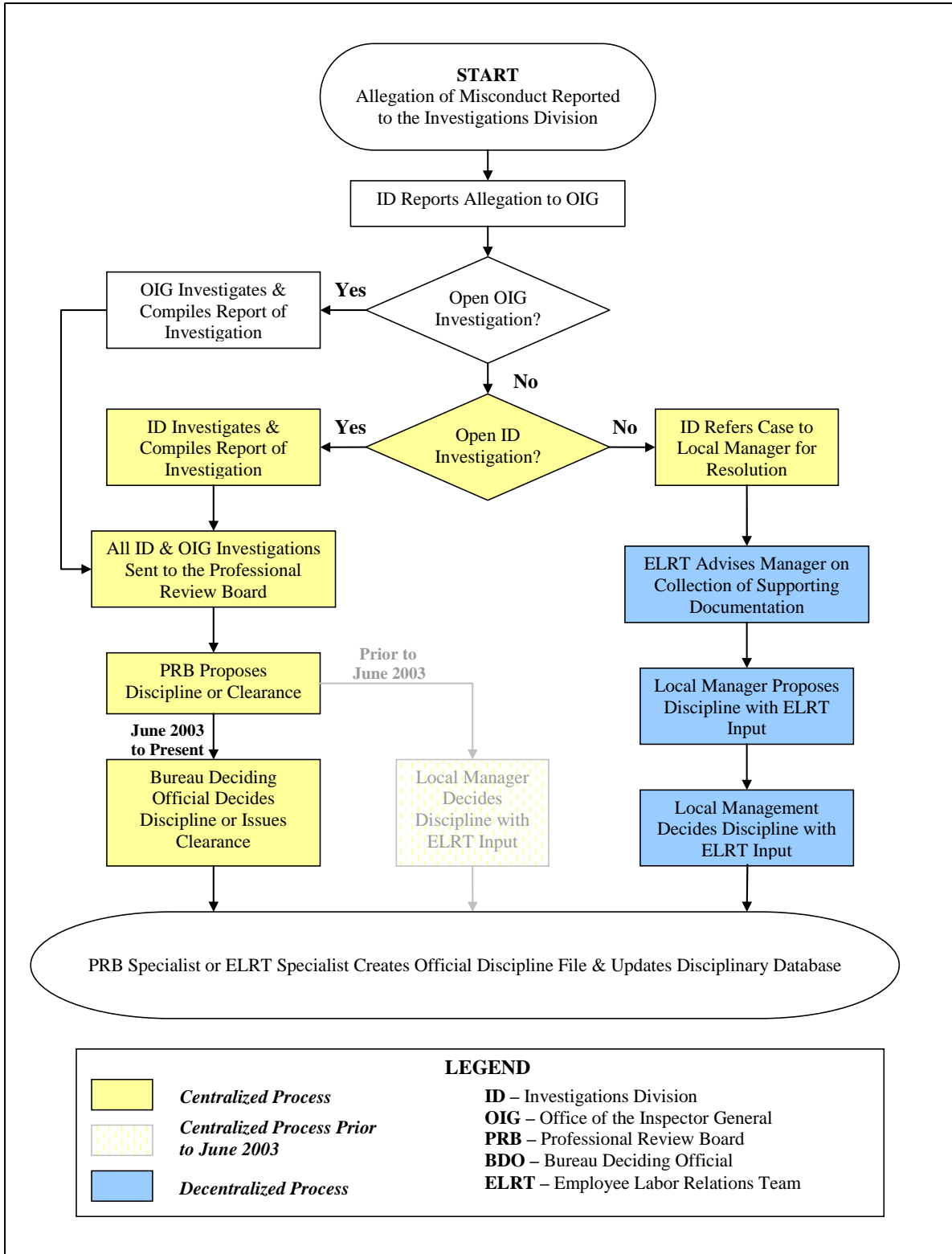
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<sup>8</sup> ATF Strategic Plan, Fiscal Years 2004-2009.

<sup>9</sup> Effective January 24, 2003, the ATF was transferred from the Department of Treasury to the Department of Justice. The ATF was established as a separate component within the Department of Justice pursuant to Title XI of the Homeland Security Act of 2002, Public Law 107-296, on January 17, 2003.

<sup>10</sup> See Internal ATF Memorandum, "Bureau Deciding Official," June 2, 2003.

**Figure 1: Official ATF Disciplinary System**



Source: Based on ATF Orders and interviews with ATF officials

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**The Reporting of Misconduct Allegations.** ATF Order 2130.1 requires that any allegation or information that the ATF's standards or rules of conduct have been violated must be promptly reported by the employee having the information to the ATF Investigations Division. The Order also requires that any questions about whether the information or allegation is a matter for administrative handling or investigation will be resolved by discussion between the appropriate administrative official and the ATF Investigations Division.

In fiscal year (FY) 2004, the ATF Investigations Division received and reviewed 781 misconduct allegations; 86 resulted in ATF Investigations Division investigations. The ATF Investigations Division typically receives misconduct allegations via telephone or e-mail. The allegations are recorded on incident reports (ATF Form 8600.39). These incident reports summarize and document such information as when the allegation was reported, who reported the allegation, the circumstances surrounding the allegation, and the investigator recording the information. Information from the incident reports are entered into the ATF Investigations Division's data management system.

The ATF is required to report allegations of misconduct to the Department of Justice's (Department) Office of the Inspector General (OIG). The ATF Investigations Division is required to report any allegation of serious misconduct to the OIG immediately and subsequently provide the related incident report. The ATF also informs the OIG of misconduct allegations not categorized as serious but, by mutual agreement, does so when an OIG Special Agent visits the ATF Investigations Division's offices, usually on a weekly basis. The OIG Special Agent collects, reviews, and discusses any misconduct allegations or issues relating to recent incident reports. After reviewing an incident report, the OIG determines whether an allegation requires (1) an OIG investigation; (2) an OIG review of the completed ATF investigation; or (3) no further involvement by the OIG.

If the OIG determines it will not investigate the allegation, the ATF Investigations Division's Special Agent in Charge reviews the allegation and determines whether the case will be (1) investigated by the Investigations Division; (2) referred to local management for an investigation that will be monitored by the Investigations Division; or (3) labeled "no action," requiring no further involvement by the Investigations Division.

The misconduct allegations investigated by the OIG or the ATF Investigations Division generally are the more serious allegations. Those offenses include embezzlement; attempted bribery; acceptance of bribes,

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gifts, or gratuities; extortion; fraud against the government or conspiracy to commit the foregoing offense; lying under oath; refusal to cooperate with an administrative or other inquiry when required to do so by law or regulation; falsification of criminal investigative reports; theft of government funds or property; excessive tardiness or other misconduct related to attendance or leave; criminal, dishonest, infamous, or notoriously disgraceful conduct; refusal to furnish testimony; misuse of a government-owned vehicle; abuse of narcotics or other controlled substances; and discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any 1-year period or any other pattern of discourteous conduct.

When the ATF Investigations Division determines allegations are not serious, it refers them to local management for investigation or labels them "no action." According to ATF Order 8610.1A, "certain minor infractions of the rules of conduct may be investigated by the appropriate [local ATF] manager." Minor misconduct allegations include tardiness for work, insubordination, and failure to complete work assignments. The label "no action" allows local managers to handle the allegation in a manner that they believe is appropriate. In these cases, local managers may choose not to pursue the allegation (for example, if the allegation does not provide enough information to warrant investigation) or may contact the ELRT for advice and assistance as they proceed with the investigation and adjudication under the decentralized process.

### **The Centralized Process**

The centralized disciplinary process is administered by officials and staff at ATF Headquarters. The centralized process currently involves three headquarters entities: (1) the ATF Investigations Division, (2) the Professional Review Board, and (3) the Bureau Deciding Official.

**The ATF Investigations Division investigates the misconduct allegation and compiles the investigations report.** The Investigations Division is located within the Office of Professional Responsibility and Security Operations. The Investigations Division is responsible for investigating, tracking, and reporting all allegations of misconduct involving ATF employees, as set forth in ATF Order 8610.1A. The Investigations Division's other responsibilities include tracking and investigating accidents involving government-owned vehicles and shooting incidents involving ATF employees. In addition to the Special Agent in Charge and the Assistant Special Agent in Charge, at the time of this review, the Investigations

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Division had a staff of approximately 12 investigators to conduct internal investigations.<sup>11</sup> Staffing fluctuates primarily based on caseload.

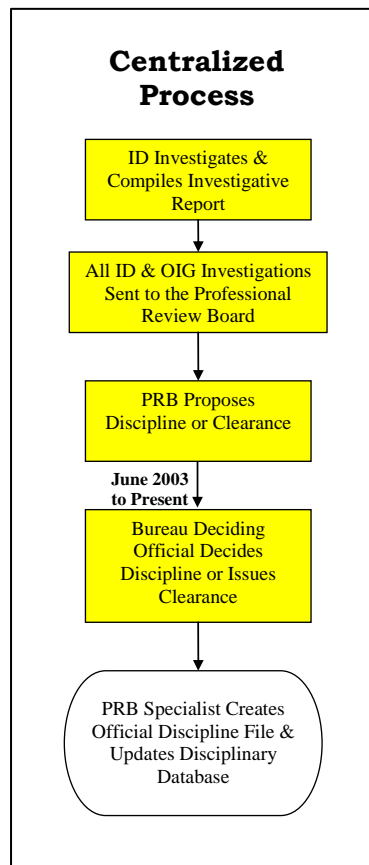
The Investigations Division opened 127 misconduct investigations in FY 2002, 91 in FY 2003, and 86 in FY 2004. Workload, case complexity (with the more complex cases typically being assigned to more senior investigators), and seriousness of the allegation influence the prioritization and internal assignment of investigations. The Special Agent in Charge monitors the progress of the Investigations Division's open investigations by conducting monthly briefings with the investigators assigned and recording the case status in a management control log. Allegations referred to local management for monitored investigation are tracked separately.

ATF Order 8610.1A, "Internal and Other Investigations," describes requirements for the Investigations Division's misconduct investigations. Each investigation must result in a case file with a report on the investigation and relevant exhibits. Before an investigation is closed, the case file contents are reviewed and approved by the Special Agent in Charge and the Assistant Director of the Office of Professional Responsibility and Security Operations.

Incomplete investigations are returned to the investigator for additional investigation and documentation. Once approved, the completed case file is forwarded to the Professional Review Board. At this point, the centralized process's investigation phase ends and the adjudicative phase begins.

**The Professional Review Board proposes discipline or clearance.**

On August 1, 1995, ATF Brief 2750.1 officially established the Professional Review Board "to ensure that allegations of employee misconduct are fairly reviewed and expeditiously handled and that penalties for misconduct are fairly administered." The Professional Review Board is charged with reviewing "incidents of misconduct" that are the subject of an investigation by the Investigations Division or the OIG and are documented in a report of



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<sup>11</sup> One of these 12 investigators is also the Shooting Review Coordinator and serves as the lead investigator for shooting incidents.

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investigation. Prior to the Professional Review Board's creation in 1995, all misconduct cases were adjudicated by local management.

The Professional Review Board is currently located within the ATF's Management Directorate and consists of four members and one Chair. All five members have an equal vote in the proposal process; however, the Chair administers the process and signs all resulting proposal letters.

The Chair is a full-time, permanent, grade 15 position. The remaining four members serve on the Professional Review Board in addition to their permanent, full-time senior management assignments. This duty is temporary and usually lasts from 12 to 18 months. The ATF tries to stagger the rotation of Professional Review Board membership to ensure that it has enough experienced voting members serving at all times.

The Deputy Director of the ATF selects the four Professional Review Board members from a pool of grade 15 and Senior Executive Service supervisors and managers nominated by the seven ATF Assistant Directors. At least two Professional Review Board members serving at any one time must be series 1811 Criminal Investigators, and one member must be a series 1854 Inspector. At least one, but no more than two, members must be in the Senior Executive Service. For those cases involving misconduct by a Senior Executive Service employee, the Senior Executive Service Professional Review Board member serves temporarily as the Chair.

The Professional Review Board is assisted by three Employee Relations Specialists.<sup>12</sup> The specialists assist in researching and preparing background information on each case and attend Professional Review Board meetings in an advisory/support capacity. The specialists are also responsible for collecting, entering, and maintaining case-related information in the disciplinary case file database.

Additionally, the Professional Review Board receives assistance, as required, from representatives of the ELRT, the Office of Chief Counsel, and the ATF Office of Equal Employment Opportunity. These representatives review each Investigations Division investigation file and attend the Professional Review Board meetings to provide counsel or guidance on

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<sup>12</sup> One full-time, federally employed Employee Relations Specialist; one full-time, contract Employee Relations Specialist; and one part-time, contract Employee Relations Specialist are assigned to the Professional Review Board. These three specialists were permanently assigned in the summer of 2003. Previously, these positions were assigned to the Employee Labor Relations Team, which provided support to the Professional Review Board on an as-needed basis.



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certain cases or proposed penalties as required. These representatives do not vote.

When the Professional Review Board receives a completed investigation file from the Investigations Division, the file is assigned to one of the three specialists for tracking and processing throughout the proposal and decision-making phases. A copy of the investigation file is also provided to each of the five Professional Review Board members and other participants (such as the Office of Chief Counsel) at least one week in advance of the scheduled meeting.

The Professional Review Board meets approximately every 6 weeks to review and determine proposed penalties (if warranted) on all investigation files that have accumulated during that time. During the scheduled meeting, the Professional Review Board proposes discipline for all investigation files that have been distributed to the members. Generally, the Professional Review Board adjudicates up to 15 cases per meeting. If an unusually large number of investigation files come in from the Investigations Division, the Professional Review Board may schedule an additional meeting to avoid a backlog.

Prior to the meeting, the Professional Review Board specialists compile a summary of each subject's investigation file and disciplinary history, as well as information on past discipline proposed for similar cases. The Chair meets with the specialists and other headquarters officials who serve as advisors to the Professional Review Board to review this information and determine how best to initiate discussion of the case during the scheduled meeting.

During the meeting, the five voting members discuss and determine which charges addressed in the investigation file are supportable and then vote on a proposed penalty. While a majority vote is all that is required, the Professional Review Board attempts to obtain unanimous agreement on the proposed penalty.

On rare occasions (perhaps two to three cases per year), the Professional Review Board postpones a vote. Generally, this is done because the investigation file does not contain sufficient information for the Professional Review Board to vote on the case or because the Professional Review Board is aware that information on a related case is forthcoming. When this occurs, the Professional Review Board may request that the Investigations Division provide a supplemental investigation or that the investigator in charge of the case answer the Professional Review Board's questions.

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After the Professional Review Board adjourns, the specialists draft a proposal letter for each case discussed during the meeting.<sup>13</sup> If the Professional Review Board decides on a letter of clearance (the allegation could not be sustained on the evidence presented), caution, admonishment, or reprimand, the specialists draft the letter and forward it to the Bureau Deciding Official for review, signature, and issuance to the employee.

If the Professional Review Board proposes a suspension, a reduction in pay or grade, or a removal, the specialist drafts the proposal letter and submits it to the Chief of the ELRT for a “technical review to determine the adequacy of the record and to ensure uniformity of proposals.”<sup>14</sup> Proposal letters involving discipline exceeding a 14-day suspension, a reduction in pay or grade, or a removal are also forwarded to the Office of Chief Counsel, where they are reviewed for “legal sufficiency.” After review, the proposal letter is signed by the Chair. The signed proposal letter and a copy of the investigation file are provided to the employee and the deciding official. Employees are required to sign an acknowledgement of receipt form indicating that they have received the proposal package. At this point, the proposal phase of the centralized process ends, and the decision phase begins.

**The Bureau Deciding Official decides discipline or issues clearance.** On June 2, 2003, ATF Brief 2141.1 established the Bureau Deciding Official pilot program to promote consistent and prompt adjudication of proposals issued by the Professional Review Board. Under the pilot program the ATF Director appoints one permanent, full-time, grade 15 or Senior Executive Service manager as the Bureau Deciding Official. The Bureau Deciding Official is assigned to the Office of the Director and

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<sup>13</sup> Some misconduct cases may raise concerns about the applicability or specificity of current policies or procedures. When the Professional Review Board encounters such a concern during a case, it can issue a “management referral.” This is a policy or procedure recommendation made directly to local management or, in some cases, to ATF management overall. As with the proposal letter, the specialist drafts it and the Chair reviews, signs, and issues it. Management referrals are not disciplinary in nature and may be issued independently or in conjunction with proposed discipline. According to the Professional Review Board Chair, a management referral addresses a breakdown in policies and procedures requiring management attention or oversight. The Professional Review Board may propose discipline for an employee and simultaneously issue a management referral, if an individual’s misconduct is identified, as well as related management issues. The Professional Review Board issues few management referrals each year, approximately three or four in FY 2004.

<sup>14</sup> According to ATF Brief 2750.1, the ELRT must concur with proposed disciplinary actions, and both the ELRT and the Office of Chief Counsel must concur with proposed adverse actions.

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serves as the deciding official for all Professional Review Board proposals except for those designated as “management referrals.”

The Bureau Deciding Official pilot program fully centralized the process for determining final discipline for those misconduct allegations investigated by the Investigations Division and adjudicated by the Professional Review Board. The ATF’s Executive Staff originally was to determine whether the pilot program should be implemented on a permanent basis by December 2003.<sup>15</sup> Instead, the Executive Staff decided to extend the pilot program indefinitely for additional evaluation.

The Bureau Deciding Official becomes actively involved in the adjudication phase of the centralized disciplinary process once the Professional Review Board has issued a proposal letter to the employee. A Professional Review Board specialist then delivers a copy of the Investigations Division’s investigation file and the Professional Review Board’s proposal letter to the Bureau Deciding Official. Once employees receive a proposal letter recommending a suspension, demotion, or removal, they have the opportunity to respond orally via telephone, in writing, or both. The Bureau Deciding Official reviews these responses.

The time allowed for the response depends on the facts and circumstances of the case. The employee is given the opportunity to review the material relied upon by the Professional Review Board to support the proposed discipline, to prepare an answer, and to secure affidavits. At least 7 days is given, although 15 days is typical.<sup>16</sup>

Any oral response by the employee is recorded by a Professional Review Board specialist, and the employee has an opportunity to comment on the specialist’s written summary before the Bureau Deciding Official renders his decision. The Office of Chief Counsel also is present during oral responses (conference call) for cases involving a proposed adverse action.

Once any oral or written reply has been submitted by the employee, the Bureau Deciding Official reviews it and, using a Douglas Factors worksheet (see Appendix I for the Douglas Factors), considers the mitigating or aggravating factors that the employee’s reply presents. As part of the

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<sup>15</sup> The Executive Staff consists of the Director, the Deputy Director, seven Assistant Directors, and nine Deputy Assistant Directors.

<sup>16</sup> The Bureau Deciding Official monitors this employee response period in a case log, using the date on which the Bureau Deciding Official receives a faxed copy of the employee’s signed proposal receipt as the starting date for the reply period.

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review process, the Bureau Deciding Official may reference the subject's official personnel folder to review factors such as job performance, promotion eligibility, and any prior disciplinary actions. The Bureau Deciding Official also considers the level of discipline that the ATF meted out for similar types of offenses in the past, based on a consistency review of previous cases. The Bureau Deciding Official documents each of the factors that was considered on the Douglas Factors worksheet and then signs and dates the form. The Bureau Deciding Official can mitigate the Professional Review Board's proposed penalty, but may not increase it.

After determining the appropriate penalty, the Bureau Deciding Official renders a final decision. The Professional Review Board specialist drafts a decision letter detailing the reasons, especially when mitigation has occurred, for the discipline that is being imposed, including projected dates when the punishment will take effect. The Chief of ELRT reviews the decision letters imposing disciplinary action; the Office of Chief Counsel reviews those imposing adverse actions. After these reviews are complete, the Bureau Deciding Official signs the decision letter and sends it to the employee.<sup>17</sup>

**Local managers decide discipline with ELRT input.** Prior to June 2003, local managers were responsible for making final disciplinary decisions. Reliance on local managers to decide discipline for the centralized process was suspended after the Bureau Deciding Official pilot project became operational in June 2003. Prior to June 2003, when the Professional Review Board proposed a penalty in a misconduct case, the assigned ELRT specialist identified and notified the appropriate local manager – usually the Special Agent in Charge or Assistant Special Agent in Charge – that he or she must serve as the deciding official for the case. The ELRT specialist then sent a copy of the proposal letter and the Investigations Division investigation file to the deciding official to reference when determining the appropriate penalty.

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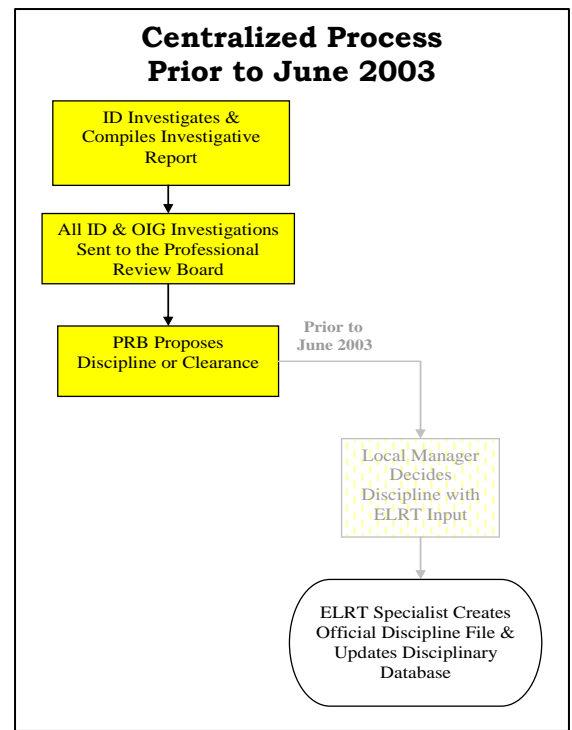
<sup>17</sup> The Bureau Deciding Official also reviews and signs any letters of clearance, caution, admonishment, or reprimand proposed by the Professional Review Board. The employee does not have an opportunity to reply to a letter of clearance, admonishment, caution, or reprimand. However, an employee may grieve the action as specified in the letter. A copy of the signed letter and receipt, along with any other related or supporting documentation, is then placed in the employee's disciplinary file. The disciplinary files are maintained by the ELRT at ATF Headquarters for approximately 4 years before they are archived. The ATF's disciplinary system database (also referred to as HR Connect), maintains this information indefinitely. Copies of letters of reprimand can be maintained in the employee's official personnel folder for up to 2 years.

Prior to June 2003, the Professional Review Board forwarded all proposal letters, including letters of clearance, caution, admonishment, and reprimand, to the local manager acting as the deciding official for review, signature, and issuance to the employee. The local deciding official could contact the ELRT specialist to discuss any issues or concerns with the case.

If the Professional Review Board proposed a suspension, reduction in pay, or removal, the local deciding official was responsible for considering the subject's oral and or written reply, applying the Douglas Factors, and deciding what discipline to impose. Once the deciding official determined the penalty, the assigned ELRT specialist drafted the decision letter for review, signature, and delivery to the employee.

### The Decentralized Process

Misconduct allegations that are not investigated by Investigations Division or the OIG are handled through a separate, decentralized disciplinary process. The decentralized process involves minimal involvement or control by headquarters entities, except for the ELRT's advice and assistance, and relies primarily on local management to conduct the investigation, proposal, and decision phases of the process. The evidence collection, proposal and decision may all be handled by the same official in cases that result in discipline involving a suspension of 14 days or less. Approximately 630 ATF supervisory-level employees are eligible to propose or decide misconduct cases in the decentralized process.



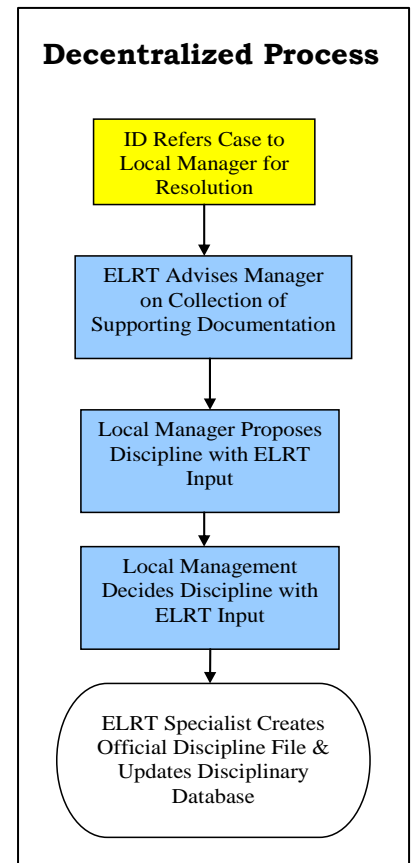
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Specialists assigned to the ELRT provide assistance and guidance to local management in the decentralized process. The ELRT falls under the Personnel Division, within the Management Directorate. The Chief of the ELRT oversees a staff of four employee relations specialists, two labor relations specialists, one administrative assistant, and two part-time students.<sup>18</sup>

ELRT specialists provide advice to local management throughout the decentralized process on how to identify and report misconduct, provide the necessary types of documentation to substantiate the alleged charges, and prepare and draft proposal and decision letters. While ELRT specialists provide advice to local management, it is important to note that they serve only in an advisory capacity and cannot overrule or directly challenge actions taken by local management.

**The ELRT advises managers on collection of supporting documentation.** The decentralized process does not require local management to conduct structured misconduct investigations, such as those required and produced by the Investigations Division in the centralized process. On the basis of the ELRT's advice, the local manager may collect voluntary statements from the subject or witnesses and gather supporting documents, such as e-mails, records, reports, or activity logs, depending on the charges. There is no written guidance indicating how this supporting documentation should be collected. Our interviews with local management showed that different offices employ different methods of determining who collects the supporting documentation for the case and who reviews the documents and evidence collected.

Once documentation supporting an allegation of misconduct has been collected and reviewed, the documentation is forwarded to the ELRT for its review and inclusion in a disciplinary file. If the ELRT believes that the documentation is insufficient to justify disciplinary action, it will recommend that additional information be gathered, if possible, or it will



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<sup>18</sup> The six ELRT specialists are each assigned certain ATF district, regional, and Headquarters offices for which they provide services. These services include assistance with misconduct-related discipline, employment suitability, performance management, the employee union contract, and performance appraisals.

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close the case. If the case is closed, no case-related information is created or entered into the disciplinary case file database, and no disciplinary file is created. If sufficient documentation is collected to substantiate the charges, then the ELRT assists local management with the adjudication phase of the decentralized process.

**Local manager proposes discipline with ELRT input.** For decentralized cases, the ATF permits a wide range of specified officials to act as both the proposing and deciding official for cases that result in disciplinary actions (suspensions of 14 days or less). Local management usually determines who will serve as the proposing official for the case. The proposing official and the ELRT normally discuss and agree on what the penalty should be. The ELRT recommends an appropriate level of proposed discipline based on the employee's disciplinary history, as well as information on past discipline proposed for similar cases. The proposing official considers the ELRT's recommendations and determines the appropriate proposed penalty.

Once the proposing official has determined the proposed penalty, the ELRT specialist either drafts the proposal letter or reviews the proposing official's draft to ensure it meets the standards for content and language. If a proposed penalty appears unreasonable, the ELRT discusses this with the proposing official. However, the proposing official has the final authority to determine the level of discipline that will be proposed in the letter. The Chief of the ELRT reviews all proposal letters, and the Office of Chief Counsel reviews proposal letters involving adverse actions. Once the proposing official signs the proposal letter, it is issued to the employee. Letters of caution, admonishment, or reprimand are issued directly to the employee without a proposal letter.

**Local manager decides discipline with ELRT input.** According to the ELRT, the same individual can serve as both the proposing and deciding official on the same case where a 14-day suspension or less is being imposed, unless the individual requests not to serve in both capacities. If the role of deciding official is filled by someone other than the proposing official, the deciding official receives a copy of the proposal letter and the supporting documentation to reference during the decision-making process.

The deciding official is not required to hear the subject's oral response. This responsibility may be delegated to someone else, as long as they are "administratively superior to and organizationally separate from the employee."<sup>19</sup> This individual is responsible for providing a written record of

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<sup>19</sup> ATF Order 1150.4, "Delegation Order," dated April 16, 1996.

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the employee's response for consideration in the case. Once the deciding official receives any oral or written reply from the employee, the deciding official must consider any mitigating factors that could affect the level of discipline to be imposed. The deciding official cannot increase the proposed penalty, but may mitigate the proposed penalty, if appropriate.

As in the proposal phase, the ELRT specialist may advise the deciding official on the appropriate level of discipline, but the deciding official ultimately determines what the penalty will be. Any major disagreements between an ELRT specialist and the deciding official can be elevated to higher ranking officials for resolution. Once a decision has been made, the ELRT specialist assists the deciding official in preparing a decision letter. According to ATF Order 2750.1C, the Chief of the ELRT reviews all decision letters. The Office of Chief Counsel reviews all decision letters involving adverse actions. The deciding official signs the decision letter and issues it to the employee.

### **Disciplinary Files and Database**

Once a decision has been rendered on an employee misconduct case, the Professional Review Board or ELRT specialist responsible for the case creates an official disciplinary file. The ELRT maintains all of the ATF's official disciplinary files from the centralized and decentralized disciplinary processes. These files contain all official adjudicative and grievance documentation, as well as evidence sustaining misconduct allegations handled through the decentralized process.<sup>20</sup> The disciplinary files are maintained at ATF headquarters for approximately 4 years; older files are archived. The Investigations Division maintains its employee misconduct investigation files separately. The Investigations Division's investigation files can be cross-referenced with the disciplinary files by employee name.

ELRT specialists are also responsible for entering and maintaining case-related information from their assigned employee misconduct cases in the disciplinary system database. There are no established standards or procedures for entering, maintaining, or reviewing case information in the database. Our interviews with Professional Review Board and ELRT specialists indicated that information can be entered as it becomes

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<sup>20</sup> According to ATF Order 2750.1C, "Adverse Action and Discipline," July 11, 1989, a record of the following documents shall be maintained by the ELRT: "(1) the notice of proposed action, (2) the answer of the employee if written, and/or a summary thereof [sic] if made orally, (3) the notice of decision and reasons therfor [sic], and (4) any order effecting the action, together with any supporting material."



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available, at specific phases of the process, or at the end of the adjudicative process.

To officially close an employee misconduct case, the discipline must be imposed.<sup>21</sup> This is done either by placing a copy of a letter of reprimand in the employee's official personnel folder or initiating a Standard Form-50 (SF-50) for suspensions, reductions in pay, or removals.<sup>22</sup> Letters of reprimand remain in an employee's official personnel folder for up to 2 years. The SF-50 becomes a permanent part of the employee's official personnel folder and serves as documentation that the employee officially received the punishment set forth in the decision letter.

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<sup>21</sup> Misconduct cases involving letters of caution and admonishment are considered closed once the employee receives the letter.

<sup>22</sup> The SF-50 is the official Office of Personnel Management document that effects United States government employee actions. Thus, all discipline that results in a change to the employee's pay, grade, or employment status must be implemented using an SF-50.

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## PURPOSE, SCOPE, AND METHODOLOGY

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### Purpose

The OIG conducted this review to assess the effectiveness of the ATF's system for investigating allegations of employee misconduct and for disciplining employees who are found to have committed misconduct. Specifically, we reviewed the consistency and reasonableness of the reporting and investigation of alleged misconduct, adjudication of misconduct cases, and implementation of the discipline imposed by the ATF. We also reviewed the timeliness of the ATF's disciplinary system for processing misconduct cases. Also, at the request of the ATF, we evaluated a pilot project intended to improve the adjudication of the centralized process misconduct cases.

### Scope

We reviewed allegations of misconduct by ATF employees that resulted in disciplinary action or clearances in FY 2002 through FY 2004. We excluded discipline cases that were still open as of September 30, 2004.

### Methodology

**Background.** To better understand the ATF's disciplinary system, we reviewed policies, procedures, briefing documents, personnel case logs, and other documents relating to the ATF's disciplinary system. We also reviewed OIG Investigations Division data relating to the ATF's disciplinary system, previous OIG reports concerning Department disciplinary systems, a Department of the Treasury OIG report on the ATF's disciplinary system,<sup>23</sup> and federal and Department-wide laws and regulations applicable to disciplinary systems.

**Interviews.** We interviewed ATF officials and staff from the three offices involved with the operation of the disciplinary system. From the Office of Professional Responsibility and Security Operations, we interviewed the Assistant Director of the Directorate and the Special Agent in Charge of the Office of Investigations, as well as one Special Agent and two administrative staff from the Office of Investigations. From the Office of Management, we interviewed the Assistant Director of the Directorate, the Chief of the Employee Labor Relations Team, three Employee Labor

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<sup>23</sup> U.S. Department of the Treasury, Office of Inspector General, *Integrity Oversight Review of the Bureau of Alcohol, Tobacco and Firearms*, March 2001.

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Relations Team Specialists, the Information Technology Specialist, the Chair of the Professional Review Board, and the Professional Review Board's three Employee Relations Specialists. We also interviewed three current Professional Review Board members, a former Professional Review Board Chair, and the Bureau Deciding Official. We interviewed the Associate Chief Counsel and Deputy Associate Chief Counsel for the Administration and Ethics Division in the Office of Chief Counsel. In addition, we conducted telephonic interviews with six managers in ATF Field Offices who have served as proposing or deciding officials in misconduct cases.

**Data.** The ATF also provided us with disciplinary case information from its database, HR Connect. The data we received came from a segment of the database that Employee Labor Relations Team and Professional Review Board Specialists use for processing disciplinary adjudications and also from a separate segment of the database that the Office of Investigations uses to track allegations of misconduct and internal investigations. Neither segment of the database is subject to formal quality assurance policies and procedures. Thus, for the purposes of our review, we relied primarily upon the case data in the physical case files, rather than case information pulled from the database.

**Disciplinary Case File Review.** To evaluate both processes within the ATF's disciplinary system, including the impact of the Bureau Deciding Official pilot program on the centralized process, we selected 230 case files to review. Of the 230 misconduct case files we selected:

- 154 closed cases from the centralized process, 77 of which were decided by the Bureau Deciding Official. The other 77 closed cases we reviewed were adjudicated by local management prior to the initiation of the Bureau Deciding Official pilot project, and
- 76 closed cases from the decentralized process.

**Investigative File Review.** We verified the existence of the incident reports and investigative reports for all of the disciplinary case files that we reviewed. We collected timeliness data on the dates on which allegations of misconduct were reported and the dates on which the investigations were closed from the incident reports and investigative reports. We also requested that the OIG's Investigations Division subjectively sample and review 17 reports of investigation to determine whether the investigations were thorough and complete. We also requested a review of the investigative portion of the 76 decentralized process disciplinary case files to determine whether the misconduct was reported to the OIG and whether the misconduct should have been reported to the OIG.

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To support our analysis of disciplinary consistency, we compared case information from the ATF's disciplinary database to the information in the disciplinary case files that we reviewed. We compared 134 database summary sheets that were in the case files that we reviewed to the disciplinary case file information to determine whether the database accurately reflected the misconduct charges and penalties in the case files. We also compared the misconduct case list provided to us from the disciplinary database to the case list from the investigative database to determine whether the disciplinary database's case list was complete.

**Employee Survey.** We conducted an e-mail survey of a random sample of ATF employees to determine their experience with and perception of the ATF's disciplinary system. We sent surveys to 860 ATF employees and received 421 responses.

**SF-50 Review.** To verify that the discipline imposed in the misconduct cases that we reviewed had actually been implemented, we requested that the ATF provide us with a copy of all SF-50s for suspensions, demotions, removals, and reductions in grade processed between FY 2002 to FY 2004. We matched these to the cases in our sample.

**Definitions.** We defined our evaluation criteria – consistency, reasonableness, and timeliness – based on the interpretations of these criteria used in three previous OIG reports examining Department disciplinary systems.<sup>24</sup> We defined consistency, reasonableness, and timeliness as follows:

- **Consistency:** Whether the policies and procedures in place were followed; whether the disciplinary system processed similar misconduct cases using uniform standards; and whether the disciplinary system imposed uniform penalties for similar misconduct across the ATF and within the same location.
- **Reasonableness:** How thorough the investigations and adjudications appeared; how objective and independent the process for investigating and adjudicating misconduct cases appeared; and how logical or appropriate the penalties for the misconduct appeared.

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<sup>24</sup> These three OIG reports are *Review of the Federal Bureau of Prisons' Disciplinary System*, I-2004-008, September 2004; *Review of the Drug Enforcement Administration's Disciplinary System*, I-2004-002, January 2004; and *Review of the United States Marshals Service Discipline Process*, I-2001-011, September 2001.

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- **Timeliness:** Whether policies and procedures in place ensured timely disciplinary results and how often the disciplinary system met formally established time and performance standards.

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## RESULTS OF THE REVIEW

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### REPORTING AND INVESTIGATION OF MISCONDUCT ALLEGATIONS

**ATF employees did not always report misconduct allegations to the ATF Investigations Division, as required by ATF policy. In addition, the ATF did not consistently report misconduct allegations to the OIG for review, as required by OIG policy. Also, the ATF's misconduct investigations were not consistently thorough.**

**Employees did not consistently comply with the ATF's misconduct reporting requirements.**

ATF Order 2130.1 requires that “any allegation or information that the standards or rules of conduct have been violated must be promptly reported by the employee having the information” to the ATF Investigations Division.<sup>25</sup> As an alternative, ATF Order 2130.1 states that employees can report misconduct directly to the OIG. Despite this reporting requirement, we found that ATF employees did not consistently report all allegations of misconduct to the Office of Professional Responsibility and Security Operations' Investigations Division or to the OIG. Interviews with local management, ELRT specialists, and Investigations Division officials revealed that ATF employees often reported allegations of misconduct to their supervisors rather than directly to the Investigations Division and their supervisors did not consistently forward the complaints to the Investigations Division.

Specifically, the ATF could not document that 59 of the 230 employee misconduct cases that we reviewed were ever reported to the Investigations Division, as required. All 59 of these cases were handled by local management using the decentralized process. The 59 cases included such misconduct charges as insubordination, absence without leave, misuse of credit card, and misuse of position. The Investigations Division had no record of an incident report corresponding to any of these cases, nor did the disciplinary case files maintained by the ELRT document a report of the initial misconduct allegation to the Investigations Division.

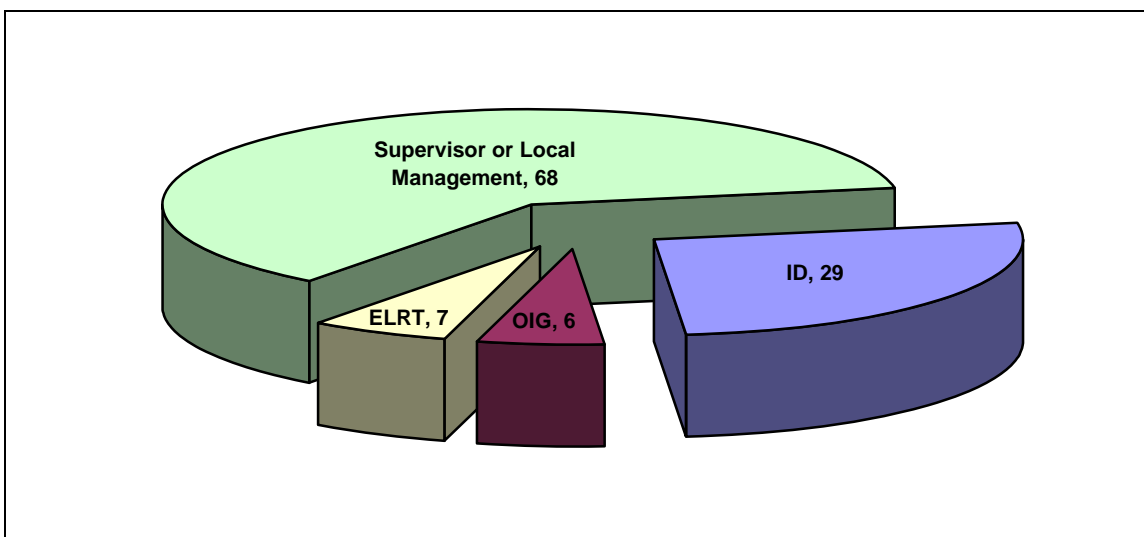
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<sup>25</sup> ATF Order 2130.1 requires ATF employees to report misconduct to the Office of Inspections, which has since been renamed the Office of Professional Responsibility and Security Operations, of which the Investigations Division is a part.

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Additionally, our employee survey confirmed that employees did not always report misconduct directly to the Investigations Division. Of the 421 employees who responded to our survey, 69 said that they were unaware of their obligation to report misconduct. Out of 345 employees who were aware of the obligation to report misconduct, only 110 stated that they had reported misconduct that they had witnessed. Some of these employees did not report it directly to the Investigations Division, as required. Only 35 of the 110 survey respondents who reported misconduct allegations (32 percent) properly reported the misconduct to the Investigations Division or the OIG, in accordance with ATF Order 2130.1. Chart 1 indicates where our survey respondents reported misconduct.

**Chart 1: Survey Respondents' Reporting of Misconduct Allegations**



Source: OIG survey of ATF employees

Although 68 of our survey respondents (62 percent) stated that they reported misconduct allegations directly to local management rather than the Investigations Division, local managers did not always report the allegations to the Investigations Division, as required. We were told in interviews and briefings that local management sometimes contacted the ELRT to discuss whether an allegation of misconduct could be handled through the decentralized process, without reporting the allegation to the Investigations Division. When this happened, ELRT specialists determined whether the misconduct allegation constituted more serious misconduct. If it did, the ELRT advised the manager to report the allegation to the Investigations Division so it could make a determination whether to conduct an investigation or refer it back to local management for action. If the ELRT did not believe the allegation met the criteria for more serious conduct, it

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would begin to provide advice to local management on how to proceed. The ELRT specialists did not report misconduct allegations they received from local management to the Investigations Division, nor did they require documentation verifying that the manager had reported the misconduct allegation to the Investigations Division.

**The ATF did not comply with the OIG's misconduct reporting requirements.**

Because the ATF was not in compliance with its own reporting requirements, it also was not in compliance with the requirement to report misconduct to the OIG. Of the 76 decentralized process case files we reviewed, 58 misconduct cases occurred after the ATF transferred to the Department in January 2003 and, thus, were subject to the Department's OIG requirement to report allegations of employee misconduct to the OIG. Our review of case files, incident reports, and OIG records showed that 47 of these 58 cases were not reported to the OIG in accordance with OIG policy.

An OIG memorandum dated March 26, 2003, OIG Investigative Procedures Relating to the ATF, requires that the ATF report allegations of employee misconduct to the OIG. Our review of the Investigations Division's incident reports and OIG records showed that, for the time period reviewed, the Investigations Division reported all allegations that it received to the OIG. However, because local management sometimes reported misconduct allegations to the ELRT and not the Investigations Division as required, and the ELRT did not ensure that these allegations were reported to the Investigations Division or the OIG, the ATF could not ensure that it fully complied with the Department's reporting requirement.

The ATF's noncompliance with internal and OIG reporting requirements altered the way in which the ATF's disciplinary system operated. The ATF's failure to ensure that all allegations of misconduct were properly reported enabled local managers to determine whether the allegations were serious or minor, in contradiction of ATF Order 8610.1A that delegates this authority to the Investigations Division. This, in turn, caused six misconduct allegations in our case file review that would normally be investigated or monitored by the Investigations Division under OIG oversight to instead be handled through the decentralized process without any report to the Investigations Division or the OIG. The ATF's noncompliance with reporting policies increases the likelihood that similar types of misconduct may be handled inconsistently through both disciplinary processes and, thus, may be subjected to different investigative and adjudicative standards. Additionally, the ATF's failure to ensure proper reporting of misconduct allegations inhibited both the ATF's and the OIG's



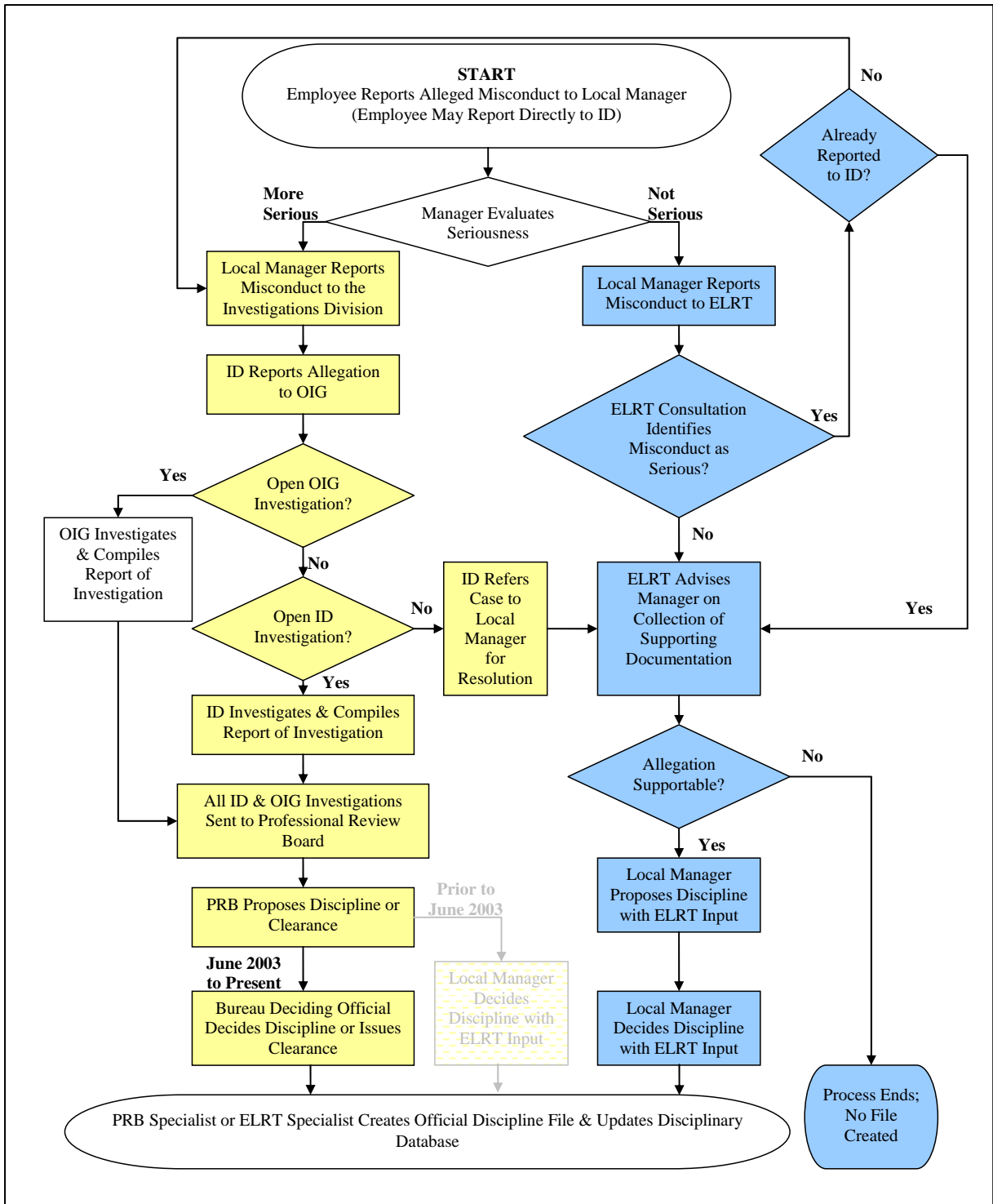
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ability to compile, monitor, and report accurate statistics on ATF employee misconduct.

Figure 2, on the next page, diagrams how the ATF's discipline system actually works, in comparison to Figure 1 on page 3, which diagrams how the system is supposed to work according to ATF regulations and OIG policy.

**Figure 2: The ATF's Disciplinary System in Practice**



Source: OIG interviews and briefings with ATF officials

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## **Investigations were not always thorough.**

While we found that investigations conducted under the centralized process were generally thorough, investigations conducted under the decentralized process did not always exhibit sufficient evidence of a thorough investigation. The 76 decentralized process case files we reviewed did not contain sufficient evidence to show that the misconduct allegations were adequately investigated. In fact, 16 of the 76 case files that we reviewed contained no documentation at all to show that there had been any investigation into the alleged misconduct, even though discipline had been imposed. The remaining 60 decentralized process case files contained documentation of some informal evidence collection. The types of evidence maintained in these 60 case files varied widely. Some case files contained activity logs, time reports, or written guidance pertaining to the alleged misconduct. Others contained written statements from the employee being investigated that described the circumstances surrounding the alleged misconduct. One case file contained only a memorandum from the local manager who processed the case, describing a statement that he had obtained from the employee; the employee's original statement was not included in the file. None of the decentralized process case files contained a report of investigation. Without a thorough investigation, the ATF may not have sufficient information to accurately determine whether misconduct actually occurred.

ELRT specialists routinely advise local managers on what types of evidence must be collected to support an allegation of misconduct. However, the ELRT specialist we interviewed stated that the ATF has no written standards or guidance for the decentralized investigative process. In fact, ATF Order 2750.1 states only that the Chief of the ELRT must review the proposal and "copies of all materials upon which the proposal is based" before discipline greater than 14 days' suspension can be proposed. The Order also states that the ELRT must maintain in the disciplinary file a record of "any order effecting the action, together with any supporting material." The Order does not, however, provide any guidance on how supporting materials should be collected or what types of materials are appropriate. Instead, each ELRT specialist determines the appropriate level of evidence individually. Based on the ELRT's advice, local managers collect evidence and send it to the ELRT via facsimile or e-mail for inclusion in the disciplinary file. The ELRT does not track what types of evidence have been recommended or when evidence is received from local management.

In contrast to the investigations conducted by local managers, the OIG's Investigations Division reviewed the investigations conducted by the ATF Investigations Division and concluded that they were thorough,

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objective, and well documented in reports of investigations. An OIG Special Agent reviewed 17 reports of investigations and found that the investigations conducted by the ATF Investigations Division were thorough. The OIG Special Agent concluded that the ATF investigators interviewed relevant witnesses and examined necessary documents, and that the investigative reports contained the information necessary to understand the actions taken during the investigations. The OIG Special Agent rated all 17 investigations reviewed as either very good or good.

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## ADJUDICATION OF MISCONDUCT CASES

**The ATF's disciplinary system did not ensure consistent and reasonable adjudications. The disciplinary system unreasonably permitted a single individual to carry out the entire adjudicative process on cases handled under the decentralized process. Prior misconduct was not consistently considered when applying discipline, and errors in the ATF's disciplinary database reduced its reliability in identifying prior discipline imposed in similar cases. Similar types of misconduct cases were not always charged consistently, and the disciplinary system did not impose consistent discipline for these cases. Finally, the ATF did not adequately document its reasons for mitigating some misconduct cases.**

### **Inadequate separation of responsibilities.**

In the decentralized process, the same official was permitted to propose and decide discipline for misconduct cases that resulted in a penalty of a 14-day suspension or less. Specifically, ATF Order 1150.4 grants the authority to ATF officials to act as the proposing and deciding official for this category of cases. By contrast, the centralized process requires the Investigations Division to investigate misconduct allegations, the Professional Review Board to propose discipline, and the Bureau Deciding Official (or, previously, local managers) to decide discipline. Although ATF Order 1150.4 does not require local managers in decentralized cases to serve as both the proposing and deciding official on an individual misconduct case, the ELRT specialist we interviewed stated that, in her experience, local managers generally served in both capacities unless they raised a specific objection to the arrangement.

Of the 76 decentralized process case files we reviewed, 19 cases resulted in proposed suspensions of 14 or fewer days. In 13 of these 19 misconduct cases, the penalties were proposed and decided by the same individual, and grievances were filed in 4 of the 13 cases. The remaining 63 decentralized process misconduct cases, which did not involve a single individual serving as both the proposing and deciding official, resulted in only 3 grievances.

One of the grievances in a case in which discipline was proposed and decided by the same individual specifically alleged:

“My immediate supervisor began a campaign of retribution against me.... [He] tried to dissuade me from filing the Grievance [sic].... I

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request[ed] that the [supervisor] be instructed to cease his personal vendetta against me.”

Another of these grievances expressed the employee’s concerns that the supervisor’s actions related to the misconduct case were “personally-motivated [sic] and vindictive.”

Our previous reviews of three other Department components’ disciplinary systems revealed that those components do not use this method of adjudicating misconduct.<sup>26</sup> In the other components we reviewed, the proposing and deciding official responsibilities are assigned to separate individuals or entities regardless of the severity of the discipline. The practice of combining the responsibilities of collecting evidence, proposing, and deciding discipline removes the checks and balances and objectivity normally in place in a disciplinary process.

**The ATF does not employ a consistent standard for considering prior misconduct when adjudicating misconduct cases.**

We also found indications that the ATF did not employ a consistent, standard methodology for considering past misconduct when determining the appropriate application of more severe discipline for repeat offenses. For instance, we found one case in which the proposed penalty was based, in part, on misconduct that resulted in discipline 6 years prior to the current misconduct. Conversely, we found a case in which prior misconduct was not considered, although the employee had received discipline less than 2 years prior to the current misconduct. Our interviews with ATF officials confirmed that the determination to consider prior misconduct varied on a case-by-case basis, with no written standard to guide the decision. In contrast, our reviews of three other Department disciplinary systems revealed that prior misconduct cannot be considered if it occurred over 2 years ago.<sup>27</sup>

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<sup>26</sup> The OIG reports include *Review of the Federal Bureau of Prisons’ Disciplinary System*, I-2004-008, September 2004; *Review of the Drug Enforcement Administration’s Disciplinary System*, I-2004-002, January 2004; and *Review of the United States Marshals Service Discipline Process*, I-2001-011, September 2001.

<sup>27</sup> A small number of specific charges in the three Department components we reviewed are restricted to 1 year or 6 months.

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**The ATF did not accurately record misconduct cases in its disciplinary database.**

The ATF relies on its disciplinary database as its primary source of information for determining the consistency of penalties for similar misconduct.<sup>28</sup> However, the ATF did not have sufficient internal controls to ensure that all information was entered or that the data was accurate.

We examined summary sheets from the disciplinary database that were included in the 230 case files we reviewed and found that incorrect or incomplete data had been entered in the database. Of the 230 case files, 134 files contained summary sheets from the disciplinary database. Of these 134 database summary sheets, 38 incorrectly identified whether misconduct had occurred. Additionally, we found that in 52 of the summary sheets, the charge or discipline recorded in the case file (specifically in the proposal and the decision letters) did not match the charge or discipline recorded in the disciplinary database. These inaccuracies prevent the ATF from successfully comparing similar misconduct cases to determine the consistency of proposed charges and penalties.

**The ATF did not always adjudicate its misconduct cases consistently.**

The charges that the ATF used to describe different types of misconduct were not always consistently applied. For example, 31 of the 230 case files that we reviewed included the charge of “poor judgment.” These 31 poor judgment charges encompassed a total of 22 different types of misconduct, as shown in Table 1.

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<sup>28</sup> The ATF uses its disciplinary database to track all facets of a misconduct case. The disciplinary database is a segment of a larger human resources database, which also contains the Investigations Division’s database and the system for processing SF-50s.

**Table 1: Poor Judgment Cases**

	<b>Types of Misconduct</b>	<b>Number of Cases</b>
1	Abusing the Public Transportation Incentive Program	1
2	Accepting Money from Contract Cleaning Crew	1
3	Accessing a Secured Area of an Airport for Unofficial Purposes	1
4	Allowing a Confrontational Situation to Escalate	1
5	Allowing a Prohibited Person Access to Firearms	2
6	Allowing an Agent's Son on the Range During Firearms Qualifications	1
7	Allowing Defendant Being Transported to Call His Girlfriend on the Phone	1
8	Attempting to Obtain Prescription Drugs Under False Pretenses	1
9	Conducting Internal Office Video Surveillance	1
10	Continuing Contact with Estranged Girlfriend Counter to Supervisor's Instructions	1
11	Distributing a Political E-mail From ATF E-mail Account	1
12	Drinking Beverages Found on Site During the Execution of a Search Warrant	5
13	Failing to Accurately Report the Theft of an ATF-Issued Firearm	1
14	Failing to Apply Reimbursements to Government Travel Card Expenditures	1
15	Failing to Report Police Contacts to Supervisor	1
16	Harassing a Private Citizen	1
17	Instructing Subordinates to Engage in Internal Office Video Surveillance	1
18	Misuse of a Government-Owned Vehicle	3
19	Operating a Privately-Owned Vehicle After Consuming Alcohol	3
20	Providing a Prohibited Weapon to a Friend	1
21	Testifying in Court for an Acquaintance Without Supervisory Approval	1
22	Viewing a Sexually Explicit DVD on a Government-Owned Computer	1
<b>TOTAL</b>		<b>31</b>

Source: OIG review of ATF disciplinary case files

Some of the types of misconduct cited as poor judgment in these cases, such as abuse of the Public Transportation Incentive Program, misuse of a government-owned vehicle, and failure to apply reimbursements to travel card expenditures, were also sometimes categorized as other, more specific charges. We found that the cases involving poor judgment charges



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sometimes appeared to result in more lenient discipline than the cases with more specific charges. For example, federal regulations require that government employees who willfully misuse a government-owned vehicle are subject to a mandatory 30-day suspension.<sup>29</sup> The ATF has applied this mandatory penalty in cases involving the specific charge of “willful misuse of a government-owned vehicle.” Nevertheless, two “poor judgment” cases we reviewed involving misuse of a government-owned vehicle each resulted in only a 2-day suspension. Another similar vehicle misuse case classified as poor judgment resulted in a 4-day suspension.

**Mitigation of penalties is not adequately documented.**

During our review of misconduct case files, we found 38 misconduct cases in which the punishment was mitigated. Deciding officials may mitigate proposed penalties based on consideration of the Douglas Factors and any response provided by the employee. ATF Order 2750.1 describes what is to be documented in a decision letter, including a discussion of any mitigating factors.

In 21 of the 38 cases that involved mitigation of the proposed penalty, the reasons for the mitigation were not adequately documented in the decision letter. The mitigations in these cases ranged from the reduction of a proposed 1-day suspension to a letter of reprimand for a poor judgment charge, to the reduction of a proposed removal to a 7-day suspension for charges of submitting fraudulent travel vouchers, accepting per diem from both the ATF and another government agency, and engaging in unauthorized outside employment. Chart 2 below shows how much mitigation was applied in the cases that we found were not adequately explained.

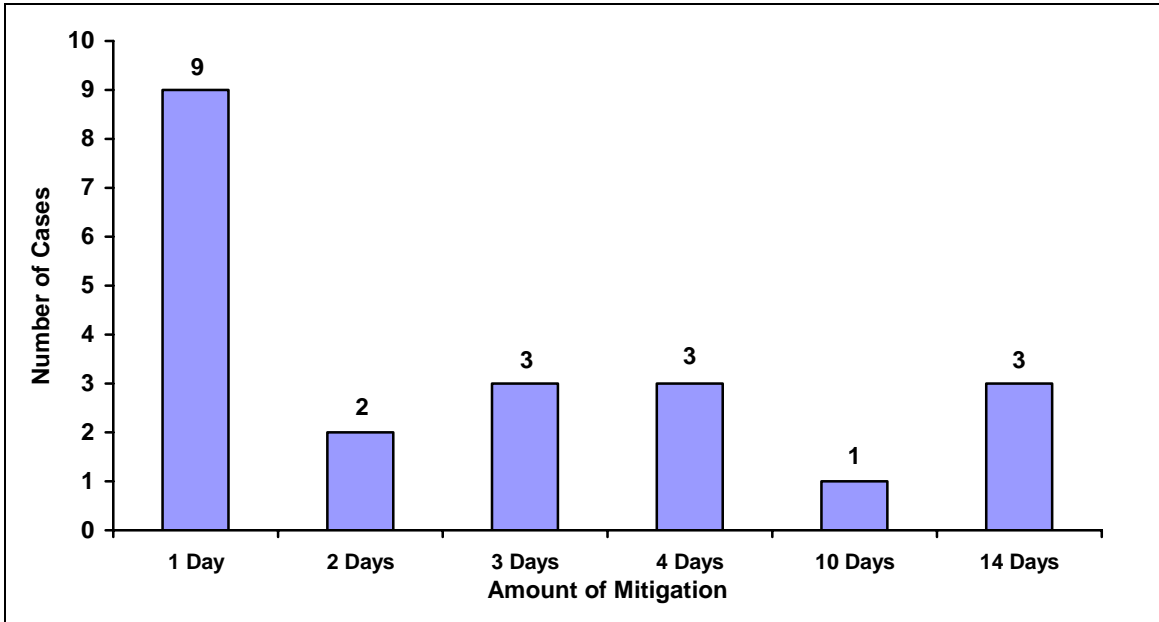
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<sup>29</sup> 31 U.S.C. § 1349 (b). “An officer or employee who willfully uses or authorizes the use of a passenger motor vehicle or aircraft owned or leased by the United States Government ... shall be suspended without pay ... for at least one month, and when circumstances warrant, for a longer period or summarily removed from office.”

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**Chart 2: Mitigations with Insufficient Explanation**



Source: OIG review of ATF disciplinary case files

The decision letters in these cases did not contain adequate explanations of why the punishment recommended by the proposing officials was mitigated. For example, some of the decision letters stated only that the Douglas Factors had been considered without giving explanation of which factors contributed to the mitigation and why. Other decision letters stated that the deciding official had considered the employee’s written or oral reply without citing specific reasons why the mitigation was appropriate. This occurred under both the centralized process (18 cases) and the decentralized process (3 cases).

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## **IMPLEMENTATION OF DISCIPLINE IMPOSED**

### **The ATF could not document that the discipline imposed had been implemented in all cases.**

We attempted to review all SF-50s documenting that the discipline in the 120 cases in our sample in which the employees were suspended, reduced in pay or grade, or removed was actually imposed.<sup>30</sup> In 14 out of the 120 cases (12 percent), the ATF could not provide an SF-50 to verify that the punishment was implemented. The 14 cases for which the ATF could not provide SF-50s comprised 12 suspensions and 2 removals. The ATF could not adequately explain why no SF-50 was available for 13 of these cases. An ELRT specialist we interviewed confirmed that, at the time of the interview, no SF-50 had yet been initiated for 1 of these 14 cases. The decision letter for this case, imposing a 2-day suspension, was issued over 7 months before our interview with the ELRT specialist. According to the specialist, the local manager who decided the case through the decentralized process did not initiate an SF-50 to implement the suspension before leaving that field office. The ELRT specialist emphasized that, while the ELRT encourages managers to implement discipline in a timely manner, local management is ultimately responsible for initiating the SF-50s.

Because the ATF could not provide SF-50s in these cases, the ATF could not demonstrate that the employees' pay had been withheld for the 12 cases involving suspensions. Although the ATF could not provide SF-50s for the two cases involving removals, we subsequently verified with ATF officials that the employees had in fact been removed from service.

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<sup>30</sup> The SF-50 is the official document that effects United States government employee actions. Thus, each suspension, reduction in pay or grade, and removal related to the case files that we reviewed should have a corresponding SF-50 documenting that the penalties had been implemented.

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## **TIMELINESS OF THE ATF'S DISCIPLINARY SYSTEM**

**The ATF has not established timeliness standards to measure the performance of its overall disciplinary system or its two current processes. However, the average time that the ATF took to investigate and adjudicate misconduct cases was in the range of other Department components that we have reviewed.**

**The ATF has not implemented timeliness standards to measure its performance.**

The ATF has not implemented any timeliness standards to measure the performance of its overall disciplinary system. Timeliness data for the centralized process is collected and recorded in a monthly status report generated by the Investigations Division.

However, timeliness data for the decentralized process is recorded in the disciplinary database only from the start of the adjudication and only for those cases in which discipline is proposed or imposed.<sup>31</sup> We were unable to determine the timeliness of the investigations for this process because the ATF lacks any requirement that this type of information be uniformly collected and recorded by either field personnel or ELRT specialists who assist in decentralized process cases. As a result, the ATF cannot measure the timeliness or performance of its entire discipline system until it establishes formal data collection procedures and ensures that the procedures are followed.

In our three prior reviews of Department components' discipline systems, we recommended that the components institute timeliness standards to measure system performance. All three components concurred with the recommendations. As a result, the components have either established timeliness standards or are in the process of testing, analyzing, and determining what those standards should be prior to formal implementation. The United States Marshals Service's Office of Internal Affairs has established a standard of 90 days and the Drug Enforcement Administration's Office of Professional Responsibility has established a standard of 180 days for completing investigations of employee misconduct. The Bureau of Prisons is in the process of formalizing investigations timeframes. The Bureau of Prisons and the Drug Enforcement Administration are also working on developing formal timeframes for

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<sup>31</sup> The decentralized process does not track misconduct cases resulting in a letter of clearance.

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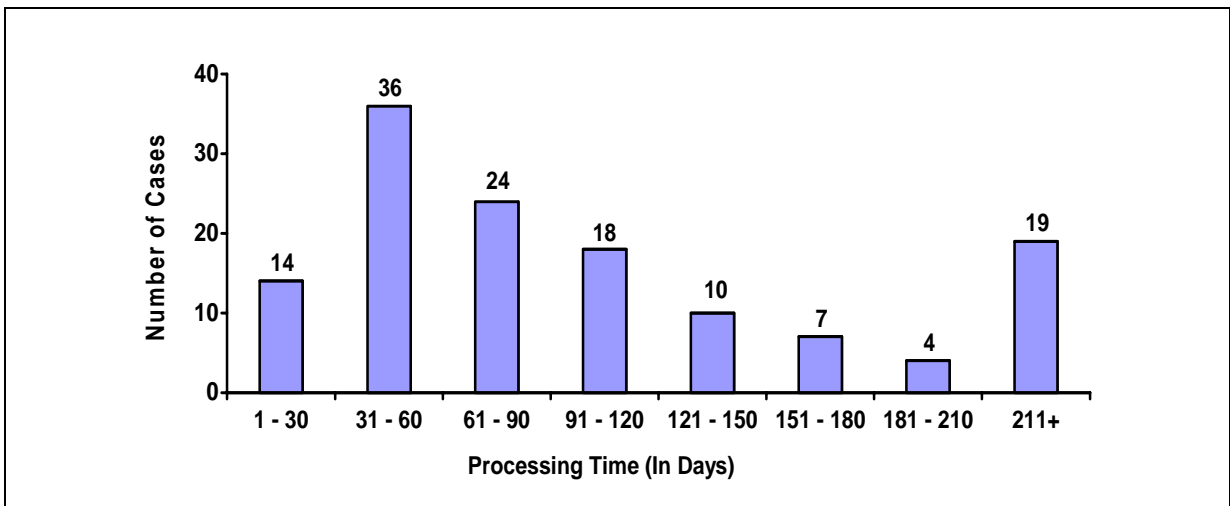
adjudicating misconduct cases. The United States Marshals Service has formalized its adjudication timeframes.

**ATF investigative and adjudicative efforts were within the range of other three Department components that we have reviewed.**

Although the ATF does not require or track the timeliness of the discipline process, we calculated the timeliness of its disciplinary system based on our analysis of the 154 centralized process case files reviewed. On the average, it took the ATF 277 days to process a misconduct allegation – 112 days to investigate the allegation and 165 days to adjudicate the case. We were unable to incorporate the decentralized process cases into our calculations because the dates tracked in the decentralized process’s files were not comparable to the dates tracked by the centralized process.

The Investigations Division’s investigation times, based on 133 reports of investigation that we reviewed, are shown in Chart 3, below.

**Chart 3: Processing Times for the Investigations Division’s Investigations**



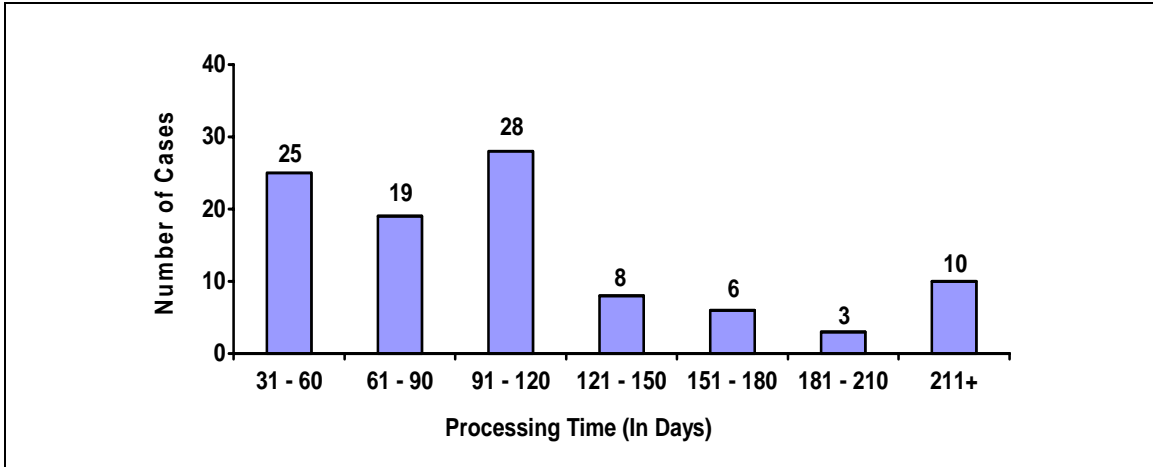
Source: OIG review of Investigations Division reports of investigation and incident reports

Some of the variation in the duration of the Investigations Division investigations may be attributed to the varying complexity of the misconduct investigations. Also, the time expended on each misconduct investigation may be affected by the Investigations Division’s prioritization of cases based on the severity of the offense and staff availability.

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Our case file review indicated that the adjudication phase lasts, on average, 165 days. Under the centralized process, the proposal portion of the adjudication phase averaged 111 days from the completion of a report of investigation to the issuance of a proposal letter. The time expended to produce a proposal letter ranged from 32 days to 422 days. The average time expended to produce a proposal letter, based on our review of 99 proposal letters, is shown in Chart 4.

**Chart 4: Processing Times for Centralized Process Proposals**



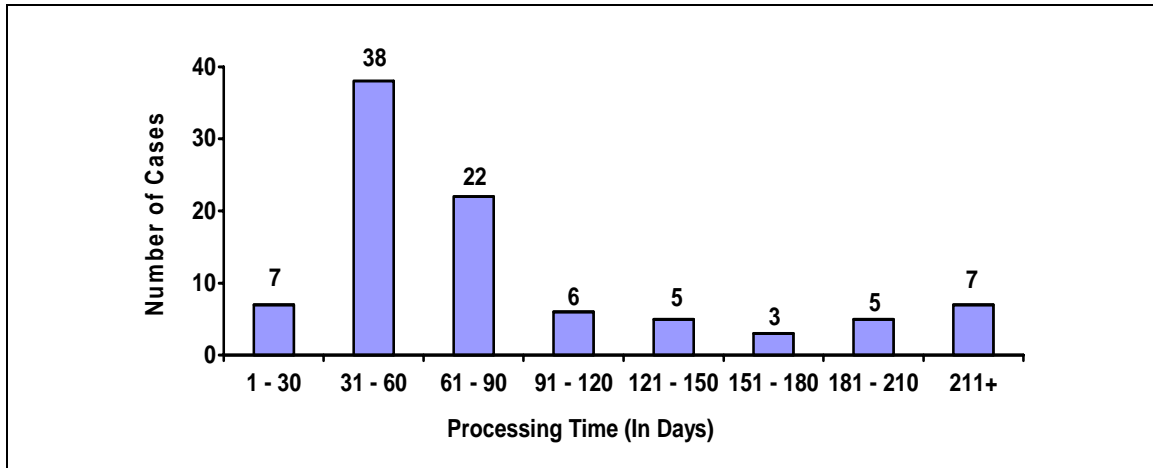
Source: OIG review of centralized process case files

Disciplinary decisions in the adjudication phase of the centralized process averaged 90 days to complete, following the issuance of a proposal letter. The ATF’s decision letter processing time ranged from 19 days to 394 days. Chart 5 shows the amount of time expended on 93 disciplinary decision letters we reviewed.

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**Chart 5: Processing Times for Centralized Process Decisions**



Source: OIG review of centralized process case files

Under the centralized process, letters of caution, admonishment, and reprimand, which are generally issued to employees without a proposal letter, averaged 119 days to produce, ranging from 56 days to 267 days. Additionally, our case file review showed that the ATF’s disciplinary system averaged 66 days to issue letters of clearance after an investigation is complete, ranging from 16 days to 145 days.

While neither the ATF nor the Department requires specific time standards, the Department encourages managers “to act in a timely manner” on misconduct cases.<sup>32</sup> To determine whether the time taken by the ATF to process misconduct cases was within the range of the other three Department components we have reviewed, we compared the average amount of time the ATF took to investigate and adjudicate misconduct cases to the other three Department components. We found that the average amount of time that the ATF expended to investigate and adjudicate misconduct cases was within the range of the other three Department components (Table 2).

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<sup>32</sup> U.S. Department of Justice Human Resources Order 1200.1, Chapter 3-1, Discipline and Adverse Actions, August 25, 1998.

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**Table 2: Component's Discipline Case Processing Times**

<b>Component</b>	<b>Average Investigation Processing Time</b>	<b>Average Adjudication Processing Time</b>	<b>Total Average Processing Time</b>
Bureau of Alcohol, Tobacco, Firearms and Explosives	112 days	165 days	277 days
Federal Bureau of Prisons <sup>a</sup>	94 days	104 days	198 days
Drug Enforcement Administration <sup>b</sup>	190 days	144 days	334 days
United States Marshals Service <sup>c</sup>	Not reviewed	140 days	Not available

<sup>a</sup> Data based on the OIG's 2004 review of the Federal Bureau of Prisons' disciplinary system.

<sup>b</sup> Data based on the OIG's 2004 review of the Drug Enforcement Administration's disciplinary system.

<sup>c</sup> Data based on the OIG's 2001 review of the United States Marshals Service's disciplinary system.

Source: OIG review of the ATF's centralized process case files and previous OIG reviews



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## REVIEW OF THE BUREAU DECIDING OFFICIAL PILOT PROJECT

**In June 2003, the ATF established a Bureau Deciding Official to decide the punishment in every case in the centralized process, rather than relying on multiple deciding officials. We evaluated the Bureau Deciding Official pilot program and concluded that it was more timely, consistent, and reasonable than the process it replaced.**

Prior to June 2003, the centralized process relied on local managers to serve as deciding officials for employee misconduct cases. In June 2003, the ATF implemented a pilot project establishing a single Bureau Deciding Official to adjudicate all cases under the centralized process. A June 2, 2003, memorandum from the Director of the ATF to all ATF employees stated that:

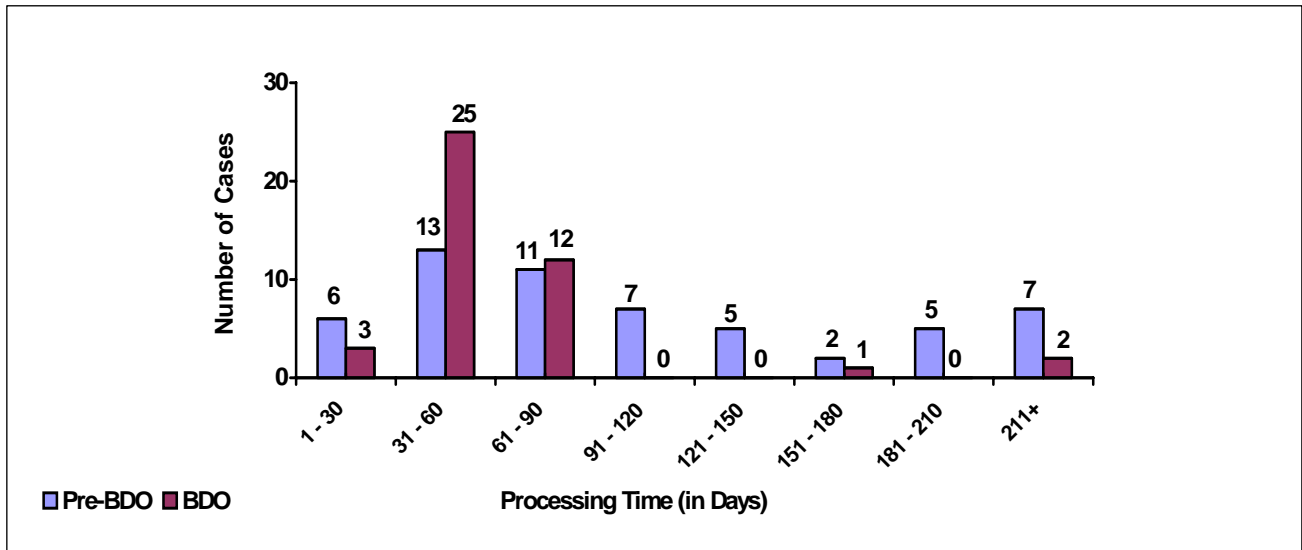
In addition to providing a mechanism for ensuring consistent final decisions, the establishment of the Bureau Deciding Official should serve to enhance timeliness of the overall deciding official process. While managers currently serving as deciding officials must handle that responsibility in conjunction with their other wide-ranging daily responsibilities, the [Bureau Deciding Official] will have a singular focus on the prompt and fair adjudication of proposals received.

To evaluate whether the single Bureau Deciding Official was an improvement, we performed a comparative analysis of disciplinary decisions in the centralized process before and after the creation of the Bureau Deciding Official. We found that the Bureau Deciding Official's disciplinary decisions were timelier than the decisions made prior to the June 2003 Bureau Deciding Official pilot project. For the time period reviewed, the Bureau Deciding Official pilot project improved the average disciplinary decision processing time by 43 percent. Based on 56 cases involving a decision prior to June 2003, the average time for local deciding officials to process a disciplinary decision was 111 days, ranging from 19 days to 394 days. Based on 43 such cases that were decided by the Bureau Deciding Official after June 2003, the average time required for the Bureau Deciding Official to decide cases was only 63 days, ranging from 26 days to 249 days. Chart 6 shows how long the centralized process took to issue decision letters, before and after the initiation of the Bureau Deciding Official pilot project.

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**Chart 6: Centralized Process Decision Letter Processing Times**



Source: OIG centralized process disciplinary case file review

The Bureau Deciding Official process also provides for more consistent decisions because the responsibility for deciding misconduct cases has been consolidated. According to the Merit Systems Protection Board, which hears employee appeals for misconduct cases involving suspensions of more than 14 days, reductions in pay or grade, or removals, deciding officials must issue disciplinary decisions consistent with their own prior decisions in their current duty station.<sup>33</sup> Prior to June 2003, therefore, individual deciding officials were only required to ensure consistency with their prior decisions in similar cases and were not required to consider the decisions of other deciding officials or conform to an ATF-wide discipline standard. Because deciding officials must issue disciplinary decisions consistent with their own prior decisions, the Bureau Deciding Official is required to ensure consistency with his own prior decisions in similar cases. Moreover, because the Bureau Deciding Official is now responsible for all centralized process disciplinary decisions ATF-wide, the Bureau Deciding Official is better able to ensure consistent disciplinary outcomes throughout the ATF for the cases he adjudicates.<sup>34</sup>

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<sup>33</sup> *Wentz v. United States Postal Service*, 91 MSPR 176, 187 (March 13, 2002). “To prove a disparate treatment claim with regard to the penalty of an act of misconduct, an appellant must show that a similarly situated employee received a different penalty.... The comparator employee must be in the same work unit... must have the same supervisors... and the misconduct must be substantially similar.”

<sup>34</sup> The Bureau Deciding Official’s effect on agency-wide consistency only applies to those misconduct cases handled through the centralized process, as local managers are (Cont’d.)

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In addition, the policies and procedures guiding the Bureau Deciding Official process promote a more consistent method for handling misconduct cases than the guidance previously in place. For example, the Bureau Deciding Official is required to hear, via telephone, all employees' oral replies to proposed discipline. All employees receive the same opportunity to reply to proposed discipline in the same format. In contrast, previously deciding officials could hear employees' oral replies via telephone or in person. Deciding officials were able to delegate the responsibility for hearing an employee's oral reply to another individual. That individual would then summarize the oral reply for the deciding official's consideration. This process increased the likelihood that misconduct cases or employees could receive inconsistent consideration during the adjudication phase.

We also concluded that the Bureau Deciding Official's decisions were more reasonable than the decisions previously made by local deciding officials. Prior to the creation of the Bureau Deciding Official, local managers mitigated the proposed punishment in 26 of the 77 disciplinary decisions we reviewed. Fifteen of the 26 cases that were mitigated did not contain adequate explanation of the mitigation in the decision letters. As discussed previously, some decision letters included only a broad statement that the deciding official had "considered the Douglas Factors" or the employee's reply. Other decision letters stated that the deciding official felt that the mitigated punishment appropriately addressed the misconduct, but did not give any reason why the discipline was mitigated.

In contrast, the Bureau Deciding Official mitigated the discipline proposed by the Professional Review Board in only 7 of the 77 cases we reviewed. Of those seven mitigations, three were not adequately explained in the decision letters, as required. These three inadequately explained mitigations were relatively minor, ranging from a 1-day mitigation to a 4-day mitigation of proposed suspensions. These results show that the introduction of the Bureau Deciding Official has reduced the incidence of undocumented mitigations in the centralized process.

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still able to impose discipline for cases investigated and adjudicated through the decentralized process. Based on information provided to us by the ATF, approximately 630 local managers were eligible to propose or decide discipline through the decentralized process for the time period reviewed.

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## **CONCLUSION AND RECOMMENDATIONS**

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### **CONCLUSION**

Although the establishment of a Bureau Deciding Official improved the consistency, reasonableness, and timeliness of the adjudication of discipline cases under the centralized process, we conclude that further improvements are needed to address the problems we found in the ATF's disciplinary system.

We found that the ATF does not ensure that all allegations of employee misconduct are reported to the ATF Investigations Division and the OIG, as required. The ATF's failure to ensure consistent reporting enabled some serious misconduct cases to be investigated and adjudicated under the decentralized process, in which no formal investigation is required.

The ATF's practice of allowing a single individual to serve as both the proposing and deciding official for an employee misconduct case removes the checks and balances normally in place in the disciplinary system and increases the likelihood for an unreasonable disciplinary result. Also, the ATF inconsistently considers prior discipline, and inconsistencies in the disciplinary database impede the ATF's ability to ensure that discipline is consistent for similar misconduct cases. Deciding officials do not always thoroughly document their reasons for mitigating proposed discipline.

We found that the average time the ATF took to investigate and adjudicate misconduct cases was within the range of the processing times of other Department components we have reviewed. However, the ATF has not implemented timeliness standards or goals to measure the discipline system's performance.

For the time period reviewed, the Bureau Deciding Official pilot project improved the timeliness, consistency, and reasonableness of disciplinary decisions in the centralized process. Based on our review of the pilot project, we believe the use of a Bureau Deciding Official will produce more consistent, reasonable, and timely adjudicative decisions.

### **RECOMMENDATIONS**

We provide nine recommendations to help the ATF better ensure that its disciplinary system is timely, consistent, and reasonable. The recommendations focus on ensuring compliance with misconduct reporting

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requirements; thorough investigation of misconduct allegations; consistent and reasonable adjudication of misconduct cases; consistent implementation of discipline imposed; and timely system performance. We recommend that the ATF:

1. Remind all employees on an annual basis, particularly local managers and ELRT staff, that any allegation or information concerning misconduct must be promptly reported to the ATF Investigations Division or the OIG.
2. Require that all investigations of alleged misconduct be conducted or reviewed by the ATF Investigations Division before the misconduct case can be adjudicated.
3. Properly categorize misconduct to accurately reflect the underlying misconduct, rather than applying generic charges such as “poor judgment.”
4. Establish data entry and quality control standards and procedures for all information entered in its automated disciplinary database and for all documentation collected and maintained in the disciplinary case files.
5. Require that each decision letter that reduces the proposed discipline adequately document the reasons for the mitigation.
6. Establish a time period for how far back prior discipline should be considered.
7. Prohibit the same individual from serving as the proposing and deciding official for the same misconduct case.
8. Establish policies and procedures, including management reviews, to ensure that discipline imposed is consistently implemented.
9. Establish time standards and performance measures for the investigation and adjudication phases for the centralized and decentralized disciplinary processes.

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## **APPENDIX I: DOUGLAS FACTORS**

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In *Douglas v. Veterans Administration* (1981), the Merit Systems Protection Board identified 12 relevant factors that agency management needs to consider and weigh in deciding an appropriate disciplinary penalty. The 12 Douglas Factors are:

1. The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. The employee's past disciplinary record;
4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. Consistency of the penalty with the applicable agency table of penalties (which are not to be applied mechanically so that other factors are ignored);
8. The notoriety of the offense or its impact upon the reputation of the agency;
9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. The potential for employee's rehabilitation;

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11. Mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
  12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

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## APPENDIX II: ATF'S RESPONSE TO DRAFT REPORT

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U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

*Office of the Director*

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SEP 21 2005

Washington, DC 20226

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MEMORANDUM TO: Assistant Inspector General for Evaluation and Inspections

FROM: Director

SUBJECT: Response to the Office of the Inspector General (OIG) Draft  
Audit Report: Review of the Bureau of Alcohol, Tobacco,  
Firearms and Explosives' Disciplinary System,  
Assignment Number A-2004-014

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) appreciates the opportunity to respond to the recommendations from the OIG's above-cited draft report. We welcome constructive criticism of our programs as this independent review process typically helps us to improve our ability to plan and manage our resources more efficiently.

In general, ATF concurs with the findings and recommendations of your report and will address each recommendation in a corrective action plan. Our responses to your recommendations are as follows:

**Recommendation #1:** Remind all employees on an annual basis, particularly local managers and Employee and Labor Relations Team (ELRT) staff, that any allegation or information concerning misconduct must be promptly reported to the ATF Investigations Division or the OIG.

**Response:** We concur with this recommendation. All ATF employees are required to complete annual on-line training in the Standards of Ethical Conduct. We will request that the Office of Chief Counsel include a reminder in the ethics training course for all employees to comply with the reporting requirements specified in ATF Order 2130.1, Conduct and Accountability, and ATF Order 8610.1A, Internal and Other Investigations. ELRT regularly advises first-line supervisors of these requirements during the Leadership Skills for New Supervisors course, which is required training for all new supervisors. In addition, an annual announcement is issued



Assistant Inspector General for Evaluation and Inspections

via the ATF IntraWeb, entitled "Standards of Conduct Reminder," encouraging all employees to review ATF Order 2130.1 on at least an annual basis and refer questions to the ELRT. ELRT and the Office of Professional Responsibility and Security Operations (OPRSO) will study the need for an additional specific annual reminder to all employees on just the reporting requirements. We estimate completion of this process by November 1, 2005.

**Recommendation #2:** Require that all investigations of alleged misconduct be conducted or reviewed by the ATF Investigations Division before the misconduct case can be adjudicated.

**Response:** We concur with this recommendation. All ATF employees are required to report allegations of misconduct to the Investigations Division. We plan to establish a procedure for referral of allegations of misconduct under the decentralized procedure (i.e., requests for assistance referred directly to ELRT by supervisors) to the Investigations Division by use of e-mail messages. When a supervisor contacts an ELRT specialist for assistance, the specialist will instruct the supervisor to summarize the facts and circumstances of the misconduct in an e-mail to ELRT. The specialist will forward the e-mail to OPRSO for review, and OPRSO will determine if an investigation is necessary. If it is not necessary, OPRSO will return the matter by e-mail to ELRT for handling. Hard copies of all such e-mail communications will be retained by ELRT and the Investigation Division for review by the OIG. We will develop a written procedure for this by September 1, 2005.

**Recommendation #3:** Properly categorize misconduct to accurately reflect the underlying misconduct, rather than applying generic charges such as "poor judgment."

**Response:** We partially concur with this recommendation. In some cases, a specific charge can be used if the agency can prove all the elements of the offense. Such is the case when an enhanced penalty is established by statute, as in the example of willful misuse of a Government-owned vehicle (GOV). However, in other cases of misconduct where the employee's improper conduct does not fit neatly into a specific charge or all of the elements of the specific offense might not be proved, use of a generic charge such as "poor judgment" is often more appropriate.

Use of generic charges like "poor judgment" can limit the elements that an agency must prove in order to sustain a charge at the MSPB. In those cases, to prove a more specific charge such as insubordination, an agency must not only prove that the employee was given a lawful order that the employee disobeyed, but also that the disobedience was willful and deliberate. A generic charge such as "poor judgment" would not require the agency to also prove "willfulness" but could sustain the same penalty. The narrative portion of the proposed action puts the employee on notice of *exactly* what misconduct the agency is alleging the employee committed (often spelling out, for example, insubordinate misconduct).

ELRT specialists and agency attorneys have been instructed at the National Advocacy Center (NAC) by instructors from the Justice Management Division (JMD) that use of a generic charge such as "poor judgment" is a preferred charge in other instances. This training at the NAC is consistent with the best practices that are taught in other courses and seminars presented by

Assistant Inspector General for Evaluation and Inspections

practitioners including MSPB administrative judges, who practice in this area of law. Better results are had as appropriate penalties are sustained by third parties while simultaneously lessening the agency's evidentiary burden. With all that said, the agency will specifically charge misuse of a GOV and similar offenses when agency counsel determines that all of the elements of the offense can likely be proved.

**Recommendation #4:** Establish data entry and quality control standards and procedures for all information entered in its automated disciplinary database and for all documentation collected and maintained in the disciplinary case files.

**Response:** We concur with this recommendation. We have determined that Standard Operating Procedures (SOPs) and a checklist for ELRT and PRB specialists to complete for each case are necessary to document compliance with data entry and case file standards. We estimate that the SOPs and the checklist can be completed by December 31, 2005. We will also review and better define the fields for data entry. In addition, during the OIG review, the PRB Chair indicated to the review team that he plans to conduct a comprehensive review of all of the PRB cases in the database for the last 5 years (approximately 500 cases), including the case files, to ensure that the information in the records is complete and accurate. This effort will exceed what was recommended in the report. The review of the 500 records will be completed within Fiscal Year 2006.

**Recommendation #5:** Require that each decision letter that reduces the proposed discipline adequately document the reasons for the mitigation.

**Response:** We concur with this recommendation. All specialists under both the centralized and decentralized disciplinary systems are expected to comply with this practice. The OIG draft report did not identify the particular cases wherein the decision letters failed to document the reasons for mitigation, so we cannot address those specific instances. In accordance with *Douglas v. Veterans' Administration*, all adverse action (i.e., suspensions exceeding 14 days, demotions, and removals) decision letters must include reference to the pertinent Douglas factors considered by the deciding official. Until a few years ago, we did not consistently apply this requirement to disciplinary actions of 14 days or less. We were instructed by JMD at the NAC to include discussion of mitigating factors in all decision letters. If the deficient letters referenced in the report were related to cases adjudicated more than a few years ago, this may be why they did not include the required language.

**Recommendation #6:** Establish a time period for how far back prior discipline should be considered.

**Response:** We partially concur with this recommendation. It is our understanding that the unwritten policy of JMD is that the "period of reckoning" for disciplinary actions is 4 years. 'Period of reckoning' is a term of art used in Federal personnel cases that describes how far back an agency will look to see if the employee in question had been disciplined for *dissimilar* misconduct. Of course, the agency can and should consider any prior discipline for the same or



Assistant Inspector General for Evaluation and Inspections

similar misconduct, including discipline more than a decade old. For example, the MSPB just recently upheld the removal of an ATF employee for the willful use of a government furnished automobile (GFA) for other than an official purpose and failure to report the discharge of the employee's firearm. In sustaining the removal, the MSPB, as did the Bureau Deciding Official when making his decision, relied on the employee's prior discipline for improper use of a GFA some 13 years before. The agency cannot agree to set a time period for how far back prior *similar* discipline will be considered. With that said, we do agree that the Bureau has not consistently applied a specific period of reckoning. This issue has been further complicated by the use of other periods by the ATF Assessment Center, the Merit Promotion Board, the National Response Team, the Special Response Team, and any other office or position which determined eligibility based partly on an employee's disciplinary record. In order to establish a consistent period of reckoning for discipline as well as the other periods used to determine eligibility discussed above, we must develop a proposal for review and approval by the ATF Executive Staff. We will complete a proposal for this by December 31, 2005.

**Recommendation #7:** Prohibit the same individual from serving as the proposing and deciding official for the same misconduct case.

**Response:** We concur with this recommendation. The official delegations of authority for proposing and deciding actions based on misconduct are established per ATF Order 1150.4, Delegation Order - Adverse Action and Discipline. Historically, the Bureau's policy and practice have been to propose and decide actions at the lowest supervisory level; however, having two different officials propose and decide is not prohibited under the order. Until ATF Order 1150.4 is revised, we can develop an ATF Brief in order to implement this particular change in policy. We will develop a draft brief by December 31, 2005. This change will also be incorporated into the forthcoming Bureau Deciding Official (BDO) order.

**Recommendation #8:** Establish policies and procedures, including management reviews, to ensure that discipline imposed is consistently implemented.

**Response:** We concur with this recommendation. Our response to Recommendation #4, above, is also applicable here. The SOPs and checklist will include steps taken to ensure full implementation of each action.

**Recommendation #9:** Establish time standards and performance measures for the investigation and adjudication phases for the centralized and decentralized disciplinary processes.

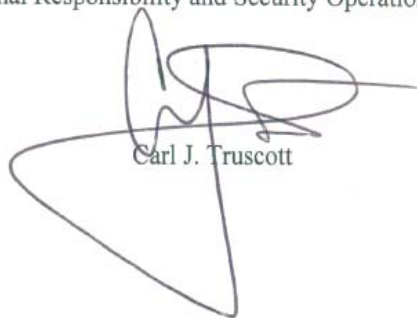
**Response:** We concur with this recommendation. The Bureau agrees that overall time standards and performance measures should be instituted for the investigation and adjudication phases of the centralized and decentralized disciplinary processes. It should be noted that the servicing specialists in ELRT have time lines and standards for handling disciplinary actions that are included as a part of the critical elements and standards for which they are held accountable and on which they are rated.

Assistant Inspector General for Evaluation and Inspections

The Bureau has contracted with LMI to look at these and other personnel processes with an eye toward strengthening and improving their effectiveness and implementing new processes where needed. Personnel staff members have already begun to discuss task process with LMI and are in the process of gathering the information needed by LMI to begin drafting standard operating procedures (SOPs) and designing additional structures to address the issues raised by the IG as well as other concerns. It is anticipated that the process for setting up these procedures can be accomplished and the use of these processes implemented by December 31, 2005.

In conclusion, ATF has a history of excellence, an outstanding record that I look forward to continuing and expanding. I believe that professional integrity and character are core expectations for those of us in public service. This means that employees' actions, both personal and professional, should withstand public scrutiny and be beyond reproach. Therefore, every employee must be responsible for his or her actions. With such accountability come the dividends of integrity, respect, and public trust. I expect all employees to be exemplary in obeying the laws of the land as well as the Bureau's regulations.

If you have any questions regarding this response, please contact Ms. Carol Campbell, Audit Liaison, Office of Professional Responsibility and Security Operations, at (202) 927-8276.



Carl J. Truscott

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## **APPENDIX III: OIG ANALYSIS OF ATF'S RESPONSE**

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On July 15, 2005, the Office of the Inspector General (OIG) sent copies of the draft report to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) with a request for written comments. The ATF responded to us in a memorandum dated September 2, 2005.

### **ATF Response**

The ATF generally concurred with the nine OIG recommendations to help the ATF better ensure that its processing of employee misconduct cases is timely, consistent, and reasonable. The ATF's response also described the actions it has taken and plans to take to implement the recommendations.

### **OIG Analysis of the ATF Response**

The actions undertaken and planned by the ATF to better ensure that its processing of employee misconduct cases is timely, consistent, and reasonable are responsive to our recommendations.

## **RECOMMENDATIONS**

**Recommendation 1:** Remind all employees on an annual basis, particularly local managers and Employee Labor Relations Team (ELRT) staff, that any allegation or information concerning misconduct must be promptly reported to the ATF Investigations Division or the OIG.

Status: Recommendation 1 is Resolved – Open.

Summary of ATF Response. The ATF concurred with the recommendation and described present efforts to remind employees of the reporting requirement. As corrective action, the ATF plans to include a reminder of the reporting requirement in required annual online training on the Standards of Ethical Conduct by November 1, 2005.

OIG Analysis. The actions planned by the ATF to remind its employees annually that any allegation or information concerning misconduct must be promptly reported to the ATF Investigations Division or the OIG are responsive to our recommendation. Please provide a copy of the revised online training on the Standards of Ethical Conduct by January 31, 2006.

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**Recommendation 2:** Require that all investigations of alleged misconduct be conducted or reviewed by the ATF Investigations Division before the misconduct case can be adjudicated.

Status: Recommendation 2 is Resolved – Open.

Summary of ATF Response. The ATF concurred with the recommendation and will establish a process for the review of ELRT (decentralized process) cases by the Investigations Division before any misconduct case is adjudicated. The ATF expects to develop written procedures for Investigations Division review by September 1, 2005.

OIG Analysis. The actions planned by the ATF to establish written procedures for the review of ELRT (decentralized process) cases by the Investigations Division before any misconduct case is adjudicated are responsive to our recommendation. Please provide a copy of the written procedures for Investigations Division review by January 31, 2006.

**Recommendation 3:** Properly categorize misconduct to accurately reflect the underlying misconduct, rather than applying generic charges such as “poor judgment.”

Status: Recommendation 3 is Resolved – Open.

Summary of ATF Response. The ATF generally concurred with the recommendation and will specifically charge employees with misuse of a government vehicle and other specific underlying misconduct when agency counsel determines that all of the elements of the underlying misconduct can likely be proven.

OIG Analysis. The actions planned by the ATF to specifically charge employees with misuse of a government vehicle and other similar charges when agency counsel determines that all of the elements of the underlying misconduct can likely be proven are responsive to our recommendation. So that we may evaluate the ATF’s implementation of this recommendation, please provide copies of the proposal and decision letters for all ATF disciplinary actions during the first quarter of fiscal year (FY) 2006 by January 31, 2006.

**Recommendation 4:** Establish data entry and quality control standards and procedures for all information entered in the ATF’s automated disciplinary database and for all documentation collected and maintained in the disciplinary case files.

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Status: Recommendation 4 is Resolved – Open.

Summary of ATF Response. The ATF concurred with the recommendation and plans to establish standard operating procedures and a checklist by December 31, 2005, for use by the employees who make database entries. As a quality control measure, the Chairman of the Professional Review Board will oversee a review of the records of approximately 500 cases entered into the database over the last 5 years during FY 2006.

OIG Analysis. The actions planned by the ATF to establish standard operating procedures and a checklist for use by the employees who make database entries are responsive to our recommendation. Please provide a copy of the standard operating procedures, the checklist, and a status report on the case file review by January 31, 2006.

**Recommendation 5:** Require that each decision letter that reduces the proposed discipline adequately document the reasons for the mitigation.

Status: Recommendation 5 is Resolved – Open.

Summary of ATF Response. The ATF concurred with the recommendation and, as directed by the Justice Management Division, the ATF will include adequate documentation of the reasons for any mitigation in future decision letters.

OIG Analysis. The actions planned by the ATF to include adequate documentation of the reasons for any mitigation in future decision letters are responsive to our recommendation. On January 31, 2006, please provide a copy of each decision letter reducing proposed discipline issued between now and January 31, 2006.

**Recommendation 6:** Establish a time period for how far back prior discipline should be considered.

Status: Recommendation 6 is Resolved – Open.

Summary of ATF Response. The ATF generally concurred with the recommendation and will establish a period of reckoning for dissimilar prior misconduct and other guidance regarding similar prior misconduct. This action will require approval by the ATF Executive Staff and will not be completed until after December 31, 2005.

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OIG Analysis. The actions planned by the ATF to establish a period of reckoning for dissimilar prior misconduct and other guidance regarding similar prior misconduct are responsive to our recommendation. Please provide a status report and further documentation of the planned corrective actions by January 31, 2006.

**Recommendation 7:** Prohibit the same individual from serving as the proposing and deciding official for the same misconduct case.

Status: Recommendation 7 is Resolved – Open.

Summary of ATF Response. The ATF concurred with the recommendation and plans to revise ATF Order 1150.4 prohibiting the same individual from serving as the proposing and deciding official for the same misconduct case. This action will not be completed until after December 31, 2005.

OIG Analysis. The actions planned by the ATF to prohibit the same individual from serving as the proposing and deciding official for the same misconduct case are responsive to our recommendation. Please provide a status report and further documentation of the planned corrective actions by January 31, 2006.

**Recommendation 8:** Establish policies and procedures, including management reviews, to ensure that discipline imposed is consistently implemented.

Status: Recommendation 8 is Resolved – Open.

Summary of ATF Response. The ATF concurred with the recommendation and plans to use the standard operating procedures, checklist, and case file review developed in response to Recommendation 4 to ensure that discipline imposed is consistently implemented.

OIG Analysis. The actions planned by the ATF to establish standard operating procedures and a checklist and to conduct a case file review are responsive to our recommendation. Please provide a copy of the standard operating procedures, the checklist, and a status report on the case file review by January 31, 2006.

**Recommendation 9:** Establish time standards and performance measures for the investigation and adjudication phases for the centralized and decentralized disciplinary processes.



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Status: Recommendation 9 is Resolved – Open.

Summary of ATF Response. The ATF concurred with the recommendation and plans to establish time standards and performance measures for the investigation and adjudication phases of the centralized and decentralized disciplinary processes by December 31, 2005.

OIG Analysis. The actions planned by the ATF to establish time standards and performance measures for the investigation and adjudication phases of the centralized and decentralized disciplinary processes are responsive to our recommendation. Please provide copies of the time standards and performance measures for the centralized and decentralized disciplinary processes by January 31, 2006.