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Integrity Oversight Review of the United States Customs Service
QA-2000-5-1

November 21, 2000

Office of Investigations

Office of Inspector General

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United States Department of the Treasury

EXECUTIVE SUMMARY

Introduction

The Office of Inspector General (OIG), Treasury Integrity Division, conducted an oversight review of the U.S. Customs Service (USCS), Office of Internal Affairs (OIA), to assess the quality of their internal investigative operation. In addition to closed OIA investigations and USCS management inquiries, the OIG Office of Audit reviewed the actions taken by management upon the receipt of the findings of an OIA investigation or administrative inquiry.

The OIG conducted this review to determine whether allegations of misconduct were properly reviewed and assigned for investigation, whether the allegations were fully and timely investigated, and if discipline was administered consistent with USCS policies.

Inspection Review

During the inspection we examined the management structure of the Office of Internal Affairs; staff qualifications; independence; due professional care; quality control and operational process.

We reviewed 318 OIA investigative files, 152 USCS management inquiry files and 131 discipline files.

Results in Brief

In 292 of the 318 OIA cases we reviewed the allegations were thoroughly investigated, completed in a timely manner, and reported to the appropriate official.

While case management was efficient, the majority of investigative case files failed to comply with USCS OIA reporting requirements. The OIA is currently in the process of changing policy concerning reporting requirements. A draft policy revision, dated May 11, 2000, is currently being circulated within OIA management.

We determined that USCS management inquiries into allegations of misconduct were not always efficiently addressed. USCS management assigned a fact finder to conduct an inquiry into 17 of the 152 management referrals in our sampling. Out of the 17 inquiries reviewed two lacked objectivity.

Of the 17 management inquiries reviewed, five cases failed to pursue all logical leads or attempt to interview all witnesses.

We found that USCS management did not always administer discipline in accordance with the guidelines set by the Table of Offenses and Penalties. The Table serves as a guide in assessing the appropriate penalty for common types of misconduct. Our review revealed that discipline was administered in 54 of the 131 reviewed discipline files. In 21 of the 54 files in which discipline was administered the penalty was lower than the guidelines provided in the Table of Offenses and Penalties.

We found that the Discipline Adverse Action Tracking System, a database maintained by the Office of Human Resources to provide information on disciplinary action and adverse actions, was incomplete and inaccurate.

The findings of this review were discussed with the USCS, Office of Human Resources and the OIA. The USCS provided a written response to the review. This response is included as an appendix to this report.

BACKGROUND

Treasury Directive 40-01, "Responsibilities of and to the Inspector General", dated September 21, 1992, states the OIG is responsible for overseeing the internal investigative functions of the USCS. Pursuant to this Directive, the OIG Treasury Integrity Division conducted an oversight review of the USCS Office of Internal Affairs to determine the quality of their investigative operation. In addition, the OIG Office of Audit conducted a review of the USCS discipline process to determine if the USCS application of discipline is consistent with USCS policy.

SCOPE AND METHODOLOGY

The scope of our inspection was to assess the efficiency and effectiveness of the OIA operation and the USCS discipline process for the time period August 1, 1999 through March 31, 2000. We evaluated the process USCS follows to decide whether an allegation of misconduct will be addressed by USCS management, investigated by the OIA or closed without action. In addition, we reviewed the quality and timeliness of internal investigations and management inquiries; the ratio of OIA cases to agents assigned and the internal quality control of investigative reports. Management decisions relative to discipline based on the outcome of closed OIA investigations and management inquiries were also reviewed to determine if the USCS Table of Offenses and Penalties was followed.

The USCS reported that during the period August 1, 1999, through March 31, 2000, there were 667 closed OIA investigative cases, 812 closed management inquiries, and 1,073 closed discipline files. The OIG used a statistically valid random sampling to determine the number of closed cases to be reviewed. The OIG reviewed 318 closed OIA case files randomly selected from OIA Offices located in 19 cities to include: Alexandria, Virginia; Boston, Massachusetts; Buffalo, New York; Calexico, California; Chicago, Illinois; Detroit, Michigan; El Paso, Texas; Hoboken, New Jersey; Houston, Texas; JFK Airport Queens, New York; Long Beach, California; McAllen, Texas; Miami, Florida; New York, New York; New Orleans, Louisiana; San Diego, California; San Francisco, California; San Juan; Puerto Rico and Tucson, Arizona. We also reviewed 152 randomly selected management inquiries. A random sampling of 123 discipline files were reviewed and another 8 discipline files were judgmentally selected for review bringing the total number of discipline

files reviewed to 131. The USCS OIA handbook was used to provide guidance concerning OIA policy and procedures.

OFFICE OF INTERNAL AFFAIRS

The U.S. Customs Service Office of Internal Affairs investigates allegations of misconduct, reports investigative results, and inspects USCS operations and processes for managerial effectiveness. In addition, OIA screens potential USCS employees, educates employees concerning integrity, and evaluates threats to employees and facilities.

MANAGEMENT

The OIA is managed by an Assistant Commissioner and a Deputy Assistant Commissioner. The Assistant Commissioner of Internal Affairs answers directly to the Office of the Commissioner of Customs. The OIA is comprised of 339 employees who are assigned to one of the seven divisions or units at the headquarters level or to four regional offices across the United States. These employees are drawn from various disciplines such as; Auditors, Criminal Investigators, Intelligence Research Specialists, Investigative Assistants, Program Managers and Security Specialists. As of July 15, 2000, over one half of the OIA is staffed by 176 Criminal Investigators: 117 hold the grade of GS-13 while the remaining 59 hold a grade of GS-14 or above.

REGIONAL OFFICES

In March 1999, the OIA field offices were reorganized into Regional Offices. The reorganization was based upon several factors such as: the OIA caseload at that time, the number of U.S. Customs personnel in a particular area and OIA response time within a geographical area. Since the largest concentration of USCS manpower has traditionally been the Southwest Border, the OIA allocated assets accordingly.

Each Regional Office is managed by a Regional Special Agent in Charge (RSAC) who is a Senior Executive Service level manager. The RSAC reports directly to the Deputy Assistant Commissioner. The Regional Offices are located as follows:

Region 1 - Newark, New Jersey
Region 2 - Miami, Florida
Region 3 - El Paso, Texas
Region 4 - Seattle, Washington

Deputy Regional Special Agents in Charge (DRSAC) are assigned to field locations within a region. The DRSAC is a GS-15 level manager who answers directly to the RSAC. DRSAC assignments are as follows:

Region 1 - Chicago, Illinois
Region 2 - Tampa, Florida
Region 3 - Tucson, Arizona
Region 3 - San Diego, California
Region 4 - Seattle, Washington

The RSAC manages Resident Agent in Charge Offices (RAC) located throughout a region. The RAC is headed by a GS-14 manager who oversees the daily investigation of OIA cases. The RAC reports directly to the DRSAC for his region. RAC offices are located in the following locations: Alexandria, Virginia; Boston, Massachusetts; Buffalo, New York; Calexico, California; Chicago, Illinois; Detroit, Michigan; El Paso, Texas; Hoboken, New Jersey; Houston, Texas; JFK Airport Queens, New York; Long Beach, California; McAllen, Texas; Miami, Florida; New York, New York; New Orleans, Louisiana; San Diego, California; San Francisco, California; San Juan, Puerto Rico; Tucson, Arizona and Seattle, Washington.

CASELOAD

During the period August 1, 1999 through March 31, 2000, the OIA received 2,319 allegations; opened 842 investigations; referred 873 allegations to management and closed 604 allegations with no action. During this period OIA closed 667 investigations and closed 812 management inquiries.

Currently there are 140 OIA criminal investigators assigned to conduct investigations. The average number of cases per OIA agent is 8.6. In addition to conducting OIA investigations, agents are responsible for consulting with fact finders assigned to conduct USCS management inquiries. In this regard, agents review reports, provide guidance to fact finders and administratively track inquiries being conducted by USCS management fact finders. The average number of inquiries to OIA agents is 1.4.

INDEPENDENCE

The Assistant Commissioner of Internal Affairs answers directly to the Office of the Commissioner of Customs. This allows the OIA to operate independent of outside influences.

On April 19, 1999, the Commissioner implemented a formal rotation policy between Special Agents assigned to the OIA and to the USCS Office of Investigations (OI). This policy mandated a minimum three-year tour of duty in the OIA. Upon completion of a three-year tour in OIA an agent may submit a prioritized list of preferred locations for reassignment back to the OI. The rotation was designed to take advantage of investigative experience.

On August 19, 1999, Assistant Commissioner, OIA, formalized a recusal policy for the OIA. This policy was designed to prohibit an agent assigned to the OIA from participating in an investigation of an individual with whom the OIA has a close personal relationship.

The Office of Inspector General conducts investigations into allegations of misconduct on the part of OIA employees.

STAFF QUALIFICATIONS

Through experience and training personnel assigned to the OIA collectively possess the necessary professional characteristics to conduct the range of expected internal investigations. Only senior investigators at the GS-13 level are assigned to the OIA. Once they are selected, agents receive specialized training in a basic OIA School. Periodically they receive additional training relative to internal investigations.

DUE PROFESSIONAL CARE

Specific methods and techniques employed by investigators and fact finders were appropriate for the circumstances and objectives of the investigation or inquiry. Except for the instances noted under the Management Inquiry File Review section of this report, we found the investigations and inquiries were conducted in a fair, impartial manner consistent with agency guidelines.

OPERATIONAL PROCESS

Sufficient supervisory controls exist over the operational process concerning the receipt, screening and assignment of allegations. The controls allowed for the effective analysis, accurate cross-referencing and efficient retrieval of required information. Only OIA personnel can access TECS II, the OIA section of the Treasury Enforcement Communications System

(TECS)[1]. Additional levels of security are in place further limiting access to investigative files to a need-to-know basis.

ALLEGATION INTAKE AND REVIEW PROCESS

Allegations of misconduct are received by the USCS from internal and external sources. Allegations are received through hotline telephone numbers, the USCS Customer Satisfaction Unit, mail, referrals from the OIG and referrals from OIA field offices. All allegations, regardless of the source, are forwarded to the Allegation Intake Desk (AID) for processing and assignment.

The AID is staffed by OIA employees who are trained to conduct an initial analysis of an allegation and recommend appropriate action. An analysis of similar allegations, related investigations and prior adverse actions is conducted to identify trends and patterns of behavior. AID staff utilize an offense guideline (decision matrix) to assist in the analysis of a particular allegation.

Once an allegation is received by the AID, an analysis process is initiated. The analysis is conducted to determine what type of action should be taken to effectively address the allegation. The AID classifies an allegation into one of four classes established by the OIA. These classes are as follows:

Class I - Criminal and Serious Misconduct

Class II - Serious Non-Criminal Misconduct or Mismanagement

Class III - Management Issues

Class IV - Information Only

Allegations in Class I and II are referred to OIA for investigation. Allegations of bribery or employee involvement in drug smuggling would be classified as Class I allegations. Sexual harassment and misuse of a government owned vehicle would be classified as Class II allegations. Class III allegations are referred to USCS management for inquiry or action. These allegations would include rude and unprofessional behavior. Class IV allegations are generally closed without action, but a

[1] The Treasury Enforcement Communications System is a database managed by the USCS. It was designed to provide controlled access to a large database of information about suspects and to interface with a number of law enforcement systems. Management information applications allow users to view, print or download previously generated investigative reports.

permanent record remains for future reference. For example, information concerning a lost pager would be considered a Class IV allegation.

If an allegation is received that is immediately determined to be a Class I allegation, an investigative referral is made to an OIA field office. Allegations below Class I are reviewed by the Intake Review Group (IRG). This Group is comprised of employees of OIA and an employee of the Labor and Employee Relations section of the USCS Office of Human Resources. The IRG reviews the Class II, III and IV allegations to determine if the allegation should be referred to OIA for investigation, referred to USCS management or closed with no action taken.

USCS MANAGEMENT INQUIRIES

Less serious allegations of employee misconduct are referred by the OIA to USCS management for examination and appropriate action. Management has the option of taking immediate action or assigning a fact finder to conduct an inquiry into the allegation. These inquiries by USCS management are known as administrative inquiries or management inquiries.

Prior to February 1999 there were no published directives for management inquiries within the Customs Service. On February 25, 1999, the Commissioner established a formalized program for management inquiries. This program provided training and written guidelines for a cadre of fact finders responsible for addressing allegations of misconduct not subject to an investigation by the OIA. The OIA provides guidance and oversight to a fact finder. When an inquiry is completed the report is reviewed and approved by the OIA to ensure the inquiry is complete and thorough.

DISCIPLINE PROCESS

In February 1999, the USCS began to undertake major changes and reforms to improve its investigative and discipline programs. While there were several reasons for these reforms, the primary impetus was the Commissioner's wish to uphold the integrity and professionalism of Customs, as well as address employee perceptions that discipline was not applied fairly or consistently throughout the organization.

Discipline can be broken into two major categories, based on the nature and seriousness of the misconduct: (1) lesser discipline for less serious misconduct and (2) adverse actions for serious

misconduct. Lesser discipline includes letters of reprimand and suspensions from duty and pay for 1-14 days. Examples of conduct which normally result in lesser discipline would include attendance problems, discourteous behavior, disruptive behavior, failure to follow supervisor's instructions, and inattention to duty.

Adverse actions include suspensions from duty and pay for more than 14 days, reductions in pay and/or grade, and removal. Examples of serious misconduct would include association with drug traffickers, unauthorized use of a government vehicle, inappropriate display of a weapon, misuse of TECS, retaliation, and sexual harassment.

There are three major steps in both lesser discipline and adverse actions: (1) the proposal stage, (2) the employee reply stage, and (3) the final decision stage. The proposal notice contains specific information and charges that outline what the employee did wrong and the specific discipline being proposed. For lesser discipline, a manager in the chain of command issues the proposal. For adverse actions, an independent Discipline Review Board issues the proposal.

The employee's reply, either provided orally or in writing or both, is the employee's opportunity to present his or her side of the story. The employee may offer new facts or evidence, which were unknown at the time the proposal was made, or they may simply offer an explanation of the circumstances or reasoning behind their actions. The employee reply is one of the significant factors that a deciding official takes into consideration when determining whether the employee committed the misconduct and whether the proposed penalty should be sustained or reduced.

At the final decision stage, the deciding official determines whether or not the employee committed the misconduct as charged, and then selects the specific penalty to impose. Disciplinary penalties are imposed to correct the behavior and teach the employee and others that those actions are inappropriate for a USCS employee. The deciding official takes into account certain factors, which are well established and commonly known as the "Douglas Factors," when selecting an appropriate penalty. The Douglas Factors include: the nature and seriousness of the offense; the employee's job level and type of employment; the employee's past disciplinary record; the employee's work record; the effect of the offense on the employee's ability to perform at a satisfactory level; the consistency of the penalty with

those imposed upon other employees for the same or similar offense; the consistency of the penalty with the applicable agency table of penalties; the impact of the offense on the reputation of the agency; the potential for the employee's rehabilitation; mitigating circumstances surrounding the offense; the clarity with which the employee had been warned about the conduct in question and the adequacy and effectiveness of alternative sanctions to deter such conduct in the future. The deciding official can sustain the original proposed action, reduce the penalty, or impose no penalty.

CUSTOMS' DISCIPLINE REVIEW BOARD

In April 1999, the Commissioner established a service-wide Discipline Review Board (DRB) to promote fairness and consistency in addressing cases of alleged employee misconduct. The primary function of the DRB is to review reports of serious misconduct and propose adverse action as appropriate. The DRB applies uniform standards of conduct to all employees regardless of their office, position or grade.

Each DRB panel is composed of three members who meet every two weeks to review reports of employee misconduct. Approximately 50 senior managers and supervisors were selected from throughout the USCS and were trained in their roles as DRB members.

The DRB reviews all Administrative Inquiry Reports produced by agency fact-finders and all Reports of Investigation produced by OIA or the OIG. After reviewing the case, the panel determines whether or not to propose an adverse action. Employee relations specialists in the Office of Human Resources provide administrative support and advisory services to the DRB. While the DRB is charged with issuing all proposals over 14-day suspensions, in some cases, the panel may determine that lesser discipline is appropriate and issue a proposal of less than a 15-day suspension. However, if the proposal involves lesser discipline, the DRB will normally remand the case to local management for consideration of a lesser penalty, if warranted.

Authority to make final decisions on actions proposed by the DRB has been delegated to the Assistant Commissioners and is redelegated, as appropriate. Deciding officials may sustain or mitigate proposed actions based upon an independent assessment of the misconduct and consideration of all relevant factors.

CUSTOMS' TABLE OF OFFENSES AND PENALTIES

The USCS revised its Table of Offenses and Penalties in August 1999 to provide clear guidance on ranges of penalties for specific acts of misconduct. The Table serves as a guide to managers, supervisors and practitioners in assessing the appropriate penalties for common types of misconduct. The Table provides a range of penalties for first and subsequent offenses. Discipline is usually progressive in nature and therefore, subsequent misconduct is treated with increasing severity.

Instructions for the use of the Table state it is provided as a guide, not as a set of mandatory rules; it does not relieve supervisors and managers of the responsibility of using good judgment when applying it to disciplinary situations. The Table is a guide to help ensure consistent application of similar penalties for similar offenses but the selection of a penalty should always be appropriate to the facts of the case. Instructions further state that the penalty may also be below the listed range for the offense but only after full and fair consideration of all available information.

EMPLOYEE RIGHTS

Employees have several avenues to address their dissatisfaction or disagreement with any formal disciplinary action that they feel is unfairly taken against them in the final decision. The forums available depend on a number of factors, including the severity of the penalty and whether the employee is a member of the bargaining unit. Methods of redress include the Administrative Grievance Procedure, the Merit System Protection Board, and the Dispute Resolution Procedure. In addition, all employees have the right to challenge any disciplinary action through the Equal Employment Opportunity complaint process if they feel the action taken was for discriminatory reasons.

DISCIPLINE ADVERSE ACTION TRACKING SYSTEM

The Discipline Adverse Action Tracking System (DAATS) maintained by the USCS Office of Human Resources contains information on disciplinary and adverse actions against USCS employees. DAATS is based on the creation of an electronic shell that consists of several preformatted screens for data entry. Each record includes basic identifying information such as name, social security number, grade, and series, and the charges alleged and sustained, as well as the proposed and final disciplinary or

adverse action taken. This information is accessed by the OIA and the Office of Human Resources.

OFFICE OF INTERNAL AFFAIRS INVESTIGATIVE CASE FILE REVIEW

OIA case files were examined to determine the proper handling and processing of allegations from receipt of an allegation and subsequent investigation to tracking the final disposition; the thoroughness and timeliness of internal investigations; the internal quality control of their investigative reports; and the management case review system.

ALLEGATIONS WERE HANDLED IN A TIMELY MANNER

We reviewed each investigative case file in our sample to determine how many days it took the OIA to initiate an investigation after receipt of an allegation. The time between the date the OIA received the allegation and the date an investigation was initiated, in most instances, was within three days. The allegations were handled effectively, efficiently and in a timely manner.

ALLEGATIONS WERE FULLY INVESTIGATED

We reviewed each investigative case file to determine whether allegations were fully investigated. With the exception of eleven cases, all logical investigative leads were developed and pursued, and appropriate investigative techniques were applied. Of the eleven exceptions, we found six cases that failed to document the dates of investigative activity, four cases that failed to interview all witnesses and one case that lacked objectivity in which the investigating agent's supervisor made subjective decisions concerning the outcome of the investigation.

TIMELY COMPLETION OF INVESTIGATION

We reviewed each investigative file from our sampling to determine whether the investigation was completed in a timely manner. We considered the date the allegation was received through the date of the final Report of Investigation. With the exception of fifteen cases, all investigations were completed in a timely manner. In one case considered untimely the closing report was written three years after the initial complaint was received.

INVESTIGATIONS WERE REPORTED APPROPRIATELY

Completed investigations are reported in TECS II, the OIA section of the Treasury Enforcement Communications System. Reports of Investigation are written, administratively tracked and approved by OIA management in TECS II. A copy of the investigative report is forwarded to USCS management for administrative action. A case is considered closed when administrative action is completed. The USCS Office of Human Resources, Labor and Employee Relations Branch, enters the final determination in the Discipline Adverse Action Tracking Section of TECS II. We reviewed each investigative case file to ensure that investigations were reported to the appropriate action official. In all cases reviewed the investigative results were properly reported either to the U.S. Attorney's office or to USCS management, or both.

ADMINISTRATIVE CONTROL OVER INVESTIGATIONS

We evaluated the TECS II automated case tracking system for OIA and determined that cases were being tracked appropriately and accurately. Our review found that TECS II was functional, complete, and up-to-date. The case list produced by the system reconciled with the physical case files reviewed.

The OIA Handbook outlines administrative procedures for maintaining investigative case files. The files reviewed did not always contain all pertinent information required by the OIA Handbook guidelines. This is due to the fact that the OIA relies heavily on TECS II for case tracking and administration. The case files reviewed contained agent notes, affidavits and relevant documents, while the TECS II system provided up-to-date reports and case status.

CASE REPORTING STANDARDS

The OIA Handbook requires that an interim report be completed within three working days after any substantive investigative activity. The majority of investigative case files failed to comply with this reporting requirement. The OIA is currently in the process of changing policy concerning reporting requirements. A draft policy revision, dated May 11, 2000, is currently being circulated within OIA management.

MANAGEMENT INQUIRY FILE REVIEW

Management Inquiry files were reviewed to determine the quality and timeliness of inquiries conducted by management; quality of reports; and the independence of the fact finder.

Our review determined that USCS management assigned a fact finder to conduct an inquiry into 17 of the 152 files reviewed. One of the inquiries reviewed was conducted by the OIA rather than a fact finder. The remaining 135 referrals made by the OIA to USCS management were acted upon without an inquiry by a fact finder. Allegations such as lost property, tardiness, rude behavior and failure to follow USCS policies were often handled by USCS management without a formal inquiry by a fact finder.

TIMELINESS

The USCS Administrative Inquiry Guidebook requires that a fact finder assigned to conduct an administrative management inquiry complete and distribute a draft report within 45 days of being assigned to conduct the inquiry. The majority of reports reviewed were completed within USCS guidelines.

ALLEGATIONS FULLY INVESTIGATED

The OIG reviewed 17 management inquiries conducted by a fact finder to determine whether allegations were fully investigated. Our review revealed five cases in which the fact finder failed to pursue all logical leads. Of these five cases, we found one inquiry that did not follow accepted procedures, one inquiry in which the fact finder failed to properly report the findings and three inquiries in which the fact finder did not pursue all leads or attempt to interview all witnesses. For example, in one inquiry the fact finder did not adequately address a subject's statement concerning possible misuse of a government vehicle. One inquiry conducted by the OIA was incomplete and failed to thoroughly interview all witnesses in order to resolve conflicting statements.

OBJECTIVITY

We reviewed each Management Inquiry conducted by a fact finder to determine if the fact finder conducted a fair and impartial inquiry. We considered the fact finder's duty assignment, pay grade, position and relationship to the subject to determine if

an inquiry lacked objectivity. Out of the 17 inquiries reviewed, two inquiries lacked objectivity. In these two inquiries the fact finder was from the same Customs Management Center as the subject and the OIG questioned the thoroughness, practices followed by the fact finder and the conclusion of the inquiry. In one inquiry the fact finder asked the subjects of the inquiry to witness each other's statements.

DISCIPLINE FILE REVIEW

DISCIPLINE ADMINISTERED RELIES HEAVILY ON THE DECIDING OFFICIAL'S JUDGMENT

We found that USCS management did not always administer discipline in accordance with the Table of Offenses and Penalties. Based on our review of 131 closed discipline cases, we concluded that although the Table of Offenses and Penalties is used as a guide, the discipline process relies heavily on the deciding official's judgment.

Of the 131 discipline cases we reviewed, "No Action" was taken in 72 cases because the allegation was unsubstantiated, unfounded, or did not merit investigation. Discipline was not administered in another five cases because the employee resigned, retired, or died before the investigation was completed or before discipline could be administered. We reviewed the remaining 54 cases that resulted in discipline being administered to determine if the penalties imposed were within guidelines established by the USCS Table of Offenses and Penalties. In 21 of the 54 cases where disciplinary action was administered, the penalty was lower than the prescribed penalty guidelines provided in the Table of Offenses and Penalties. For example, we found a case in which an allegation of Disruptive Behavior-Fighting was substantiated and the final action was a 1-day suspension, although the proposed action of a 3-day suspension was below the penalty of 5-day suspension to removal prescribed by the Table. In another case in which an allegation of Neglect of Duty was substantiated, the final action was a 2-day suspension. Neither the proposed action of a 3-day suspension or the final action was within the guidelines of a 7-day to 14-day suspension recommended in the Table. We discussed the 21 cases with USCS Office of Human Resources (HR) management to determine whether the penalties administered appeared reasonable.

HR management stated they believed that for those cases where discipline was not in accordance with the Table, the discipline administered was appropriate based on the circumstances of the case. HR management informed us that the purpose of discipline was not to punish employees, but to correct the employee's behavior so that the offense does not happen again. HR employees reiterated to us that the Table of Offenses and Penalties was just a guide, not a mandatory set of rules, and that the penalty administered could be below the listed range for the offense. HR employees stated that each discipline case was different, and that in each case, the Douglas Factors must be considered and the selection of the penalty should always be appropriate to the facts of the individual case. HR management stated that discipline proposals needed to be consistent, but not the decisions. They stated the final action does not need to be within the Table of Offenses and Penalties.

USCS officials also informed us that the vast majority of discipline and adverse actions are formally appealed by the employee. Therefore, agency decisions are routinely reviewed by appellate bodies who have the legal authority to affirm the Customs action, reverse the action, or to mitigate the penalty imposed by Customs. As a result, every discipline and adverse action case is examined carefully by employee relations specialists against case law to ensure that USCS can successfully support its decision before third parties.

DAATS INFORMATION INACCURATE AND INCOMPLETE

Based on our review of 131 discipline cases, we found that information in DAATS was not always accurate and, in many instances, incomplete. For example, we found that: allegations were not always entered correctly into DAATS; allegations were coded [redacted] - Undefined Infractions" when more suitable misconduct codes were available; allegations were not entered into DAATS even though an allegation was included in the discipline case file; and allegations that were found to be "sustained" were not always recorded in DAATS.

HR management stated they are aware of the problems with DAATS and recognized that the USCS did not have a system that produced complete, accurate, detailed data on discipline and adverse actions. HR management informed us that DAATS was just a discipline tracking system and not a case management system. They also informed us that the USCS has a $2.5 million effort underway to redesign and improve DAATS. Implementation of the new system is slated for December 2002.

U.S. Customs Service

Memorandum

DATE: November 20, 2000

FILE: AUD-1:OP BAB

MEMORANDUM FOR MICHAEL TARR
ASSISTANT INSPECTOR GENERAL

FROM : Director,
Office of Planning

SUBJECT : Response to the Office of Inspector General Report "Integrity Oversight Review of the USCS"

Thank you for the opportunity to comment on the draft version of the Office of the Inspector General (OIG) report on the Customs integrity oversight review. Overall, Customs agrees with the Office of Inspector General's findings but would like to propose several changes to the report to ensure a more comprehensive presentation.

Since this new integrity management program began in April 1999, Customs has been continually improving the shortcomings that all start-up efforts incur. As the report notes, Customs Office of Internal Affairs oversees management inquiries in the following three areas:

- Training a cadre of agency fact-finders (with Office of Training and Development support);
- Providing technical guidance and support to fact-finders during the inquiry process; and
- Establishing a formal review and approval process for final Administrative Inquiry Reports (AIR).

The agency now has a full complement of trained fact-finders in the field. The Office of Internal Affairs (IA) will use its direct oversight of the program to enhance the quality, timeliness and professionalism of management inquiries. Customs will continue to improve the accuracy, consistency and effectiveness of this process and will use the report's recommendations toward this end.

With respect to the draft report, we would suggest that the Executive Summary be amended to include an additional statement about the

agency policy on use of the Table of Offenses (see conclusion on page two) which reflects that the table is intended as a guide for managers, and that penalties outside the suggested range are allowed after full and careful review. Although these facts are acknowledged in the report, similar statements should be included in the Executive Summary to provide the appropriate context for the OIG finding.

The published instructions for use which precede the Table state that "the Table is provided as a guide, not as a set of mandatory rules; it does not relieve supervisors and managers of the responsibility of using good judgement when applying it to disciplinary situations." Managers are legally required to consider the relevant Douglas considerations in rendering final decisions and thus, penalties may be at variance with the Table, especially at the final decision stage. In some cases, aggravating factors will warrant selecting a penalty higher than the suggested range. Conversely, mitigating circumstances may result in a penalty, which is below the listed range for the offense. As long as the cases are distinguishable due to unique facts and circumstances, then final decisions can be made which are not wholly consistent with the suggestions in the Table of Penalties.

The report stated that the OIG team found **final** penalties below the suggested range in 21 of 54 cases. Due to the large number of factors that affect **final** discipline decisions, including the employee reply, "Douglas" considerations and proof requirements, we believe that it is more appropriate to compare the "proposed " actions with the suggested range. When this method was applied, only 15 of the 54 cases were found to be below the suggested range. This information was provided to us by the OIG after our close-out briefing and should be included in the final report.

Also, we believe the nature and extent of the inconsistencies is relevant and should be addressed. Our analysis shows that the majority of cases cited as being inconsistent with suggested penalty ranges involved relatively small differences (e.g., written reprimand vs formal counseling, or 3 days vs 5 days). Again, the inclusion of this information would put the OIG findings into the proper context for the reader.

The report should also recognize that the Office of Internal Affairs (IA) undertook two important initiatives during the period of the report that temporarily impacted its ability to efficiently handle the investigative caseload.

- In February 1999, Commissioner Kelly directed the establishment of a centralized allegation intake unit operating 7 days a week, 24 hours a day. Until permanent intake personnel could be hired, (a lengthy

process under federal personnel rules), the unit was staffed entirely by TDY field agents.

- In addition, a total of 134 special agents were rotated between the Offices of Internal Affairs and Investigations. While this process served to improve the professionalism and expertise of IA, it initially challenged IA's ability to complete some of our investigations in an expeditious manner.

Thank you again for the opportunity to comment on this report. If you have any questions about these comments, please do not hesitate to call Ms. Brenda Brockman at (202) 927-1507.

William H. Riley

Cc: Chief of Staff
G. Zawadski
Audit Program Coordinators (IA, HRM)