

DEPARTMENT OF JUSTICE INTERNAL
AUDIT OPERATIONS

ME-1

HEARINGS
BEFORE A
SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS
SECOND SESSION

MARCH 24 AND APRIL 24, 1980

nted for the use of the Committee on Government Operations



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

83232-1
83233

COMMITTEE ON GOVERNMENT OPERATIONS

JACK BROOKS, Texas, *Chairman*

L. H. FOUNTAIN, North Carolina	FRANK HORTON, New York
DANTE B. FASCELL, Florida	JOHN N. ERLNBORN, Illinois
WILLIAM S. MOORHEAD, Pennsylvania	JOHN W. WYDLER, New York
BENJAMIN S. ROSENTHAL, New York	CLARENCE J. BROWN, Ohio
FERNAND J. ST GERMAIN, Rhode Island	PAUL N. McCLOSKEY, Jr., California
DON FUQUA, Florida	THOMAS N. KINDNESS, Ohio
JOHN CONYERS, Jr., Michigan	ROBERT S. WALKER, Pennsylvania
CARDISS COLLINS, Illinois	ARLAN STANGELAND, Minnesota
JOHN L. BURTON, California	M. CALDWELL BUTLER, Virginia
RICHARDSON PREYER, North Carolina	LYLE WILLIAMS, Ohio
ROBERT F. DRINAN, Massachusetts	JIM JEFFRIES, Kansas
GLENN ENGLISH, Oklahoma	OLYMPIA J. SNOWE, Maine
ELLIOTT H. LEVITAS, Georgia	WAYNE GRISHAM, California
DAVID W. EVANS, Indiana	JOEL DECKARD, Indiana
TOBY MOFFETT, Connecticut	
ANDREW MAGUIRE, New Jersey	
LES ASPIN, Wisconsin	
HENRY A. WAXMAN, California	
FLOYD J. FITHIAN, Indiana	
PETER H. KOSTMAYER, Pennsylvania	
TED WEISS, New York	
MIKE SYNAR, Oklahoma	
ROBERT T. MATSUI, California	
EUGENE V. ATKINSON, Pennsylvania	

WILLIAM M. JONES, *General Counsel*
 JOHN E. MOORE, *Staff Administrator*
 ELMER W. HENDERSON, *Senior Counsel*
 JOHN M. DUNCAN, *Minority Staff Director*

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS SUBCOMMITTEE

RICHARDSON PREYER, North Carolina, *Chairman*

ROBERT F. DRINAN, Massachusetts	THOMAS N. KINDNESS, Ohio
GLENN ENGLISH, Oklahoma	M. CALDWELL BUTLER, Virginia
DAVID W. EVANS, Indiana	JOHN N. ERLNBORN, Illinois
PETER H. KOSTMAYER, Pennsylvania	
TED WEISS, New York	

Ex OFFICIO

JACK BROOKS, Texas	FRANK HORTON, New York
TIMOTHY H. INGRAM, <i>Staff Director</i>	
CHRISTOPHER J. VIZAS II, <i>Counsel</i>	
EUPHON METZGER, <i>Clerk</i>	
THOMAS G. MORR, <i>Minority Professional Staff</i>	

(II)

CONTENTS

	Page
Hearing held on—	
March 24.....	1
April 24.....	69
Statement of—	
Rooney, Kevin D., Assistant Attorney General for Administration, Department of Justice; accompanied by Michael Shaheen, Jr., counsel, Office of Professional Responsibility; Glen E. Pommerening, Director, Internal Audit Staff; and Frank P. Cihlar, attorney adviser, Office for Improvements in the Administration of Justice—	2, 70
Letters, statements, etc., submitted for the record by—	
Cihlar, Frank P. attorney adviser, Office for Improvements in the Administration of Justice, Department of Justice: May 27, 1980, letter to Chairman Preyer concerning titles of GAO reports reviewed.....	70-71
Pommerening, Glen E., Director, Internal Audit Staff, Department of Justice: Department of Justice debt collection activity.....	74
Rooney, Kevin D., Assistant Attorney General for Administration, Department of Justice:	
April 4, 1980, letter to Chairman Preyer concerning promulgation of a successor order.....	44
July 23, 1980, letter to Chairman Preyer from Associate Attorney General John H. Shenefield re INS procurement activity.....	87-88
Prepared statement.....	6-15
Response to additional subcommittee questions.....	102-123
Shaheen, Michael, Jr., counsel, Office of Professional Responsibility, Department of Justice:	
April 9, 1980, letter to Chairman Preyer concerning disciplinary punishments imposed in the Department of Justice being too lenient.....	48-66
Response to additional subcommittee questions.....	97-101

APPENDIXES

Appendix 1.—Correspondence relating to reorganization of Department of Justice administrative functions.....	125
A. Memorandum from Kevin D. Rooney, Assistant Attorney General for Administration, Department of Justice, to the Attorney General, dated August 20, 1979.....	125
B. Letter from Kevin D. Rooney, Assistant Attorney General for Administration, Department of Justice, to Chairman Peter W. Rodino, Jr., Committee on the Judiciary, U.S. House of Representatives, dated August 22, 1979.....	129
C. Letter from Kevin D. Rooney, Assistant Attorney General for Administration, Department of Justice, to Chairman Peter W. Rodino, Jr., Committee on the Judiciary, U.S. House of Representatives, dated January 16, 1980.....	136
D. Letter from Alan A. Parker, Assistant Attorney General, Office of Legislative Affairs, Department of Justice, to Chairman Richardson Preyer, Subcommittee on Government Information and Individual Rights, dated July 9, 1980, responding to questions submitted subsequent to subcommittee hearings.....	140
E. Letter from Benjamin R. Civiletti, Attorney General, to Congressmen Richardson Preyer and Thomas N. Kindness, Subcommittee on Government Information and Individual Rights, U.S. House of Representatives, dated January 22, 1980.....	144

(III)

Appendix 1.—Continued

F. Letter from Kevin D. Rooney, Assistant Attorney General for Administration, Department of Justice, to Chairman Richardson Preyer, Subcommittee on Government Information and Individual Rights, U.S. House of Representatives, dated March 20, 1980-----	Page 147
G. Memo from Guy K. Zimmerman, Acting Director, Evaluation Staff, Department of Justice, to subcommittee staff, dated April 15, 1980-----	160
Appendix 2.—Letter from Gordon Tucker, Special Assistant to the Attorney General, Department of Justice, to subcommittee, dated June 17, 1980-----	162
Appendix 3.—Department of Justice Report, "The Performance of Inspector General Functions Within the Department of Justice," dated February 15, 1980-----	163
Appendix 4.—Letter from Chairman Richardson Preyer, Subcommittee on Government Information and Individual Rights, U.S. House of Representatives, to Maurice Rosenberg, Assistant Attorney General, Office for Improvements in the Administration of Justice, Department of Justice, dated May 5, 1980, and reply dated May 14, 1980-----	214
Appendix 5.—Annual report to the Attorney General, 1979, Office of Professional Responsibility, Department of Justice-----	216
Appendix 6.—Memorandum from Kevin D. Rooney, Assistant Attorney General for Administration, to the Attorney General, dated January 7, 1980-----	245
Appendix 7.—Documents relating to the Department of Justice's establishment affirmative program for detection of fraud and abuse-----	247
A. Memorandum from President Jimmy Carter to the heads of Executive departments and agencies, dated December 13, 1978-----	247
B. Memorandum from James T. McIntyre, Jr., Director, Office of Management and Budget, to the heads of Executive departments and agencies, dated January 3, 1979-----	249
C. Memorandum from Michael E. Shaheen, Jr., counsel, Office of Professional Responsibility, Department of Justice, to James T. McIntyre, Jr., Director, Office of Management and Budget, dated June 19, 1979-----	253
D. "Office of Professional Responsibility; Protection of Department of Justice Whistleblowers," Federal Register, vol. 45, No. 81, April 24, 1980-----	255
E. "Responsibilities for the Detection of Waste, Fraud and Error in Department of Justice Programs," Order 2900.5, Department of Justice, May 30, 1980-----	257

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Public Domain
U.S. House of Representatives

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

DEPARTMENT OF JUSTICE INTERNAL AUDIT OPERATIONS

MONDAY, MARCH 24, 1980

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2247, Rayburn House Office Building, Hon. Richardson Preyer (chairman of the subcommittee) presiding.

Present: Representatives Richardson Preyer, Robert F. Drinan, Ted Weiss, Thomas N. Kindness, and M. Caldwell Butler.

Also present: Timothy H. Ingram, staff director; Christopher J. Vizas II, counsel; Euphon Metzger, clerk; Thomas G. Morr, minority professional staff, Committee on Government Operations; and Lawrence Gaston, supervisory auditor, General Accounting Office on assignment to the subcommittee.

Mr. PREYER. The subcommittee will come to order. We have several more members on the way, but I will begin with the opening statement now.

The hearings today will examine the Department of Justice's internal audit operations and the possible need for a statutorily created Office of Inspector General in the Department. We will focus on the Department's recent reorganization of its administrative functions and the impact of this reorganization upon the Department's internal audit capabilities. We will also review the recent Department of Justice study of the need for an Office of Inspector General and the extent to which the recommendations outlined in the Committee on Government Operations 1978 report on the Office of Professional Responsibility have been carried out by the Department.

These are particularly significant hearings because in recent years investigations such as Watergate, Koreagate, Abscam, and others have severely tested the Government's ability to police itself. Any action by a department of the Government which might adversely affect this ability should be closely scrutinized by the Congress. The Department of Justice's recent reorganization of its internal audit program is such an action.

We are pleased to have with us four employees of the Department of Justice. They are Kevin Rooney, Assistant Attorney General for Administration; Michael Shaheen, Counsel of the Office of Professional Responsibility; Glen E. Pommerening, Director of Justice's internal audit staff; and Frank P. Cihlar, Attorney Adviser, Office for Improvements in the Administration of Justice.

Gentlemen, we are delighted to have you with us here this morning. It is the practice of the Government Operations Committee to swear its witnesses at an oversight hearing. Those of you who will be testifying or answering questions, please stand and be sworn at this time.

Do you solemnly swear the testimony you are about to give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. ROONEY. I do.

Mr. SHAHEEN. I do.

Mr. POMMERENING. I do.

Mr. CIHLAR. I do.

Mr. PREYER. Thank you, gentlemen.

We will be glad to hear opening statements from you, and then we will go to questions. We do have your statement, Mr. Rooney.

STATEMENT OF KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, DEPARTMENT OF JUSTICE; ACCOMPANIED BY MICHAEL SHAHEEN, JR., COUNSEL, OFFICE OF PROFESSIONAL RESPONSIBILITY; GLEN E. POMMERENING, DIRECTOR, INTERNAL AUDIT STAFF; AND FRANK P. CIHLAR, ATTORNEY ADVISER, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE

Mr. ROONEY. Thank you, Mr. Chairman.

I believe I am the only one with a prepared opening statement. I will try to summarize it, if that meets the chairman's pleasure.

Mr. PREYER. Certainly. Without objection, the entire statement will be made a part of the record.

[See p. 6.]

Mr. ROONEY. Mr. Chairman, I have been invited today to discuss with you the Department's internal audit function and our recent reorganization with regard to the conduct of evaluations. I am pleased to have this opportunity to discuss our program with you and to respond to your questions and concerns.

The internal audit staff has long been a part of the responsibility of the Assistant Attorney General for Administration. This is consistent with the role the Assistant Attorney General for Administration holds as senior adviser to and personal representative of the Attorney General in the management and financial matters of the Department.

A major function of mine as Assistant Attorney General is to direct the activities of the departmental management staff. As this subcommittee knows, this staff was reorganized by the Attorney General, Mr. Civiletti, in October 1979. Several aspects were considered when we reorganized, but the principal ones that concern this subcommittee, as I understand it, are the impact upon the internal audit staff and the creation of a new evaluation staff.

Up through January of 1980, the internal audit staff had been comprised of 56 positions. Of these positions, 38 were appropriated, and two were for the Equal Employment Opportunity investigations which were assigned to the audit staff. Twelve positions were reimbursed by our working capital fund, and I transferred these over to

the audit staff to handle ADP systems quality control audits and to allow the audit staff to begin a more active program of comprehensive system audits. This was done in two stages over the last 3 years.

Six positions were made available to the staff on a reimbursement basis by the Bureau of Prisons for conducting fiscal reviews of the Federal prison industries programs.

Over the years, the internal audit staff has had a very broad charter, a charter which continues today under Department of Justice Order 2900.1(b). The broad charter of the audit staff made it the only staff within the Department which could be used for evaluations of programs.

This really had never been a great problem within the Department because program evaluations essentially have been conducted in terms of program audits and program reviews which would naturally fall within the function of the audit staff.

In recent months, going back to probably last spring, new burdens have fallen on the Department as well as the arrival on the scene of the new Attorney General, Mr. Civiletti, who was particularly interested in the conduct of evaluations which got to program impact thus allowing the Attorney General to be responsive to questions about not how effectively our programs were being conducted, but whether we were going about our strategy in the most effective fashion.

In addition to the Attorney General's interest in the conduct of strategy and impact evaluations, our 1980 Authorization Act—passed by the Congress in November 1979—I believe, but deliberated throughout the summer of 1979—concluded with several requests for rather extensive program evaluations, particularly in the area of strategy and impact as it related to several of our programs.

We felt, as a department, that if we were to conduct these evaluations as well as those requested by the Attorney General and the Office of Management and Budget, this would require, because of the lack of resources as well as for the purpose of providing an adequate and comprehensive response, the active participation of the program officials involved.

If we were to look at the Immigration and Naturalization Service program, for example, we would want to get the heavy involvement of INS officials; if we were looking at strategy of the Immigration and Naturalization Service officials.

This new role for evaluation in the Department, considering the fact that we had only the then constituted internal audit staff as a resource, was troubling to me because I was concerned about the independence of the audit staff and the need to have a strong, independent internal audit capability which could look with integrity, particularly as it relates to fiscal and financial integrity, at compliance with statutory regulations and laws of the Department. And I saw that the evaluations being mandated, particularly by the Congress in our Authorization Act as well as by the Attorney General and the Office of Management and Budget, would require in 1980 the dedication of at least 20 work years, in effect, 20 people working full time, along with the participation of our program officials in the organizations under study.

This would obviously come out of the 56 personnel resources of the audit staff, only 38 of which were devoted to audits and evaluations.

This would have a tremendous impact on the audit staff and if we had the participation of the component organizations, in my opinion, would considerably dilute the independence of the auditor.

We decided at that time to maximize the use of audit resources for evaluation strategy assessment-type studies in 1980. Thus we freed internal audit resources for evaluation. In this way an independent audit staff could be maintained which would continue to be viewed, in effect, as a watchdog within the Department, rather than as a group looking at programs to advise the Attorney General in his conduct of the Department management.

There were other elements of the audit staff which clearly detracted from the professional internal audit function and its independence. These were the conduct of EEO investigations and ADP systems reviews which principally studied preimplementation and quality control.

As a result of this review of the audit and evaluation resources in the Department, we took the following actions. The evaluation staff was formed from available resources within the Justice Management Division by transferring eight positions from the management and organization analysis function and four or five positions from the budget review function. Fourteen positions were then added from the internal audit staff which, according to the 1980 audit plan were to devote their full time to the conduct of program evaluations in participation with other organizations of the Department.

In addition, the two positions that were involved in conducting equal employment opportunity investigations—the investigations of complaints—were transferred to the equal employment opportunity staff to allow us to draw upon other resources in that staff for the effective conduct of these investigations.

We also transferred eight positions dedicated to systems reviews to our systems policy and planning staff. Over the last few years there has been an expansion of systems activities in the Department—and, as you are aware, Mr. Chairman, in some of our organizations perhaps there has not been sufficient amounts of preimplementation review of these systems. So we transferred 8 of the 12 positions devoted to system audits back to the systems area in order that, working in conjunction with the Department policy and planning staff for systems, these resources could be used to conduct preimplementation reviews to insure that we had an effective system before beginning procurement actions and actual implementation.

We also transferred one position to my immediate office for the conduct of liaison with the General Accounting Office.

The result, we feel, is that we have a stronger, more independent audit staff which can be viewed as the staff responsible for financial integrity, program efficiency and economy, and compliance with statutory and regulatory requirements. We also feel that we have at least the core of an evaluation staff which can be responsible for the conduct of evaluations either directly or through coordination with our component organizations to assess program impact and strategy, as has been requested by the Judiciary Committee.

We feel that as a result of this we have an effective increase in our program review capability without added resources. By finding re-

sources throughout the Department to conduct evaluations and by making the audit staff more independent, we feel that we are closer to our goal of having an effective evaluation and audit program.

One of the questions that has been raised by this subcommittee in correspondence with the Department has been the transfer of the evaluation function from the audit staff. As I indicated earlier, we see a very strong conceptual and role difference between evaluation, such as strategy setting and impact evaluation, and audit, which is basically a watchdog function. One is advisory in nature; the other is a clear oversight function.

Regarding the establishment of an Office of Inspector General, which you indicated you would address this morning, in a recent study of the establishment of an Office of Inspector General, which was directed by our Justice Authorization Appropriation Act for fiscal year 1980, we carefully examined the role of Inspector General and concluded that the same role difference existed there. That is to say, the Inspector General role, which is typically composed of audit and investigation, is also watchdog in nature. To my knowledge, no one in the executive branch has effectively argued that evaluation strategy and impact evaluation should be merged with the Inspector General function. The consensus of U.S. Government Inspectors General on this point was recently expressed at the second annual management conference held at Cherry Hill, N.J.

At that conference in February 1980 the Inspector General of NASA, speaking for the group, expressed the very logic that our audit/evaluation realignment was based on. He said, in effect, that evaluation is a policy, management, and decisionmaking tool and should not be merged with Inspector General, that is, audit/investigation-type functions. He expressed the same concerns we had, that evaluation would lose its credibility as a method in search of viable alternatives, if it is seen as an investigative or auditor function; and an Inspector General office or audit staff would lose its independence if it became part of the management and decisionmaking process as an evaluator.

Our alinement of audit and evaluation functions and resources in the recent reorganization is consistent with the currently accepted view of the role and place of an Inspector General.

One of the other elements we were confronted with, quite frankly, was the availability of resources and the mandate to conduct evaluations.

Mr. Chairman, I hope this general overview of what I have presented in my prepared statement will be helpful. My colleagues and I will be pleased to answer any questions you or any of the other members wish to ask.

[Mr. Rooney's prepared statement follows:]



Department of Justice

STATEMENT OF
KEVIN D. ROONEY
ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION
DEPARTMENT OF JUSTICE

BEFORE THE
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

MARCH 24, 1980

Mr. Chairman and Members of the Subcommittee:

I have been invited today to discuss with you the Department's internal audit function and our recent reorganization with regard to the conduct of evaluations. I am pleased to have this opportunity to discuss our program with you and to respond to your questions and concerns.

During my tenure as Assistant Attorney General, and for several years prior, the Internal Audit Staff has been a part of the Assistant Attorney General for Administration's responsibility. This has been consistent with his role as the senior advisor to, and personal representative of, the Attorney General in the management and financial matters of the Department.

A major function of the Assistant Attorney General for Administration is to direct the activities of the Departmental management staff. This staff was reorganized by Attorney General Civiletti on October 1, 1979, to form the Justice Management Division, headed by the Assistant Attorney General for Administration, and comprised of the Office of the Controller, the Office of Personnel and Administration, and the Office of Litigation and Management Systems, each headed by a Deputy Assistant Attorney General. While this reorganization was accomplished to improve the delivery of several management and financial programs and services, two aspects of it are of special interest to this subcommittee today. These

involve (1) the impact upon the Internal Audit Staff, and (2) the creation of a new Evaluation Staff.

In restructuring the Justice Management Division, we have kept in mind that there are major conceptual role differences between the various elements of management. Specifically, we have been cognizant of the differences between audit and evaluation and how the integrity of these roles can be safeguarded by organizational alignment. That is, audit is viewed as a watchdog or enforcer function whereas evaluation is viewed as an advisory function. These are important distinctions which are now more clearly manifested by the reorganization. It should be noted that the role differences which we have identified are also recognized throughout the Executive Branch and similarly treated in other Executive Departments and Agencies.

As I advised the Congress by letter to the Chairmen of our Senate and House Appropriations Subcommittees and the Chairman and Ranking Minority Member of the Senate and House Judiciary Committees on August 22, 1979, both the Audit and Evaluation staffs would be part of the Office of the Controller. At that time, I also advised that the Audit Staff would continue to function as it had in the past, but that the conduct of several of its program evaluation functions would be shifted to the Evaluation Staff by January, 1980. The planned delay in implementing this aspect of the reorganization was designed to allow us to

review the 1980 audit agenda to determine which evaluations and relevant resources should appropriately be transferred. As you know, in January 1980, we advised the Congress that, as part of finalizing our new structure, the Internal Audit Staff would once again report directly to my office.

The establishment of a separate Evaluation Staff and the direct reporting relationship of the Internal Audit Staff are closely related and support our efforts to strengthen (1) the independence of the internal auditor, and (2) the ability of the Department to respond to the need for comprehensive, in-depth assessments of program strategy and impact.

Over the years there has been a tendency in the Department to ask the Internal Audit Staff to assume a broader role with regard to program and activity review. This has included expansion of the audit function to include Equal Employment Opportunity investigations, ADP systems quality control reviews, and program liaison with the General Accounting Office. In addition, the Internal Audit Staff had become the only staff element responsible for program evaluation--in effect our only resource for conduct of evaluations designed to assist the Attorney General in assessing program strategies and impact. These activities, we believe, limit the independence of the internal auditor in pursuing his principal mission.

With the tremendous expansion of requests for program and strategy evaluations by the Congress and the President, and the continuing limited

resources available to the Department, we saw clearly that the independent audit function of the Internal Audit Staff would be quickly eroded to compensate for a growing focus on evaluations. By actually conducting evaluations designed to assist management in determining strategy and policy, the Internal Audit Staff de facto loses its ability to be an independent consumer of these products in pursuing its charter for continuing review of program economy, efficiency, fiscal integrity and compliance.

If I am to advise the Attorney General on the management and financial integrity and soundness of Department programs, I must have the freedom to react to and request independent audits. In turn, the Internal Audit Staff must have the freedom to conduct audits in an orderly and unhindered manner, following audit issues and findings to their logical conclusions. The auditor must not be faced with changing priorities for study and analysis. This is inevitable in the conduct of the types of studies which we are transferring to the Evaluation Staff, i.e., evaluation of program strategy and impact. Such studies are more time sensitive and associated with tight time deadlines and the need for quick response. To be effective, they also demand active participation of experienced program officials in the actual study. I cannot reconcile this need with the role of an independent auditor. Placing the two activities together produces irreconcilable conflicts to the detriment of both.

As a result of the reorganization, the Internal Audit function will include a renewed emphasis on program efficiency and effectiveness and financial and compliance audits. More specifically, this will enable the Internal Audit Staff to:

- . independently determine whether current agency operations comply with legal and regulatory requirements;
- . independently identify problems affecting efficiency and economy of operation;
- . independently assess the integrity of agency financial practices and systems;
- . independently assess the implementation of approved recommendations of program evaluations regarding policy, strategy, and impact;
- . exercise Department oversight of internal bureau-level audit activities, e.g., those in the Federal Bureau of Investigation, Immigration and Naturalization Service, etc.; and
- . support the Office of Professional Responsibility in performing investigations of alleged impropriety and misconduct.

To provide senior Department management with a single information source on on-going GAO activities affecting our components, and to serve as the focal point between the Attorney General and the GAO in responding to GAO recommendations, another feature of our recent reorganization is the conduct of the GAO liaison activity by my immediate office. This will ensure a higher level coordination point, without affecting the conduct of our internal audits. This is particularly helpful since the Internal Audit Staff is also a consumer of GAO audits in the performance of its own activities.

The Evaluation Staff, created through the realignment of existing resources, performs the role of management advisor. It has two perspectives. In a retrospective sense, it is responsible for advising top management on the effectiveness of on-going programs in meeting objectives set by law, the President or the Department. The Evaluation Staff has no major programmatic responsibility, so it too is an independent agent. In addition to acting as a Staff advisor to Department management it is also called upon to conduct evaluations requested of the Department by the Congress. The trend of Congressional requests is clear and as we continue to operate in an environment of fiscal constraint the demand for internal evaluations will grow as well. This brings me to the second perspective of the Evaluation Staff, i.e., prospective.

Now more than ever the Department needs to be able to evaluate future program strategies and policy options. We need to improve our

ability to examine several alternatives in order to decide on the best course of action. We may find that the present course is, indeed, viable. But without a capability to evaluate alternatives to the status quo we cannot be sure that our programs are as effective or as responsive as they could be to the wide range of needs the Department of Justice is charged with meeting. The establishment of an independent Evaluation Staff is a major initiative toward that goal.

In the reorganization we have attempted to establish a Departmental evaluation capability that is free of programmatic or operational responsibility, so that it can function in its intended role--as an unbiased advisor in the strategic policy, planning, and decision-making process. As one might expect, we have not altered the capability in the major Department program areas themselves to conduct evaluations with these same perspectives. But by the consolidation of Justice Management Division resources for evaluation we have highlighted the importance of the function at the Department level and do anticipate a renewed emphasis on evaluation as a management aid at the major program levels.

In addition to the transfer of resources to evaluation, I have located quality and policy control reviews of ADP systems with the Systems Policy and Planning Staff. The reason behind this move is that this type of ADP review is highly technical and specialized, and must emphasize the effectiveness of systems design to meet management objectives. Audits of systems activities of the Department, of course, will continue

as a responsibility of the Internal Audit Staff. Hopefully, the conduct of pre-implementation reviews at the policy level will lessen the need for the previously large concentration of audit staff resources in this area and improve Departmental ADP systems activities.

In sum, we expect to see an increased independence of audit. This will be the result of elevating the Internal Audit Staff above any operational activities of the Justice Management Division. The Staff Director will report directly to the Assistant Attorney General for Administration. Independence also will be increased by eliminating the need for the Staff to focus on externally required evaluations. Secondly, we expect to achieve increased regulatory compliance and financial integrity within the Department by more sharply focusing audit attention on inspections rather than program reviews. Third, and last, we expect to improve our management capability by having consolidated evaluation resources in a Departmental staff function where those resources can more effectively assist Department management in evaluating alternative strategies. Together, these two perspectives should add insight to the Department's decision-making process which the previous organizational alignment did not as effectively accomplish.

Early in the foregoing discussion I described the conceptual role differences between audit and evaluation, i.e., watchdog versus advisory. In a recent study regarding the establishment of an Office of Inspector General in the Department of Justice, a study requested by the statement of managers filed with the conference report on the Justice

Authorization Appropriation Act for Fiscal Year 1980, we carefully examined the role of Inspectors General and concluded that the same role difference existed. That is to say, the Inspector General role which is typically composed of audit and investigation, is also watchdog in nature. To my knowledge no one in the Executive Branch has effectively argued that evaluation should be merged with the Inspector General functions. Conversely, the consensus of U.S. Government Inspectors General on this point was recently expressed at the Second Annual Management Conference held at Cherry Hill, New Jersey. At the conference, held February 1980, the Inspector General of the National Aeronautics and Space Administration, speaking for the group as a whole, expressed the very logic that our audit/evaluation realignment was based on. He said, in effect, evaluation is a management policy and decision-making tool and should not be merged with Inspector General, i.e., audit/investigation, functions. He expressed the same concerns we had, that evaluation would lose its credibility as an objective alternative seeker if seen as an investigator or auditor; and an Inspector General Office would lose its independence if it became part of the management and decision-making process as an evaluator. Our alignment of audit and evaluation functions and resources in the recent reorganization is consistent with the currently accepted view on the role and place of an Inspector General.

This concludes my formal statement, Mr. Chairman. My colleagues and I will be pleased to respond to any questions you or other members of the Subcommittee may have.

Mr. PREYER. Thank you.

I will have a number of questions, but before I go into my questions I will recognize the other members of the committee, a number of whom are on the Judiciary Committee and who are familiar with this subject.

First I would recognize Mr. Weiss who, I believe, was the first member here today.

Mr. WEISS. I will defer to Mr. Drinan, Mr. Chairman.

Mr. PREYER. Very well. Mr. Drinan?

Mr. DRINAN. Thank you very much.

Let me speak first about the FBI audit conclusions on the criminal informant program. This is a report to the chairman and to Mr. Kindness, and it appears now that an impasse has been reached. As the chairman indicated, the Judiciary Committee has done a good deal of work on this too.

I wonder how Mr. Rooney would characterize or describe the impasse. We wanted originally to have some estimate through the GAO of the efficiency, economy, and effectiveness of the criminal informant program, and the GAO feels frustrated and feels that they were really unable to get what the chairman wanted. Would you talk to that program—anyone?

Mr. SHAHEEN. Congressman Drinan, I am Mike Shaheen, and I am pleased to be here this morning.

I do not think anyone at the witness table is prepared to address that or is competent to. I think that is a question better asked of FBI Director Webster. I have a copy of that audit report; I was indicated as copied when it was transmitted to the Houses—the committees of the House and Senate last summer, and I am familiar with your concerns as they were articulated to me last week by committee counsel. But I am not prepared to address your concern this morning because I did not have a part in that audit, but I got a copy of the report.

Mr. DRINAN. Mr. Rooney?

Mr. ROONEY. I am not competent to respond to that, Mr. Drinan.

Mr. DRINAN. I will reserve questions on that.

Counsel, did you have a question?

Mr. INGRAM. If I might, I would just clarify this. Mr. Rooney signed a 5-page response to the GAO finding. The General Accounting Office had concluded that the initial audit done by the FBI of the informant program was a compliance audit. I do not believe that the Department is arguing with that. The question was whether or not the findings presented by Judge Webster were accurately stated, that is whether or not the audit was simply a compliance audit as opposed to an audit which examined into whether the Government was getting its money's worth and whether the informant program had additional problems in terms of quality of the information presented.

I would imagine that the question that flows from that is, under the reorganization of the internal audit unit, if a followup review were requested or done by the Department of the other question—as to whether the informant program was being adequately run—would it be performed by the internal audit staff or by the newly created evaluation staff? Also, whether the distinction between the economy/efficiency audit as opposed to the program impact audit is a clear one?

Mr. DRINAN. Thank you, counsel.

Mr. Chairman, I commend you for the report that you brought about which was received by you and Mr. Kindness under date of March 13, 1980. This is of very urgent relevance to Mr. Edwards on the Judiciary Committee and a subcommittee there on which I serve. So, at the appropriate time I would like to come back to this. And, if I may, I will reserve my time and yield back the balance.

Mr. PREYER. Thank you.

Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman.

Mr. Rooney, I thank you for taking the time to share this occasion with us and go into some of these problems again.

As you might have guessed, when I worked for a living I was a lawyer. It is difficult for me, as a lawyer, to pull together all the ramifications involved in the audits and evaluations and things of that sort. I am always concerned, in the legislative process, that the lawyers seem to have taken over everything. That is why I want to know what your background is that qualifies you in the administration of the Department of Justice? I hope you are not a lawyer.

Mr. ROONEY. I am a lawyer, Mr. Butler. My professional experience, however, has been in management. I came to the Department of Justice in 1973 as a program analyst. During the time between then and 1977 when I assumed this position, I was responsible for budget and program review in the litigating division area and for the U.S. attorneys. I then was responsible for financial management, budget, and personnel for all of the Department with the exception of the five bureaus. Then I became Assistant to the Associate Attorney General and then Assistant Attorney General for Administration.

So, my entire background in the Department has been in management. Prior to that, I was in ADP systems with the Veterans' Administration.

Mr. BUTLER. What you are trying to tell me is that your experience has overcome your legal training. And I have some comfort in that, as a matter of fact.

It seems to me that this is a pretty sophisticated problem that you have. And I am comforted to know that your background is such that it is helpful to you.

I recall, of course, your testimony before the Judiciary Committee subcommittee when we were concerned about the Immigration and Naturalization Service. One of the questions that kept arising was with regard to the sheer volume of audits that were pending before the Immigration Service. Are they all internal audits?

Mr. ROONEY. No, Mr. Butler. As a matter of fact, the reference that morning was to 43 audits that were being conducted. I believe these numbers are correct; it has been a while since I have refreshed myself on them. Thirteen of those reviews, as I understand it, were GAO—some particularly requested by Members of the House and Senate; 7 were internal audits conducted by the internal audit staff, and 23 were internal to the Immigration and Naturalization Service conducted by their own staff.

Mr. BUTLER. In other words, that particular internal audit of the Immigration Service is not under your supervision?

Mr. ROONEY. No. They were characterized as audits, Mr. Butler, but they were actually being conducted by, as I recall, two elements of the Immigration and Naturalization Service. One was their planning, evaluation, and budgeting shop which includes a function much like what we are talking about here in evaluation for the Attorney General. This would be an evaluation function reporting to the Commissioner of INS. And others were being conducted by their Administration Division.

Mr. BUTLER. To what extent were your resources committed to what was going on in the Immigration Service?

Mr. ROONEY. There were seven audits on that list. Mr. Pommerening can probably address how many personnel resources were devoted to it, but, as I recall, there were four—possibly five—of those seven that were specific reviews of INS programs. At least two of them were INS involvement in departmentwide and/or Government-wide reviews.

For example, in one, the Inspector General at GSA has the responsibility for looking at furniture or property use throughout the Government and has delegated that responsibility to several of the audit staffs in the Government. Our internal audit staff was looking at furniture departmentwide and that was one of the ones included on the list that Ms. Holtzman was talking about.

Another was another Government-wide one—I cannot recall exactly. And a third had to do with our doing a continuing review of motor vehicle usage in our law enforcement agencies. One year we do the FBI, another year the Drug Enforcement, U.S. Marshals, etc.; INS was involved this time.

Mr. BUTLER. In your responsibilities, do you find yourself running into GSA in your internal audits from time to time?

Mr. ROONEY. In that regard, only because of the alleged furniture abuses throughout the Government. Each department was asked by GSA to take an internal look. But ordinarily GSA does not impose that type of requirement on us.

Mr. BUTLER. Let us turn to GAO. Are you overlapping their responsibilities, or does that disturb you?

Mr. ROONEY. We try not to. As we develop our audit plans, Mr. Pommerening, the Director of the internal audit staff, will generally sit down with GAO to determine what they plan to look at, and we try to coordinate so that there is not an overlap. Sometimes we will do a followup after the GAO study has been done, recommendations made, et cetera, 2 or 3 years later.

Mr. BUTLER. So you think you are meeting that problem, if it is one?

Mr. ROONEY. I think so, but not as well as I would like to. It has become a problem to some extent when there are internal studies being done within an organization. We were mentioning the Immigration Service. With the 23 studies being done there, clearly there would be some overlap. Generally, unless it is being conducted by an audit staff within one of the bureaus, we do not necessarily know what internal reviews they are going to be conducting. Frequently, there may be a Department audit or evaluation done of a specific program, and it turns out that, at the same time, very naturally, the Commissioner or the Bureau Director decided that he or she wants to look at the same

program to be able to determine what his or her management options are with regard to that program and if there has been some problem with it. As a result, we may have an ongoing study, and they may come in on their own during the course of it and, in effect, compound the problem for the operating element. That is where I see the difficulty because sometimes, if an organization is over-reviewed, there is little time to run an effective operation.

Mr. BUTLER. You can burn yourself out responding to auditors and never get around to your assigned responsibility. That is what you are suggesting.

Mr. ROONEY. Yes, sir.

Mr. BUTLER. How do you coordinate audit activities—and we will not pick on INS necessarily—with any particular service within the Department. If any particular service within the Department wants to pursue a line of inquiry, and you are pursuing a line of inquiry, do you tell each other what you are doing, or do you make any effort to coordinate that, or do you feel that is any responsibility of yours?

Mr. ROONEY. It is a responsibility. Basically, we use two mechanisms. One is the Department's internal audit plan. This is communicated to the organizations, and they provide some of their reports, if they have conducted their own internal review. For instance, over the past 2 or 3 years, the organizations present their reports to the audit staff on a continuing basis. As the plan is formalized, we sit down with GAO and assess what activities need to be looked at; we make a quick survey to determine if there is one that needs to be looked at and what has gone on before and whether it answers those specific questions.

The second mechanism we use is the budget process. As we get into May or June of each year, each organization has to submit to the Attorney General through my office their budget and program plans for the coming fiscal year. This year it will be for 1982. As we review them, we also ask for any internal reviews or evaluations conducted on those programs. If, through that process, the Attorney General, the Deputy, or Associate Attorney General determine that a specific program needs review, that particular study will be placed on the agenda for the coming fiscal year.

If there is anything to add to that, Mr. Pommerening, regarding coordination, particularly with the organization, please let us know.

Mr. POMMERENING. To supplement what Mr. Rooney has said, you raised some very interesting problems. The problem as it relates to GAO, however, is basically a nonproblem. Our relationships with GAO are excellent, and we meet with them periodically to determine what their interests and their plans are for within the Department, and we share our plans with them.

In cases where it appears that there is going to be an overlap, we generally will pull back and let GAO proceed unless they would prefer otherwise.

We have a very firm understanding with them that we, of course, will rely on the results of their audit, and that would preclude us from doing something in a given area. On the other hand, they have expressed to us sufficient confidence in the quality of our work that if we have been active in a given area, they will take cognizance of our

product in responding to the Congress in any given area or in developing an audit which they are undertaking on their own initiative.

As far as the individual elements and organizations in the Department are concerned, our working relationships have varying degrees of efficacy. Most of them are quite good. We do use whatever materials they have been able to develop internally in doing our audit work, and in those cases we review them for the quality of the work that has gone into their effort.

We do meet with them before we initiate any given project in an entrance interview and tell them precisely what we are interested in reviewing, solicit their cooperation, and ask them to disseminate the fact that we are around to the appropriate elements.

As we conclude our work, we have an exit interview to tell them what we have basically determined to be the situation, and then we go through a process of letting them comment on our draft reports, and so on.

There are, of course, varying elements of potential overlap because the internal audit staff has worked within a finite resource area. There have been staffs developed internally in the internal audit area, and it is indeed difficult to be always fully aware of what they are all doing.

Mr. BUTLER. I thank you.

Mr. Chairman, may I ask one more question?

Mr. PREYER. Surely.

Mr. BUTLER. Since we are touching on the Immigration Service, my information from counsel is that audits were deferred for lack of resources for internal inspection unit audits, nonimmigrant and immigrant document control systems, personnel systems in operations, all in the Immigration Service. Why? Can you explain that?

Mr. POMMERENING. Yes; Mr. Butler, I will explain that to you. As Mr. Rooney noted in his opening remarks, there have been transfers of resources from the internal audit staff to the evaluation staff. Faced with a lesser level of resource availability, we were required to make judgments as to which audits we would continue to do within the current time period and which we would defer to a later time period.

Because of the situation you have noted, where the Immigration Service is being inundated with audit efforts by people other than ourselves, we thought the most productive application of our new resource level was to concentrate in other areas, and leave INS alone, and let these other organizations work there.

While we still consider these audit areas appropriate, we are deferring them until 1981, at which time we will look at them again. It may well be that some of the audit areas will have been covered by other people and we can drop them from our program. But we thought it would really be less than productive to add to the burden of the operating units there.

Mr. BUTLER. I thank you.

I have just this observation. What you are saying is that you have been preempted in the Immigration Service by their own internal procedures and carrying-on, and so forth.

Mr. POMMERENING. I am not really saying that.

Mr. BUTLER. I am indulging in legislative license, perhaps. In any event, I can certainly see your reluctance to get involved in auditing

the Immigration Service when they are going wild with their own internal self-examination. But it seems to me that your responsibility ought to include the authority to say, "We will call a halt to all of this; let us take a look at it," or something of that nature. Am I on the wrong track? Explain that to me.

Mr. ROONEY. No, I do not think you are completely.

With regard to those particular ones that are being deferred, the personnel program, for one, will be looked at very extensively as part of the effort conducted by the President's Management Improvement Council which reports to the Department. As part of our 1980 authorization bill, we were required to conduct an independent assessment of INS management, and the first phase of that study will be focused on systems because of this committee's interest in ADP systems at INS. Personnel operations will then be looked at as well as some other management areas.

I had no difficulty deferring that particular audit because of this other study. There is no sense in doing two reviews. I do not think we would be responsive to the Congress if we did not conduct that independent assessment of INS.

With regard to the nonimmigration document control system, again there is a request by the Congress to take an independent look at that. In fact, there is going to be a contract consultant to come in and conduct that study.

We would prefer to be in the position to say, "Do not conduct that review because there is Departmental interest, and it is of importance to the Attorney General and to others as to how the program is being done."

However, with the limited resources that we have, in effect, we welcome internal reviews so long as we can be a consumer of those reviews.

Mr. BUTLER. Thank you.

Thank you very much, Mr. Chairman. I yield back.

Mr. PREYER. Thank you very much.

Mr. WEISS?

Mr. WEISS. Thank you, Mr. Chairman.

Mr. SHAHEEN. I have no specific criticism at all of you for fulfilling your responsibilities. I recollect, however, a statement that you made to this subcommittee sometime in 1977, shortly after you had assumed the position that you hold in which you said that you thought that no one should hold your position for a period in excess of 2 years. That timeframe having long since expired, I wonder whether, in fact, you consider the validity of the statement that you made in 1977 still operative?

Mr. SHAHEEN. I do. I have twice tendered my resignation and twice have been asked to stay on until my replacement could be picked or until an attorney general had left.

It is a mixed blessing, Congressman Weiss, to want to leave and to be asked by succeeding bosses to stay on. I still think 2 years is an adequate period of time.

Mr. WEISS. Would you share with us again your reasoning as to why you thought that would be advisable?

Mr. SHAHEEN. I have since developed reasons on the other side. First, one should not set a time period unless one wants to be a lame duck or run that risk. But the reasons I gave earlier I still think are

relevant. That is, in a job such as heading OPR, one has at one's disposal access on a recurrent basis—88 percent of the material is terribly salacious and proves to be meritless. One gets jaded in that job, I think; and the one in the job, after staying on a while, might be viewed with some fear and trepidation by people just because of the information which that office has in its possession.

Mr. WEISS. So, what you are saying is that, on the one hand, people who have cause to be concerned potentially—that is, other employees of the Department—may view you with less than wholehearted enthusiasm because of your continued access to that information; and, on the other hand, you yourself holding that position for a length of time—

Mr. SHAHEEN. Four years.

Mr. WEISS [continuing]. Seeing that the overwhelming portion of the information is invalid, might find it even more difficult to select out those situations where the complaints or criticisms may be valid because you become jaded after a while?

Mr. SHAHEEN. I see that as a problem that I am consciously on guard against. I am just terribly suspicious of people in sensitive positions growing stronger by being durable and not necessarily effective.

Mr. WEISS. Is there a pending change in the offing, do you know?

Mr. SHAHEEN. As to the office?

Mr. WEISS. Yes—your personal role.

Mr. SHAHEEN. I am not certain, Congressman. Every time I come up and testify I feel I am putting my job on the line. I would welcome any assistance you could provide. If you have anything in mind, let me know.

Mr. WEISS. I do not, but I think the position that you took does have a great deal of merit, and I think your superiors might be well advised to review your thinking along those lines.

The Office of Professional Responsibility is charged with reviewing only attorneys in the Department or all personnel in the Department?

Mr. SHAHEEN. All personnel in the Department.

Mr. WEISS. So it is the professional responsibility in the Department itself that is within the charge of your office?

Mr. SHAHEEN. Yes, sir; that includes the review of allegations of a criminal nature and a noncriminal nature.

Mr. WEISS. As you may know, a number of Members of the House, as indeed a number of members of the public at large—and I certainly have been among the more outspoken of them—have expressed great concern about the leaks that attended the public disclosure of the so-called Abscam investigation. I wonder if you could tell us what the status of the inquiry is into the disclosure of the investigative matter—the factual information—to the public on or about February 2.

Mr. SHAHEEN. Congressman, I can appreciate your interest; I share it since Mr. Blumenthal, the U.S. attorney in Connecticut, is heading the leak of the investigative materials to the press in Abscam. He is doing this as well as two others—Brilab and Pendorf. They were improperly disclosed to the press. I am certain you have read about them, not realizing perhaps that they were enjoying a special acronym.

Besides telling you that I am pleased with Mr. Blumenthal's pace and progress, it probably would be inappropriate to discuss where he

stands investigatively because, one, it is an ongoing investigation; and, two, he and I and the Attorney General have asked that Abscam not be the subject of topical news coverage; and, three, he would be the person more appropriate to ask. And something could come up that might make his progress seem a little slower than he anticipated.

So, I just want to foreclose any opportunity I have to stick our feet into it again by saying, or except to say that I am satisfied with the pace of the progress he is making, and the investigation is going along well. To comment further would be inappropriate.

Mr. WEISS. I am pleased that at least there is one person who is satisfied with the pace of the investigation.

Mr. SHAHEEN. I am talking about the leak.

Mr. WEISS. Yes—the leak investigation. But I think you probably have an advantage over us in that you know what the pace of that investigation is and I, for one, do not. I am not really sure if anyone else does either.

But you are now saying—and correct me if I am wrong—that at this stage—and is this your personal position or the position of the Department—that not only does the Department consider inquiries into the substantive allegations of the so-called Abscam investigation but the inquiries into the allegations of the leak itself as being inappropriate?

Mr. SHAHEEN. Not the inquiries—to respond to them would be inappropriate.

Mr. WEISS. You mean, I can ask all the questions I want, but you are not going to respond to them?

Mr. SHAHEEN. That is the gist of my response, Congressman—yes, sir. You grasp the mettle.

Mr. WEISS. Mr. Chairman, within the framework of Mr. Shaheen's responses, I renew the request that I have made to you by correspondence of considering the convening of this subcommittee for the specific purpose of inquiring of those people, specifically the Attorney General and Director and any others whom they may feel or we may feel appropriate, into the inquiry into the leaks aspect.

Mr. PREYER. We will be considering the best way to approach that subject, Mr. Weiss.

Mr. WEISS. I do have some other general questions which go outside of this particular area, and after you have asked some questions perhaps I could get back to them.

Mr. PREYER. Very well.

Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

I would like to express my apologies for not being here earlier for your testimony, Mr. Rooney.

Could I just develop a better understanding of the use made of internal audit reports and the evaluation reports?

What is the distribution and use of internal audit reports, first?

Mr. ROONEY. The internal audit reports are generally issued to the organization affected, the organization that has been reviewed. If the organization reports to the Deputy Attorney General, a copy also goes to the Deputy Attorney General. Our experience is that on critical ones the Deputy Attorney General himself does review the reports. If the

organization reports to the Associate Attorney General, it is the same story.

If it is an audit where either the Deputy or the Associate determines the Attorney General ought to review it, it is sent to him. For audits of anything within my office, the report goes directly from the Director of Internal Audits to the Attorney General.

Those audits are also provided to GAO and to the Congress on request, as I understand it. In fact, the Senate Judiciary Committee is now on the regular mailing list.

Mr. KINDNESS. As to program evaluation, is that similar?

Mr. ROONEY. The evaluations would be, yes. However, evaluation is a new program, and we are just underway. In fact, the only evaluation that we have completed, and it was not conducted by the evaluation staff, that we have completed, was mandated in our authorization bill, the Inspector General study, which was conducted by the Office for Improvements in the Administration of Justice, which I know was provided to the Congress as well.

Mr. KINDNESS. In the course of use of either type of report, would it be normal practice for an internal audit report or an evaluation report to be modified or amended before it might go to the Attorney General following review by the Associate or Deputy Attorney General?

Mr. ROONEY. No. I was just checking to see if that had ever happened. The report is sent to me for my signature, with a cover memorandum to forwarding the report to the persons I indicated were recipients, the organization head, the Deputy, et cetera. This is sent to me from the Director of the internal audit staff.

There have been some areas where I have questioned a particular statement, but to my knowledge I have never altered any report or recommendation, and the prerogative to change anything ends with me.

Mr. KINDNESS. In terms of the scope of audits, who defines the scope of the audit or limits the scope of an audit, if that is to be done? Is that done by you or persons under your direction?

Mr. ROONEY. I am going to ask Mr. Pommerening to respond to that because he is responsible for the audits as they are being conducted and as they are being laid out as to scope.

Mr. POMMERENING. Mr. Kindness, the subject area to be audited is developed in preparation of our annual audit plan. In each case, we conduct a preliminary review or examination, upon which we define what the actual scope of the audit will be.

Having done that and written the audit program for that particular subject area, we then proceed to complete the audit.

So, I guess the answer is that my staff professionally defines the scope of the audit.

Mr. KINDNESS. Turning to the Inspector General's functions report of February 15, the report discusses possible alternatives for consolidating internal audit and investigation functions. The two approaches are combining IAS and the Office of Professional Responsibility, or merging IAS and other internal audit staffs within the Department and merging of the Office of Professional Responsibility and other internal inspection units.

What are the strengths and weaknesses of those two different approaches? I really do not understand that you would come up with any different results.

Mr. ROONEY. The results would be different to this extent. The first option decided on was the merger of the Office of Professional Responsibility and Audit, which would, in effect, combine those two operations. The second would be to combine the Department's internal audit staff with the audit elements within each component organization, which would be different because there we are talking about audit solely.

Mr. KINDNESS. Would that really function differently than it does at the present time?

Mr. ROONEY. Yes; to some extent, Mr. Kindness. Right now, the departmental audit staff has only a limited oversight responsibility; it does not direct the audits conducted by the component organizations. Those audit staffs really are responsive to the head of that organization.

Mr. Pommerening and I were just discussing the possibility of conducting an audit of audits or an evaluation of audits to determine what aspects of those programs given the availability of resources, might be centralized or even decentralized further, should that be the result, which I doubt.

I cannot recall your third point.

Mr. KINDNESS. The combination of the Office of Professional Responsibility with other internal inspection units.

Mr. ROONEY. That would be the same aspect that I was referring to regarding the audit and component organizations. Mr. Shaheen, I guess, would have to be responsive to that.

Mr. SHAHEEN. Congressman, the merger of OPR with its coordinate units in the components that have an internal inspection function, I think, would do great damage to the internal inspection function and capacity as it now stands in place at the Department for this simple reason—and I cannot take credit for thinking it up and seeing it demonstrated. Mr. Levi—former Attorney General Levi—pointed it out and established the office, and I articulated his view when Judge Bell at one time thought that was the case when he first came on and then wanted to know when I told him it was not the case—that all internal inspection functions were not literally a part of the Department's OPR. I told him why they ought not to be. I repeated what Mr. Levi had explained to a group of us as the reasoning for keeping them separate.

It is simple but, as I said, it escaped me until I heard it. That is, Mr. Levi and I agreed and felt it was important for the components having an internal inspection function, that is, essentially all of the nonlitigating components, that they retain an internal inspection function that is coordinate to ours for the simple reason that they should retain the capacity to demonstrate to themselves and the outside world their ability, at the first-line basis, to keep their own house clean. It is only when they have a problem—an institutional interest in the outcome of an investigation—when there is a clear conflict by leaving an investigation in that internal inspection component, or when there is an appearance of a conflict, do we order that the investigation be placed in our control on a day-to-day basis and take it out.

Mr. Levi felt—and we have all seen it work—that it is in the interest of DEA, for example, to have a first crack at demonstrating to its own employees and to the rest of the Department and to the outside world its capacity to keep its own house clean, that it is in the interests of the FBI that it retain the capacity to keep its own house clean. Only in the case of an institutional conflict, a clear conflict of interest, or the appearance of one should it be taken out and given, say, to us, which we have done in the past with several of the components.

One place in the Department having that total responsibility would end up being a garbage pail. Any complaint generated within the FBI would be picked up by the FBI and they would say, "We don't have any interest in this any more; send it over to that central place." There would be no retained interest in demonstrating or keeping one's house clean.

Mr. KINDNESS. Thank you.

Going back, Mr. Pommerening, you stated that your unit determines the scope of the audit. Is that still the case following the recent reorganization or change and the designated role given to the evaluation staff?

Mr. POMMERENING. Yes; I believe it is, Mr. Kindness.

The evaluation function as described and enunciated by Mr. Rooney is the sort of review that would ordinarily not fall within an audit program. I am not aware of any change in the reorganization which would circumscribe our ability to define the scope of what we plan to do.

Mr. ROONEY. Mr. Kindness, the charter for the audit staff remains the same.

Before you came in, I was discussing why the transfer of resources from audit to evaluation occurred. The essential element there is that we have the requirement mandated by our Authorization Act to conduct specific evaluations as well as a very strong coincidental interest of the Attorney General in conducting impact strategy-type assessments of how some of our programs are operated.

To accomplish this function, the only place where we could operate this program of evaluations would be in the audit staff. It has been our only evaluation staff or audit staff within the Department.

I was considerably concerned about the extensive amount of involvement of the staff in doing, not internal audits or program audits for review, but evaluations, these "think tank" type reviews for two reasons. One, it would severely impact on the availability of audit resources for traditional audits; and, two, to have an effective performance of an evaluation or strategy or impact evaluation, you really need the involvement of the program officials. I felt that developing a track record of participation by the program officials with the auditors was something we should not get into. Frankly, I strongly feel that this would dilute the independent audit function.

Mr. KINDNESS. Speaking of independence, you indicated that the Deputy Attorney General or the Associate Attorney General would determine which audit reports go to the Attorney General. Would you care to comment as to whether institutionally that ought to be handled in some other way because of the operational responsibility that each

of them has over the subject matter of each of those internal audit reports?

Mr. ROONEY. I would be glad to comment. I have never seen the problem. The deputy and the Associate Attorney General—and I have served under three deputies and two associates—I have never seen the instance where they took, as an organization head might, patronage over a program, their program. They have always worn the departmental hat in reviewing the activities.

The role of the deputy and the associate only comes into being, other than their review of it when a mutually acceptable agreement cannot be reached regarding the recommendations, although they may well get with the organization head and ask about the audit findings. But principally, once the recommendations are made, the head of the audited organization has the responsibility to respond to the recommendations within 45 days and to indicate to me, as the one who conveys the report, what action they plan to take.

It is only when we have a difficulty with that that I then turn that back to the audit staff, and the audit staff says, "They are missing the point, and we feel it is very important that this particular recommendation be implemented or that something be done." Ordinarily, it is then communicated back by me to the organization head, depending on the importance of it. If it is strictly a technical financial technique they are concerned about, they will ordinarily just send a memorandum back to the organization head because, in effect, it is much lower in his organization where the action has to be taken. In general, the very fact that we are asking again will encourage that organization head to say, "Hey, we ought to do it," or we will sit down and discuss what the problem is.

It is only when we cannot come to a mutually acceptable agreement that the deputy or the associate would get involved and require some action to be taken.

Mr. KINDNESS. Thank you, gentlemen. And thank you, Mr. Chairman. I guess I have used up more than my 5 minutes.

Mr. PREYER. I wanted to ask some questions about audit resources and then questions about independence of the audit function, but before doing that, I believe Mr. Weiss had some questions about the Abscam leak investigation, and I would like to recognize counsel to ask a few laying-the-groundwork-type questions. I realize that Mr. Shaheen does not want to go into the substance of that right now, but I would recognize counsel for questions on that point.

Mr. INGRAM. Thank you, Mr. Chairman.

Mr. Shaheen, you had indicated that the proper individual to reply to Mr. Weiss' question on the current status of the leak investigation would be Mr. Blumenthal.

Mr. SHAHEEN. Probably more properly the Attorney General.

Mr. INGRAM. To whom does Mr. Blumenthal report?

Mr. SHAHEEN. To me.

Mr. INGRAM. So that Mr. Blumenthal is, in effect, an employee of the Office of Professional Responsibility or is assigned to your office for this purpose?

Mr. SHAHEEN. For this purpose—yes.

Mr. INGRAM. There was some confusion as I recall, initially, when Mr. Blumenthal was appointed. The press office of the Department had

announced that Mr. Blumenthal would be reporting directly to the Attorney General. Is that correct?

Mr. SHAHEEN. That is correct.

Mr. INGRAM. How long did that situation remain in effect?

Mr. SHAHEEN. One day.

Mr. INGRAM. And what action was taken to change that reporting requirement?

Mr. SHAHEEN. We informed the director of the press office of his error in characterizing Mr. Blumenthal's responsibility as including a direct reporting authority to the Attorney General. We had a relatively new Director of Public Information who was unaware how previous task force assignments had been established and put in our office and he did not appreciate that this was just like previous task force designations.

Mr. INGRAM. If I understand you correctly, the regulations setting up the Office of Professional Responsibility would give to your office the responsibility for investigating allegations involving departmental employees.

Mr. SHAHEEN. That is right.

Mr. INGRAM. Mr. Blumenthal was appointed by whom—by the Attorney General?

Mr. SHAHEEN. With my concurrence. I will review it with you because the Attorney General should not be faulted. If it was anyone's mistake, it was the New York Times reporter's reliance on Mr. Smith's representation, Mr. Smith being the Director of Public Information.

Mr. INGRAM. If I could clarify that, it is a problem that the press officer had in knowing what your responsibility is?

Mr. SHAHEEN. That is correct.

Mr. INGRAM. Or is it a problem of the Attorney General knowing what your responsibilities are? Was the initial appointment of Mr. Blumenthal and the orders given to Mr. Blumenthal that he would report to you or that he would have his own independent responsibility?

Mr. SHAHEEN. The orders were, initially, that he would report simultaneously to me and to the Attorney General. The Attorney General did not appreciate—and I was unaware that those were the orders—the significance of that. That was about the only thing we had not discussed prior to the announcement of Mr. Blumenthal's assignment at the press club session that Mr. Civiletti was talking before.

We had ironed out everything except the precise wording that the New York Times and others have attached to Mr. Blumenthal's designation by the Attorney General. And I explained to the Attorney General that it was important that we clearly reverse the characterization being used by the New York Times, as given to them by Mr. Smith, because it was clearly unacceptable for the Department, for the office, and for him. When I explained to him what the problem was, he agreed immediately. I called him from home on the evening of the day that Mr. Blumenthal's appointment was announced, and he said, "We have to get this straight tomorrow morning," and we got it straight.

Mr. INGRAM. Have there been other instances where the Attorney General, in your view, has been unclear about the role or responsibilities of your office?

Mr. SHAHEEN. No.

Mr. INGRAM. This is the only incident in which that question of reporting has been directly made?

Mr. SHAHEEN. Yes, sir.

Mr. INGRAM. I understand that Mr. Blumenthal is asking each person interviewed in the Abscam investigation if they would be willing to take a polygraph test. Is this the normal policy of the Department of Justice? Or perhaps you could state for us what the Department's policy is with regard to polygraphs.

Mr. SHAHEEN. The Department's polygraph policy is not written down anywhere.

Mr. INGRAM. Why is that?

Mr. SHAHEEN. I do not know why. That may soon be rectified.

Mr. INGRAM. Again, since it is your office's responsibility to conduct investigations involving allegations involving departmental employees—

Mr. SHAHEEN. I think there ought to be a written one. I did not know until we were asked to give a briefing on the Department policy regarding polygraphs that I was the one who knew it best. That bothered me as well. I called several people.

Let me tell you what I think the Department's policy is as the Office of Professional Responsibility employs the use of polygraph.

Mr. INGRAM. Just to clarify, are you stating the policy as formulated by you or by tradition?

Mr. SHAHEEN. I am stating what I believe to be the Department's policy, certainly as used departmentwide by OPR in internal investigations.

We are very concerned—the Office of Professional Responsibility, that is—about any use of the polygraph. We become very concerned when an investigation, in order to exonerate the subject, seems to be pointing toward the sole option of addressing the use of the polygraph. What I am saying, at the outset, is that we use it only when the subject of the investigation appears to be in trouble because of the weight of the evidence already against him and only when the subject—we do not even like to talk about the possibility of the use of the polygraph—that is what I am trying to tell you—until it appears that the allegations cannot be resolved independent of its use.

When we reach that stage and have exhausted all other investigative tools, we discuss with the subject that this is clearly a noncriminal matter, to be used for administrative purposes only. We make it clear. First, we do not allow anyone to take it unless it is voluntarily taken. I appreciate, however, that this is another troubling element in the use of polygraph. One does not ask a person whether he or she would volunteer to take one, except in a circumstance that already has some element of compulsion in it. And then we draw no negative inference from an employee's refusal to take one.

Mr. INGRAM. I guess the bottom line question is whether or not Mr. Blumenthal's action, in effect, telling individuals early on that they may be requested to take a polygraph examination is in compliance with your understanding of the Department's policy.

Mr. SHAHEEN. He is aware of the office's polygraph policy as it represents the Department's policy.

Mr. INGRAM. In your view, then, his actions are in compliance with the Department's policy?

Mr. SHAHEEN. In my view, yes—so far.

Mr. INGRAM. I have just one final question, Mr. Chairman, again to clarify.

So far the press reports have indicated that Mr. Blumenthal's investigation is examining the Abscam leak. Around the time of the Abscam leak there were a series of newspaper articles involving the FBI's Brilab project, Miporn, and a number of undercover investigations involving presumably officials or former officials of the Immigration Service, some allegations involving the Teamsters, and Senator Cannon.

Are all of these matters currently being investigated by Mr. Blumenthal in addition to the Abscam leaks?

Mr. SHAHEEN. Yes. Each has its own independent team of FBI investigators and two assistant U.S. attorneys for each of the alleged improper disclosures.

Mr. INGRAM. And each of these in turn under Mr. Blumenthal's direction and under your ultimate direction—is that right?

Mr. SHAHEEN. Yes, sir.

Mr. PREYER. Thank you.

Mr. WEISS?

Mr. WEISS. Mr. Chairman, I wonder if, with your permission, I could further try to clarify some of the questions which counsel has asked.

Mr. SHAHEEN. Miporn is not included—I am sorry. Brilab, Pendorf, and Abscam are. Excuse me, Congressman.

Mr. WEISS. That is all right.

Mr. INGRAM. Is there a distinction on Miporn?

Mr. SHAHEEN. Miporn is Miami Pornography. I understand you may have included it. It is not one of the ones under Mr. Blumenthal's direction.

Excuse me, Congressman.

Mr. WEISS. If we could review the development of Mr. Blumenthal's appointment and his reporting status, let me see if I understand it correctly. You said that originally the announcement, as it appeared in the New York Times, was that Mr. Blumenthal was to report directly to the Attorney General and that that was an erroneous report.

Mr. SHAHEEN. That is correct.

Mr. WEISS. OK. Then I think you said that the original intention of the Attorney General had been that Mr. Blumenthal report both to you—that is, to the Director of the Office of Professional Responsibility and to the Attorney General simultaneously. Is that correct?

Mr. SHAHEEN. Yes, sir.

Mr. WEISS. Now, has that been changed or modified in any way?

Mr. SHAHEEN. Yes, sir. He is now under the office's direction and will report to me—when he submits his report, it will be to me, and the office will make observations or recommendations and forward them to the Attorney General. He may simultaneously submit a copy of his report to the Attorney General, I believe.

Mr. WEISS. But as far as the obligation of reporting is concerned, that is directly to you?

Mr. SHAHEEN. Yes, sir.

Mr. WEISS. And that was modified within what framework—what timeframe?

Mr. SHAHEEN. An afternoon.

Mr. WEISS. That is, after your conversation with the Attorney General as to why that would be inappropriate in your judgment to have the Office of Professional Responsibility bypassed?

Mr. SHAHEEN. That is right.

Mr. WEISS. So that if either I or anyone else, on the basis of newspaper reports, drew the impression that, in fact, Mr. Blumenthal's appointment was intended to create an independent inquiry outside of the normal in-house investigations by the Office of Professional Responsibility, I or anyone else who drew that conclusion would be in error?

Mr. SHAHEEN. Yes, sir.

Mr. WEISS. The second question, I guess, is a followup as to areas of responsibility that Mr. Blumenthal would have. I have noted that since his appointment there have been a number of other instances which could be characterized as followup leaks.

For example, there was a story involving the mayor of Newark, as to what his alleged role in the so-called Abscam investigation was to have been. Would Mr. Blumenthal have responsibility over leaks which occurred subsequent to his appointment as distinguished from those that occurred prior to his appointment?

Mr. SHAHEEN. Yes, sir.

Mr. DRINAN. Would the gentleman yield? What about the wife of Senator Harrison Williams? I wonder if that would be included too?

Mr. WEISS. Yes?

Mr. SHAHEEN. It could be and may be, gentlemen.

I think in the course of Mr. Blumenthal's inquiry, it may be that he will find out who an original source was, and it may address your concerns as to Senator Williams and the one Congressman Weiss adverted to.

Mr. WEISS. He may indeed, but the question I have is, does he have automatic jurisdiction to inquire into leaks which occurred subsequent to his appointment?

Mr. SHAHEEN. Yes, sir.

Mr. WEISS. And in the final area—and I preface this as being still in the same line of subsequent leaks—although there may have been other Federal laws violated—or may not have been—in the original set of leaks, as I read rule 6 of the Federal Criminal Rules of Procedure, that was not violated because there had been no testimony before a grand jury as of that time.

Mr. SHAHEEN. Yes, sir.

Mr. WEISS. However, since Mr. Blumenthal's appointment, there was one instance in which one of those Members of the House originally mentioned as being involved in the so-called Abscam investigation was then mentioned in the course of a leak with a member of his staff—an employee of his—having allegedly testified thus and so before a grand jury. That, indeed, crept into the area of criminal violation of that particular rule.

The question is, does Mr. Blumenthal have jurisdiction over that specific leak and that kind of a leak which involved leaks of testimony given before a grand jury?

Mr. SHAHEEN. He would, Congressman.

Mr. WEISS. He would and does?

Mr. SHAHEEN. Yes, sir.

Mr. WEISS. Thank you, Mr. Chairman.

Mr. PREYER. Mr. Drinan?

Mr. DRINAN. I have one last question, Mr. Chairman.

Does Mr. Blumenthal have charge of possible leaks about the resignation of Mr. Felt? Somebody announced that. Is that within the category of his jurisdiction?

Mr. SHAHEEN. I am not aware of that, Congressman. Which Mr. Felt?

Mr. DRINAN. Mark Felt.

Mr. SHAHEEN. He has been resigned for several years—5 or 6 years.

Mr. DRINAN. I am sorry—it is a gentleman from the New York office. There was a rumor or a leak over the weekend that this FBI official was in the process of getting himself another job.

I yield back the balance of my time, Mr. Chairman.

Mr. PREYER. Thank you.

I think one of the things this discussion has shown is that policy questions are more interesting than management questions. But I think these are helpful questions.

Mr. WEISS. Mr. Chairman, I wonder if I could beg your indulgence for just one question?

Mr. PREYER. Certainly.

Mr. WEISS. Then, in fact, our asking Mr. Blumenthal to come would be to ask a subsidiary of your office to come?

Mr. SHAHEEN. Yes, sir. That is why I said, when counsel asked, that properly the Attorney General would be the one.

Mr. WEISS. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. Let me start following up on the question that Mr. Butler put to you, Mr. Rooney. He was describing the deferred audits from the INS, and the point you made was that these were deferred because of lack of resources. The question is, why was that necessary and whether Internal Audit has adequate resources.

I think that on the 20th of this month, Mr. Rooney sent the subcommittee a letter detailing the current status of the 64 ongoing or planned audits to be conducted this fiscal year under the fiscal year 1980 audit plan. Of the 64 audits listed in last September's audit plan, 32 percent or 21 audits are listed as either being canceled or postponed until later this year, next year, or some indefinite date.

Was the decision, Mr. Rooney, to defer the audits that Mr. Butler mentioned to you and these other audits that were deferred, a decision made by Mr. Pommerening as head of the internal audit staff, or was it a decision made by you as head of the Department's management?

Mr. ROONEY. I think it was a little bit of both Mr. Chairman. Let me explain a little about the process so that you will have the benefit of that.

As I indicated, once we realized that we were going to have to conduct several of these evaluations—and I have already gone through why I did not feel that these evaluations ought to be conducted within

the audit staff—I personally went through in great detail the audit agenda for 1980.

As you can see from looking at the audit agenda for 1980, several of the audits—as would be the case in any year—are scheduled for the upcoming year. Of course, this gives management, in reviewing the audit agenda, the opportunity to request the auditor to move them up. In fact, on the list I provided you several were indicated as, "originally scheduled for fiscal year 1981."

When reviewing the audit agenda, we had the option—I, the deputy, and the Associate Attorney General, and the Attorney General—to request the auditor, as we would in any instance, to move them up and conduct them sooner.

I reviewed the audit agenda and determined to the best of my ability the types of audits which would be principally of an evaluation nature, in order to determine the maximum resources the audit staff was going to devote to that type of an effort. We came close to 14 work years.

However, in transferring those resources, for the reasons that I indicated, we did not reduce the audit agenda in any way, except for a couple of audits that we have pointed out to you.

Once we completed the transfer of resources, I asked Mr. Pommerening and my deputy to take another look at the audit agenda to indicate which audits, from their perspective, could be given priority to be completed this year and which ones we ought to defer.

I would have to ask Mr. Pommerening to indicate how much specifically was indicated by the audit staff as priority this year with deferral.

Mr. PREYER. Let me ask Mr. Pommerening.

Was it your decision to cancel or defer some of these audits? Or, was it a decision in consultation with Mr. Rooney? Or, did you view it as his decision?

Mr. POMMERENING. There have been only two audits that have been canceled, Mr. Chairman. One was the audit of working capital fund and one was an audit of debt collection activities.

All other elements of our 1980 audit program remain on the audit program. However, the number which you quoted have been programmed as being conducted in fiscal year 1981 or later because of the lack of resources to carry them out in the current fiscal year as we had originally hoped.

The question of which ones would be deferred to a later fiscal year and which ones we would attempt to do within the current fiscal year, or at least initiate within the current fiscal year, was, by-and-large, an input from my staff and me.

We reviewed the status of the audits, the situations that existed in each of the organizations within the Department. I then discussed the whole question of the deferral with Mr. Van Stavoren, Mr. Rooney's deputy, and we discussed the reasons why certain ones would be more appropriately done as soon as possible and others could, if necessary, be deferred more readily.

My staff and I then prepared a revised timetable for work on these audits. Mr. Van Stavoren and Mr. Rooney prepared the letter to you.

Mr. ROONEY. If I may, whenever the audit agenda is presented by the Director of the Internal Audit staff, the Department calls the

senior management team—composed of myself and the deputy and the Associate Attorney General—to review the agenda, and to indicate priorities as there might be an area one of us is particularly interested in having an audit conducted.

Or, we may come up with an idea that is not on the general agenda. In the past we have been able, because we have not had this extra burden of conducting evaluations mandated from outside the Department, to, in essence, approve the agenda as it is submitted.

This year we knew ahead of time that if the audit staff was to have included, at our request, all of the evaluations which were requested, there would be very little time left to conduct any of the audits.

As a result, once we had addressed the resources—because I feel very strongly, and I am sure the deputy and the associate concur in this—it is essential that internal audit have the right and responsibility to indicate what areas he and his staff feel ought to be audited.

With the two exceptions that have been indicated, we did not remove any of the audits from the agenda. However, as I responded to Mr. Butler, there are some areas which were excellent candidates for deferrals since they were also being looked at elsewhere in the Department, or within one of the subelements of the Department.

Mr. PREYER. So far as fiscal year 1980 goes, deferral would amount to cancellation.

Finally let me just ask this question.

If it is not solely Mr. Pommerening's decision, or solely your decision, Mr. Rooney, to cancel or defer these audits, at what level in the Department was the decision made?

Mr. ROONEY. It was—

Mr. PREYER. You made the decision? At what level in the Department was the decision made to cancel or defer these audits?

Mr. ROONEY. Of the list you have which Mr. Pommerening submitted, I have from my perspective, approved it. The deputy and the associate and I have not caucused as a group to determine whether we want one, two, or three, or whatever of those given priority so that they are conducted this year.

I expect the plan, as now presented, will stay in effect. I do not expect to have any significant changes made.

Mr. PREYER. All right.

Mr. Ingram?

Mr. INGRAM. Thank you, Mr. Chairman.

Excuse me. I am rather unclear on this. Mr. Rooney, you said that you had gone through the audit plan to determine how much resources would be involved in the evaluations and which audits in the fiscal year 1980 plan were evaluation in nature. You seem to be saying that this was one of the factors which determined whether the internal audit staff would conduct the audit or the evaluation staff would conduct it.

Mr. ROONEY. No, not as to who would conduct the audit. I was looking at the audit agenda for 1980 to determine what efforts of the audit staff—the devotion of resources—were more toward areas which would be of the program evaluation or program audit nature. I realize there is a fine line. But this was where the efforts of the staff would be most

closely associated with an evaluation rather than with a determination of compliance, economy, and efficiency of an ongoing operation.

I felt it was essential that those particular activities—the latter: the traditional compliance audits, integrity, compliance, efficiency, economy audits—be conducted. Since we knew we would have to conduct the evaluations that were mandated by our authorization, I undertook to determine how much of the current audit plan would have been devoted to evaluation-type audits.

The estimate ranged somewhere between 9 and 14 work years. Once that was determined, I wanted to insure that all of the rest of the resources could be devoted to the audit function. We settled on 14 work years to transfer to the evaluations to remove from the independent audit responsibility.

We then asked the Director of Internal Audit staff to assess his current resource situation regarding all the audits on the initial agenda and to provide an estimate of what could be conducted. You have that here as the attachment to my memorandum.

Mr. INGRAM. Who decides what the auditors should do? So far you have mentioned the auditors, the Assistant Attorney General for Administration and the Associate Attorney General.

In another point you indicated that the audit staff should decide. I am rather unclear as to who it is who decides what the Department's auditor will audit.

Mr. ROONEY. The internal auditor, in deliberation with his staff, draws up the audit agenda. The audit agenda is then submitted to me.

As the Assistant Attorney General and as the direct supervisor of the Director of the Audit staff, I will review it.

There has never been any occasion that I can recall where unilaterally the specific audit plan was simply approved. The Associate Attorney General, and the Deputy Attorney General, and I then review the audit plan.

Our responsibility is not to indicate specifically which audits ought to be done, but to give them priorities and to indicate to the director of the audit staff which management priorities exist for the conduct of those audits.

If, for example, there is an audit that requires a devotion of a minimum number of resources, and is of particular interest and top priority to management for reasons the auditor may not be aware of, he can then be asked to give that one priority and insure that it is conducted during that fiscal year.

Mr. INGRAM. My only comment is that I am certainly glad I am not the Department's auditor. I would be in a heck of a position, I think, if I had no final say as to what it is my auditors were allowed to go into or not.

What you are saying, in effect, is that management will decide ultimately what the auditor reviews in terms of setting the timetable as to what agenda is undertaken.

Mr. ROONEY. The auditor is performing his audits to assist the Attorney General in the review of the Department's programs. If the Attorney General or his representatives—myself, the deputy, and the associate—feel there is something that is of maximum importance, we

always have the right, as with any organization or Cabinet head, to determine at any time that a certain program ought to be audited.

It is a very important aspect of my responsibility that I can, if I see anywhere within the Department, that something is not functioning, in my opinion, the way it ought to be, to direct an internal audit.

The internal audit staff is always responsive to those requests.

Mr. POMMERENING. Mr. Chairman, possibly I could add something to Mr. Rooney's statement. In my experience there has not been an audit initiative proposed by the internal audit staff, save one, that they were precluded from doing.

This covers an experience range of 9 years. Conversely, there have been numerous occasions when either the head of an organization within the Department or the Assistant Attorney General for Administration or the deputy or the Attorney General has specifically, through the proper organizational lines, said: "We think that we would like you to conduct an audit in a certain situation or a certain area."

Obviously, if the senior management of the Department has that great an element of concern or interest, it has been the policy of the internal audit staff to restructure priorities to accommodate those unique interests at the earliest possible date.

Mr. PREYER. What was the one you were precluded from doing?

Mr. POMMERENING. The working capital fund audit. Mr. Rooney discussed that in his letter to you of March 20.

Mr. PREYER. Thank you.

Let me get back to a few more basic questions—a few basic questions on audit resources.

In the February 1980 Department of Justice study on the advisability of statutorily creating an office of inspector general for the Department, it stated: "In terms of resources, the Department's internal audit and investigative capabilities are fully adequate."

Mr. Rooney, do you agree with that statement?

Mr. ROONEY. I believe it has been the case, Mr. Chairman, but with the need for the evaluation function. Although we have now made more resources available for the conduct of the combined audit and evaluation functions, I am convinced that the direct audit resources are not going to be sufficient.

We could not anticipate in planning for 1980 or even at this stage for 1981 the mandate to conduct the evaluations.

As the situation now stands, I feel the resources available are not sufficient. I did have an opportunity to review the report. At that time I felt the resources were, as we have since then finalized the audit agenda for 1980, and the concerns you see as to the number of audits that must be deferred, we could use more resources.

The fact of the matter is that as the Department has been growing over the years, during my tenure as head of the Management Division there has been a 7-percent increase in the organizations within the Department over which we provide review and oversight and a 4-percent decrease in the management staff.

So, with the very limited resources, as I have said, we have been able to find more resources to devote to audit and evaluations, and as a result of the mandate, we have been able to come up with more evalu-

ation resources by begging and borrowing from other functions. For direct internal audit, however, I believe we now have a shortfall.

Mr. PREYER. Mr. Pommerening, what is your judgment on whether your resources are fully adequate?

Mr. POMMERENING. Mr. Chairman, in my opinion our current staff allocation is 31 people. Six of those are being reimbursed from the Federal Prison Industries and their efforts must be diverted to that program.

These are important audits which GAO has a great interest in. But when arrayed against the breadth and scope of the Department's programs, certainly they command a lesser priority.

That means we are left with 25 professional—not even professional people—25 total people. I do not believe that this is adequate to support a competent level of internal audit activities in the Department of Justice.

Mr. PREYER. Has anyone in Justice asked for additional resources of internal audit personnel?

Mr. ROONEY. Mr. Chairman, we are now in fiscal year 1980 and our request for 1981 is before the Congress. No new resources have been requested. We have asked for resources internally, but actually, what we have asked for in the most recent past is an increase in the evaluation function which did not come.

As a result we have had to put this burden on the auditors. Although I have no idea as to what will result from it, I intend to ask internally for a considerable increase for this function in this budget-planning year.

Mr. PREYER. So, I gather you are telling me that you did request additional staffing for the internal audit function in the fiscal year 1981 budget proposal that was submitted to the Attorney General.

Mr. ROONEY. I cannot recall specifically, Mr. Chairman, how it was arrayed and what actually went over to OMB; I can certainly get that.

We did ask for evaluation resources, however, which did not come through and therefore impacted on the responsibilities of the audit staff.

Mr. PREYER. The point I was getting at was this. If we agree that increased staffing was needed in this area, at what level was the decision made not to include the request in the 1981 budget? Was it the Attorney General? Was it OMB? Was it the President?

What was the reason given for not increasing it?

Mr. ROONEY. Mr. Chairman, as I recall I did not request additional resources for 1981 primarily because right up to the most recent time, once the authorization bill was enacted, I was not aware of the need for the evaluation resources.

Up until that time it had been my understanding and the Director of Audit had not requested any significant increase. I do not believe any at all in 1980 was requested. We were under the assumption that there would be available resources.

I think the report statement that they were adequate is correct. However, with the burden of the evaluation function, which has come upon us in this fiscal year, we now recognize the need that if we are going to do both, each is at the expense of the other.

Mr. PREYER. Well, I am not quite clear on how all of that comes down. You mentioned that you would be glad to look it up or go into it. I would hope that we could ask you to submit to the subcommittee information on this and internal memorandums dealing with the budget proposals for the internal audit function for the 1981 fiscal year budget process.

Mr. ROONEY. Mr. Chairman, if I may, I think it is important also to include in that reference the request for evaluation, because the audit staff made no request to me and I subsequently made no request because we had determined they were adequate. It was the onslaught of the evaluation function and the need to staff that properly that has impacted this year.

Mr. PREYER. Thank you.

[Material submitted by Mr. Rooney is on file in the subcommittee.]

Mr. PREYER. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman.

May I ask one followup question?

Before the transfer of personnel resources to program evaluations staff, you had 57 in the audit section. Was that an adequate number of people at that time to perform the audits as they were perceived to be performed?

Mr. ROONEY. I believe so, Mr. Kindness. I will have to defer to Mr. Pommerening.

Mr. POMMERENING. I believe we were at a level, Mr. Kindness, that enabled us to keep operative a minimal, but effective, program of internal audit in the Department of Justice.

Mr. KINDNESS. If I may, Mr. Chairman, the number of personnel required for the performance of program review or program evaluations, that is, the number that were transferred, is that an adequate number for that function?

Mr. ROONEY. It is hard to tell right now. We determined that about 20 work years would be necessary, with participation by program officials of the other elements of the Department that would be involved in an evaluation, that would be sufficient.

We transferred the 14 and we also transferred 13 other resources to create 27 evaluation staff positions. Those other 13 came from ongoing functions, 8 of which were management and organizational analysis, et cetera, conducting studies at the request of organizations to determine the efficiency of their management and organizational structures.

Those have been cut back, obviously; so there is an impact there.

Because our budget review process is an effective one, and there is a lot of evaluation that goes on as part of the Department's internal review process, we freed up five positions from our budget staff.

We now have 27 within this evaluation staff doing more than just evaluation functions. I am in no position at this moment to say this is inadequate, however, particularly with the constraints we have on budget and personnel.

I think for at least the planning period we are looking at now, which is through 1982, it ought to be sufficient. We will get experience as more of the evaluations are conducted and from the cooperation and coordination efforts of other elements of the Department that participate.

Mr. KINDNESS. So I could characterize that answer as yes.

Mr. ROONEY. I have forgotten the question, Mr. Kindness. But I believe so.

Mr. KINDNESS. But the program evaluation as perceived at the present time is apparently adequate. The number for the internal audit is 14 short—a combination of professional and support people?

Mr. ROONEY. That is correct.

As I look for my requests internally for the upcoming fiscal year, that would be my posture.

Mr. KINDNESS. But at the same time the internal audit function no longer performs the program evaluations. It seems like you would not really be 14 short.

Mr. ROONEY. Let me explain.

We now have 27 resources available in evaluation. If, indeed, the evaluations were to be conducted by the audit staff, which was the other alternative, in those evaluations—and those evaluations are mandated and must be conducted—there would be two impacts upon the audit staff.

First: At least 20 work years would have to be devoted, which would be more than the 14; and, second: There would have to be active participation with those auditors by the subelements of the Department in conducting evaluations.

We felt that was an intolerable situation to place the audit staff in, because there is so much follow-on done with an evaluation. It is incumbent upon the auditors in doing any kind of an audit that if something turns up which should be pursued further, it should be pursued.

And, with this joint type of effort with 20 members of the audit staff devoted to this kind of activity, I think you would very quickly see the independence of the audit function erode. We would also be in a position of having an audit and evaluation function which would not be adequate for both agendas.

I do not think we are necessarily in that position. We would be defeating ourselves for the future in the audit function.

As I said, I think it would be eroded considerably.

Mr. KINDNESS. Thank you, Mr. Chairman.

Mr. PREYER. Thank you.

In September of last year, the internal audit staff submitted an audit plan for fiscal year 1980 to begin last October. The audit plan called for 46 staff years of effort. The internal audit staff currently has a staff of 22 auditors and many of the planned audits are now impossible to complete.

Mr. ROONEY, did you examine and approve the internal audit staff's fiscal year 1980 audit plan?

Mr. ROONEY. To some extent, Mr. Chairman. We used that audit plan, as I indicated, to determine the number of resources that would be devoted to the evaluation function. So, in effect, we approved it with the two exceptions of the collections and the working capital fund.

However, because of the transfer of the resources, some of the audits which were scheduled for fiscal year 1980, we expect will have to be deferred.

In essence, that audit plan—and Mr. Pommerening can correct me if I am wrong—with those two exceptions is the audit plan we now have.

Mr. PREYER. Why did you approve it knowing that the reorganization was going to significantly reduce the manpower that would be available to do these audits?

Mr. ROONEY. Mr. Chairman, it was not approved as such. It was presented for consideration and the determination of priority with additions to be considered by the deputy, the associate, and myself.

We knew at that time that we would have to include the evaluations that had to be conducted in that agenda. Therefore, the audit plan, plus the evaluations, is what we were considering at that time. We knew there were only 56 resources available, 42 if you leave out the systems and EEO—Equal Employment Opportunity—function.

Mr. PREYER. Mr. Pommerening, as I understand it, 40 percent of the Justice Department's personnel are located west of the Mississippi, and the internal audit staff currently has a staff of seven personnel in Burlingame, Calif., to conduct audits on the west coast.

What will happen to that office following the new reorganization of the internal audit staff?

Mr. POMMERENING. Mr. Chairman, the number is now six instead of seven, so far as full-time permanent personnel is concerned.

Mr. PREYER. I mentioned seven, but one of those was clerical, so maybe I am talking about six. Have you reduced it from seven to six?

Mr. POMMERENING. We had an attrition. One person left. I have advised Mr. Rooney that I will, by July 1, have concluded an internal review and advise him as to the viability of continuing to maintain a field office on the west coast given the new level of internal audit resources.

We are presently working on developing that review and although I choose not to totally prejudge it, it would appear to me that there would have to be some very unusual things developing which would prompt me to recommend, given the staff level of 31, that it is effective or reasonable to maintain an isolated number of 6, 7, or 8 people at the field office.

My understanding with Mr. Rooney is that I will furnish him with recommendations by July 1, and that he will then approve, disapprove, or modify so that any change which is to be effective will be effective as of the first of the fiscal year.

Mr. PREYER. So, basically, your recommendation is going to be to move these personnel back to Washington?

Mr. POMMERENING. In the absence of some situation which I do not now perceive, yes.

Mr. PREYER. Before the shift of personnel in the internal audit unit following the new reorganization, that is before February 25 of this year, the internal audit staff was composed of 57 personnel, as I understand it and was divided into five groups: Legal and departmental organizations group, investigative organizations group, corrections and assistance organizations group, automated systems review group, and administrative review group.

A GS-15 headed up each group in addition to the GS-15 running the west coast office.

Following the reorganization this year, the internal audit staff has been reduced from 57 positions to 31. Five groups have now been dissolved into one working unit and the staff now has three GS-15's, counting the current west coast personnel.

Is that about right?

Mr. POMMERENING. That is absolutely correct.

Mr. PREYER. Mr. Pommerening, as I understand it, dividing the internal audit staff into five groups allowed you a certain amount of specialization within the office.

With the reduction in manpower, will you and your staff be able to specialize to the extent that you have in the past?

Mr. POMMERENING. Not to the extent that we have in the past, Mr. Chairman.

On the other hand, I advise you that I asked Mr. Rooney for authority to make this organizational change because, in my judgment—and he concurred—with the staff of 31 there just was no way to support an overstructure of the type we had before on any rational basis.

Mr. PREYER. Mr. Rooney, let me ask you this.

In the situation of an overlap, how would it be decided whether the internal audit staff or the evaluation staff would conduct the audit review?

Mr. ROONEY. Other than those areas in which we determine that we, as the management of the Department, feel an audit ought to be done, we looked to the director of the internal audit staff to propose an audit agenda.

I do not foresee any circumstances where an audit would be transferred to an evaluation. However, it would be within the prerogative of the Director of the Internal Audit Staff if an evaluation that is going on by the audit staff, GAO, or anywhere else, subsequent to his submission, to put that to a lower priority, depending on the result of the evaluation.

Hopefully—we have not seen this happen yet because we have not had any final products from the evaluation group. The audit staff, however, would be one of the principal consumers of the evaluations to trigger audits.

But I do not see any diminution of the audit agenda or any audit item because of the existence of the evaluation staff.

Mr. PREYER. You are not telling us, then, that the Budget Review Committee makes the decision as to which of the two staff, if either, would perform the review of the problem area?

Mr. ROONEY. No; I am not.

When the audit agenda is presented, the role of the Budget Review Committee is to set priorities. It then goes back to the auditor. If the auditor has reason to believe that a specific audit is high on his agenda for reasons that we did not consider, certainly it would go back to a higher priority.

Let us take an example. The Immigration Service is a good example; let us take a particular aspect of their program.

If there were a function where there is some consideration being given, either internally or externally to the Department, where there are problems with a given area, it ought to be reviewed.

If the auditor has that on his agenda, and there has been no attempt to do an evaluation, certainly that would be a very high priority audit.

If there is an evaluation going on, although it is within the discretion of the auditor under his charter to go ahead and do a review, we would hope he would want to be a consumer of the evaluation and devote his immediate resources elsewhere.

Perhaps the evaluation may determine that this particular activity ought not be conducted in the fashion it is being done simply because

it has no positive impact on society or on the actual charter of the Immigration Service.

If that is the case, the auditor benefits considerably from that evaluation and can do the followthrough and see whether with any implementation of recommendations in the evaluation that program would now perform in compliance with its charter.

Mr. PREYER. Mr. Pommerening, is this your understanding of this operational procedure? I guess what we are really asking is what sort of authority do they have to tell you not to pursue some audit or particular audit.

Mr. POMMERENING. Based upon experience, Mr. Chairman, we have not been faced with the problem of either the Assistant Attorney General or somebody else telling us not to do a given audit.

The process of the Budget Review Committee, or whatever group that is prioritizing these matters, is a subject I have not had prior experience with.

I must say that I take no exception at all with the concept that Mr. Rooney has enunciated as to the need for a staff to do impact or a strategy evaluation, which I believe are the words you described—as a matter of fact, I think that is a resource that has been long needed in the Department. My concern, of course, is the fact speaking parochially, that it is being created at the expense of the internal audit function.

Again, I trust you will recognize that as an extremely parochial attitude.

Mr. PREYER. Have you been told, Mr. Pommerening, that the internal audit staff cannot review a specific type of audit such as program results audits of legal division programs?

Mr. POMMERENING. It had been my understanding that evaluations of program effectiveness in the legal divisions would no longer be our responsibility, but would be the responsibility of a group in the evaluation staff.

I have since been disabused of that understanding and am informed that I misunderstand that and that, indeed, we continue to retain the same range of audit authority and responsibility that we had prior to the reorganization.

Mr. ROONEY. Mr. Chairman, on that point we have had several discussions. This goes back to some of the interests of the Attorney General as a former head of a division. He recognized that the divisions—as opposed to the bureaus in the Department—the law enforcement bureaus—did not have an internal review capability and was quite concerned about that.

He felt it was something he lacked when he was head of the Criminal Division and saw it as the Deputy Attorney General with regard to U.S. attorneys.

So, in our discussions about the creation of an evaluation staff prior to the considerations of where the resources would come from, we were considering centralizing somewhere within the Department, either in the deputy's office, or within each division itself, a small internal review capability so that, particularly with regard to U.S. attorneys, the Department would then have the capability, without being dependent on other department programs, to go out and review offices around the country for their effectiveness and efficiency.

We do not have the resources to do that unless each subelement of the Department creates them out of available resources. That is going to be part of the charter that the Attorney General will request each organization head to do.

Mr. PREYER. Mr. Pommerening, is not the Budget Review Committee composed of the same management officials that internal audit is charged with reviewing?

In other words, what would prevent the Budget Review Committee from killing or postponing an audit that it thought might be embarrassing to management or from giving thought to the evaluation staff whose sole role is advising management and taking the audit away from you?

Mr. POMMERENING. The Budget Review Committee, as I understand it, is composed of Mr. Rooney, the Associate Attorney General, and the Deputy Attorney General.

Neither the deputy or associate has operational program responsibilities. Mr. Rooney does. The order under which we have worked and under which we will all continue to work, provides for special treatment of audits which we undertake within the organization headed by Mr. Rooney.

In other words, the reports are not issued to him, but directed to the Attorney General.

As I said, Mr. Chairman, prior to recent times, the Budget Review Committee had not involved itself in the question of prioritization of audit and evaluation items.

So, I am not familiar with how that process really is going to work. But I repeat again that in my experience in the Department, there have not, to this time, with the one exception I mentioned, been any initiatives to restrain the scope of the audit inquiry.

I might add that I do not view a deferral of an audit as necessarily being a cancellation. The audits that are canceled are canceled by the internal audit staff based on circumstances or results of preliminary examinations or something else which, in our judgment, makes it unnecessary at a given time to pursue under initiative.

Mr. PREYER. Mr. Rooney, the role of the Budget Review Committee was not contained in the submissions the Department made to the Congress outlining the proposed reorganization.

Do you think this change in operating procedure and its implications should be submitted to Congress before it becomes final?

Mr. ROONEY. I have no difficulty with that, Mr. Preyer. I may have been putting more emphasis on the Budget Review Committee role.

Traditionally, the audit plan is presented to the Assistant Attorney General for Administration. In prior years, there being no associate, a copy would be provided to the Deputy Attorney General. It was his option to add anything he felt was important or to say: "I really strongly recommend that you go ahead with this one early because it is of great interest to us."

If I may repeat myself, we have no intention, and it has never been considered, that we would delete any items, except for over-powering reasons, from the audit agenda.

I do not really see the involvement of the Budget Review Committee as anything any different from prior years. I feel it is important

that I advise my superiors as to what we plan to do. They are the ones vested with running the Department.

I have no intention to change my procedure of looking at an audit agenda and would only look to receive the monthly status reports and make those available to my superiors so they will have a better awareness of what is going on in the audit area. I think that is important.

Mr. PREYER. I understand that the Department's order on its audit operations is being revised to include these changes.

Do you plan to publish it in the Federal Register so that interested professional organizations and the public can comment on it before it goes into effect?

Mr. ROONEY. We did not plan to. I have no great difficulty with doing that. However, internal department orders generally do not go through that process. Generally, when an order is drafted it is for my signature. In fact, I signed it this morning. I was going to say this one is for the Attorney General's signature, but I just realized I signed it this morning.

Mr. PREYER. Would you be opposed to the Federal Register publication of the revised order with a 90-day comment period?

Mr. ROONEY. At this moment, I am not, Mr. Chairman. I would be agreeable to that.

However, if there are overriding concerns of which I am not aware, I would like the opportunity to think about those.

Mr. PREYER. I will take that as being a tentative agreement to that procedure. If you find you cannot agree with that, I would certainly hope that at minimum you would agree to consult with the subcommittee considerably before the time it became final.

Will you let us know whether you would be willing to follow the procedure of publishing it in the Federal Register?

Mr. ROONEY. Yes, I will, Mr. Chairman.

Mr. PREYER. Thank you.

Without objection, so ordered.

[The material follows:]

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., April 4, 1980.

HON. RICHARDSON PREYER,
Chairman, Government Information and Individual Rights Subcommittee,
Committee on Government Operations, U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the hearing before the Subcommittee on March 24, 1980, a question was raised as to the promulgation of a successor order to Department of Justice Order 2900.1B. It was suggested that the Subcommittee might wish to have the proposed order published in the Federal Register for comment prior to its being effective.

The Internal Audit Staff has furnished copies of the order identified as DOJ Order 2900.1C to your staff, and has pointed out that it is substantially identical to the predecessor DOJ Order 2900.1B. The Internal Audit Staff concurs with the content of the order and I believe it to be noncontroversial and, indeed, appropriate to an effective internal audit program in the Department.

Because of the nature and content of the order and because it does not appear appropriate to publish internal orders in the *Federal Register*, we propose to disseminate DOJ Order 2900.1C on April 15, 1980. I trust that this course of action will meet with your approval.

Sincerely,

KEVIN D. ROONEY,
Assistant Attorney General for Administration.

Mr. PREYER. Mr. Weiss, I believe you had some questions.

Mr. WEISS. Thank you, Mr. Chairman.

Mr. Shaheen, in your 1978 report to the Attorney General, you said on page 14 of that report: "We have determined that the discipline meted out by several components has definitely been too lenient."

What is the source of that problem and how frequently have the components—the FBI, the DEA, and so on—not followed the sanction recommendations of your office?

Mr. SHAHEEN. That is part of the problem, Congressman. Except for investigations that the office conducts on its own, by Federal regulation the Attorney General has delegated to the heads of the components—the FBI, DEA, INS, the Marshal Service, and the heads of other divisions—the sole authority to impose sanctions for cause on their subordinates.

The FBI and the DEA have a fairly good record of the uniformity and nondiscrimination in the imposition of sanctions.

The problem is varied, depending on the component. In one component the head of INS, for example, is limited in the scope of how he addresses an administrative inquiry by rights that have been contracted away for a number of its employees by a union.

The same is true with the Marshal Service. They enjoy, that is, they have another problem that makes uniformity of discipline a little difficult.

The head of the Marshal Service is directly appointed by the Attorney General. The 94 U.S. Marshals under his jurisdiction are appointed by the President. He is a GS-18 or the top level of SES—Senior Executive Service.

The Presidential appointees in the field are GS-12's, GS-13's, GS-14's, and one or two GS-15's. But when he decides he needs to discipline someone, he knows if they want to stand on ceremony and protocol they turn to him and say: "Who appointed you—The President gave me my job."

That poses a big problem for the Director and for the Department. I have discussed with the subcommittee counsel, Mr. Ingram, that you might want to consider helping the Department in that particular respect.

You might also want to address the problem of whether U.S. attorneys should remain Presidential appointees.

You would be asking the Senate to abdicate quite an area of responsibility and participation in the patronage realm. The head of the FBI in the field office earns the same amount of money as the U.S. attorney and much more than the U.S. Marshal. He is a career official. He owes his allegiance to the organization that holds him subordinate; that is the Department.

Mr. WEISS. Is it your testimony that the sole source of the problem is in this area of Presidential appointments?

Mr. SHAHEEN. No, sir.

Mr. WEISS. Then the question I have is this.

Below what would be considered a radical blockbuster recommendation, do you have other recommendations you might make to us as to how to deal with this problem?

Mr. SHAHEEN. I have suggested three areas of problems. There is a fourth.

There are too many people in several of the units in the Department who have a "crack" at the disciplinary process. An employee of LEAA can be recommended for dismissal by the head of his organization, but he can appeal it to, say, Mr. Rooney.

That decision can be appealed to the Merit System Protection Board. There are too many people who have a crack at the disciplinary pie in internal inquiries. There ought to be a schedule of uniform sanctions that can be uniformly applied.

That is just not the case right now.

Mr. WEISS. On that point alone, would it be possible for you to draw up a table of such uniformity?

Mr. SHAHEEN. There is a table. It enjoys disparate application, component by component.

Mr. WEISS. Is it possible for an internal operation by either forms or timetable requirements, to report back to your office as to what was done in response to the sanctions recommended?

Mr. SHAHEEN. They do that now, Congressman Weiss. There is no authority of anyone, including the Attorney General, for instance, to reverse a final sanction determined by the Administrator of DEA for one of his employees.

The Attorney General, upon hearing what he has done, can say in a given instance—and I am not singling out the administrator as an example—can say: "Golly, that was the most ridiculous, absurd punishment you gave out for a guy who should have been dismissed. Do not ever impose such a lenient sanction."

Mr. WEISS. Is that because of statutory limitation?

Mr. SHAHEEN. That is because of a full delegation of authority in the administrative area to the heads of the components.

Mr. WEISS. By whom?

Mr. SHAHEEN. By the Attorney General.

Mr. WEISS. So, it would be possible for the Attorney General to review that whole process and say: "Listen, folks. This is not working"?

Mr. SHAHEEN. Yes, sir.

There is a good argument for the agency heads, that is, it is important for an agency—and I agree with it. It is part of a problem that has to be worked out.

It is important for an agency head to be looked at and looked upon by his subordinates as the man who will be the ultimate dispenser of sanctions. That is an important management tool that does repose—and properly so—in the agency head.

There just needs to be more focus on the problem by the Attorney General with the agency heads to see if they cannot sit down and work out something.

Mr. WEISS. Could you supply to the subcommittee a tabulation of the number of instances, including, say fiscal 1978 and 1979, where the Attorney General had delegated to—it was not a statutory problem or problems of who appoints whom—but where you recommended certain sanctions and that the administrative head—for whatever reason—either ignored it totally or was more likely to provide a much more lenient sanction?

Mr. SHAHEEN. Except for the investigations we personally handle, Congressman Weiss, we do not recommend sanctions.

Unless we personally handle an FBI inquiry, this is so. The internal component of the FBI conducting the investigation will come up with facts and forward the facts to an administrative panel, or the administrative division. They in turn, will determine the sanctions.

They have a fairly good record, as I indicated earlier. So does DEA. But since we do not recommend sanctions, except for Presidential appointees—we do investigations of, say, U.S. Marshals and U.S. attorneys and people like that, we cannot do that.

Mr. WEISS. In order to come to the conclusion you came to in your report, you determined that the discipline meted out by several components has definitely been too lenient. I assume you did some sort of tabulation.

Mr. SHAHEEN. We observed monthly reports of investigative results or products and the actions taken in each instance. We were able to see the same thing in one component was not addressed as firmly or as decisively in another component.

We did not get involved in any of the instances of recommending what action was taken.

Mr. WEISS. Could you give us the benefit of some of the background studies which led you to that conclusion?

Mr. SHAHEEN. In a sanitized form, yes, sir, probably.

Mr. WEISS. Whatever form you feel is appropriate, which would benefit the subcommittee.

Mr. SHAHEEN. Yes, sir.

Mr. WEISS. Thank you.

Mr. PREYER. Without objection, so ordered.

[The material follows:]



UNITED STATES DEPARTMENT OF JUSTICE

OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C. 20530

APR 9 1980

Honorable Richardson Preyer, Chairman
Government Information and Individual
Rights Subcommittee
Committee on Government Operations
U.S. House of Representatives
Washington, D. C. 20515

APR 14 1980

Dear Chairman Preyer:

During hearings before your Subcommittee on March 24, 1980, I was asked to provide you with the basis for the conclusions set forth in this Office's 1978 Annual Report to the Attorney General that the disciplinary punishments imposed in the Department of Justice are too lenient. This letter responds to that request.

The statement which apparently led to Representative Weiss' question appeared on page fourteen of the Annual Report: "We have determined that the discipline meted out by several components has definitely been too lenient." (For your convenience, a copy of the report is enclosed.) This conclusion is founded upon this Office's belief that individuals holding positions of responsibility in this Department should be held to stricter standards of conduct than lower level personnel. For example, it is our view that a Special Agent in Charge should be punished more severely than a street agent for the same offense, that a Section Chief should receive harsher sanctions than a line attorney for similar misconduct. We think that, if positions of responsibility are supposedly given to individuals on the basis of their greater experience and maturer judgment, then the actions of persons occupying those positions should reflect their experience and judgment. Accordingly, when they engage in misconduct that merits a certain fixed punishment by a low-ranking employee, superiors should receive a harsher punishment for that same

offense. Section II-B of the 1978 Annual Report cites several instances in which not only was punishment not imposed on the basis of the standard just mentioned, but punishment was imposed on the basis of an apparently too lenient, across-the-board standard. For example, note under the Drug Enforcement Administration, instances 2(b) and (c); under the Federal Bureau of Investigation, instance 3(d); under the Immigration and Naturalization Service, instances 4(e) and 4(f); under Law Enforcement Assistance Administration, instances 5(a) and 5(b); and, under the U.S. Marshals Service, instance 7(c). Additional examples will be included in our 1979 Annual Report, as will further discussion on this point.

I hope this information will be helpful to you.

Sincerely,

Michael E. Shaheen, Jr.
MICHAEL E. SHAHEEN, JR.
Counsel

ANNUAL REPORT TO THE ATTORNEY GENERAL
1978
OFFICE OF PROFESSIONAL RESPONSIBILITY

TABLE OF CONTENTS

I. OFFICE DUTIES	1
II. INVESTIGATIONS CONDUCTED OR MONITORED BY THE OFFICE	1
A. COMPLAINTS REVIEWED BY THE OFFICE	1
B. SERIOUS MISCONDUCT	2
1. BUREAU OF PRISONS	2
2. DRUG ENFORCEMENT ADMINISTRATION	3
3. FEDERAL BUREAU OF INVESTIGATION	4
4. IMMIGRATION AND NATURALIZATION SERVICE	5
5. LAW ENFORCEMENT ASSISTANCE ADMINISTRATION	5
6. OFFICES AND DIVISIONS	6
7. UNITED STATES MARSHALS SERVICE	6
III. CONTINUING DIFFICULTIES ENCOUNTERED	7
IV. IMPACT OF NEW LEGISLATION	10
V. AUDIT OF THE INTERNAL INSPECTION UNIT OF THE UNITED STATES MARSHALS SERVICE	11
VI. CONCLUSIONS	13

ANNUAL REPORT TO THE ATTORNEY GENERAL
OFFICE OF PROFESSIONAL RESPONSIBILITY

I. OFFICE DUTIES

The Office of Professional Responsibility was created in December 1975 "to ensure that Departmental employees continue to perform their duties in accordance with the professional standards expected of the nation's principal law enforcement agency". The Office was designed to oversee and, if necessary, investigate "conduct by a Department employee that may be in violation of law, of Department regulations or orders, or of applicable standards of conduct". 28 C.F.R. §0.39 et seq. (1976).

This is the third annual report submitted to the Attorney General for the purpose of "reviewing and evaluating the activities of internal inspection units, or where there are no such units, the discharge of comparable duties within the Department". 28 C.F.R. §0.39a(f)(4).

II. INVESTIGATIONS CONDUCTED OR MONITORED
BY THE OFFICE

A. Complaints Reviewed by the Office

In 1978 the Office reviewed 298 complaints or other requests for investigation of Departmental employees.^{1/} This represents a slight decrease from 1977 during which 319 complaints were received. Most of the complaints came from private citizens, frequently through their attorneys.

^{1/} These 298 matters were received directly by this Office. That figure does not include the approximately 1,000 investigations conducted by the internal inspection units and reported, on a monthly basis, to this Office. Nor does it include minor misconduct handled at the field level.

Requests for investigation also came from the various components of the Department and from federal judges. Significantly, the number of complaints brought directly to our attention by Department employees increased.

During 1978, we closed 305 inquiries^{2/} and had 67 matters pending at the end of the year.

As in 1977, the complaints we reviewed most frequently involved allegations of abuses of investigative and prosecutorial authority. We also received several allegations of unauthorized disclosures of information, either to the news media or to other persons outside the government. We received fewer allegations of this type than in previous years. The third major type of allegation we received most frequently concerned real or apparent conflicts of interest.

B. Serious Misconduct

Following is a list of serious misconduct which was investigated and substantiated during 1978.

1. Bureau of Prisons

(a) Five correctional institution staff members assaulted three inmates who were captured during an escape attempt. One employee was transferred to a different prison, one voluntarily resigned, and three were dismissed.

(b) A prison employee placed bets for inmates. Prosecution of the employee was declined and he was dismissed.

(c) An employee had sexual relations with an inmate. He was dismissed.

(d) An employee assaulted an inmate. He was dismissed.

^{2/} More inquiries were closed than were received because 70 matters were still pending at the end of 1977.

(e) An employee was dealing in a controlled substance (PCP) with inmates. He was dismissed, indicted, and convicted of possession of a controlled substance.

(f) Three employees sold amphetamines and marijuana to inmates. All three resigned; two were indicted and prosecution is pending. Prosecution was declined on the third.

(g) Two employees sold cocaine to inmates. Both were dismissed and indicted. One has been sentenced to a three year prison term; trial is still pending on the other.

(h) An employee stole \$300 of government funds and replaced it when auditors arrived to do a routine check on the institution's books. The employee was dismissed and indicted; trial is pending.

2. Drug Enforcement Administration

(a) A Special Agent (SA) leaked computer information to a former SA and then conspired with him in a narcotics transaction. The employee was dismissed and both were prosecuted, receiving sentences of ten and twelve years.

(b) An informant who had received an unusually large sum of money for assistance in an investigation built a shed for a Special Agent In Charge (SAIC) of a field office. For the improper relationship with an informant, the SAIC was suspended for three days.

(c) An SAIC loaned an informant \$3,500 in personal funds; the informant used the money to finance an illegal laboratory. The SAIC was not aware of or involved in the illegal laboratory, but was suspended for three days for the improper relationship with the informant.

(d) A Special Agent was arrested for accepting bribes amounting to approximately \$9,000. He was dismissed and indicted by a Federal Grand Jury on two counts of bribery.

(e) An Administrative Officer (AO) manipulated Government Travel Requests in order to (1) up-grade his air fare and (2) transport parts for the Regional Director's (RD) personal automobile. The AO reimbursed the government and resigned. The allegations against the RD were resolved in his favor, but he was required to reimburse the government.

3. Federal Bureau of Investigation

(a) A clerical employee leaked Bureau reports, informants' identities and descriptions of Bureau automobiles to organized crime subjects. The employee was dismissed and prosecuted.

(b) Six Agents and supervisors who were involved in surroptitious entries were disciplined. Two Agents were censured and demoted, one Agent was censured and voluntarily retired prior to dismissal, one Agent was censured and suspended for 30 days, two Agents were censured.

(c) An Agent accepted a bribe from an organized crime figure. He was indicted, resigned and entered a guilty plea to one count of perjury, as the Statute of Limitations had expired on bribery. He is presently serving a jail sentence.

(d) An Agent submitted a false voucher claiming lodging expenses which he did not incur. Two other Agents assisted him in the fraud. Prosecution was considered and declined. All three Agents were suspended and censured; two of the three were demoted.

4. Immigration and Naturalization Service

(a) A clerk illegally obtained welfare subsistence while employed by INS. The employee was suspended for five days.

(b) An Immigration Detention Officer allegedly raped and assaulted a female with a knife. State authorities dropped the charges against the employee when the victim did not cooperate with its criminal investigation. The employee never returned to work after the incident and was dismissed.

(c) A Border Patrol Agent shot and wounded an alien. The agent was dismissed, tried and was found guilty by a jury; the trial judge set aside the verdict.

(d) A Border Patrol Agent shot an alien and then deported the alien in an attempt to conceal the assault. A dismissal action was initiated, but the agent resigned before the action could be completed. Prosecution is pending.

(e) A Border Patrol Agent beat an alien. He was suspended for three days.

(f) A District Director and a Deputy District Director accepted gifts from persons seeking favorable action by INS. The District Director retired and the Deputy received a letter of reprimand.

5. Law Enforcement Assistance Administration

(a) A Division Chief converted to his personal use numerous items of government property belonging to his LEAA unit. The total value of the property was considerable. He also submitted false travel

claims. Removal action was initiated, but on appeal the employee was demoted three grades and permitted to remain in his original division.

(b) A Program Analysis Officer privately used government franked envelopes for a volume mailing. The employee made restitution to the government and was orally reprimanded.

6. Offices and Divisions

(a) A United States Attorney participated in the opening of a political party's local office. He was cautioned, in writing, not to engage in any future conduct which gives the appearance of partisan political activity.

(b) An Assistant United States Attorney, while intoxicated, was arrested and charged with disorderly conduct and resisting arrest. He was asked for and tendered his resignation.

(c) A Supply Clerk with a litigating Division made improper use of a government charge card at a GSA Self-Service Store. He was dismissed, indicted for conspiracy to defraud the United States and pled guilty.

7. United States Marshals Service

(a) A Deputy U.S. Marshal failed to properly restrain a prisoner resulting in the prisoner's escape. He was dismissed.

(b) A Special Assistant to the Director accepted a bribe to help a federal prisoner defeat prosecution. He was dismissed, prosecuted for obstruction, and sentenced to three years.

(c) A Supervisory Deputy U.S. Marshal leaked sensitive information about a protected witness to a private attorney. He was suspended for five days.

(d) A Deputy U.S. Marshal improperly displayed his credentials to try to avoid arrest for solicitation of a prostitute. He was fired.

(e) A Supervisory Deputy U.S. Marshal and a Deputy U.S. Marshal used their official positions to have parking violations dismissed. The Supervisor was suspended for twenty days; the Deputy was suspended for fifteen days.

III. CONTINUING DIFFICULTIES ENCOUNTERED

The same basic kinds of problems we encountered in 1977 were again present in 1978. One of our most difficult had been to determine how to investigate a complaint against a federal prosecutor or investigator when the complainant was the target of a pending federal criminal investigation. This difficulty remains, but with a new wrinkle. We are now receiving more complaints alleging that investigations are opened, indictments are gotten, and prosecutions continued for political purposes, either to further the political career of the prosecutor or someone in the prosecutor's office, or to further the political career of a close political associate by removing an opponent from contention. We feel that these type of allegations are the inevitable result of the Department's emphasis on pursuing white collar crime. We have tried to resolve these matters in a manner similar to that used to resolve allegations in which no political motivation is claimed: by interviewing the prosecutor or investigator who is the subject of the complaint as quickly as possible and by promptly reviewing all relevant documents such as grand jury transcripts. This type of allegation, because it is more amorphous than the standard misconduct allegation due to the alleged motivation for the improper prosecution, requires additional investigation. We have found that we must interview more of the subject's professional associates. We have had to review carefully the evidence collected against the complainant and analyze, or have analyzed for us by Department attorneys knowledgeable about the substantive

offense, the quality of the case and its chances for successful prosecution. We have yet to sustain one of these allegations and have concluded that allegations of this type frequently, but not always, are made solely to delay an investigation, indictment, or trial.

Another problem, one which constitutes a serious threat to our ability to remain a viable entity within the Department, results from attempts to gain access to our files. These attempts, whether through the civil discovery process, the Freedom of Information Act, or otherwise, have been almost uniformly resisted. The Office was created to oversee the internal inspection operations of this Department and to conduct investigations ourselves as necessary. Our ability to conduct our own inquiries and investigations, and to receive allegations whether or not we investigate them ourselves, depends on the cooperation of Department employees and private citizens. Frequently, we extend promises of confidentiality to such individuals, after a thorough discussion of the "ground rules" and terms of these promises. Where we do not extend such promises (usually because the allegation cannot be pursued without "surfacing" the complainant or witness), we make it absolutely clear that any information furnished to us will be disseminated on an extremely limited, strictly enforced "need-to-know" basis. Our experience has been that, without such promises, many individuals with relevant information simply would not have come forward or would not have spoken to us so candidly.^{3/} A potential

^{3/} During the initial stages of one investigation, we discussed with a complainant and his attorney the possibility of our using our authority to conduct a strictly criminal investigation and convene a grand jury to receive his allegations. The attorney was interested in this procedure so that his client's statement would be protected by Rule 6(e) of the Federal Rules of Criminal Procedure. We explained that we had exercised that authority very rarely and were hesitant to do so in that case because of the great expense to the Government in both money and time. It was finally agreed that a limited promise of confidentiality would be sufficient and we did receive the client's allegations. Also, we have repeatedly had to assure individuals who supplied us with information that their statements would not be released pursuant to an FOIA request.

interviewee's or complainant's perception of our ability to honor a promise of confidentiality or to limit access to any information provided without such a promise, is as important, in our judgment, as the reality of our ability to honor such a promise. If a person who has not yet come forward with relevant information thinks that what he may relate to us can be obtained by those without a need-to-know--no matter how baseless that thought may be--then that person will often simply not talk to us. Such individuals do not, and should not be expected to, draw the distinction between a release ordered by a court pursuant to a discovery motion, a release pursuant to an FOIA request, a story based upon a "leak" and a release made by persons in this Office for other reasons. That individual knows that information furnished to us by some previous interviewee or complainant was released and that alone is enough to chill his willingness to speak to us. It is our view that the interest of this Department and the general public is clearly better served by preserving our ability to gather information pertaining to employee misconduct than it is by releasing such information to those who may have a casual interest in a matter or to those who were involved in an inquiry. We will continue to adhere to this policy of non-disclosure as well as our policy of serving the legitimate interests of the public in learning what we do and how we do it by issuing public reports on matters of significant public interest and by cooperating fully with reviews or audits of this Office and its operations by appropriate Committees of the Congress and the General Accounting Office.

A third problem is not a new one and pertains to allegations of improper disclosures to the news media. Because we had found that "leak" investigations are, in terms of being able to identify the source of a leak (and possibly also in terms of deterrent effect), generally futile exercises, we had adopted a policy of not investigating any leak unless requested to do so by the Attorney General or a federal judge. We have now decided to alter that policy somewhat and also investigate those allegations of improper disclosures in which it is clear initially that the disclosure had to have been made by a Department employee. So many individuals are usually involved in an investigation from which there has been a "leak" that it is impossible to

determine even from what agency the leak came, let alone identify the source as a particular employee. When such investigations were conducted during 1978, we continued to adhere to our policy of not asking media personnel to identify their sources.

IV. IMPACT OF NEW LEGISLATION

Two recent pieces of legislation, the Ethics in Government Act and the Civil Service Reform Act, will have a definite impact on the workload of the Office. In conjunction with the Office of Legal Counsel, we have proposed amendments to our regulations to make them comport with specific provisions of the Civil Service Reform Act designed to protect "whistleblowers". Those changes will have the effect of making it clear that the jurisdiction of OPR includes allegations of "mismanagement, gross waste of funds, abuse of authority, or a substantial danger to public health or safety", as well as allegations of reprisals against whistleblowers. This Office has already become the point of contact for the Justice Department with the Office of the Special Counsel, the agency which has primary responsibility under the statute for the review of allegations of prohibited personnel practices in the Executive Branch. It is anticipated that the changes in our regulations will result in an efficient working relationship between the Department and the Special Counsel, although it will necessarily result in additional duties.

The full impact of the Ethics in Government Act cannot yet be assessed, but it is clear that the expanded financial disclosure requirements for employees and the review of these disclosures for potential conflicts of interest will at least have a peripheral effect on our workload. Also, we have discussed with the Office of Legal Counsel an additional revision of the Department's regulations to require all attorneys and all individuals--regardless of grade--exercising significant responsibility for the Department's fiscal operations to file financial disclosure statements. These discussions are still in a preliminary stage, but such an expansion of the reporting requirements would assist in our efforts to identify circumstances of potential fraud or conflict of interest by Department employees.

V. AUDIT OF THE INTERNAL INSPECTION UNIT OF THE
UNITED STATES MARSHALS SERVICE

The Internal Audit Staff of the Office of Management and Finance conducted an audit of the internal investigations program of the United States Marshals Service (USMS) during 1978. The audit, initiated at our request, commenced in April 1978 and a final report which includes the comments of the Marshals Service on the audit staff's recommendations was actually issued in February 1979.

The audit was part of this Office's continuing effort to evaluate the effectiveness and efficiency of the internal inspection program throughout the Department. The audit team's immediate goal was to determine whether the USMS Office of Internal Investigations (OII) was meeting its assigned mission of assuring that a strong and vigorous program was in effect to maintain the highest standards of integrity, loyalty, and conduct among USMS personnel.

The scope of the audit included a review of procedures, practices, reports, and management controls within OII. The audit team visited four district offices--District of Columbia, Washington, D. C.; Northern District of Georgia, Atlanta, Georgia; Middle District of Alabama, Montgomery, Alabama; Northern District of Florida, Pensacola, Florida--interviewed USMS Headquarters personnel, personnel from this Office, and Deputy United States Marshals who had been the subjects of internal investigations.

The audit team concluded that, in general, OII has accomplished its program mission. A backlog of cases awaiting investigation has been eliminated and minor matters are now being handled by district office personnel. The team concluded, however, that improvements need to be made in the following areas:

1. OII and district offices have not established procedures to properly document the receipt of misconduct allegations and do not have adequate controls over subsequent processing and disposition actions.

2. There are no documented criteria to be used for assigning cases for investigation and no documented procedures to be followed in conducting internal investigations.
3. There are no internal guidelines to assure that investigations are completed in a timely manner or that, if delays are encountered, the Chief, OII, is advised and provided explanations for the delay.^{4/}
4. Substantial delays occur between the time an investigation is completed and the time final disciplinary action is taken.
5. More definite guidelines need to be established for reporting allegations and investigations to this Office (OPR).
6. Federal Personnel Manual requirements for the removal of disciplinary actions from Official Personnel Files were not being followed.

Director William Hall has already begun to act on the report and its recommendations and will have made the Marshals Service internal inspection operation more proactive than reactive during 1979.

Several comments are in order regarding the audit findings. This Office had intentionally left somewhat vague the standards regarding what types of misconduct to report to us to permit the components measurable discretion to report only those matters deemed by them to be important. For example, if an agent of one of the investigative components failed to carry out his duties, his dereliction would normally be pursued as a management, not a misconduct, matter. Dereliction by a prison guard is, in each instance, potentially a much more serious matter because of the possibility of a prisoner's being

^{4/} It took OII an average of 47 days to complete an investigation.

abused by his fellow inmates. Nevertheless, we have re-examined the guidelines we had issued to the components and will now require the reporting of all allegations of misconduct.^{5/}

VI. CONCLUSIONS

A review of our work during 1978 has led us to several conclusions. The first is that we have a tendency to be overly optimistic about how much we can accomplish. We intended to do a comprehensive analysis of changes which could improve the procedures of this Office and the Department's components and stated that as our intention in last year's annual report. We were presumptuous in so stating; we have not yet gathered sufficient information to make such an analysis and, even had we collected sufficient data, we did not have the time to analyze it intelligently.

With regard to this Office, however, we have decided that, upon the entry on duty of the two additional attorneys authorized for FY 1980, particular attorneys will be assigned oversight responsibilities for particular components. This has begun to occur spontaneously and informally and we intend to formalize this in the fall. We have also begun to explore the possibilities for adopting a more sophisticated two track system to permit closer monitoring of components' investigations and to permit us to place tighter time constraints on investigations we conduct ourselves. We will have formalized our oversight assignments and adopted a new monitoring system no later than October 1.

^{5/} We were criticized about this by the House Committee on Government Operations. We are taking this step very reluctantly because we do not wish to create the impression that we are interested in minor misconduct which should, in our view, be handled at field level by local management. We also are concerned about the additional burden placed on the components, through the necessary lengthening of their monthly reports to us and the burden placed on us of reviewing additional summaries of minor misconduct.

We also stated in last year's report that we intended to determine whether our preliminary perception that some components take too long in deciding upon an appropriate penalty for misconduct and then impose too lenient a penalty was correct and, if it was, to recommend suggestions for improvement. We have determined that the discipline meted out by several components has definitely been too lenient. The cause of this appears to be that too many officials, both within and outside those components, have authority to institute or review disciplinary actions. Because one of these components has already begun a complete review of its disciplinary procedures and intends to reduce the number of officials authorized to institute disciplinary actions, we think it appropriate to await the outcome of its internal initiatives before pursuing this problem further. If successful, the steps it takes might be able to be used as a model for other components.

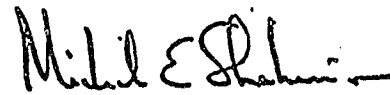
Our second conclusion is that we must do all we can to encourage Department employees to bring allegations to us. We consider it significant that more of our complaints are coming from employees and intend to send a memorandum in June to the heads of all components reminding them of their responsibility to re-inform all of their employees of this Office's mission and of the employees' right to bring allegations directly to us.

Our third conclusion is that the internal audit program should be continued. It highlights for this Office and for the internal inspection unit audited those areas which need improvement and those areas in which a unit is strong. Additionally, we have found from our own experience of being the subject of an "audit" during 1978 by the House Committee on Government Operations that the very process of being audited forces an office to review and reflect upon its procedures and policies. During 1979, the Drug Enforcement Administration and the Bureau of Prisons will be audited and the Immigration and Naturalization Service will be reaudited to determine how effective the changes made after its 1977 audit have been.^{6/}

^{6/} We should also note that in August the General Accounting Office issued a report entitled "FBI Has Improved Its System For Handling Allegations of Improprieties And Misconduct Against Its Employees". GAO's review of the Bureau's operations began shortly after former Director Kelly reorganized the Bureau's internal inspection operation. The report was highly complimentary.

Our fourth conclusion is that the second, and equally important, aspect of this Office's mission and the mission of each internal inspection unit gets too little emphasis. The goal of any internal inspection system is, of course, to find sufficient, pertinent facts which permit the disciplining, dismissing, or prosecution of employees who have committed serious misconduct. The same process used to investigate wrongdoing is also used to exonerate those employees who have been falsely accused of improper acts. We feel that, all too often, the public perceives it to be our job to find wrongdoing and root out malfeasors and thinks that we have somehow failed when no wrongdoing is uncovered. Put another way, what often controls the public's perception is a perverse logic that withholds approval absent a finding of wrongdoing. In 1979, we intend to emphasize the fact that the lack of evidence of wrongdoing by Department employees is not a sign of failure, but a positive indication of a vigorous, honest Department of Justice.

Respectfully submitted,



MICHAEL E. SHAHEEN, JR.
Counsel

Office of Professional Responsibility

Mr. WEISS. Another question in the same area.

Have you had problems with a swift followup by the Attorney General in implementing the recommendation that there be some form of discipline?

I guess within that context what is the oldest recommendation that is currently sitting on the Attorney General's desk awaiting action?

Mr. SHAHEEN. With this Attorney General, there is one matter several months old that awaits his implementation. His record does not compare as favorably as the records of Judge Bell and Attorney General Levi.

He knows I have that criticism. He heard that I made it before the Senate Judiciary Committee a week and a half ago. He said: "I heard you said I was slow." I said: "Yes, I did."

Mr. WEISS. And you are still holding onto your position?

Mr. SHAHEEN. Yes; I am holding on to my position.

I told you that he is slow. It is good that he knows he is.

Mr. WEISS. In the area of the Presidential appointments you were referring to earlier, have you had any problem in getting the Attorney General to back you up in achieving swifter White House action?

Mr. SHAHEEN. The exception which I guess ought not to be construed as the rule is the one he has had for several months. That would be the problem.

Mr. WEISS. And that would involve not just Marshals, or U.S. attorneys, but other White House appointees?

Mr. SHAHEEN. We have not encountered any other difficulty with Mr. Civiletti. We have had rare occasion to send something. But there is this one item that we think is important. He thinks it is important. But he has not been able to act on it.

Mr. WEISS. Again, Mr. Chairman, I think whatever background material we could get from Mr. Shaheen to help us in drawing some recommendations would be appreciated.

Mr. PREYER. Thank you, gentlemen.

I want to thank all of you for being here this morning. There are a number of problems that we might want to follow up on with you through written questions or through further hearings, particularly on the Inspector General's functions.

Mr. Cihlar, I regret that you got a free ride here today, and that we did not have a chance to draw your report on the possible need for an Inspector General.

We certainly would like to get into that area. Of course, that is one important area we are concerned with as to whether we need legislation in that field.

So, we will pursue that at some later date. We appreciate your being here today, as well as all the other members.

All the lights are on up there. It looks like an abandoned ship. I think it means we have a series of votes on the floor.

The subcommittee will adjourn at this time.

[Whereupon, at 12:40 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

DEPARTMENT OF JUSTICE INTERNAL AUDIT OPERATIONS

THURSDAY, APRIL 24, 1980

HOUSE OF REPRESENTATIVES,
GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2154, Rayburn House Office Building, Hon. Richardson Preyer (chairman of the subcommittee) presiding.

Present: Representatives Richardson Preyer, Robert F. Drinan, and David W. Evans.

Also present: Timothy H. Ingram, staff director; Christopher Vizas, counsel; Euphon Metzger, clerk; Thomas G. Morr, minority professional staff, Committee on Government Operations; and Lawrence Gaston, supervisory auditor on assignment from GAO to the subcommittee.

Mr. EVANS [presiding]. The subcommittee will come to order.

The hearing today continues the subcommittee's oversight of the internal audit operations of the Department of Justice. Today we will focus on the need for a statutorily created Office of Inspector General in the Department.

We will review the Department's February 15, 1980, report entitled, "The Performance of Inspector General Functions Within the Department of Justice," and will continue our earlier examination of the Department's reorganization of its internal audit staff.

We are pleased to welcome back this morning Kevin Rooney, Assistant Attorney General for Administration; Michael Shaheen, Counsel of the Office of Professional Responsibility; Glen Pommerening, Director of Justice's Internal Audit Staff; and Frank Cihlar, Attorney Advisor of the Office for Improvements in the Administration of Justice.

Gentlemen, we are delighted to have you with us here this morning. As you were sworn in before this subcommittee during the last hearings, please consider yourselves still under oath.

As you do not have an opening statement this morning, we will consequently proceed to the questions as there are a considerable number. We would appreciate it if your answers could be as concise and to the point as possible.

Mr. Cihlar, would you define in two or three sentences, if possible, what you believe to be the functions of an Inspector General?

STATEMENT OF KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY MICHAEL SHAHEEN, JR., COUNSEL, OFFICE OF PROFESSIONAL RESPONSIBILITY; GLEN E. POMMERENING, DIRECTOR, INTERNAL AUDIT STAFF; AND FRANK P. CIHLAR, ATTORNEY ADVISER, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE

Mr. CIHLAR. The functions, as we have outlined them in the report, Mr. Evans, can be broken into three analytical categories. The first is the factfinding function, which entails the general supervision of audits and of investigations within the agency. The second is what we have termed the facilitating function which refers to the promotion of programs and policies within the agency designed to eliminate or reduce waste, fraud, and mismanagement. The third is the monitoring function which we have defined as staying abreast both of deficiencies within the agency and of corrective actions that may be taken to remedy those deficiencies.

Mr. EVANS. The Department of Justice report on the establishment of an Inspector General function within Justice concludes that the Department's performance of Inspector General functions has been effective.

Mr. CIHLAR. To reach this conclusion did you review and analyze the findings of GAO reports on Justice's internal audit or internal investigations functions?

Mr. CIHLAR. Are you referring to a specific report by GAO?

Mr. EVANS. No, just generally.

Mr. CIHLAR. In the course of my work, I personally did review several GAO reports. At this point in time, I do not recall the specific titles.

Mr. EVANS. Did you review any GAO findings made in the last 3 years on the mismanagement or operational problems within the Department?

Mr. CIHLAR. I could not say for certain at this point. I would have to check my files. I did review a number of GAO reports on the Department's activities. At this point, I do not have a firm recollection as to which ones I had—

Mr. EVANS. If you could check your records and report to the subcommittee, we would appreciate it.

Without objection, so ordered.

[The material follows:]

U.S. DEPARTMENT OF JUSTICE,
OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE,
Washington, D.C., May 27, 1980.

HON. RICHARDSON PREYER,
Chairman, Subcommittee on Government Information and Individual Rights,
Committee on Government Operations, Rayburn House Office Building, House
of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On April 24, I appeared before the Subcommittee with regard to the report to the Congress dated February 15, 1980, and entitled, "The Performance of Inspector General Functions Within the Department of Justice." During the course of my testimony, I agreed to supply for the record the titles of the General Accounting Office reports I reviewed during the course of my work on the report.

For the record, those titles are:

1. "Internal Audit Coverage of Financial Matters in the Department of Justice" (May 13, 1977);
2. "More Effective Action Is Needed on Auditors' Findings—Millions can be Collected or Saved" (October 25, 1978);
3. "The FBI Can Improve Its Management Control Over Operations By Providing Effective Internal Audit" (January 17, 1979); and
4. "Audit Coverage of Law Enforcement Assistance Administration Grants Is Sparse And Resolution of Auditors' Findings Is Ineffective" (draft, September 24, 1979).

Sincerely yours,

FRANK P. CIHLAR,
Attorney-Adviser.

Mr. EVANS. As a part of that question, I also would like to have answered the question: Did you review departmental responses to GAO findings and recommendations?

Mr. CIHLAR. To the extent they would have been included with the GAO reports that I reviewed, yes.

Mr. EVANS. Did you review and analyze the findings of Justice's internal audit regarding the internal audit and investigations functions?

Mr. CIHLAR. I do not recall reviewing that report.

Mr. EVANS. Did you review departmental responses to the findings and recommendations of any internal audit staff reports?

Mr. CIHLAR. I can recall at least one.

Mr. EVANS. Did you review or analyze any public criticisms of the internal audit and investigation functions of the Department?

Mr. CIHLAR. I do not recall any such criticisms.

When you say "public," are you including GAO reports?

Mr. EVANS. No; I am not specifically referring to GAO reports.

Mr. CIHLAR. I think the answer would have to be no, then.

Mr. EVANS. Did you seek an independent evaluation of the Department's internal audit and internal investigation operations?

Mr. CIHLAR. Did I intend to make an independent evaluation?

Mr. EVANS. No; did you seek any independent evaluation of the Department's operations other than GAO reports or any other type of independent appraisal or evaluation?

Mr. CIHLAR. No, sir.

Mr. EVANS. Did you review this subcommittee's inquiries to the Attorney General and other officials of the Department regarding its internal audit and review mechanisms?

Mr. CIHLAR. No, sir.

Mr. EVANS. What did you do to assess the performance of the Inspector General functions within the Department?

Mr. CIHLAR. We began by analyzing the act of 1978 to familiarize ourselves with the objectives and functions of the Inspector General as set forth in the statute and its legislative history. Then I familiarized myself with the operations of the components of the Department, principally OPR and IAS, that seemed most responsible for the discharge of cognate functions within the Department, compared the operation of those elements and their discharge of those functions to the model contemplated by the 1978 statute, and reached the conclusions set forth in the report.

Mr. EVANS. Mr. Cihlar, the Department of Justice's authorization act for fiscal year 1980, conference report asked for a study with respect to establishing an Office of Inspector General within the Department.

I understand your report represents the Department's responses to that request. How would you categorize the report you produced? Would you categorize it as an evaluation, an audit, or what?

Mr. CIHLAR. I would characterize it as a report summarizing the results of the study we conducted within our office.

Mr. EVANS. Mr. Shaheen, as an evaluation of the performance, not an analysis or brief for a point of view, but as an evaluation, do you believe the report on the Inspector General functions represents a complete, thorough, and accurate evaluation of the Office of Professional Responsibility?

Mr. SHAHEEN. Yes, I do.

Mr. EVANS. How would you categorize it in regard to an evaluation of the Department's internal audit and internal investigation operations, generally?

Mr. SHAHEEN. To the extent that we have limitless access to and use of internal audit, it accurately reflects our free use of internal audit.

But as a separate functioning unit, we are not as familiar with internal audit as the report's author is.

Mr. EVANS. Would you characterize it more of a think piece rather than a studied investigation or studied evaluation?

Mr. SHAHEEN. I would regard it both as a studied evaluation and a think piece, not being clever enough to distinguish between the two.

Mr. EVANS. Mr. Pommerening, as an evaluation of performance, not an analysis or brief for a point of view, but again an evaluation of performance, do you believe that the report on the Inspector General functions represents a complete, thorough, and accurate evaluation of the internal audit staff?

Mr. POMMERENING. I do not believe so. I am speaking from a different perspective. I do not believe that was Mr. Cihlar's objective. I would have to say that he was not able to spend adequate time with our staff to conduct a thorough evaluation of its performance of its total scope of activities over the past several years.

Mr. EVANS. How long did he spend with your staff?

Mr. POMMERENING. I cannot answer that.

Mr. EVANS. Was it a matter of a few days? Could you characterize the timeframe?

Mr. POMMERENING. I believe I had two sessions with Mr. Cihlar; several hours.

Mr. EVANS. In duration?

Mr. POMMERENING. Yes.

And I also did furnish him written information as to the scope of our activities and types of audit we did, our relationships with other elements of the Department, and so forth.

Mr. EVANS. Again, then, how would you characterize the evaluation on the basis of an evaluation of performance? How would you characterize the report in terms of the Department's internal investigation operations?

Mr. POMMERENING. I think in the area of the relationship between internal audit, and OPR, and other elements of the Department, it was an evaluation.

As to the individual detailed pieces of work which we do or the specific programs which we audited, I do not think they are addressed in the report.

Mr. EVANS. Mr. Cihlar, are you aware of any instance in which the internal audit staff identified a problem but the Department took no action to correct the problem?

Mr. CIHLAR. Let me back up, Congressman. When you say, "identification of problems," are you including therein the types of recommendations for change, the workaday things you would find in an audit report or are you referring to other more specialized types of recommendations?

Mr. EVANS. For example, let me specifically mention the debt collection practices.

Mr. CIHLAR. I do not recall that particular recommendation or any subsequent actions on that.

Mr. EVANS. Are you aware that the internal audit staff decided not to audit the debt collection activities of the Department this year because there had been no significant change from the last review?

Mr. CIHLAR. No, sir, I would have to say I am not aware of that.

Mr. EVANS. Mr. Pommerening, when was the last time your staff reviewed debt collection activities?

Mr. POMMERENING. I believe it was 1975, Mr. Chairman.

Mr. EVANS. What were the staff findings and recommendations at that time?

Mr. POMMERENING. The major finding was that the Department would have to look at its total debt collection process. The basic recommendation was that it be centralized, that the debt collection activities of three of the legal divisions be consolidated into a debt collection activity to be housed somewhere else, possibly in the Office of Management and Finance, but possibly in the Office of the Deputy Attorney General and possibly in the Executive Office of U.S. Attorneys.

We considered that to be a matter of judgment for the senior management of the Department to determine.

Mr. EVANS. Do you know why action has not been taken to correct the problems you identified?

Mr. POMMERENING. There have been several intervening events. There was an effort to create a debt collection automated system and pilot projects were undertaken. That event was unsuccessful, that attempt.

There have been succeeding attempts, largely with the Executive Office for the U.S. Attorneys, to create a better debt collection system. They are ongoing.

Because of these happenings, as you pointed out correctly, we have deferred further review of that subject until there is more to review.

Mr. EVANS. What is the dollar value of the debts the Department is supposed to be collecting?

Mr. POMMERENING. I cannot give that figure to you off the top of my head and be assured that it is reasonably accurate. I would be very happy to provide it for you.

Mr. EVANS. If you will provide that to the subcommittee, we would appreciate it, along with the figure as to the amount that was actually collected by the Department. Without objection, so ordered.
[The material follows:]

Department of Justice debt collection activity

Balance, September 30, 1976	\$630, 713, 499
Changes:	
Impositions	296, 827, 100
Collections	160, 286, 432
Compromises	46, 111, 528
Uncollectables	21, 119, 925
Total	63, 309, 215
Balance, September 30, 1977	694, 022, 714
Changes:	
Impositions	450, 262, 945
Collections	170, 654, 719
Compromises	14, 221, 047
Uncollectables	21, 682, 200
Total	243, 704, 979
Balance, September 30, 1978	937, 727, 693
Changes:	
Impositions	314, 549, 165
Collections	180, 716, 262
Compromises	27, 446, 724
Uncollectables	61, 457, 346
Subtotal	269, 620, 332
Total	44, 928, 833
Balance, September 30, 1979	982, 656, 526

Mr. ROONEY. Mr. Chairman, there are several elements I think the committee ought to be aware of with regard to the debt collection problem of the Department.

As Mr. Pommerening indicated, one effort to get a better focus on what our debt collection was before implementing any of the recommendations in the internal audit report was to develop an accounting system, a GAO approved accounting system, for debt collection.

We did get a subsystem approved. Mr. Pommerening referred to it. However, it was to be part of a Department-wide case management system to track the other litigation of the Department and the debt collection system would be a subsystem of that system.

Because of the differences among the various divisions in how they track cases, that effort never really was successful. In fact, a subsequent audit by Mr. Pommerening's staff recommended against implementing the total system.

We stopped that system.

We now have an approved subsystem which cannot function because there is no overall system. What we have done in the meantime is to work with the Executive Office for U.S. Attorneys to take a new look at the debt collection problem of the Department and to try to incorporate a debt collection system within the new case management system.

One of the significant problems we have is that there are a couple of ways to report the debts collected as well as debts outstanding. There is a variance in the figures.

We have a pretty good feel of what is the accurate data we can provide. However, until we can get a system going which will track for each U.S. attorneys office—a critical element because there are 94 of them—we cannot have an effective system.

Those are the considerations which have entered into implementing finally the recommendations of the report.

Mr. EVANS. Is there any other action that you took to insure that the internal audit staff's recommendations were considered by the management of the debt collection activities of the Department?

Mr. ROONEY. Yes. I can provide you for the record some of the specific details: Once I became Assistant Attorney General, Mr. Pommerening brought the report to my attention. It had been an outstanding report. I assigned someone on my immediate staff to work with each of the divisions involved to try to come up with a recommendation as to where this function should be located.

As Mr. Pommerening indicated, there was talk about the Attorney General's office, or my own office, or somewhere in the Department.

We would, with the new administration, have Deputy and Associate Attorney Generals. Divisions report to different ones. All these factors, as well as our concern about the accuracy of the existing manual systems for reporting, had to be taken into account.

So, we did make that effort. The result of that effort has been for a group from the Executive Office for U.S. Attorneys and from my Finance Staff jointly to look at the problem in more detail.

I can present for the record the study plan on the action that that joint committee is taking.

[Included in letter to Chairman Preyer from Mr. Rooney dated July 24, 1980, printed at page 102.]

Mr. EVANS. Do you believe that a case management information system is an adequate response to the Internal Audit Staff's findings and recommendations?

Mr. ROONEY. A case management system? No, not to the specific recommendations. However, one of the responses to those recommendations was the development of a subsystem of the case management system which was under development for the Department.

That subsystem was approved by GAO, if I recall. However, since the total system has not been implemented, we do not have the vehicle now to go online with the subsystem. It would be inefficient and uneconomical to implement just that subsystem. It is reliant upon information fed in from the various U.S. attorneys and divisions.

Mr. EVANS. Five years has passed since that report. Is that not correct?

Mr. ROONEY. I was not aware it was 1975, but, if that is so, yes.

Mr. EVANS. Was the Attorney General involved in the decision to take or not take action to correct problems identified by the Internal Audit Staff?

Mr. ROONEY. Not that I recall, however, Mr. Civiletti is aware of the current problem and has been looking at the case management proposal that the Department has prepared in response to requests by the Senate Judiciary Committee.

The Attorney General has been active in insuring the collection aspects of the activities of each division in the U.S. attorney's office are considered and included when the review of the Executive Office is completed.

Mr. EVANS. Mr. Pommerening, how often does the Internal Audit Staff make recommendations, only to have them ignored, or equally important, implemented in a method other than that which was intended?

Mr. POMMERENING. Our recommendations are distributed in draft report form to the organizations involved. They then comment. If the comments are to the point and accurate, any necessary changes are made before the final report is issued.

The final report, when issued and signed by Mr. Rooney, requests that the organization make specific responses to the specific recommendations within a finite period of time.

If those responses or proposed actions are not sufficient, we contact the organizations and attempt to get a more responsive posture. On occasion we will ask Mr. Rooney to advise the organizations that the responses are not adequate.

Once we have received responses that we consider adequate and responsive to the substance of our recommendations, we close that particular audit file. Because of the scope of the Department's activities and because of limited staff resources, we are not able to make a continuing review to monitor the implementation of the recommendations.

In other words, we accept, on faith, the statement of the head of the organization that he or she will do certain things. Our next opportunity to assess that will be several years later when we next do another audit which touches the affected areas.

So, I cannot, in substance, give you a definitive figure which would say that x percent of the recommendations we have made in the last 3 years have been adopted and implemented.

Mr. EVANS. Well, I feel I really have not gotten an answer to the question as to how often these recommendations are ignored or implemented in some method other than that which was intended.

So, I do not know if perhaps you can again try to answer the question. How often, in your opinion, does this question that I posed here, do the situations occur?

Mr. POMMERENING. I believe that we could go through our audit reports and give you a precise figure. But in my opinion 90 percent of our recommendations are implemented.

Mr. EVANS. Well, for lack of being able to quantitate this answer, it is my feeling from what you have said here trying to answer this question there is often no followup to the recommendations which are made.

Is that correct?

Mr. POMMERENING. We followup to get the organization on record as to what they will do.

Mr. EVANS. But is there followup on their part to implement some of these recommendations that the staff has made, the internal audit staff?

Mr. POMMERENING. I cannot give you an accurate answer on that.

Mr. EVANS. I guess I am not clear as to why you cannot give me an answer on that. Is it because you are not familiar with it? Or why?

Mr. POMMERENING. The situation is that after the organization tells us what they are going to do, we then have no opportunity to monitor on an ongoing basis.

We next look at it when we reaudit that area and determine whether they have, in fact, done what they said they were going to do.

Mr. EVANS. How often do you have to go back and work with them to get implemented the recommendations originally made when you go back the second time to examine the situation?

Mr. POMMERENING. If we discover, on the second go-around, that they have not implemented it, we generally have no difficulty in getting prompt implementation.

Mr. ROONEY. If I may, another thing we do is during the process of our internal budget review, the staff analyst will frequently utilize internal audit reports in reviewing organizations' budget submissions.

There have been several instances where we have been asked specific follow-on questions by the Deputy Attorney General or Associate Attorney General at internal budget reviews.

Although I am sure there have no doubt been instances where there has not been compliance, it has been my experience at least on the major areas we have mentioned, that the response has generally been pretty good.

We frequently utilize those recommendations and the actions that have been taken in making budget decisions.

Mr. EVANS. Mr. Pommerening, what is your opinion as to what the ability of the internal audit staff to get action on their recommendations would be if the staff was a part of the Inspector General's operations, reporting directly to the Attorney General?

Mr. POMMERENING. I believe it would.

Mr. EVANS. Would the Inspector General not have more prestige than the staff currently has, in your opinion?

Mr. POMMERENING. In my opinion, it would.

Mr. EVANS. Let me turn the hearing back to the chairmanship of our distinguished chairman, Mr. Preyer, if I may, at this time.

I will take my position now down the row here.

I guess since I have started this, I will continue this line of questioning for a few moments.

Mr. Pommerening, in January 1979 the GAO issued a report entitled, "The FBI Can Improve Its Management Control Over Operations by Providing Effective Internal Audit," GGD-78-93, issued January 17, 1979.

This report recommended that the Federal Bureau of Investigation improve its internal audit operation by:

First, increasing the qualifications, independence, and permanence of its internal audit staff;

Second, conducting an indepth program review of priority FBI programs;

Third, developing audit plans and programs for reviewing FBI activities, emphasizing major programs; and

Fourth, coordinating its reviews and plans closely with your staff.

Has the FBI implemented all these recommendations, these four specific recommendations?

Mr. POMMERENING. I do not believe they have.

Mr. EVANS. Which have they not implemented?

Mr. POMMERENING. I believe the FBI took exception to the first recommendation. In their response they pointed out that they were going to create a cadre of nonagent personnel who would have longer tenure and, thus, greater experience.

But the internal scope of their internal audit and inspection resource would continue to exist within the framework of the executive development programs in the FBI.

Mr. EVANS. Did the Bureau decide on its own initiative not to implement that particular GAO recommendation, or, did the Department review it and approve the Bureau's decision?

Mr. POMMERENING. The Department did review and approve the Bureau's decision.

Mr. EVANS. Mr. Rooney, you signed the Department of Justice's comments to the GAO report. In these comments you state that the Department "basically concurs with the report's recommendations" and noted that it would be a "difficult management problem to achieve the goals of the recommendations while retaining FBI's current career development structure."

What has the Department done to solve these "difficult management problems"?

Mr. ROONEY. I have not been involved in any efforts since that time. I would have to go back and discuss that with the Bureau before I could respond.

Mr. EVANS. The crux of the GAO recommendation in the report was that the Bureau establish a truly independent and permanent internal audit staff instead of its current practice of assigning agents on a temporary basis to the internal audit staff.

Mr. Rooney, do you believe it is inappropriate for the Bureau to establish a permanent and independent internal audit staff?

Mr. ROONEY. No; I do not. The difficulty, as I believe I stated in that response which I have not seen in a while, is the career development program within the Bureau and the existence of positions other than the agent positions in the professional series.

However, as in any organization, I do not believe it would be impossible to establish a career cadre of inspectors.

Mr. EVANS. Mr. Pommerening, on the first day of the hearings that this subcommittee held, the subcommittee was told that the Department order covering the internal audit staff was going to be revised.

Has the revised order been issued?

Mr. POMMERENING. Yes; it has.

Mr. EVANS. Does the revised order describe completely the internal audit staff's reduced responsibilities, its new relationship with the evaluation staff, and the Budget Review Committee's responsibilities in regard to the internal audit function?

Mr. POMMERENING. The new order is silent on the relationship between our staff and the evaluation staff. It is also silent on the subject of the Budget Review Committee.

It does, I believe, completely and accurately describe the full scope of responsibilities which we, as a unit, do have.

Mr. EVANS. Mr. Rooney, are further orders intended to be issued to spell out these relationships?

Mr. ROONEY. Mr. Chairman, the internal audit order which you are referring to covers the responsibilities of the internal audit staff. There would be no need to reference the evaluation staff, in my opinion, because the evaluation staff functions are separate and distinct from the internal audit staff.

With regard to the Budget Review Committee, as I indicated the last time, the role of the Budget Review Committee is to review the agenda proposed by the Director of the internal audit staff and to indicate areas where the Budget Review Committee believes the audit staff ought to engage additionally. It may also suggest changes in priorities where it is felt that an audit ought to be conducted at a higher priority than it may be on the audit agenda.

Mr. EVANS. As we all know, these relationships can really change overnight with new personnel and so forth. Would it not be helpful to have this type of relationship set down in writing?

Mr. ROONEY. With regard to the Budget Review Committee?

Mr. EVANS. With regard to the internal audit staff's relationship to the evaluation staff and the Budget Review Committee.

Mr. ROONEY. I do not know. It certainly would not be harmful to spell it out.

With regard to the Budget Review Committee, however, it is a normal course to advise the head of the department or his designees what the audit agenda is.

I do not see any inconsistency or any reason to spell out anything on it specifically. We simply have not addressed that.

Mr. EVANS. Mr. Pommerening, how would you respond to that question? Would it not be helpful for the relationship to be spelled out in writing?

Mr. POMMERENING. I concur with Mr. Rooney that I do not see a convenient or easy way to relate the two relationships, or the two orders, one applying to internal audit staff and one applying to evaluation staff.

As to the Budget Review Committee, I have never had an opportunity to work with—I have not had an opportunity to work with that committee. I think the role they are to carry out, or have carried out, is one that could well be defined for the benefit of our staff.

Mr. EVANS. As I understood Mr. Rooney, he thought the relationship was fairly clear. Now you are telling me you are unclear as to what is the relationship. I guess that tells me something.

Mr. POMMERENING. I am not unclear about the relationship. What Mr. Rooney has told the committee is exactly what he has told me. It is a new role. These roles may change. I would find that for our staff it would be helpful if the role were spelled out.

Mr. EVANS. Mr. Cihlar, how would you respond to that question as to the setting forth of the relationships?

Mr. CIHLAR. Between the audit staff—

Mr. EVANS. The internal audit staff, the Budget Review Committee, and the evaluation staff?

Mr. CIHLAR. I really do not feel competent to respond. That goes way beyond the scope of the study we were asked to conduct for the Congress. I just am not in a position to offer a meaningful answer on that.

Mr. EVANS. Mr. Pommerening, do you think that the internal audit staff can function properly without its relationship to the evaluation staff and Budget Review Committee being fully set out and set forth?

Mr. POMMERENING. Yes; I believe it can until such time as one of these other factors impacts on our program in a deleterious fashion. By that I mean, the staff can function adequately until such time as we are precluded from doing audits which we think are necessary because of action by the Budget Review Committee, or—I will stop there.

I do not see how the evaluation staff would impact on our operations unless the Budget Review Committee, for example, were to direct that certain audits we propose not be done and instead they be assigned as evaluations to the sister staff.

Mr. EVANS. Thank you, Mr. Chairman.

Mr. PREYER [presiding]. I wanted to ask some questions in a different area concerning the justification for the internal audit reorganization.

The subcommittee, over the past few months, has requested from the Attorney General information on the reorganization of the internal audit functions, and other subjects.

We have been concerned over the lack of responsiveness to these requests. For example, the first request that the subcommittee made asked the basic question of how the reorganization solves the past administrative problems in the Department.

I do not think the letter of reply effectively answered that question. Therefore, I would like to ask you, Mr. Rooney, for the record, if you could briefly explain to the subcommittee how the reorganization solves the Department's past administrative problems.

Mr. ROONEY. I will certainly attempt to do so, Mr. Chairman.

As I indicated last time, one of the difficulties we saw was the increasing demand for evaluations beyond the normal scope of the internal audit staff. We planned to assign those to the audit staff because of the staff's scope and because there was then no other place to assign them.

Yet we felt this would have a rather severe impact on what the audit staff could conduct in its traditional areas of compliance, integrity, efficiency, economy, and program results.

I do not want to imply that we were not considering improving internal administrative problems of the Department. However, we did not want to be in the position of increasing them, either.

There are limited staff resources and we wanted to insure that we would have the independent audit function which could go about its business as it traditionally has without devoting most of its time to doing those types of reviews for the Attorney General which the evaluation staff is now slated for, specifically assessing strategy, impact, and so forth, of programs.

This, in effect, is a management response to the Attorney General's needs. I still feel very strongly that an independent auditor who

reports directly to me and who has the freedom to conduct his activities in compliance with our order does have the opportunity to highlight those areas where there are management problems in the Department.

Specifically, I am talking about management and administrative problems. In our Department, that is what is foremost. We are not a grantmaking agency, with the exception of the LEAA. We have a great concern about the availability of resources, how well these resources are being managed, and whether they are managed properly, efficiently, and economically.

Therefore, having an internal audit staff providing reviews of these subjects and reporting them to me and to the Attorney General is the most effective way to meet that challenge with limited resources.

Mr. PREYER. Mr. Rooney, in your prepared statement, you referred to numerous individuals who perform management assistance or evaluation functions and are on the various staffs of the various departmental components and are outside the evaluation staff headed by Mr. Zimmerman.

Could you provide for the record—not necessarily now—the number of such personnel and their titles?

Mr. ROONEY. I am sorry, Mr. Chairman. I did not follow the introductory. What types of personnel?

Mr. PREYER. I will ask the staff to follow up with you—this would be the people who perform management assistance or evaluation functions who are on the staff of various departmental components, divisions, and bureaus and are outside the evaluation staff.

Mr. ROONEY. Are you referring to people that we would involve in evaluations other than members of the evaluation staff?

Mr. PREYER. Yes; and to the people who provide management assistance advice to components of the Justice Department bureaus and divisions.

Mr. ROONEY. The internal audit or evaluation functions within each bureau or division.

Mr. PREYER. Without objection, so ordered.

[Material included in letter to Chairman Preyer from Mr. Rooney dated July 24, 1980, printed at page 102.]

Mr. PREYER. In your memo of August 20 to Mr. Civiletti you strongly urged the Attorney General to approve the reorganization immediately. You stressed the need for haste because labor union representatives had just been elected but not certified yet.

When were the union representatives certified?

Mr. ROONEY. Specifically by date, Mr. Chairman, I cannot respond. It was some time within a couple of weeks thereafter. I will have to get you the specific date.

[Date submitted: August 24, 1979.]

Mr. PREYER. The Attorney General approved the reorganization orally on August 20, I believe.

Mr. ROONEY. That is correct; yes, he did.

Mr. PREYER. But he did not sign it until September 4?

Mr. ROONEY. That is correct.

Mr. PREYER. And certification occurred between August 20 and September 4, I believe, is that not correct?

Mr. ROONEY. I do not know, Mr. Chairman.

Mr. PREYER. I think you will find according to union records it was August 24.

How much review and planning had gone into the reorganization before the Attorney General orally agreed to the reorganization?

Mr. ROONEY. The Attorney General and I had been discussing a restructuring of what was then the Office of Management and Finance for, I am sure, 6 months. He was the Deputy Attorney General at the time.

We had discussed several things. We had discussed the drain upon my time which stemmed from my responsibilities for the direct management of the Office of Management and Finance to the detriment of my being free to provide personal staff advice to the Attorney General, the Deputy Attorney General and the Associate Attorney General.

The Deputy Attorney General, Mr. Civiletti, felt at that time that the scope of responsibilities in the Justice Management Division—then the Office of Management and Finance—that he, as Deputy Attorney General and later as Attorney General, did not have enough time to spend with me on management problems within the Department.

One of the key things he was looking toward was the development of a more expanded senior cadre within the Justice Management Division in order that the responsibilities could be divided and there would be more people more directly involved in the daily oversight and supervision.

So, we discussed several alternatives, each of which would include three deputies to head up certain functions.

He was interested, as I was, in giving each of these deputies pretty much line authority so that problems would come to my attention primarily if it were necessary to bring them to the attention of other organization heads, or the Attorney General, or his Deputy. With that in mind, I prepared what is the present organizational structure.

We had talked at the same time about several problems.

One, we had a limited policy analysis capability in the Department. He asked me to consider that as I prepared my proposal.

We were very cognizant at that time of the Judiciary Committee's interest in program evaluations and the mandate to conduct them. He knew of my opposition to involving the audit staff in evaluations where they participated with other members of the Department because—

Mr. PREYER. Without asking all about the thinking in the planning, let me ask you if you have any record or documents relating to this planning? Or, is all of this just oral discussions with the Attorney General? Or, are there some planning papers?

We have the August 20 memo, which is what the Attorney General approved. Are there any other documents?

Mr. ROONEY. Not to my knowledge, Mr. Chairman. When the letter came in and the response was prepared, I was not available. I was on the phone with the staff.

I believe that this is it. That was my understanding.

I do know that we had prepared some charts and so forth, but none of them vary much from this. I sketched out several things as we chatted; it was usually very informal, afterhours discussions.

He asked me then to go back and submit a plan. This was it. It was modified in the discussion, as you can see from the final implementation.

Mr. PREYER. You are not saying, then, that the memorandum was agreed to in the form it was simply to cut the union out of the details of the reorganization.

Mr. ROONEY. No. Let me give you the precise—

Mr. PREYER. I assume you would not consider that a proper reason for approving reorganization?

Mr. ROONEY. Absolutely not.

Mr. Civiletti was sworn in on Thursday. This was Monday, August 20. He was sworn in on the Thursday before that. We had discussed going ahead with it. On Sunday, on "Meet the Press," he announced he was reorganizing the Office of Management and Finance.

Hence, I presented the package to him.

I alerted him to the union situation because, if we were not going to be implementing for a good long time and not come in with a proposal, I wanted to alert him to the fact that a lot of it would have to be negotiated.

But, in fact, I was not that specifically aware of the union issue until I saw this memo again.

We had not had a problem with the union at all in this regard, and I had not anticipated one. But he was well aware of the fact that we were being unionized.

Mr. PREYER. Your memorandum did state to him:

I strongly believe that timing is important here. The union, once certified, will make every effort to negotiate the details. By announcing more than 30 days prior to implementation, the union can comment but not negotiate. This is the proper exercise of management's rights.

Mr. ROONEY. That was the advice I had been given in preparing the memo; yes.

Mr. PREYER. Mr. Rooney, in the August 20 memorandum, you stated that the evaluation staff would have, and I quote:

The single central responsibility of conduct of all program evaluations, program audits, and management studies.

Does the evaluation staff currently exercise exclusive responsibility for these matters?

Mr. ROONEY. As I intended it there; yes.

What is a problem in responding directly to that, however, is that my understanding of "program audits" is different now from what it was at the time this memo was prepared.

I have given a definition of evaluations which is primarily targeted at strategy and impact assessments. That had been my understanding of program audits.

Shortly after this was released, Mr. Pommerening pointed out to me that "program audits" include the types of program reviews that are conducted by the internal audit staff. In our implementing regulations, we stuck to that. We eliminated the term "program audits."

Frankly, this was the best representation of what my staff and I had been talking about when it came to evaluations. Regarding evaluations and management studies, with the exception of what the audit staff does, the evaluation staff now is the principal staff responsible for the former management analysis studies we conducted.

Mr. PREYER. On the program audit point, was the fact that you planned to transfer the program audit responsibility from the internal audit staff to the evaluation staff the reason you decided to transfer 14 internal audit staff members to evaluation staff?

Mr. ROONEY. I have to be specific. If we are talking about program evaluation, yes. As I indicated last month, it was determined that the minimum amount of effort required for the audit staff to conduct the program evaluation function, as we understood it, was approximately 14 work years. That is how we came to the numbers.

I did not know in August what those numbers would be. In fact, in August and October, we indicated that over a period we would review the number of resources and the types of efforts we would ask the audit staff to do in addition to its agenda in order to determine what we would assign to the evaluation staff.

That is why we had announced in August the delay from October to January.

Mr. PREYER. I gather you were answering that question "yes," that you did plan to transfer the program audit responsibility from the internal audit staff to the evaluation staff, was the reason you decided to transfer 14 internal audit members.

Or, are you answering that "no"?

Mr. ROONEY. What I am saying is that when I speak of the conduct of the evaluation function and the program audits in this memorandum, I am talking about the evaluation function as I have defined it.

In August, once we had determined that the evaluation function—the strategy and impact evaluations—would be conducted by the evaluation staff, we said that between the time of implementation on October 1 and the end of December, we would assess the number of resources it might be necessary to transfer from the audit staff. Based upon that, the determination was made that 14 positions should be transferred.

Mr. PREYER. I now recognize Mr. Evans again while I go to perform a ministerial function upstairs.

Mr. EVANS [presiding]. Mr. Pommerening, do you have any comment on Mr. Rooney's last statement?

Mr. POMMERENING. No.

Mr. EVANS. Let me return again, Mr. Pommerening, to one point that was made earlier. I want to make sure that I understand your statement.

You said that you believe that it is often at least several or more years after an internal audit staff report and recommendations are issued before the internal audit staff goes back for a second review.

Why is there such a long period before you go back to see whether there has been improvement or implementation of your recommendations?

Mr. POMMERENING. Mr. Chairman, there are probably 500 separate programs and functions within the Department of Justice, each of which is identifiable.

With the size of our staff, there is no physical way that each of them can be audited on any type of regular 2-year, 3-year, or 4-year cycle. Some of these programs and functions have greater complexity, greater potential for problems. We do repeat on some of those, but

that is the reason we may not get back into some of these areas for several years.

Mr. EVANS. What would be the ideal review interval? What is the maximum period of time that you would like to see in between the initial recommendations report and your followup preview?

Is not 2 years, 3 years, or 4 years an overly long period of time to see if those recommendations have been put into effect?

Mr. POMMERENING. Yes. As a matter of fact, when we go back the second time, it is not for the specific purpose of reviewing what happened 4 years earlier; we assume when we go in that they have done what they said they would do. We are then looking at the status of the program on this later date.

It is then that occasionally we find that something which was promised 4 years earlier, in effect, was not delivered.

Mr. EVANS. So it is a lack of staff resources?

Mr. POMMERENING. That is right. I think ideally we should schedule a review session which would be truncated and involve much less staff time, probably a year after the audit.

Mr. EVANS. Thank you.

When was the last time you met with the Attorney General, may I ask, Mr. Pommerening?

Mr. POMMERENING. The Attorney General invited the Justice Management Division staff directors to lunch in October.

Mr. EVANS. October of what year?

Mr. POMMERENING. 1979.

Mr. EVANS. How long, prior to that point, had it been that you had seen the Attorney General?

Mr. POMMERENING. Well, strangely enough, the prior Attorney General invited me to lunch on the day that Attorney General Richardson's picture was being received. That was in February 1978.

Mr. EVANS. February 1978.

How would you describe these luncheons that you attended? I understand that at least the last one in October was a luncheon. Was it a social luncheon or did you discuss substantive business? Was that the purpose of that luncheon?

Mr. POMMERENING. I was told the purpose of the luncheon was for the Attorney General to have an opportunity to meet the staff directors and the senior officials of the Justice Management Division.

Mr. EVANS. So, it was a greeting session?

And that has been the only meeting with the Attorney General in the last year; is that correct?

Mr. POMMERENING. That is correct.

Mr. EVANS. Let me ask you about the Deputy Attorney General. When was the last time you saw him?

Mr. POMMERENING. I have not met the current Deputy Attorney General.

Mr. EVANS. Let me ask the staff.

There is a current Deputy Attorney General; is there not?

Mr. INGRAM. Yes.

Mr. EVANS. Mr. Rooney, on December 1, 1979, you approved a recommendation to the Attorney General to withdraw procurement authorization from the Immigration and Naturalization Service's contract officer and to have that authority redelegated to you.

First of all, why do you believe this action was necessary?

Mr. ROONEY. Our staff review of procurement actions within INS indicated there were problems. It was my view, based on the staff's recommendations, that until we could pursue it vigorously to find out what those problems were, I had recommended that the authority be withdrawn and that it be executed by my staff.

In response to that, that memorandum went to the Associate Attorney General, who is my immediate superior. Then it was decided we would take over that function on an interim basis for procurements over \$10,000, I believe, and that a review of the Service's procurement function would be conducted and a report issued to the Associate Attorney General by the end of March.

The report was completed. I believe I sent it up on April 1. The Associate Attorney General has, last week, focused on it and has requested the Acting Commissioner of INS respond to him next week. The associate is away until then.

I have had discussions with committee staff about it. As soon as the Associate Attorney General has completed that cycle, we will make that report available.

Mr. EVANS. Why was not the procurement authority of INS then removed the last go-around at the end of this last year?

Mr. ROONEY. As a result of the December memorandum?

Mr. EVANS. Yes.

Mr. ROONEY. My recollection is that the action that the associate determined to take was as I indicated, that we would review the action, the procedure that I outlined. We would review the actions over \$10,000.

The delegation was not withdrawn. I do not recall any specific explanation, but I believe the idea was that we would conduct a review first rather than withdrawing it without the hard review.

Mr. EVANS. So your recommendation was not followed? You are not really clear as to why it was not followed; is that correct?

Mr. ROONEY. Well, I am not clear on anything beyond its being determined we ought to complete the review first, but, in the interim, to review all major procurements.

That is my understanding.

[Further information supplied in letter to Chairman Preyer from Mr. John H. Shenefield, Associate Attorney General, dated July 23, 1980, responding to questions addressed to the Department of Justice subsequent to hearing. The letter follows:]



U.S. Department of Justice

Office of the Associate Attorney General

Washington, D.C. 20530

July 23, 1980

The Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee of
the Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Your recent correspondence concerning the INS procurement activity is a matter which has been of priority concern to me and one to which I have devoted considerable personal attention.

As explained in Mr. Rooney's testimony before you during the April hearings of the Government Information and Individual Rights Subcommittee, INS procurement problems have come under Departmental review several times during recent years. My decision not to withdraw procurement authority in toto from INS was based on the belief that agencies and responsible officials must be held accountable for the management of their programs. We sought to achieve this objective by requiring Departmental review of all significant contracts (those over \$10,000) and by undertaking a careful review of INS' procurement difficulties.

That review is now complete and a wide range of reforms have been developed. Most have already been instituted; the remainder are being implemented on a priority basis.

For your information, the key areas are as follows:


- The contracting and procurement functions in INS have been removed from the General Services branch and placed in a new, independent contracting and procurement branch reporting directly to the Assistant Commissioner, Administration. INS has advertised widely for a professional procurement expert to direct the procurement and contracting functions and will make an appointment as soon as possible.

JUL 25 1980

- The INS Acting Commissioner has established a formal Procurement Review Board for the agency to review and approve all contract actions.
- The need to supervise effectively and improve the procurement function has been added as a critical job element to the SES performance work plans of the Associate Commissioner, Management, and the Assistant Commissioner, Administration. Similar provisions are being entered into the merit pay performance appraisal plans of the other personnel associated with the procurement function.
- A major overhaul of the procurement workflow -- including review procedures, centralization of files, and specification preparation guidelines, for example -- has been instituted.
- The new contracting officer, as one of the first tasks, will develop plans and procedures for delegations of procurement authority to employees qualified to perform as contracting officers on the basis of thorough evaluation of procurement personnel qualifications.
- Contracting personnel have been instructed to comply fully with all procurement regulations and provide maximum publicity to assure completion. This requirement will be closely scrutinized by the Review Board.
- A new attorney with experience in federal procurement activities has been employed in the General Counsel's office.

The leadership of INS and the Department of Justice will maintain close oversight of the agency's contracting program. Thank you for your interest and concern.

Sincerely,


John H. Shenefield
Associate Attorney General

Mr. PREYER [presiding]. Mr. Rooney, I understand that the Department is considering the establishment of a central Contract Review Board to review the contracting actions of Justice's components.

What is the current status of that proposal?

Mr. ROONEY. I have not refreshed myself on the current status in the last couple of weeks, Mr. Chairman. I cannot give you the exact status, but let me explain why it is where it is.

Based on the staff recommendation, I forwarded the proposal to the Associate and Deputy Attorneys General—this was before the new Deputy Attorney General arrived in March. It had earlier been approved by the Associate Attorney General, and it had been returned by the Office of the Acting Deputy Attorney General with some questions on some of the specifics.

We have since put the package together again and sent it forward; I am not sure exactly where it rests today.

A determination has not been made on it yet, and I know the Attorney General has not focused on it.

Mr. PREYER. Could you make a copy of that proposal available to us for the record?

Mr. ROONEY. Mr. Chairman, I would prefer that we wait until the Attorney General has focused on it so we have the final action rather than various proposals.

Mr. PREYER. When you have that in some final form?

Mr. ROONEY. Definitely.

Mr. PREYER. We would appreciate it.

Without objection, so ordered.

[Material included in letter to Chairman Preyer from Mr. Rooney dated July 24, 1980, printed at page 102.]

Mr. PREYER. Why do we need to establish this Board?

Mr. ROONEY. There is some question about that, Mr. Chairman. We were hesitant, first, to propose it because we did not want to imply that every organization within the Department had difficulties significant enough to have major procurements reviewed at the Department level.

In some of the major procurement agencies, however, such as the Department of Defense, its subelements, and the CIA, there is departmental review, a Contract Review Board that reviews major procurements.

With ongoing problems in the Immigration Service and in other areas this committee has referred to us and, recognizing our very limited procurement policy staff resources—4 positions—were felt at least to propose for the Attorney General's consideration, a Department-level Contract Review Board was a necessary step.

Mr. PREYER. Have you had the chance to ask the contracting officers of the components of the Justice Department for their views on the necessity of this?

Mr. ROONEY. I have not myself. I am not sure whether the staff has done so; with the exception of the bureaus, we have, however, because the contracting officers for the offices and division are within my staff.

Mr. PREYER. One of the questions that the Attorney General will be focusing on, then, is the justification and the need for establishing the Board?

CONTINUED

1 OF 3

Mr. ROONEY. Yes, I believe so, Mr. Chairman.

Mr. PREYER. Before instituting such a change, do you not think it would be wise to look at the views of the contracting officers of the components?

Mr. ROONEY. Ordinarily, Mr. Chairman, as we begin to promulgate a new order, we circulate the order.

It has been strictly internal to this stage, and, frankly, we are focusing on getting the attention of the Attorney General and the Deputy and Associate Attorneys General on the concept before we do that.

Mr. PREYER. I would like to shift to some questions to Mr. Shaheen in the area of ethics.

I will not try to define ethics.

Have you ever been requested to investigate a violation of the canons of ethics by a departmental lawyer which did not necessarily include violation of Federal law?

Mr. SHAHEEN. It is probably hundreds of times.

The canons of ethics now referred to as the Code of Professional Responsibility, in the private sector, has been embraced and included as a part of the Code of Federal Regulations and made applicable to all Department of Justice employees.

Yes, sir, is the answer to your question.

Mr. PREYER. And hundreds of times?

Mr. SHAHEEN. Yes, sir.

Mr. PREYER. Have you ever initiated an investigation of a violation of the canons of professional ethics which did not include a violation of Federal law? I guess you have answered that.

Mr. SHAHEEN. We have conducted them both ways.

A number of the canons of ethics, as you know, are for Government lawyers criminalized in 18 U.S.C. 204, 205, 206, 207, and 208, conflict of interest.

What in the private sector would be a conflict of interest for a private attorney, for a Government lawyer would be a criminal offense.

Mr. PREYER. As a consequence of your investigations, have you ever recommended that the Department seek professional disciplinary action by the appropriate bar association against any Justice Department lawyer for violating the canons of ethics?

Mr. SHAHEEN. The answer is: When we have disciplined them for the violations we found, and there were additional violations that could not be appropriately addressed by the Department, and we felt it needed further addressing, we would cooperate with the appropriate State bar with an interest in the licensing of that attorney.

The instances have been few, but there have been instances.

Mr. PREYER. Your answer is that there have been instances of that, although few?

Mr. SHAHEEN. Yes, sir. And it works two ways. When a State bar has initiated proceedings, they usually are very prompt and kind in sharing their problems with that Government attorney with us.

Mr. PREYER. Have you ever been requested, or have you ever initiated an investigation into possible improprieties because of violation by a departmental lawyer of the search and seizure restrictions of the fourth amendment?

Mr. SHAHEEN. Yes, sir.

Mr. PREYER. Is that few or many?

Mr. SHAHEEN. The allegations are many. The findings of validity and merit to the accusations or allegations are few.

Mr. PREYER. How about possible violations of other portions of the Bill of Rights?

Mr. SHAHEEN. Yes, sir.

Mr. PREYER. Many allegations?

Mr. SHAHEEN. Yes.

Mr. PREYER. And you follow up on those?

Mr. SHAHEEN. Every one; every single one.

Mr. PREYER. I wonder if you could give us for the record any documentation about any such action involving alleged violations of the Bill of Rights within the last 3 years taken by the Department.

Mr. SHAHEEN. If we could give you some documentation?

Mr. PREYER. Yes.

Mr. SHAHEEN. Appropriately sanitized, we would be happy to provide you some instances of that, Mr. Chairman.

Mr. PREYER. Thank you.

Without objection, so ordered.

[Material included in letter to Chairman Preyer from Mr. Shaheen dated July 7, 1980, printed at page 99.]

Mr. PREYER. If the propriety of a senior official of the Department was called into question, such as the ethical conduct of an assistant or a deputy assistant attorney general, would your office conduct any investigation which might occur?

Mr. SHAHEEN. It would, indeed. We have exclusive jurisdiction. It has in the past, and it will in the future.

Mr. PREYER. I think you are familiar with the furor over the *Standard Life* litigation, in which the Department was charged in the press with failing to zealously pursue certain lines of legal argument of which it was aware in its suit to recover over \$270 million in unpaid taxes from the insurance industry.

In a letter to the subcommittee, the Attorney General indicated that the Department conducted a thorough investigation into the handling of the *Standard Life* case.

Were you, as head of the Office of Professional Responsibility, asked to conduct any investigation of the *Standard Life* case?

Mr. SHAHEEN. I have discussed this with Mr. Ingram and with Mr. Gaston. Our investigation focused on the improper disclosure of documents in that instance, not the propriety of the conduct of certain of the lawyers who had prepared the leaked information.

Mr. PREYER. Why did you not examine both questions?

Mr. SHAHEEN. We thought that—would you excuse me for 1 second?

Mr. PREYER. Surely.

Mr. SHAHEEN. First, we were given a set of all the documents to conduct the unauthorized disclosure of internal files inquiry.

Second, the leaked materials which had raised questions about the Government's conduct of the *Standard Life* case had been prepared in good faith by an inexperienced, low-level attorney outside of the Tax Division who was unfamiliar with Tax Division policy. His views were ultimately rejected by senior attorneys, but his freedom to express them was not questioned.

Stupidity, so far, is not an offense that we have included in our jurisdictional mandate.

Mr. PREYER. You do not consider that a violation of the canons of ethics?

Mr. SHAHEEN. I consider it a dismissible offense, but we usually have them on other grounds as well.

Mr. PREYER. In another recent case, the Washington Post reported that your office conducted an investigation and transmitted a report to the Attorney General on the conduct of two Justice Department attorneys who made allegations against U.S. District Judge Robert Merhige.

He is a Virginia judge, but I think this may have been heard in North Carolina. These attorneys made the allegations about him after they lost a case before him.

Were you asked to initiate that investigation?

Mr. SHAHEEN. We initiated that on our own, Mr. Chairman, a month before one of the Washington Post articles indicated we had.

I read the article and it made it sound as though news coverage had inspired the initiation of the investigation.

We were well into it fully a month before the disclosure of that memorandum. Mr. Chairman, I hope you will understand that to comment further any more specifically would be inappropriate because it is still ongoing.

Mr. PREYER. Are you looking at it from the point of view of whether it was a violation of professional ethical standards?

Mr. SHAHEEN. I think it is fair to tell you that, yes, indeed, we are, among other things.

Mr. PREYER. Thank you, Mr. Shaheen.

I recognize staff for a question.

Mr. VIZAS. I have two questions to follow up.

In the *Standard Life* case, you stated stupidity had not yet become a violation of the Code of Professional Conduct.

I think we all hope that it does not.

Mr. SHAHEEN. A lot of us may be in trouble.

Mr. VIZAS. At the same time, there is a specific provision in canon XII, and from documentation published in the *Standard Life* case it is clear that it draws into question that canon, that a particular Government lawyer should seek any lawful objective through all legally permissible means, including the presentation for adjudication of any lawful claim, issue, or defense.

Part of what went on in the *Standard Life* situation, as I understand from having read the published documentation and memorandums, is that there were claims that what all parties admitted were appropriate claims to make were not pursued by the Government and these became the point on which the Supreme Court decisions turned.

Yet, you suggest that the failure to even assert those claims—we are not talking about how vigorously they were argued as a tactical matter—but simply the failure to assert those, was not something you would feel appropriate to investigate?

Mr. SHAHEEN. As you have stated the question, you raise a point that I can address directly and that is we do not seek to second-guess

the Assistant Attorney General in charge of the litigating division in the deliberative process with his subordinates over which claims to assert.

We would be in every litigating division on all questions if these issues could not be decided at this level. In the *Standard Life* case, both the Assistant Attorney General for the division and the Solicitor General were satisfied that the claims you mentioned were, in fact, appropriately handled in the Department's brief to the Supreme Court.

Fights that are unsatisfactorily resolved at that level are taken to the appropriate next official. In this case it would have been the associate and the deputy—and then the solicitor—when there are policy questions governing the position or positions to be asserted by the U.S. Government.

There are other officials in the Department who are charged by law and practice to make those decisions. We think it is an inappropriate intrusion of our office to seek to second-guess them.

Often what one reads in the press is the outrage of an attorney who has lost. He has lost the argument and he seeks to cast his position in terms of propriety, when, in fact, it is a clear policy question and nothing improper is involved.

Those are the points I would like to make.

Mr. VIZAS. Then you suggest the documents that were leaked were misleading?

Mr. SHAHEEN. They may have been.

Mr. VIZAS. Would it be possible to provide us with a more complete representation of what went on?

Mr. SHAHEEN. I think you need to ask the Assistant Attorney General and the Solicitor General for those documents. They are their decisions. They would be the ones to best respond to those.

Mr. VIZAS. Thank you.

There is one other matter I hope you would follow up, not here, but in responding to some of the things you have indicated. That is, if you could indicate for us whether the Department has ever sought professional disciplinary action for a Department attorney who participated in a violation of a portion of the Bill of Rights, outside the sanctions of the Department itself.

Have you gone to a bar association, for example?

This is a slightly different question than the one the chairman asked.

Mr. SHAHEEN. Could you ask it again?

Mr. VIZAS. Certainly.

Has the Department ever sought professional disciplinary action against a Department attorney who participated in a violation of a portion of the Bill of Rights, for example, where it was not necessarily illegal? He did not violate the law or did not clearly violate the law, but did raise a serious question as to propriety.

Have you ever, other than sanctioning the lawyer-employee of the Department, gone to the bar and actually initiated the proceeding against him?

Mr. SHAHEEN. We have not initiated a proceeding. We have forwarded a file and left it to the bar to determine whether to initiate a proceeding.

Mr. VIZAS. But you have forwarded?

Mr. SHAHEEN. I believe, yes. The answer is affirmative.

Mr. VIZAS. Thank you.

Thank you, Mr. Chairman.

Mr. PREYER. Mr. Ingram?

Mr. INGRAM. I have one question, Mr. Chairman.

We have talked a great deal, Mr. Rooney, about the transfer of the 14 staff officers from the internal audit staff to help create this evaluation staff. I am unclear as to the difference between the roles played by the evaluation staff and that currently played by the Office for Improvements in the Administration of Justice as to whether there is some duplication in terms of evaluation functions that the two may play.

Perhaps you or Mr. Cihlar could comment on that.

Mr. ROONEY. Let me make an initial comment.

The principal focus of the Office for Improvements in the Administration of Justice is on Government-wide or courtwide problems, the judicial machinery, and the development of relative legislation, and so forth.

I will let Mr. Cihlar expand on that.

The principal idea of the evaluation staff is to look at a Department program in terms of the strategies for that program developed either by the Attorney General, the organization head, or the project director, and assess the impact of that program, primarily within the Justice Department.

The focus has been defined for us this first year, frankly, by some of the evaluations we have been asked to conduct by the Senate Judiciary Committee.

There is no question that some of those evaluations—not any of those mandated—could take on greater dimensions focus and could come within the responsibilities of the Office for Improvements in the Administration of Justice.

That is essentially the distinction I would draw.

Mr. INGRAM. But the reports might be able to be done in either office in the same sense that the examination of the role of the Inspector General functions within the Department was done by the Office for Improvements in the Administration of Justice?

Mr. ROONEY. Yes; to some extent. Its predecessor organization, the Office of Policy and Planning in the Department was probably the closest thing to an evaluation staff, as we have defined it, the Department had.

However, when Attorney General Bell came in, he decided to create the Office for Improvements in the Administration of Justice principally utilizing the positions less for internal Department evaluations and assessments, and more for an expanded mandate focusing on improvements in the administration of justice in the Federal sector.

Mr. INGRAM. The two units were manned by staff conversant with the criminal justice system who would be able to conduct evaluation studies of one sort or another?

Mr. Cihlar?

Mr. CIHLAR. So far as our office is concerned, people are concerned with criminal as well as civil justice. It is not restricted.

Going back to your original question, I would answer it by saying, first of all, the question had not occurred to me before. As I would view the operations, the OIAJ function has been primarily external and prospective in terms of developing solutions to perceived problems, particularly within the Federal judicial system.

The evaluation staff, as I would comprehend it, would be internal in its focus, and, I suppose, more retrospective in terms of reviewing what has been going on within the Department, particularly.

Mr. INGRAM. Mr. Rooney, would it have been possible to have pulled staff from the Office for Improvements in the Administration of Justice in setting up the manpower in the evaluation staff? Or might it be possible to do that in the future?

Mr. ROONEY. There is always a possibility of drawing upon any resource, I presume, but not without diminishing the role of the Office for Improvements in the Administration of Justice. However, I would say no.

There had been consideration given to having that Office do some of the evaluations, and, as you know, the Inspector General report was performed by that Office.

In much the way we articulated our workload problems with assigning evaluations to the internal audit staff, the workload there, too, required us to look around elsewhere.

Mr. INGRAM. You state as a rationale for the establishment of the evaluation staff the large number of requests mandated upon the Department by the Congress.

I wonder if you would provide for the record the specific number of evaluations and staff-years mandated in the authorization bills for the Department to conduct. I was not able to find anything above 5 staff-years which, as you know, was a small portion of the 20-year load.

Mr. ROONEY. We do have some documentation. I believe we provided that to staff.

Mr. INGRAM. There is nothing in there in terms of the number of reports actually mandated by Congress which the evaluation staff or the Department would be required to conduct.

In that regard, if there is a particular report requested by the Congress or that the Department itself decided to initiate, which would involve an evaluation function, how would it be determined as to whether the Office for Improvements in the Administration of Justice would be the more appropriate one to conduct that evaluation?

Would the Budget Review Committee, for example, get into that decision?

Mr. ROONEY. What we would do—and although we were not able to do this for this fiscal year because of the timing of the authorization bill, the evaluation staff would be responsible for coordinating evaluations conducted in the Department in addition to conducting some evaluations and, as part of the budget review process, presenting a tentative agenda for the fiscal year based upon discussions on the authorization act for the upcoming fiscal year.

Then, during the budget review process, several evaluations come out of that.

The Budget Review Committee would then focus on which evaluations ought to be conducted. I am sure there will be many instances where some will be assigned to different organizations to conduct, and others may well be assigned to the Office for Improvements in the Administration of Justice.

Mr. INGRAM. So, the decisions as to who would conduct evaluations between the two units would be made at a level above those units, presumably by a committee?

Mr. ROONEY. Yes.

Mr. INGRAM. If you could furnish us with that information regarding the staff-years, I would appreciate it.

Mr. PREYER. Without objection, so ordered.

[Material included in the letter to Chairman Preyer from Mr. Rooney dated July 24, 1980, printed at page 102.]

Mr. INGRAM. Thank you, Mr. Chairman.

Mr. PREYER. Thank you, gentlemen. We appreciate your being here today.

We would like to leave the record open for some followup questions, if there are any.

Without objection, so ordered.

[The material supplied subsequent to hearing follows:]

RICHARDSON PREYER, M.C., CHAIRMAN
ROBERT F. DRINAN, MASS.
RLEWY ENGLISH, OKLA.
DAVID W. EVANS, IND.
PETER H. NORTMAYER, PA.
TED WEISS, N.Y.

THOMAS H. KINNESS, OHIO
M. CALDWELL BUTLER, VA.
JOHN H. ERLINGER, ILL.
228-3741

NINETY-SIXTH CONGRESS
Congress of the United States
House of Representatives
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515

May 8, 1980

Mr. Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility
Department of Justice
Washington, DC 20530

Dear Mr. Shaheen:

In your testimony before the subcommittee on April 24, you promised to provide certain documents and information in order to complete the testimony. In addition, as I advised you at that time, the hearing record was left open for your response to additional written questions from the subcommittee. Your answers to the following questions should provide us with the information and documentation you promised and clarify certain ambiguities in your testimony:

1. In response to the requests for documentation and information at the hearing, please provide the subcommittee with:
 - (a) the number of attorneys in the department actually investigated by OPR for possible violations of the Code of Professional Responsibility of the American Bar Association or parallel Federal laws or regulations;
 - (b) the number of cases enumerated in (a) for which OPR recommended disciplinary action and the number for which any other unit of the department recommended disciplinary action;
 - (c) the number of cases enumerated in (b) which were officially referred by the department to the appropriate State Bar Association;
 - (d) the number of cases enumerated in (b) in which OPR's recommendations were implemented as originally made, the number in which recommendations were implemented in a fashion other than that recommended,

Mr. Michael E. Shaheen, Jr.
May 8, 1980

and the number in which no disciplinary action was taken;

- (e) the total number of investigations by OPR into allegations of violations of any portion of the Bill of Rights on the part of any Departmental attorney or any investigators under the supervision of a departmental attorney;
- (f) the number of cases enumerated in (e) for which OPR recommended disciplinary action and the number for which any other unit of the department recommended disciplinary action;
- (g) the number of cases enumerated in (f) which were officially referred by the department to the appropriate State Bar Association;
- (h) the number of cases enumerated in (f) in which OPR's recommendations were implemented as originally made, the number in which recommendations were implemented in a fashion other than that recommended, and the number in which no disciplinary action was taken;
- (i) supporting documentation for the cases enumerated in (f), including documentation indicating the nature and scope of the violation, the action recommended by OPR, and the final action taken by the department.

2. In your testimony, you stated that you did not pursue any inquiry into possible violations of Canon 7 of the Code of Professional Conduct of the American Bar Association (particularly as it relates to the assertion of arguments in tax cases) or any of its parallels in Federal law and regulation as part of your investigation of the so-called Stanford Life case. Please provide the subcommittee with a more complete and specific explanation of why you did not pursue such an inquiry in that case, particularly in light of the strictures of Canons 1, 6, and 9. In addition, describe the circumstances under which you would investigate an alleged violation of the strictures of Canon 7 as they relate to the vigorous "assertion of any lawful objective through legally permissible means."

3. When, if ever, has OPR investigated an alleged violation of Canon 7 or any related Federal law or regulation? Provide the number of such investigations, the circumstances of the alleged violation, the disciplinary action recommended, and the action taken.

We would appreciate your prompt reply to these questions in order to complete the subcommittee hearing record. I appreciate your continued cooperation and assistance in this matter.

Cordially,

Richardson Preyer
Chairman



U.S. Department of Justice

Office of Professional Responsibility

Washington, D.C. 20530

Honorable Richardson Preyer
Chairman, Government Information and
Individual Rights Subcommittee
Committee on Government Operations
U.S. House of Representatives
Rayburn House Office Building
Room B-349-B-C
Washington, D.C. 20515

JUL 7 1980

Dear Mr. Chairman:

This is in response to your letter, dated May 8, 1980, regarding my testimony before the Government Information and Individual Rights Subcommittee on April 24, 1980.

In paragraph numbered 2 of your letter, you asked for a clarification of my testimony as it relates to Canon 7 of the Code of Professional Responsibility. More specifically, your letter summarized my testimony as having stated that the Office of Professional Responsibility does not pursue any inquiries into possible violations of Canon 7 of the Code. I do not believe that such a summary presents an accurate reflection of my testimony or my views.

The Office of Professional Responsibility has pursued, and will continue to pursue, violations of all of the Canons of Professional Responsibility--including Canon 7. In my testimony, I indicated a certain amount of displeasure at the handling of the Standard Life case. Although, in retrospect, it appears that the Department's legal position could have been different from that taken, the matter was fully considered in an appropriate manner. It is our view that the primary responsibility for the development of legal positions rests with the legal divisions and their superiors, and our Office, except in certain very limited situations, has no jurisdiction to approve or disapprove those positions. The spectrum of litigation engaged in by the Department of

Justice is exceedingly broad and complex, and the most fully informed legal experts in particular areas of the law are found in the divisions responsible for the subject matter of the litigation. Our Office was never intended to second-guess the legal decisions formulated by those experts.

Thus, what I intended to convey by my testimony was that the Office of Professional Responsibility does not, as a rule, investigate situations wherein later events show legal positions taken on behalf of the Government to have been less than fully satisfactory. Specifically, with respect to the Tax Division, no disparagement of Assistant Attorney General Ferguson or personnel of his Division was intended. Mr. Ferguson is highly respected within and outside the Department of Justice, and he has done much to make his Division an outstanding advocate for the Government in the cases under his jurisdiction. In the Standard Life matter, there was every reason for our Office to investigate possible leaks of information, but no reason to investigate the manner in which the Government's legal position was formulated.

You also request, in paragraphs numbered 1 and 3 of your letter, that I enumerate in detail the instances in which attorneys in the Department of Justice were investigated for violations of the ABA's Code of Professional Responsibility (with specific designation of Canon 7 violations), parallel Federal laws or regulations, and the Bill of Rights. The investigations undertaken by this Office simply do not lend themselves to the type of categorizations suggested in your letter. Virtually all complaints this Office receives regarding Justice Department attorneys might be considered violations of the ABA's Code of Professional Responsibility. In addition, because Justice Department attorneys with prosecutorial responsibilities have a duty to serve the ends of justice as well as to represent the position of the government, any misconduct by a prosecutor in a given case might fall within the broad category of due process or Bill of Rights violations. Accordingly, it would be very difficult, if not impossible, to attempt such categorization with regard to the complaints brought to the attention of this Office.

In an attempt, however, to be responsive to some of the questions in paragraph 1 of your letter, we have compiled statistics which provide examples of the number of complaints against Department of Justice attorneys received by this Office and their disposition. These statistics cover a six-month period in 1978 and are limited to complaints regarding misconduct directly related to the performance of an attorney's duties, as opposed to personal malfeasance. In 55 of these cases, there was no misconduct found or action taken for the following reasons:

1. In 36 of the complaints, the allegations were found to be meritless or otherwise unsubstantiated.

2. In six of the complaints, the actions complained of were found to be authorized or proper.
3. In six of the complaints, OPR was found to have no jurisdiction to investigate.
4. One complaint was withdrawn.
5. Six complaints were referred to other components of the Justice Department for appropriate action.

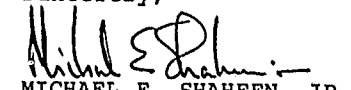
In four of the complaints received during this period, we determined, as a result of our investigation, that misconduct occurred. Of these, letters of reprimand were issued in two cases, an oral reprimand was issued in one case, and a subject recused himself, in one case, from participation in litigation due to a possible conflict of interest. The recommendations of the Office as to appropriate disciplinary actions against Departmental attorneys found to have engaged in misconduct were uniformly followed.

I note your special interest, expressed in paragraph number 3 of your letter, in violations of Canon 7 by Department of Justice attorneys. Such alleged violations are the frequent subject of complaints received by this Office and most commonly arise where an attorney becomes overzealous in presenting his case in court or takes a position which violates published Department policies or procedures. You may be assured that such allegations are of prime interest to this Office and, where such violations have been substantiated, they have been dealt with in an appropriate manner.

With respect to the question of the number of cases officially referred to State Bar Associations, while such referrals have on occasion been made, our records are not maintained in a fashion which would enable us to provide statistics as to the number of such referrals. It is our policy, however, to continue to make such referrals when appropriate.

I hope that I have now clarified and amplified my previous testimony to your satisfaction. Please feel free to contact me with any further questions you might have.

Sincerely,


MICHAEL E. SHAHEEN, JR.
Counsel



U.S. Department of Justice

JUL 24 1980

Honorable Richardson Preyer
Chairman, Subcommittee on Government
Information and Individual Rights
Committee on Government Operations
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Thank you for your letter of June 2 following my testimony of April 24 before the House of Representatives Committee on Government Operations, Subcommittee on Government Information and Individual Rights.

The following are comments I agreed to provide at the time of the hearing. The answers to the additional questions are appended as Attachment A.

-Specific details of actions I took to ensure that the Internal Audit Staff recommendations regarding the Department's debt collection activities received full consideration within the Department.

The principal recommendations of the December 1974 Internal Audit Report on Debt Collection Activities in the legal divisions and the U.S. Attorneys offices suggested: (1) the consolidation of the debt collection responsibility at the headquarters level to supervise and support collection efforts in the U.S. Attorneys offices, and (2) the need for training of collection personnel.

The recommendation to consolidate debt collection activities of the Department into a central unit was of major significance since it would substantially affect the organization and operations of several legal divisions and the Executive Office for U.S. Attorneys. Senior Department officials were not sure how such a recommendation could be best implemented given the available options. Concurrently in 1975, the design of an automated debt collection accounting system was approved by GAO. It was believed that the new system would afford better control and management of the debt collection process, and it was decided that a final decision would await its results. This system, however, was never implemented because it was dependent upon another larger system which failed and was never fully installed. Later, I reopened the issue by eliciting current data on the debt collection activities of each of the legal divisions. The responses reported improvements in the debt collection activity, including better training of the collection personnel, dictating that a major organizational and functional change would not be appropriate at that time.

Subsequently, the Executive Office for U.S. Attorneys undertook the development of an improved collections reporting system which will automate the procedures now performed manually in U.S. Attorney offices. This new system will permit the immediate posting of collections information, calculation of outstanding balances, and notices of overdue

JUL 25 1980

payments. This will assist the U.S. Attorney offices in processing the already large volume of civil claims which increased dramatically in the last few years from the heavy influx of veterans benefit overpayment claims and student loan defaults. This improved capability will also assist the Department in its management of collections activities by providing accurate information on the status of collections activities. The collections portion of this system, however, would not be fully in place for at least 3 years. In the meantime, a project is being initiated to improve the accountability of Legal Process Debts within the confines of the existing semi-automated system. The proposed plan, included in this response as Attachment A, will provide for a uniform reporting procedure supported by detailed records in the field offices.

-The study plan outlining actions to be taken in regard to the debt collection problem authored by the joint committee composed of representatives from the Finance Staff and the Executive Office for U.S. Attorneys.

The "Project Statement" for the Legal Process Debt Accountability System is appended as Attachment B.

-The position and titles of departmental personnel who perform full or part-time functions of evaluation or internal audit, but who are located outside either the Evaluation Staff or the Internal Audit Staff. (You stated in your prepared statement of March 24 that you had not altered the capability of the major Department programs to conduct their own evaluations.) Because the personnel classification terminology varies throughout the Department with regard to those who perform full evaluation, internal audit, or inspection functions, I have listed the divisions and bureaus and the numbers of persons within each organization rather than the position title for each individual.

Department of Justice
Personnel Performing Functions of
Evaluation, Internal Audit, and Inspections

	Total Staff
Federal Bureau of Investigation	61
Drug Enforcement Administration	70
U.S. Marshals Service	10
Law Enforcement Assistance Administration	69
Immigration and Naturalization Service	23
Bureau of Prisons	13
Antitrust Division	14
Community Relations Service	6
Civil Division	6
Criminal Division	3
Land and Natural Resources Division	6

-Details of the proposal for the establishment of a departmental contract review board including the comments if any of the various components concerning the proposal.

The documentation you requested is appended as Attachment C.

-A list of evaluations currently planned by the Evaluation Staff that were mandated by the Congress, including the staff years involved with each evaluation.

FY 1980 Evaluation Activity
Mandated By The Congress

<u>Evaluations:</u>	<u>Workyears:</u>
U.S. Railway Association	.75
Federal Detention Study*	2.2
Service of Civil Process	.9
U.S. Trustees	1.1
Witness Security Program	2.2
	<u>7.15</u>

*This study was the result of a request from the Federal Judiciary. Several members of Congress have also expressed interest in this problem.

If there are ways that I may be of further assistance, I stand ready to help in any way possible.

With all best wishes,

Sincerely,

Kevin D. Rooney
Kevin D. Rooney
Assistant Attorney General
for Administration

Attachments

ATTACHMENT A
Follow-up Questions

Question 1:

In your August 20, 1979 memorandum to the Attorney General explaining the reorganization of the Office of Management and Finance, you state that the Evaluation Staff will have the sole, central responsibility for the conduct of all program evaluations, program audits, and management studies.

- a. What is the difference between a "program audit" the Evaluation Staff is to perform under this scheme and a "program results audit" the Internal Audit Staff is to perform?

The difference between the types of activity to be conducted by the two staffs is that the Evaluation Staff will conduct evaluations designed to assist management in determining strategy and policy with active participation of program officials; the Internal Audit Staff, on the other hand, will operate as watchdog and enforcer for the Department, independent of officials in the Department's program components, and will examine the end results and achievements of a program.

- b. What is your definition of a "program evaluation" of the type the Evaluation Staff is to perform?

A "Program evaluation" of the type the Evaluation Staff is to perform is a study designed to assist management in determining and assessing strategy and policy of Departmental programs. It evaluates alternatives to determine whether Department of Justice programs are as effective and responsive as they can be or whether they should be changed or altered to improve performance.

Question 2:

According to the notation on the August 20, 1979 memorandum, the reorganization described therein was approved orally by the Attorney General on August 20.

- a. Why did the Attorney General not sign the memorandum on that date but instead waited until September 4?

Because Mr. Civiletti had only recently (August 16) assumed the position of Attorney General, he was occupied with a number of other matters requiring his attention. Because he had approved the concept of the reorganization and had orally approved it on August 20 and because the reorganization was not to become effective until October 1, there was no immediate urgency to document his decision.

- b. Did he approve, and in what manner, the changes to the reorganization that were made after the formulation of the August 20 memorandum, as the decision not to establish a policy analysis staff?

The Attorney General orally directed on August 20 that the reorganization plan be redrawn to reflect his decisions regarding the proposed policy analysis unit. He also advised at that time that he intended to consider,

in due course, the organizational placement of the Security Programs Staff and the Evaluation Staff. On January 10, 1980, the Justice Management Division was realigned to place the Security Programs Staff under my immediate direction and that of my principal deputy instead of under the Deputy Assistant Attorney General, Office of Personnel and Administration. At the same time, the Internal Audit Staff, upon my recommendation, was also placed under my immediate direction and that of my principal deputy, instead of under the Deputy Assistant Attorney General, Office of the Controller.

Question 3:

On March 24 you testified that prior to the reorganization the Internal Audit Staff was the only staff in the Department that could be used to perform evaluations.

- a. What special expertise did members of the Internal Audit Staff have that made them the only departmental personnel that could conduct evaluations?

It was not so much a matter of expertise as of available time. Two other staffs, the Program Review and Budget Staff and the Management Systems Policy Staff, had individuals with relevant experience. However, the Program Review and Budget Staff was almost continually occupied with the budget and authorization processes, and the small Management Systems Policy Staff did not have the resources to perform major evaluations in addition to its other responsibilities. Consequently, the Internal Audit Staff was the only staff experienced with an overview of the Department's programs, functions, and mission, and having the reflective time to conduct program evaluations.

- b. Prior to the reorganization, did the Internal Audit Staff conduct any evaluations?

To the extent that an audit is evaluative in nature, they did. They did not, however, conduct the type of evaluation I have described in response to Question 1.a.

- c. If yes, would you please provide a list of evaluations performed by the Internal Audit Staff over the last three years?

I believe you have previously been furnished with a listing of all Internal Audit Staff reports since April 1977. You may upon review of that listing, or the reports themselves, draw a conclusion as to which have substantial evaluative components.

- d. Has any other Justice component conducted evaluations during the last three years?

As cited in response to a question in the text of your letter, other organizations within the Department have evaluation and audit units which conduct studies relevant to their respective organizations. With regard to the

Justice Management Division, the Program Review and Budget Staff previously performed a very limited number of evaluations. That function effectively ceased when the Justice Management Division took a program reduction of 15 positions in its Department Management function in the 1980 budget. The Division had previously been reduced across the board in the 1977 budget by 30 positions.

- e. If yes, would you please provide a list of components and the evaluations they performed?

There is no central repository for evaluations in the Department. Within JMD, two such evaluations would in my view meet the definition of evaluation:

- The Litigation Management Study - conducted by the Program Review and Budget Staff in 1976 and 1977, and
- The Los Angeles Metropolitan Correctional Center Study conducted by the Senior Management Counsel with assistance from other JMD personnel in 1979.

Question 4:

On March 24 you testified that you reviewed the fiscal year 1980 internal audit plan to determine the number of internal audit resources that would have been used in audits that were evaluation in nature.

- a. What criteria did you use to determine which audits were "evaluation in nature"?

I reviewed the audit agenda and determined to the best of my ability the type of audits which were principally of an evaluation nature, that is to say, those which dealt with strategy, impact, and management analysis.

- b. Would you provide a list of those planned audits you identified as evaluation in nature?

Audit Agenda Items of an Evaluation Nature

Study Topic	Organization
Unit Management	Bureau of Prisons
Education Program	Bureau of Prisons
Fugitive Apprehension Program	Federal Bureau of Investigation
U.S. Border Patrol Management of Mexican Border	Immigration and Naturalization Service
Clearinghouse Function	Law Enforcement Assistant Administration
Follow-up to 1979 Report	Community Relations Service

- | <u>Study Topic</u> | <u>Organization</u> |
|--------------------------------------|---|
| Executive Direction and Control | U.S. Marshals Service |
| Security Support Program | U.S. Marshals Service |
| Law Enforcement Training | Department of Justice |
| Research and Development | Department of Justice |
| Laboratory Programs | Department of Justice |
| Integrated Policy and Prosecution | Law Enforcement Assistance Administration |
| Witness Assistance | |
| Technical Investigative Equipment | Drug Enforcement Administration |
| Adjudications Operations | Immigration and Naturalization Service |
| Supervision of Unsentenced Prisoners | U.S. Marshals Service |
| Records Management | Immigration and Naturalization Service |
- c. If the audits were to be evaluation in nature, why did you decide not to transfer these to the Evaluation Staff?
- I did not restrict the agenda of the Internal Audit Staff because I consider it essential that the staff have the freedom to formulate its own agenda.
- d. Since the audits you identified as evaluation in nature have not been transferred to the Evaluation Staff, will the Internal Audit Staff conduct these?
- As stated earlier, I did not change the Internal Audit Staff's agenda as a result of my review of evaluation type activities. It is my expectation therefore, that it will conduct them.
- e. What was the purpose of identifying planned audits as "evaluation in nature" if you did not expect to transfer them?
- The purpose of my review was to assess the amount of Internal Audit resources devoted to evaluation type activities.

Question 5:

On March 24 you testified that you made the decision to transfer 14 Internal Audit Staff members to the newly created Evaluation Staff. Will these individuals perform evaluations only or will they also perform other functions assigned to the Evaluation Staff?

The Evaluation Staff will devote a minimum of 14 work years to the performance of evaluations. From time to time, an individual who was transferred from the

Audit Staff to the Evaluation Staff may be used to perform other responsibilities of the Evaluation Staff.

Question 6:

In your April 24 testimony you referred to "implementing regulations" for the operation of the Evaluation Staff. Please provide a copy of these regulations.

Attached (Attachment D) is a copy of the draft functional statement for the Evaluation Staff that has effectively served as the internal implementation directive. I believe this statement, when considered in conjunction with DOJ Order 2900.1c governing Audit Services in the Department of Justice, clearly supports the thrust of my testimony regarding the maintenance of program audit responsibility in the Internal Audit Staff.

ATTACHMENT B

PROJECT STATEMENT

TITLE. Legal Process Debt Accountability System.

PURPOSE. The purpose of this project is to establish improved accountability for legal process debts assigned to the offices of the United States Attorneys (USA) through a joint project by the Executive Office for the United States Attorneys (EOUSA) and the Justice Management Division (JMD).

BACKGROUND. For the past several years the USA have been reporting collection activity by two methods. One method is through the U.S. Attorneys Docket and Reporting System (USA Order 2840.1). This semi-automated system requires the submission of input forms and update forms for each debt supported by a debtor card located in a field office. The output of this system is basically used to provide a listing of outstanding debts by debtor and the dollar balance of these debts. This listing is supposed to be reconcilable to the official debtor cards maintained in the field.

The second is the reporting of the same collection activity on the USA-5, Monthly Statistical Report of U.S. Attorneys. This report is used to prepare the EOUSA annual statistical report.

In 1972, an amount representing outstanding judgments, fines and penalties was established and reported to the Treasury Department; the basis used for establishing these balances is unknown. The Docket and Reporting System is supposed to provide data to update

the amounts reported to the Treasury; however, the reports necessary to accomplish this were never programmed and the revisions were never made. Collections activity data reported in the USA-5 were used to change the Treasury figure, but these changes were not reconciled to changes in the Docket and Reporting data base. A difference exists between the dollar amount reported to Treasury and the detailed records in the U.S. Attorneys' offices.

GOALS. The goals of the Department of Justice regarding legal process debt accountability are:

1. To establish a system for the current recording of the status of legal process debts to meet the legal and regulatory requirements fixed on the Department.
2. To improve the management of legal process debts.

OBJECTIVES. The overall objective of this project is to establish reliable record and data controls over the legal process debts in the district offices of the USA's. To accomplish this will require the following:

- a. The establishment of minimum accounting reporting for legal process debts within the Docket and Reporting Systems as required by USA Order 2840.1.

- b. Establishment of a controlled difference amount between the subsidiary records in the Docket and Reporting System and the amounts reported to the U.S. Treasury as of September 30, 1979.
- c. Establishment of a system to identify and control the differences between the USA-5 data and the Docket and Reporting updating data at the district level, until a single, reliable system of legal process debt activity can be established in the Docket and Reporting System.
- d. Establishment of adequate legal process debt activity reporting in the Docket and Reporting System and elimination of the USA-5 for reporting legal process debts.
- e. Initiation of the development of procedures to reconcile the Docket and Reporting data base to each district's debtor cards, including the impact of the reconciliation on the controlled difference amount.

PROJECT MANAGEMENT. A project manager will be selected by the Assistant Attorney General for Administration (AAG/A) with the concurrence of the Director of the Executive Office for U.S. Attorneys. The project manager will be responsible for achieving the objectives of this project.

STAFFING AND RESOURCES. The project staff will consist of not fewer than four professionals who should have accounting systems and legal expertise. Three of these professionals will be selected by JMD, and the fourth will be selected by EOUSA.

The Systems Design and Development Staff, JMD, will provide personnel for computer programming. Personnel will be available to assist the project team so that necessary work can be performed expeditiously.

The Systems Policy and Planning Staff, JMD, will be available to act in an advisory capacity.

METHODOLOGY. To accomplish the objectives stated above will require completion of the specific tasks outlined below.

Objective A. The establishment of minimum accounting reporting for legal process debts within the Docket and Reporting Systems as required by USA Order 2840.1.

Task 1. Define requirements for establishing minimum accounting reporting.

Task 2. Review current procedures.

Task 3. Design and/or redesign selected reports.

Task 4. Design and/or redesign input documents.

Task 5. Prepare ADP specifications and program reports.

Task 6. Document system changes.

NOTE: The degree of work required for tasks 3 through 6 will depend on the outcome of tasks 1 and 2.

Objective B. The establishment of a controlled difference amount between the subsidiary records in the Docket and Reporting System and amounts reported to the Department of the Treasury.

Task 1. Select a cutoff date. (End of fiscal year or other.)

Task 2. Update Treasury reporting file if the selected date is not a reporting date.

Task 3. Compare Treasury report file amount and Docket and Reporting amount. Establish the difference as the controlled difference amount.

Objective C. The establishment of a system to identify and control differences between the USA-5 Report and the Docket and Reporting System updating at the district level, until a single reliable system of legal process debt activity can be established in the Docket and Reporting System.

Task 1. Obtain district-level USA-5 Reports for monthly collection amounts.

Task 2. Establish district level reports for collection amounts from the Docket and Reporting System which are comparable to the USA-5 district reports.

Task 3. Establish procedures for comparing reports and determining differences.

Task 4. Establish a monthly activity difference control account at the district level.

Task 5. Establish procedure for posting and maintaining difference control accounts until such time as these two reports are in agreement.

Objective D. Establishment of adequate reporting of legal process debt activity in the Docket and Reporting System and elimination of legal process debt reporting from the USA-5.

Task 1. Determine if the work performed in previous tasks is adequate to eliminate duplications required to complete this task.

Task 2. Determine at what time the USA-5 can be eliminated.

- Task 3. Program the Docket and Reporting system to provide information to the Accounting Operations Group to prepare reports to Treasury and to the USA and EOUSA on financial activities for statistical reports.

Objective E. Initiate the development of procedures to reconcile the Docket and Reporting system data base to each district's debtor cards, including the impact of the reconciliation on the controlled difference amount.

- Task 1. Review and modify present reconciliation procedures.
- Task 2. Develop reports and listings to assist in reconciliation.
- Task 3. Write office reconciliation procedures.
- Task 4. Test reconciliation procedures in four offices.
- Task 5. Review office reconciliation procedures, if necessary.
- Task 6. Determine the effect of the reconciliation on the controlled difference amount.

- Task 7. Specify reconciliation adjustment procedures including adjustment of controlled difference.

REPORTING REQUIREMENT. The project manager will report the progress and status of the project monthly to the Deputy Assistant Attorney General, Office of the Controller and to a designated official of the Executive Office for United States Attorneys.

APPROVAL

KEVIN D. ROONEY
Assistant Attorney General
for Administration

WILLIAM P. TYSON
Acting Director
Executive Office for
United States Attorneys

Date:

Date:

ATTACHMENT C

UNITED STATES GOVERNMENT

*Memorandum*TO : The Associate Attorney General
The Deputy Attorney General

DATE: MAR 19 1980

FROM : Kevin D. Rooney *KDR*
Assistant Attorney General for Administration

SUBJECT: Establishment of a Departmental Contract Review Committee

Although the proposal for the establishment of a Contract Review Committee was previously approved by the Associate Attorney General and the then Acting Deputy Attorney General, Paul Michel, I am resubmitting the package because of concerns raised by Paul. I believe most of these concerns have been covered in the revised proposal.

This proposal is basically intended to assist JMD in performing its assigned duties under 28 CFR § 0.75, § 0.76, and § 0.139 as staff to the Attorney General and each of you. Presently 28 CFR § 0.139 authorizes the Assistant Attorney General for Administration to post audit and correct any procurement actions entered into by the bureaus. The Contract Review Committee would enable the Department to prevent procedural and legal deficiencies in contracts rather than correcting them later. I consider this proposal a viable mechanism for executing my responsibility to provide each of you with essential staff support and assistance.

Since JMD has not been staffed to perform at this level of activity (only four positions are available for Department procurement policy), some alternative is essential. As the Contract Review Committee will provide a clear service to the bureaus by improving their contracting, it is a proper area for reimbursement from the bureaus. No other funding is available to establish and support the Committee. I recommend, however, that the funding of the Committee be included directly in JMD's 1982 budget.

2 Attachments



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Form OBD-197
MAY 1978

UNITED STATES GOVERNMENT

*Memorandum*TO : The Attorney General
THRU : The Associate Attorney General and
The Deputy Attorney General

DATE: MAR 19 1980

FROM : Kevin D. Rooney *KDR*
Assistant Attorney General for AdministrationSUBJECT: Establishment of a Departmental Contract Review
Committee--ACTION MEMORANDUM

As you are aware, procurement authority--specifically, the capacity to make contract awards--has been delegated in its entirety to the bureaus. While this is an acceptable practice, especially in light of the unavailability of Department resources to provide direct procurement support to the bureaus, it does not provide the kind of Department-level review that can help assure quality procurements in general and provide appropriate technical assistance to the bureaus in difficult procurement situations. Further, there have been several instances over the last year in which procurement deficiencies in the bureaus have been highlighted. Notably, the Immigration and Naturalization Service has had several questionable procurements over the last year. The Federal Bureau of Investigation is in the process of having several of its procurements queried as well. At the same time, Congressman Preyer and his Government Operations subcommittee continue to focus on bureau procurements with increasing vigor.

In order to respond to these concerns, I propose that a departmental Contract Review Committee be established for the purpose of reviewing proposed contract awards. The Committee will assist me in executing my responsibility to ensure that proposed contract awards within the Department of Justice (DOJ) are procedurally and legally sufficient prior to award of the contract. Committee rejections will be reviewed by me personally. Those which the bureau head and I cannot mutually remedy will be referred to the Deputy Attorney General or Associate Attorney General as appropriate. Contract reviews shall be limited to the following categories: ADP contracts and modifications, regardless of dollar value; all contracts in excess of \$100,000; all non-competitive contracts in excess of \$10,000; and all other unusual or difficult contracts that are potentially controversial in nature.

The formal Committee will be composed of three qualified members of the various departmental organizations, with several support staff. The Committee will meet at least biweekly for the purpose of reviewing proposed awards, or more frequently as may be required by the urgency of an individual project.



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Form OBD-197
MAY 1978

Upon completion of the review, a statement will be prepared by the Committee stating that the contract has been reviewed and found to be procedurally and legally sufficient. This statement shall be placed in the contract file. This process should considerably reduce future criticisms that might arise concerning DOJ contracts, and substantially improve the quality of work within the procurement process.

I am also proposing that non-personnel expenses for members of the Committee and personnel and other expenses for staff to the Committee be funded by the bureaus on a reimbursable basis during the balance of this fiscal year and in 1981. The activity should be included in the JMD budget for 1982.

Upon your approval of this proposal, detailed review procedures will be developed and Committee members appointed. I shall submit a recommendation of Committee membership for your approval.

Approve: John H. Shenefield Date: 6-26-80
John H. Shenefield
Associate Attorney General

Disapprove: John H. Shenefield Date: _____
John H. Shenefield
Associate Attorney General

Other: _____

Approve: Charles B. Renfrew Date: 7.1.80
Charles B. Renfrew
Deputy Attorney General

Disapprove: Charles B. Renfrew Date: _____
Charles B. Renfrew
Deputy Attorney General

Other: _____

Approve: Benjamin R. Civiletti Date: 7/3/80
Benjamin R. Civiletti
Attorney General

Disapprove: Benjamin R. Civiletti Date: _____
Benjamin R. Civiletti
Attorney General

Other: _____



Office of the Attorney General
Washington, D. C. 20530

July 17, 1980

TO: Heads of Offices, Boards, Divisions and Bureaus

FROM: Benjamin R. Civiletti
Attorney General *BRC*

SUBJECT: Establishment of a Departmental Contract Review Committee

In the months since I have been the Attorney General, I have become increasingly aware of concerns with procurement activities in the Department of Justice. These concerns relate not only to the conduct of such important procurement activities as A-76 analyses and support for minority business, they also extend to the way in which each of our component organizations makes individual contract awards.

While the Department of Justice is not a "major" procurement agency, such as the Departments of Defense, Energy and Transportation, it does make procurements in excess of \$300 million a year. It is also imperative that this Department, as the nation's leading law enforcement agency, comply fully with both appropriate procurement procedures and such special procurement programs as the President seeks to highlight.

In that regard, it seems essential to me to establish an entity at the Department level to assure both compliance with procurement law and policy and to improve the quality of individual procurements. I am, therefore, creating a Department-level Contract Review Committee. This Committee will serve as a review panel for the Assistant Attorney General for Administration and will sit as the pre-award review authority for proposed procurement actions in the Department's component organizations. Where necessary, final decisions will be referred to the Deputy Attorney General or Associate Attorney General. The Assistant Attorney General for Administration will shortly be issuing implementing instructions in a Department of Justice order. I expect full and complete cooperation with this effort.

DRAFT

ATTACHMENT D

OFFICE OF THE CONTROLLER

EVALUATION STAFF

GENERAL FUNCTIONS

Promote, plan, conduct, direct, review, and coordinate evaluation efforts throughout the Department to provide information to assist top-level officials in assessing program efficiency and effectiveness.

Conduct, plan, direct, review, evaluate, and coordinate management and organization studies and make recommendations to top-level officials and program managers for improvements.

Provide advice and counsel to the Assistant Attorney General for Administration on all matters relating to evaluation, management, and organization.

Represent the Department in its contacts on matters relating to evaluation, management, and organization with Congress, the Office of Management and Budget, the General Accounting Office, the Office of Personnel Management, the General Services Administration, and other departments and agencies.

Formulate and develop Department-wide policies, plans, and procedures for evaluation and management assistance.

SPECIFIC FUNCTIONS

Evaluate, as requested or directed, Department programs and activities, either independently or in conjunction with other Department-level staffs, to assess the efficiency of program management and operations, and program performance in terms of achievement of objectives, progress according to the program plan, effectiveness of program planning, effectiveness of program results in carrying out legislative and management mandates, and effectiveness and economy of resource utilization.

Formulate proposed policies and procedures, based on performed evaluations, for effective, efficient and economical operation of Department programs.

Recommend elimination, curtailment, modification, or expansion of particular programs or activities as indicated by evaluation findings.

Monitor, review, and coordinate evaluation and management assistance activities throughout the Department.

Provide, as directed or requested, management consulting or advisory assistance to analyze specific issues, problems, or concerns and propose alternative solutions.

Act as the principal advisor to the Assistant Attorney General for Administration on all Department organization and management matters and analyze proposals for organization changes.

Conduct in-depth studies, reviews, analysis and evaluations of specific organizational, functional and management issues at the direction of the Attorney General, Deputy Attorney General, Associate Attorney General, and Assistant Attorney General for Administration.

Develop and administer a Department organization system including concepts, plans, standards, and documentation, and control procedures governing organizational structure, assignments of responsibility, delegations of authority and operational relationships.

Develop, in consultation with the Budget Staff and the Internal Audit Staff, an annual evaluation and management assistance study agenda for approval or modification by Department top-level management.

Mr. PREYER. You mentioned in your testimony that some of this information was provided to the Senate.

I would like to ask that the subcommittee be provided with copies of internal audit reports and evaluations in the future where it is appropriate. If you could do that, that would be helpful.

Mr. ROONEY. We will have no difficulty at all with the internal audit reports; on the evaluation reports, once they have been reviewed by the Attorney General, then there would be no problem.

Mr. PREYER. Thank you very much, gentlemen.

The subcommittee stands adjourned.

[Whereupon, at 11:20 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—CORRESPONDENCE RELATING TO REORGANIZATION OF DEPARTMENT OF JUSTICE ADMINISTRATIVE FUNCTIONS

A. MEMORANDUM FROM KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, DEPARTMENT OF JUSTICE, TO THE ATTORNEY GENERAL, DATED AUGUST 20, 1979

UNITED STATES GOVERNMENT
Memorandum
 TO : The Attorney General
 FROM : Kevin D. Rooney
 Assistant Attorney General for Administration
 SUBJECT: Reorganization of the Office of Management and Finance (OMF)

RECEIVED
 OFFICE OF THE
 ATTORNEY GENERAL
 AUG 20 1979
 DATE: AUG 20 1979

For the past several weeks we have discussed various options for the restructuring of OMF. Yesterday, on national television, you indicated that an OMF reorganization is a major objective of yours.

As you know, the American Federation of State, County, and Municipal Employees (AFSCME) has been elected (last Thursday) as union representative for OMF. Since your idea to reorganize is now well known, I strongly urge that we avoid difficulties with AFSCME by moving as quickly as possible. I believe it essential that we provide appropriate notice to the union now and thereby avoid both employee unrest and the possibility of negotiating details of the new structure with AFSCME. With an organizational plan approved by the Attorney General this week, prior to certification of the union election, we need not negotiate on the impact of the reorganization.

Attached is an organization chart for your signature. This chart generally coincides with my most recent formal presentation. I have, however, reduced to the minimum practical level (from four to three) the number of staffs with systems responsibilities and then moved the Library to the Office of Legal and Management Systems. This allows each Deputy Assistant Attorney General to supervise four sections.

As we had discussed earlier, the major advantages of the new organization are:

- Abolishing OMF and establishing the Justice Management Division, consisting of three offices: (1) Office of the Controller; (2) Office of Personnel and Administration; and (3) Office of Legal and Management Systems.
- The Assistant Attorney General will be less encumbered by day-to-day operational responsibility in the conduct of the wide range of management and administrative services performed at the Department level. I will be more able to concentrate upon management policy matters in response to the Department's leadership and in coordination with the heads of other Department components. A major part of this activity will involve my increased personal conduct of liaison with the Office of Management and Budget (OMB), the General Accounting Office (GAO), the Office of Personnel Management (OPM), the General Services Administration (GSA), the Congress, and the Judiciary (Administrative Office of U.S. Courts).



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Form OBD-197
5-79

Internal management of the functions now performed by OMF should be markedly enhanced. Each of three Deputy Assistant Attorneys General will serve as an Office Director and will be responsible for the conduct of the activities assigned to his office, in the same way that I am now responsible for OMF. With smaller and more logically ordered units, each Deputy should have a better span of control and more knowledge about daily operations.

Functions and responsibilities will be assigned from the present ten (10) staffs to the three (3) new offices to eliminate duplication and overlap and to aggregate similar functions in the same office.

In addition, I believe the three areas where you expressed concern as to the functions and staffing of the Justice Management Division have been resolved as follows:

- (1) Policy Analysis (section reporting directly to me as staff for projects approved by the Attorney General or any member of the Budget Review Committee): By specifically identifying and staffing this function (with a core of 6 to 8 professionals, augmented as necessary by bureau and division personnel), the Department will have a Department-level policy analysis staff capability for the first time. This will offer the Attorney General, the Deputy, and the Associate staff support in this important area. By reporting to me directly, and not through the Controller, the policy analysis function is separated from the budget and program review functions. This, of course, was a major recommendation of the Policy and Management Study. This office will assist the Attorney General and the Budget Review Committee in developing the Attorney General's annual policy and program guidelines for the budget process. This office, with a small core staff, may subsequently be reassigned to another Departmental unit once it has been developed, implemented, and evaluated.
- (2) Evaluation (section reporting to the Deputy Assistant Attorney General/Controller): This section has the same advantages as the Policy Analysis section, i.e., specific identification of the evaluation function and, at least section-level, separation from budget review. Creation of the evaluation section is a first step toward meeting the Congressionally-mandated evaluation responsibilities of the Department. This staff will have the single, central responsibility for conduct of all program evaluations, program audits, and management studies now spread through OMF (Program Review and Budget

Staff, Internal Audit Staff, Management Systems Policy Staff). Since most of these evaluations currently involve bureau (rather than division) programs, the Justice Management Division continues to be the logical location for this activity; however, the pooling of available staff resources should enable us to develop, as an early initiative, an evaluation capability for the U.S. Attorney offices.

- (3) Office of Legal and Management Systems: This office is essentially the equivalent of existing OMF staffs under Ed Dolan; however, the function is given increased visibility and identified to work closely (in its relevant activities) as a staff arm to the new Special Assistant to the Attorney General for Litigation Management. Ned Slaughter and I have agreed that this Office will provide direct support as he requires. Pending any new assignment, Ed Dolan will remain as the Deputy Assistant Attorney General for this area; Ned Slaughter and I will assess long-term staffing, etc. as the program develops, in consultation with you.

If you approve, I propose that we proceed along the following lines:

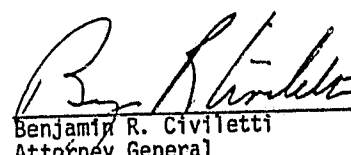
- (1) Allow me to advise my Staff Directors and key personnel prior to formal announcement (should be done by Tuesday, August 21);
- (2) Formally announce the reorganization to OMF employees (by memorandum) and by press release (by Wednesday, August 22);
- (3) Schedule implementation for October 1, to allow for any possible union comments;
- (4) I will immediately designate (and so announce) Charles Neill as the Deputy Assistant Attorney General (Controller); Harry Flickinger as the Deputy Assistant Attorney General (Personnel and Administration); and announce that Ed Dolan will continue as Deputy Assistant Attorney General (Systems). These appointments can become effective immediately, with each Deputy becoming responsible for existing OMF operations in the areas they will supervise after October. This will ensure an easy transition.

I strongly believe the timing is important here. The union, once certified, will make every effort to negotiate the details. By announcing more than 30 days prior to implementation, the union can comment but not negotiate. This is a proper exercise of management's rights. The

public announcement of the intent to reorganize, without an approved plan, will encourage the union to attempt to negotiate. On the other hand, announcement of the reorganization immediately following your public identification of it as a major objective, should have a positive public impact.

Attachment

Approve:


Benjamin R. Civiletti
Attorney General

Date:

9/4/79
as agreed orally 8/2/79

Disapprove:

Benjamin R. Civiletti
Attorney General

Date:

B. LETTER FROM KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, DEPARTMENT OF JUSTICE, TO CHAIRMAN PETER W. RODINO, JR., COMMITTEE ON THE JUDICIARY, U.S. HOUSE OF REPRESENTATIVES, DATED AUGUST 22, 1979

AUG 22 1979

Honorable Peter W. Rodino, Jr.
Chairman, Judiciary Committee
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Office of Management and Finance (OMF) of the Department of Justice will be reorganized, effective October 1, 1979. This reorganization abolishes OMF and creates, in its place, the Justice Management Division, headed by the Assistant Attorney General for Administration and consisting of three entities: an Office of the Controller (OC), an Office of Personnel and Administration (OPA), and an Office of Litigation and Management Systems (OLMS). The Director of each of these three offices shall be a Deputy Assistant Attorney General.

Under the direction of the Assistant Attorney General for Administration, the Director of each office will be responsible for both the daily operation and management of his own office and, in concert with his colleagues and the Principal Deputy Assistant Attorney General for Administration, for the satisfactory performance of the Justice Management Division. Each office will be composed of four staffs designed to fulfill the office's functions as clearly as possible, without duplication and waste.

This reorganization is proposed in order to achieve certain benefits and efficiencies in operations. These are set forth below.

- The Assistant Attorney General for Administration will be less encumbered by day-to-day operational responsibility in the conduct of the wide range of management and administrative services performed at the Department level. He will be able, instead, to concentrate upon policy matters in response to the Department's leadership and in coordination with the heads of other Department components. A major part of this activity will involve greater personal conduct of liaison with the many

organizations whose "cross-government" responsibilities bring them into constant contact with the Department of Justice, including: the Congress of the United States (particularly the Appropriations and Judiciary Committees of the House and Senate), the Office of Management and Budget, the Office of Personnel Management, the General Services Administration, and the Federal Judiciary.

- Internal management of the functions now performed by OMF should be markedly enhanced. Each Office Director will be responsible for the conduct of the activities assigned to his office, in the same way that the Assistant Attorney General for Administration is now responsible for OMF. With smaller and more logically ordered units each Director will have a better span of control and more knowledge about daily operations. Further, the three Office Directors will, under the overall supervision of the principal Deputy Assistant Attorney General for Administration, form a central cadre for the conduct of management/administrative functions in the Department of Justice, and for the development of policy for review by the Assistant Attorney General.
- Functions and responsibilities will be assigned from the present staffs to the three new offices to eliminate duplication and overlap and to aggregate similar functions in the same office. Further, while each of the new offices will be smaller than OMF, they will be substantially larger than each of the individual staffs. Thus, potential for movement of staff from area to area, as the need arises, is greater.

ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

The Assistant Attorney General for Administration will concentrate upon review and resolution of policy issues, long-range planning and development for the conduct of management and administrative activities in the Department, respond to the concerns of both the leadership of the Department and the heads of its component agencies, and liaison with external agencies with which the Department of Justice deals. The Department's Equal Employment Opportunity Section will continue to perform its traditional functions and will report directly to the Assistant Attorney General. Further, the newly created position of Senior Management Counsel, designed to work with the Assistant Attorney General and senior Department leadership on the development of analytic capacity in the Department, will report through the Assistant Attorney General.

PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION

The principal Deputy Assistant Attorney General will continue to have responsibility for central management of day-to-day operations in the Division. He will review and resolve problems as they arise, and develop--in concert with the three Deputy Assistant Attorneys General--policy initiatives for consideration of the Assistant Attorney General. He will assume the role of the Assistant Attorney General in his absence.

In addition, two staff units will report directly to the principal Deputy Assistant Attorney General for Administration. They include the Executive Secretariat and the:

Administrative Counsel - The Administrative Counsel will continue to provide legal advice to the Assistant Attorney General and the Department's component organizations concerning proposed administrative actions, FOIA/PA matters, and legal issues of an administrative nature arising before the General Accounting Office, the Office of Personnel Management, etc.

Office of the Controller (OC)

The Deputy Assistant Attorney General, Office of the Controller, will be responsible for the day-to-day conduct of all budget, financial, and audit activities, program evaluations, and accounting operations assigned to the Justice Management Division. The Controller will serve as the Department's Budget Officer and the financial manager of the Working Capital Fund. The activities of this office will include both central management and administrative support functions. It will be composed of four discrete staffs, each of which will perform a specific element of these responsibilities. Each element is described below.

Budget Staff - The Budget Staff will be responsible for budget formulation, budget execution, and (in support of the Office of Legislative Affairs) program authorization. The budget formulation functions are those related to the generation of the Department's annual appropriation, supplemental, and amendment requests to the Congress through the Office of Management and Budget. The budget execution functions relate to the way in which funds are managed and controlled during the operating year. Responsibility for the authorization function will reside in this staff because of its close substantive relationship to the appropriation process.

Finance Staff - The Finance Staff will be responsible for all accounting and voucher examination responsibilities for the OBDs, as well as development of adequate accounting systems for the

Department and its component organizations, liaison with the General Accounting Office on all financial matters, review of matters related to financial policy and development of the Financial Management Information System, a major initiative of the incumbent Assistant Attorney General.

Audit Staff - This staff will continue to function as it has in the past. By January, 1980, however, the conduct of its program evaluations will be shifted to the Evaluation Staff.

Evaluation Staff - This staff will ultimately have responsibility for the conduct of all program evaluations, program audits and management studies for which any of the existing OMF staffs are currently responsible.

Office of Personnel and Administration (OPA)

The Deputy Assistant Attorney General for Administration, Office of Personnel and Administration, will be responsible for all activities related to personnel management and administrative services. He will have a direct responsibility for conduct of SES activities in the Department and support to the Senior Executive Resources Board. Specific staff duties will include: personnel management and operations, training, the library, procurement, space and property management, security, printing, and records management. The allocation of these responsibilities into appropriate units is set out below.

Personnel and Training Staff - With the exception of the direct conduct of SES functions by the Deputy Assistant Attorney General, this staff will continue in its current configuration for the performance of personnel and training activities for the Department.

Security Programs Staff - This Staff will conduct all Department security activities assigned to the Justice Management Division. As a separate staff unit, it should have the visibility to perform on a Department-wide basis, with an adequate level of internal review and control.

Property Management and Procurement Staff - Two of the most pressing areas of administrative difficulty remaining within the Department are the conduct of the procurement function and the search for new and adequate space. These two major areas of difficulty are being separated from their existing organizational structure and highlighted within a separate unit to ensure that they receive maximum attention from a single staff director.

Records and Publications Staff - The responsibilities of this staff are centered around the printed word. They include printing, distribution of documents, mail and messenger services, document control and document storage.

Office of Litigation and Management Systems (OLMS)

The Deputy Assistant Attorney General, Office of Litigation and Management Systems, will be responsible for the provision of all facets of automated data processing service to components of the Department of Justice. This includes both the provision of direct support services (such as payroll processing, generation of reports on employees, and systems design and programming), and the conduct of central control functions (such as review of the proposed systems acquisitions by Justice organizations to determine merit and need, and review of annual budget and supplemental requests for ADP services). This Office will be composed of four staffs.

Systems Policy and Planning Staff - This staff will provide short and long-term planning and policy development for Departmental use of ADP services, as well as providing technical assistance to users in developing "needs" assessments and locating proper hardware and software systems. Further, it will provide an overall point of contact and control for all projects being run at the Department level in order to ensure that users needs are met in every case. The continued handling of the recompetition of the Department's ADP hardware under Project 80 will be managed from here.

Systems Design and Development Staff - All section components involved in the design, development, programming, operation and maintenance of management and litigation systems will be brought together to ensure cohesive uniformity in development and operation of such systems. In short, the staff will continue to function as it does now.

Systems Operations Staff - In this staff, the task of running operational ADP systems and such standing operations as the Department's world-wide communications network will be located. Essentially, this staff will be responsible for "keeping the machines running." This section, in effect, will consist of the Department's existing service operations, i.e., the Justice Communications Service (Comm Center) and the Justice Data Management Service (Data Center).

Library - The Library will continue to operate as presently organized.

Impact on Programs and Budget

The reorganization is intended to strengthen the management of both the Division and the Department. It will not require a change in present resource levels. We will, however, be modifying the decision units to which we report for the purposes of both budget formulation and program authorization. These will be provided to your staff shortly.

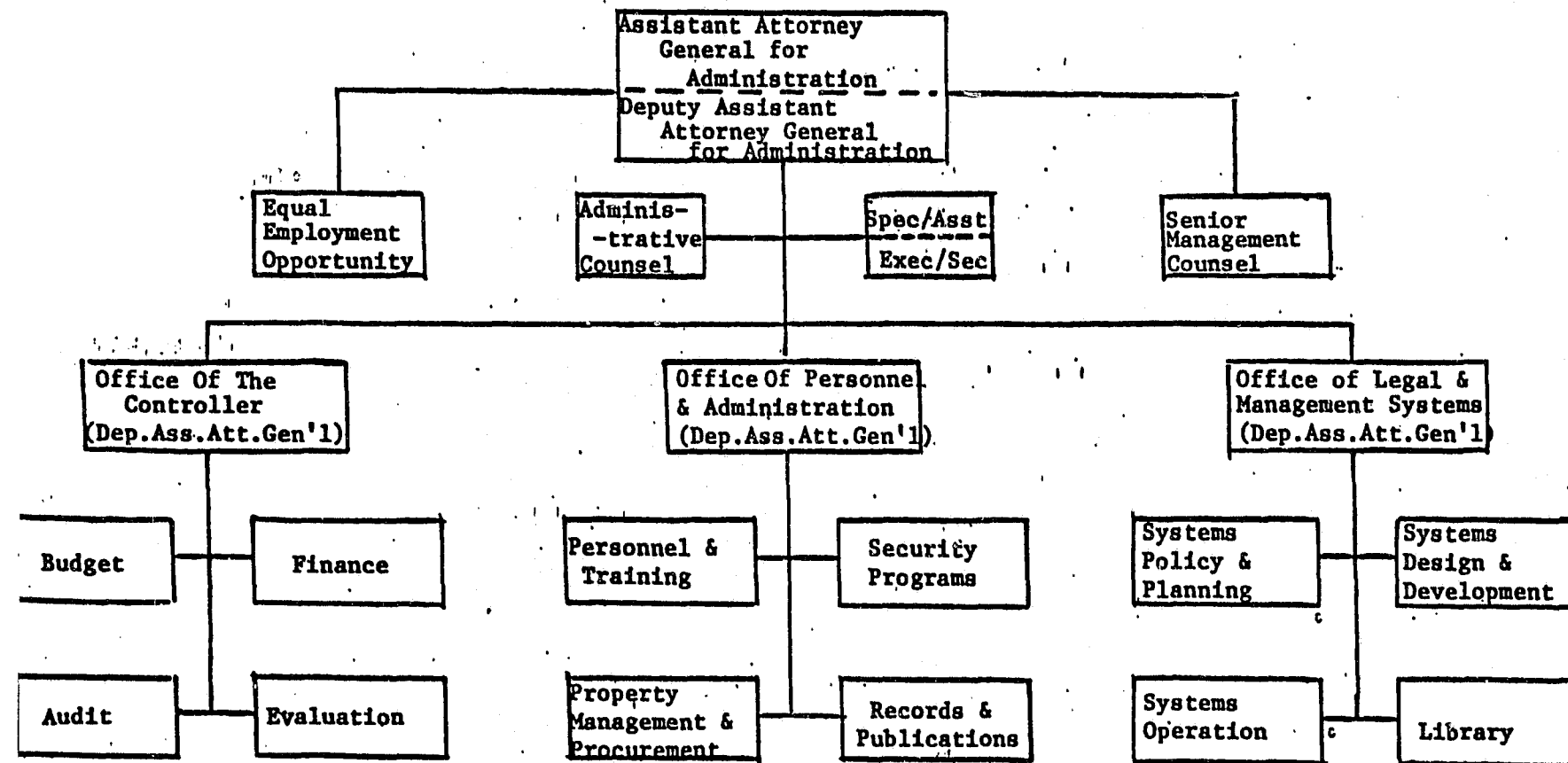
Sincerely,

/s/ William D. Van Staveren

for Kevin D. Rooney
Assistant Attorney General
for Administration

Attachment

JUSTICE MANAGEMENT DIVISION



C. LETTER FROM KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL
FOR ADMINISTRATION, DEPARTMENT OF JUSTICE, TO CHAIRMAN
PETER W. RODINO, JR., COMMITTEE ON THE JUDICIARY, U.S. HOUSE
OF REPRESENTATIVES, DATED JANUARY 16, 1980

JAN 16 1980

Honorable Peter M. Rodino
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The purpose of this letter is to notify you that the Department of Justice will reorganize the Justice Management Division (JMD) to change the organizational placement of the Internal Audit Staff and the Security Programs Staff. The head of each staff will report directly to the Assistant Attorney General for Administration (AAG/A). Currently they report to a Deputy Assistant Attorney General (DAAG) in, respectively, the Office of the Controller and the Office of Personnel and Administration. A new organization chart is enclosed.

This reorganization results from my continuing assessment of the effectiveness of the reorganization which created JMD on October 1, 1979. It is a refinement of an otherwise effective strategy to achieve the benefits and efficiencies of operations set forth in the earlier notification. (A copy of the prior notification letter is enclosed for your convenient reference.)

The current reorganization is designed to accomplish the following specific objectives:

Internal Audit Staff: Make the audit staff more independent.

Under the previous configuration the audit function and other like functions (evaluation, budget and finance) were placed under the DAAG, Office of the Controller. This placed the audit function in a subordinate position to the Controller which is not consistent with the traditional standards of audit objectivity. The new reorganization raises the audit function to a level commensurate with that standard and achieves the goal of making audit more independent. In addition, this escalation will enhance the staff's ability to provide priority support to the Office of Professional Responsibility in investigations of alleged wrong doing. As was planned in the October 1 reorganization the Internal Audit Staff will continue to direct its attention to economies and efficiencies (to include financial and compliance activities)

and will emphasize its role of problem identification as opposed to problem solution. This will avoid potential compromise by avoiding a situation where audit would review its own proposed solutions.

Security Programs Staff: Increase the emphasis on the Department's security and emergency preparedness activities.

Under the previous configuration, the Security Programs Staff was placed under the direction of the DAAG, Office of Personnel and Administration. The Staff's functions cover the full range of the Department's broad security responsibilities involving the U.S. Intelligence Community and National Security Information. These are critical responsibilities involving high priority concerns and sensitivities which warrant direct accessibility and accountability to the Assistant Attorney General for Administration. Accordingly, the Security Programs Staff will be removed from the Office of Personnel and Administration and placed under the direct supervision of the AAG/A. To complement this increased emphasis on security, I have initiated a study to assess the adequacy of current staffing levels to fulfill these responsibilities effectively and economically.

The reorganization described above will not require a change in present resource levels. Further, it will not modify the decision units which were provided previously for JMD.

Sincerely,

/s/ Kevin D. Rooney,

Kevin D. Rooney
Assistant Attorney General
for Administration

2 Enclosures

Identical letters sent to:

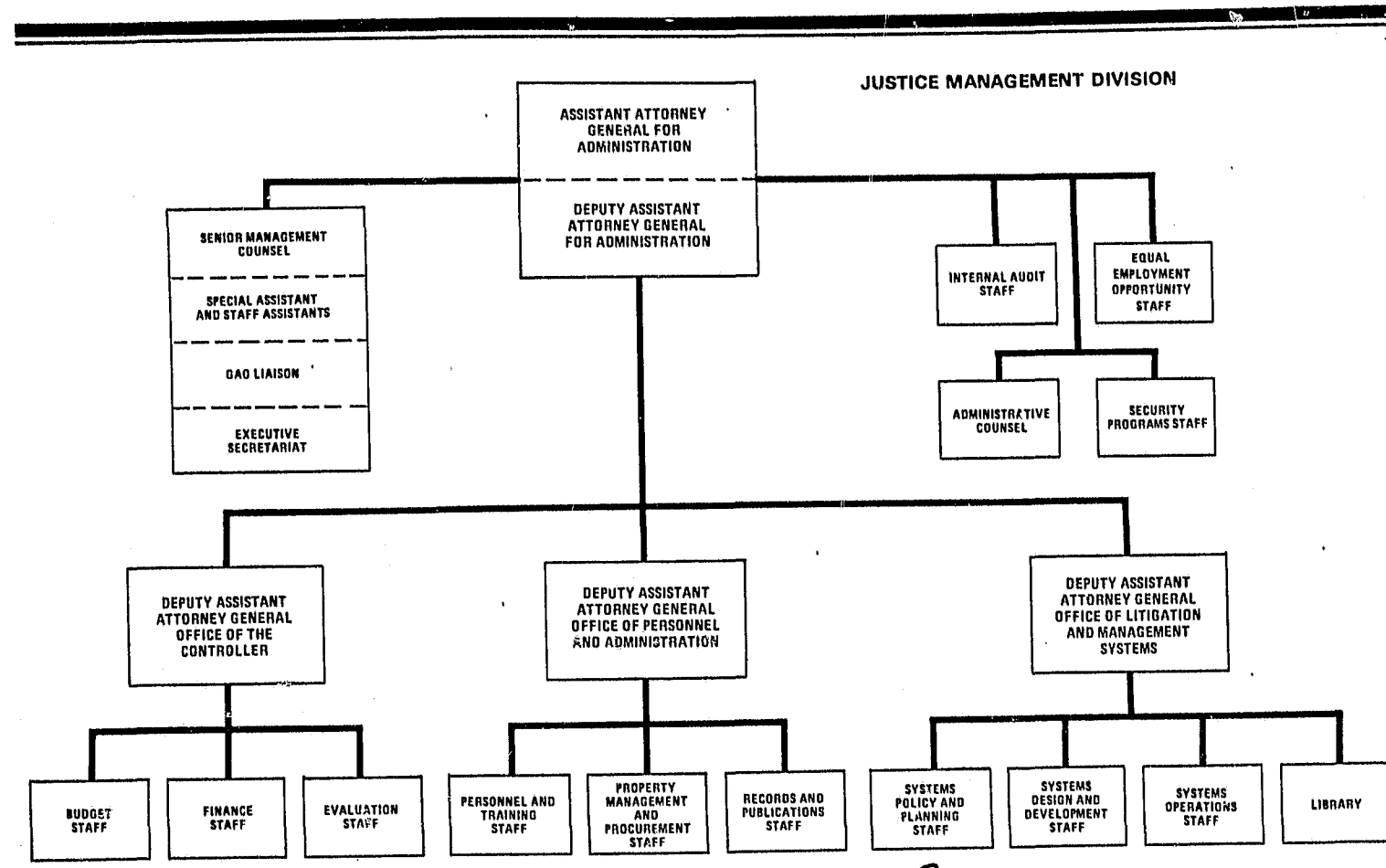
Honorable Robert McClory
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515
(Dear Congressman McClory:)

Honorable John M. Slack
Chairman
Subcommittee on State, Justice,
Commerce, and the Judiciary
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515
(Dear Mr. Chairman:)

Honorable Edward M. Kennedy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510
(Dear Mr. Chairman:)

Honorable Strom Thurmond
Ranking Minority Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510
(Dear Senator Thurmond:)

Honorable Ernest F. Hollings
Chairman
Subcommittee on State, Justice,
Commerce, and the Judiciary
Committee on Appropriations
United States Senate
Washington, D.C. 20510
(Dear Mr. Chairman:)



APPROVED: John H. Shenefield
John H. Shenefield
Acting Associate Attorney General

DATE: 1/10/80

D. LETTER FROM ALAN A. PARKER, ASSISTANT ATTORNEY GENERAL,
OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE, TO
CHAIRMAN RICHARDSON PREYER, SUBCOMMITTEE ON GOVERN-
MENT INFORMATION AND INDIVIDUAL RIGHTS, DATED JULY 9, 1980
RESPONDING TO QUESTIONS SUBMITTED SUBSEQUENT TO SUB-
COMMITTEE HEARINGS



United States Department of Justice

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

JUL 09 1980

Honorable Richardson Preyer
Chairman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Attorney General has asked me to respond to your letter of May 29, 1980, regarding the reorganization of the Office of Management and Finance (now the Justice Management Division) last year.

The comments and/or questions included in your letter are responded to as follows.

--The reorganization has not been implemented as described in the approved plan of August 20th. For example, the plan contained a proposal for establishment of a policy analysis section that was to report directly to the Assistant Attorney General for Administration. This section has not been established.

The reorganization was not implemented as proposed in the memorandum of August 20, 1979; it was implemented as the Attorney General approved orally in a meeting on August 20 with the Acting Deputy Attorney General, Acting Associate Attorney General, and the Assistant Attorney General for Administration. Specifically, the Attorney General did not approve the creation of a policy analysis unit. (See the enclosed organization chart, approved by the Attorney General on September 4, 1979, which does not include a policy analysis unit.)

--Did you hold any meeting prior to August 20 to discuss the proposed OMF and internal audit reorganization? If so, please supply dates and details. If the meetings were documented in any manner, please provide copies of relevant papers and memos.

The Attorney General, while Deputy Attorney General, had several meetings over a period of months with the Assistant Attorney General for Administration where the organization of the Office of Management and Finance and the performance of its mission were discussed. There is no exact record of the date of each discussion of the issue nor were records of the discussion maintained. However, during the period August 1 through 20, 1979, Messrs. Civiletti and Rooney met with each other on a minimum of nine occasions. During this period of time, a common and continuing source of discussion between them was the organization of OMF and management improvements within the Department.

--When you orally approved the reorganization on August 20, what documentation did you have before you?

The Attorney General had before him the August 20, 1979, memorandum from Mr. Rooney.

--Why was your written approval delayed until September 4? Were there additional oral understandings, during or after this time concerning the reorganization?

Since Mr. Civiletti had only recently assumed the position of Attorney General (August 16, 1979), he was occupied with a number of other matters requiring his attention. Since he had approved the concept of the reorganization and it was not to become effective until October 1, 1979, there was no immediate urgency to document his decision.

--Have you approved any changes to the August 20 memo, or is it the sole embodiment of the OMF reorganization plan?

As noted previously, the Attorney General orally directed on August 20, that the plan be redrawn to reflect his decisions with regard to the proposed policy analysis unit. He also advised the Assistant Attorney General for Administration at that time that he intended to consider further, in due course, the organizational placement of the Security Programs Staff and the Evaluation Staff. On January 10, 1980, the Justice Management Division was realigned to place the Security Programs Staff under the immediate direction of the Assistant Attorney General for Administration and his principal deputy instead of under the Deputy Assistant Attorney General, Office of Personnel and Administration. At the same time, the Internal Audit Staff was relocated from the Office of the Controller to report directly to the Assistant Attorney General for Administration and his principal deputy. This was recommended by the Assistant Attorney General for Administration for the reasons he has discussed with you at formal hearings before your subcommittee.

--On March 11, 1980, you testified before the Senate Committee on the Judiciary regarding the Department's fiscal year 1981 authorization bill. During those hearings, you stated that you had been reevaluating the internal audit function at the Department but had not yet made up your mind about its proper location. You listed as possibilities the following: combining the internal audit and evaluation functions within the Justice Management Division; transferring the internal audit function to the Office of Professional Responsibility; or creating a separate internal audit office, reporting directly to you. We understand the location of the Evaluation Staff within the hierarchy is also under study.

Could you please answer the following:

--If you were unsure about the proper location of the internal audit and evaluation functions within the Department, why did you approve the reorganization of OMF last summer?

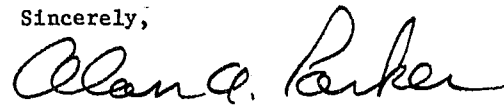
The Attorney General concluded that the effective and efficient performance of the management function of the Department would be enhanced by the reorganization. The reasons for the reorganization were set forth in detail in a letter to the cognizant oversight committees of the Congress (the Appropriations and Judiciary Committees of both Houses). A copy of those letters was provided to you by my letter of April 18, 1980.

--Since last August, have you rethought the issue and determined what should be the proper location of either the Internal Audit Staff or the Evaluation Staff? If so, could you provide details concerning this decision? If not, is Justice currently performing any studies on this matter?

As noted above, and as Assistant Attorney General Rooney advised in testimony before your subcommittee on March 24, 1980, the Internal Audit Staff now reports directly to him. The Attorney General is satisfied with that arrangement and is not considering any change in the Staff's reporting lines.

With regard to the Evaluation Staff, the Attorney General has reached no final conclusion on its organizational placement. The Staff now has underway several evaluations and management assistance efforts which the Attorney General will want to consider before he makes any change in the management of the Staff.

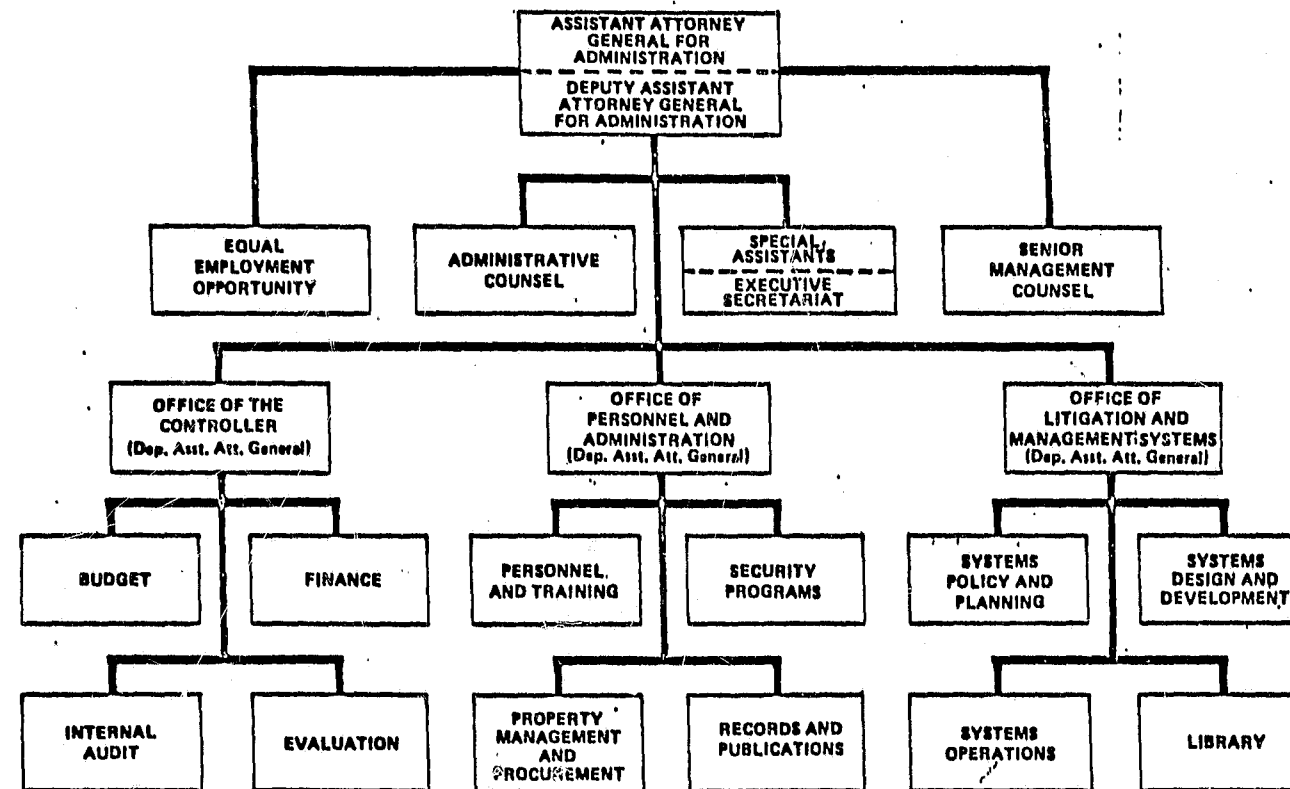
Sincerely,



Alan A. Parker
Assistant Attorney General
Office of Legislative Affairs

Enclosure

JUSTICE MANAGEMENT DIVISION



DATE: 5/14/79

APPROVED: B. R. Civiletti

Benjamin R. Civiletti
Attorney General

E. LETTER FROM BENJAMIN R. CIVILETTI, ATTORNEY GENERAL, TO
CONGRESSMEN RICHARDSON PREYER AND THOMAS N. KINDNESS,
SUBCOMMITTEE ON GOVERNMENT INFORMATION AND INDIVIDUAL
RIGHTS, U.S. HOUSE OF REPRESENTATIVES, DATED JANUARY 22,
1980



Office of the Attorney General
Washington, D.C. 20530

January 22, 1980

Honorable Richardson Preyer
Chairman
Subcommittee on Government Information
and Individual Rights
Committee on Governmental Operations
House of Representatives
Washington, D.C. 20515

Honorable Thomas N. Kindness
Ranking Minority Member
Subcommittee on Government Information
and Individual Rights
Committee on Governmental Operations
House of Representatives
Washington, D.C. 20515

Dear Congressmen Preyer and Kindness:

This letter is in response to your December 17, 1979, letter concerning the reorganization of the Office of Management and Finance into the Justice Management Division (JMD).

In August of last year I established JMD focusing special attention upon strengthening the internal audit function and creating an evaluation staff to perform independent departmental program evaluations.

This reorganization was designed to do the following things:

1. Provide for better utilization of the limited available resources to carry out both the audit and evaluation functions.
2. Focus internal audit resources on economy and efficiency reviews (to include renewed emphasis on financial and compliance audits).
3. Free resources in the Internal Audit Staff to provide support to the Department's Office of Professional Responsibility in performing investigations of alleged impropriety and improper conduct.
4. Make audit more independent by emphasizing its role of problem identification (as opposed to problem solution). This will avoid potential compromise by avoiding a situation where audit would review its own proposed solutions. Audit will, however, continue in its oversight role in the Department of Justice (DOJ).

5. Provide greater visibility, focus and dedicated resources for the program and system evaluation functions.
6. Provide DOJ with a comprehensive and independent evaluation capability (to include program/organization effectiveness reviews).
7. Enable DOJ to attract and develop the variety of analytical skills needed to conduct evaluations.
8. Enable the Congress and DOJ top management to pinpoint problems which need in-depth evaluations with recommended solutions.
9. Provide DOJ with support in the planning and budget process.
10. Consolidate the systems evaluation function with our data processing policy function to (1) provide data processing management with an independent check on implementation of systems policy, (2) better enable our data processing evaluation function to keep up with the state of the art, and (3) better identify problems, provide in-depth reports to management on those problems and support data processing planning.

Under the reorganization, the Evaluation Staff will be responsible for conducting (usually in concert with other appropriate organizations) program reviews, assessments of effectiveness, and impact evaluations to determine how well programs and specific operations are meeting the objectives established by law or by the Attorney General. This staff will perform evaluations, either in an anticipatory fashion or by responding to the continuing requests by Congress.

The original reorganization had placed the Internal Audit Staff under the Office of the Controller in JMD. Since that time I have reconsidered its location and have now decided that it should report directly to the Office of the Assistant Attorney General for Administration. Under this organizational configuration, the Internal Audit Staff will be better able to utilize its resources by focusing its efforts on problem identification, audits of economy and efficiency, compliance reviews of specific operations, and financial audits. It will also be able to provide needed support to the Office of Professional Responsibility in performing investigations of alleged impropriety and improper conduct. I have also decided to place the General Accounting Office liaison function in the Office of the Assistant Attorney General for Administration in order that it may receive top management attention.

The evaluation of data processing systems is a highly specialized function which involves assessing the effectiveness of providing data processing services in a timely and economical manner, determining the adequacy of management and operational controls over the collection, processing and dissemination of data processing information, determining if data processing systems are documented (a technical term having to do with user procedures, sequential flow charts, and finely detailed operational instructions), reviewing development, operational and recurring maintenance, and examining all applicable contractual and reimbursement costs. This technical evaluation function will be placed in the JMD Systems Policy and Planning Staff. The Internal Audit Staff will continue to identify and, where appropriate, conduct needed audits of existing Department systems activities.

This reorganization not only gives full recognition to the General Accounting Office's internal auditing standards, but in fact strengthens the Department's implementation of them by designating specific components with dedicated resources to be responsible for the various aspects of the standards.

I have asked Kevin Rooney, Assistant Attorney General for Administration, to set up a meeting with you or your staff to discuss the reorganization and answer any questions you might have concerning it.

Sincerely,

Ben Civiletti
Benjamin R. Civiletti
Attorney General

F. LETTER FROM KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, DEPARTMENT OF JUSTICE, TO CHAIRMAN RICHARDSON PREYER, SUBCOMMITTEE ON GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS, U.S. HOUSE OF REPRESENTATIVES, DATED MARCH 20, 1980



Address Reply to the
Division Indicated
and Refer to Initials and Number

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

MAR 20 1980

Honorable Richardson Preyer
Chairman, Government Information
and Individual Rights Subcommittee
Committee on Government Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In accordance with your request of March 4, 1980, enclosed are:

- . A status report on the fiscal year 1980 audit plan (Enclosure A).
- . A status report on the fiscal year 1980 evaluation plan (Enclosure B).
- . A listing of audits initially scheduled for fiscal year 1980 which are now postponed (Enclosure C).
- . An estimate of the total staff years required by the Internal Audit Staff and Evaluation Staff to perform the audits and evaluations identified (Enclosure D).

You also asked for a list of those audits which will not be performed and the reasons therefor. To this point, only two audits previously identified by the Internal Audit Staff will not be performed by that staff. They are audits of the Working Capital Fund and of debt collection activities.

With regard to the Working Capital Fund, I determined after consulting with the Associate Attorney General, the Attorney General, and the General Accounting Office, that the audit should be performed by a competitively selected, outside accounting firm. The specifications have been developed and a Request for Proposal will be issued within this week. An outside contractor will be used because of unusual circumstances that apply, i.e., three principal officials in the Justice Management Division have had such a close relationship to the Fund as to at least raise in the minds of others questions as to their objectivity.

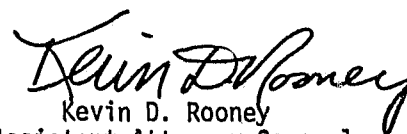
With regard to the audit of collection activities, the Director of the Internal Audit Staff suggested that the audit be removed from the agenda, and I concurred. The considerations which entered into this decision include: (1) an opinion that significant change has not occurred since the last audit; (2) the President's Management Council now has underway a project in this area; and (3) the Justice Department has a more limited joint project underway involving the Office of the Controller and the Executive Office for U.S. Attorneys designed to more accurately reconcile data differences which presently exist. Following completion of these projects, I would anticipate a complete and thorough audit by the Internal Audit Staff.

Two audits have been added to the earlier audit agenda. The first relates to the Government-wide furniture audit being done under the auspices of the Inspector General of the General Services Administration. The second involves an audit of the Internal Inspection Unit of the Bureau of Prisons.

Turning to another matter mentioned in your letter, I regret there has been confusion and misunderstanding with regard to physical relocation of personnel transferred from the Internal Audit Staff to the Evaluation Staff. There has been no permanent relocation of professional audit personnel to the Evaluation Staff. The space assigned to the Internal Audit Staff has not been decreased; nor has the space assigned to the Evaluation Staff been increased. There are a number of personnel presently assigned to projects which necessitate their working away from their permanent work stations; however, that is a normal practice with regard to both auditors and evaluators. For example, although located in the Chester Arthur Building at 4th & I Street, N.W., the Internal Audit Staff had over the years maintained a small office in the Main Justice Building for the express purpose of providing office space in proximity to on-going audits in the Main Building.

I look forward to further discussions at the Subcommittee's hearing which I understand is now scheduled for March 24, 1980.

Sincerely,


Kevin D. Rooney
Assistant Attorney General
for Administration

Enclosures

ENCLOSURE A

SUMMARY OF THE STATUS OF AUDITS INCLUDED IN IAS
FY 1980 AUDIT PLAN

	<u>Status</u>
<u>BUREAU OF PRISONS</u>	
<u>On-going Audits</u>	
Building and Improvements	Draft report issued for comment
Farm Program	Final report signed
Community Programs	Final report signed
<u>Planned Audits</u>	
ADP Support of Bureau Activities	Estimated to start July 1980
Unit Management Program	Started but deferred for lack of resources. Estimated to restart July 1980.
Internal Inspection Unit	Estimated to start 4th Quarter
Motor Vehicle Fleet Management	Estimated to start 4th Quarter
Population Management	Deferred for lack of resources
General and Occupational Education Program for Inmates	Originally scheduled for FY 1981
Witness Security Program	Originally scheduled for FY 1981
<u>FEDERAL PRISON INDUSTRIES</u>	
<u>On-going Audits</u>	
Financial Activities, Danbury, Conn.	Final report signed
Financial Activities, Atlanta, Ga.	Final report being reviewed
Financial Activities, Milan, Mi.	Final report ready for signature
Canvas Division*	Just started
Financial Activities, Terre Haute, Indiana	Just started

*Review is being made concurrent with four financial activity audits. A consolidated report will be issued.

StatusFEDERAL PRISON INDUSTRIES - CONTINUEDPlanned Audits

Financial Activities, Lexington, Ky.	Estimated to start in March 1980
Financial Activities, Terminal Island, California	Estimated to start in August 1980
Financial Activities, Atlanta, Ga. (Canvas only)	Estimated to start in May 1980
Financial Activities, Butner, N.C.	Estimated to start in April 1980
Financial Activities, Lompoc, Cal.	Estimated to start in July 1980
Financial Activities, Miami, Fla.	Cancelled because production was late starting
Financial Activities, Bastrop, Tx.	Estimated to start in September 1980
Contracting and Procurement	Estimated to start mid-May 1980

DRUG ENFORCEMENT ADMINISTRATIONOn-going Audits

Controlled Substance Act Registration Records System (CSA)	Final report sent for signature
Controls Over Seized Property and Evidence	Just started
Imprest Fund With Emphasis on PE/PI Transactions	Draft report being reviewed

Planned Audits

Control and Use of Technical Investigative Equipment	Estimated to start July 1980
Pharmacy Theft Program	Estimated to start 4th Quarter
Effectiveness of Regional Office Structure	Estimated to start 4th Quarter
Automated Records and Consummated Orders System/Diversion Analyses and Detection System (ARCOS/DADS)	Estimated to start 4th Quarter

StatusOFFICE OF JUSTICE ASSISTANCE, RESEARCH AND STATISTICSOn-going Audits

Career Criminal Program	Draft report issued for comment
Technical Assistance Program	Just started

Planned Audits

Clearinghouse Function	Estimated to start June 1980
Program Monitoring	Deferred for lack of resources
Contracting	Deferred for lack of resources
Integrated Police and Prosecution Witness Assistance Program	Originally scheduled for FY 1981

IMMIGRATION AND NATURALIZATION SERVICEOn-going Audits

Naturalization and Citizenship Activities	Draft report being reviewed
Alien Anti-Smuggling Program	About 90 percent completed
Border Patrol Operations	About 35 percent completed
Follow-up on INS Financial Management and Procurement	Draft report being prepared
Motor Vehicle Fleet Management	Just started

Planned Audits

Internal Inspections Unit	Deferred for lack of resources
Non-Immigrant Document Control System (NIDC)	Deferred for lack of resources
Personnel Systems and Operations	Deferred for lack of resources
Adjudications Operations	Originally scheduled for FY 1981
Records Management	Originally scheduled for FY 1981

StatusMULTI-ORGANIZATION ACTIVITIESOn-going Audits

Utilization of Aircraft	Draft report issued for comment
-------------------------	---------------------------------

Planned Audits

Research and Development	Estimated to start September 1980
Law Enforcement Training	Deferred for lack of resources
Laboratory Operations and Support	Originally scheduled for FY 1981

OFFICES, BOARDS, AND DIVISIONSOn-going Audits

Management of Executive Office for United States Attorneys	Awaiting comments on draft report
--	-----------------------------------

Antitrust Grant Program	Draft report issued for comment
-------------------------	---------------------------------

Control and Management of Property in the Department*	Survey report issued to GSA - Draft report on DOJ being prepared
---	--

Audit of Imprest Fund	Draft report being prepared
-----------------------	-----------------------------

DOJ Telecommunications System (JUST)	About 75 percent complete
--------------------------------------	---------------------------

DOJ Central Payroll Accounting System	About 35 percent complete
---------------------------------------	---------------------------

Planned Audits

Procurement and Contracting Functions	Estimated to start April 1, 1980
---------------------------------------	----------------------------------

Working Capital Fund	Cancelled at the request of the Assistant AG. Audit will be done by private contractor.
----------------------	---

ADP Support of Civil Rights Division	Originally scheduled for FY 1981
--------------------------------------	----------------------------------

Debt Collection Activities	Cancelled because no progress has been made since our last audit and other on-going activities. We will, however, make a preliminary survey of the unique system in the Eastern District of Pennsylvania.
----------------------------	---

*This audit was not on our 1980 plan. It was a special request by GSA for DOJ participation in a Government-wide audit of furniture acquisition and disposal.

StatusOFFICES, BOARDS AND DIVISIONS - CONTINUEDPlanned Audits

Land and Natural Resources Division Land Acquisition Program	Estimated to start 4th Quarter
--	--------------------------------

Antitrust Division Judgment Enforcement Program Activities	Originally scheduled for FY 1981
--	----------------------------------

Civil Rights Division Housing and Credit Program	Originally scheduled for FY 1981
--	----------------------------------

Justice Uniform Personnel System (JUNIPER)	Originally scheduled for FY 1981
--	----------------------------------

Community Relations Service Follow-up Audit	Originally scheduled for FY 1981
---	----------------------------------

UNITED STATES MARSHALS SERVICEOn-going Audits

Execution of Warrants	Draft report issued for comments
-----------------------	----------------------------------

Executive Direction and Control	Preliminary examination just started
---------------------------------	--------------------------------------

Planned Audits

Security Support Program	Deferred for lack of resources
--------------------------	--------------------------------

Witness Security Integrity	Deferred for lack of resources
----------------------------	--------------------------------

Supervision of Unsented Prisoners	Originally scheduled for FY 1981
-----------------------------------	----------------------------------

Financial Support Services	Originally scheduled for FY 1981
----------------------------	----------------------------------

FEDERAL BUREAU OF INVESTIGATIONOn-going Audits

Applicant Investigation Program	Draft report being reviewed
---------------------------------	-----------------------------

Motor Vehicle Fleet Management Program	Draft report being prepared
--	-----------------------------

Recreation Association	Just started
------------------------	--------------

StatusFEDERAL BUREAU OF INVESTIGATION - CONTINUEDPlanned Audits

Control of Seized Property and Evidence	Estimated to start September 1980
Fugitive Apprehensions Program	Deferred for lack of resources
Automated Record Management System (ARMS)	Originally scheduled for FY 1981

ENCLOSURE B

SUMMARY OF THE STATUS OF EVALUATIONS
PLANNED IN FISCAL YEAR 1980 ^{1/}

<u>Division or Bureau to be Studied</u>	<u>Requested By</u>	<u>Subject</u>	<u>Status</u>
Marshals Service (USMS)	USMS	Manpower Allocation Study	*ES, completed
Civil Division, U.S. Railway Association (USRA)	Congress	Feasibility Study for transfer of USRA litigation to Department of Justice (DOJ)	*ES, completed
Drug Enforcement Administration (DEA)	Attorney General (AG)	Feasibility Study for transfer of DEA Special Agent training to the Federal Law Enforcement Training Center (FLETC)	*ES, completed
U.S. Attorneys	Executive Office for U.S. Attorneys (EOUSA)	Case Weighting System	*ES, in process
Justice Management Division (JMD)	AG	Staffing Analysis of the Security Function	*ES, in process
JMD	Office of Information Law and Policy (OILP)	Freedom of Information/Privacy Act Processing	*ES, in process
JMD	Assistant Attorney General for Administration (AAG/A)	Study of Investigation of Complaints of Discrimination Practices	*ES, in process
USMS	USMS	Motor Vehicle Fleet Allocation	*ES, in process
Bureau of Prisons (BOP), USMS	Federal Judiciary in Puerto Rico	Supervision of Unsentenced Federal Prisoners (including Detention of Federal offenders in Puerto Rico)	*ES to coordinate with BOP, USMS, planned

^{1/}Included are evaluations requested from outside the Department of Justice (e.g., the Congress, OMB). These evaluations may be performed in a variety of ways including performance by a bureau with monitoring by the Evaluation Staff, joint projects between the Evaluation Staff and bureaus, or exclusively by the Evaluation Staff. Those which require substantial manpower commitment by the Evaluation Staff are marked by an asterisk.

<u>Division or Bureau to be Studied</u>	<u>Requested By</u>	<u>Subject</u>	<u>Status</u>
DEA	AG	Review Effectiveness of DEA's Regional Office Structure, including an assessment of management and staffing needs	*ES, DEA planned
Immigration and Naturalization Service (INS)	Staff Initiative	Study of the medical care needs of undocumented aliens	*ES to coordinate with INS, planned
USMS, 9	U.S. Congress	A study of the service of civil process for private litigants	*ES, USMS, planned
U.S. Trustees 1.1	U.S. Congress (statutory program requirement)	Evaluate the needs, feasibility and effectiveness of the new U.S. Trustee system	*ES, EOUSA, planned
Civil Rights Division (CRT)	Congress	Housing and Credit Programs	CRT, planned
Federal Bureau of Investigation (FBI) 9	Office of Management and Budget (OMB)	Cost-effectiveness study of FBI background investigations	*ES to coordinate with OMB, planned
Department-wide 2.2	Senate Judiciary Committee	Witness Security Program	*ES to define and coordinate with USMS, Criminal Division, planned
Criminal Division (CRM)	Senate Judiciary Committee	Evaluation of impact of organized crime, fraud, drug trafficking, and the CRM reorganization	ES to coordinate with CRM, planned
CRM	House and Senate Judiciary Committee	Impact of Speedy Trial Act	ES to coordinate with CRM
BOP	OMB	Comprehensive correctional plan for BOP	BOP, in process

<u>Division or Bureau to be Studied</u>	<u>Requested By</u>	<u>Subject</u>	<u>Status</u>
Law Enforcement Assistance Administration (LEAA)	OMB	Review of juvenile delinquency programs	LEAA has contracted for the study
CRT	OMB	Study of Title VI discrimination programs	CRT, in process
CRT	OMB	Study of sex discrimination task force	CRT, in process
BOP	OMB	Study to assess the effects of hiring detainees in Community Treatment Centers	BOP, in process
BOP	Congress	Plan to close McNeill Island, Atlanta, and Leavenworth Penitentiaries	BOP, in process
BOP	Congress	Compliance with fire safety standards	BOP, in process
BOP	Congress	Plan to house Federal prisoners in Department of Defense (DOD) facilities	BOP, DOD in process
INS	House Judiciary Committee, OMB	Evaluate INS pilot project in Houston, Texas	INS, JMD, in process
INS	House Judiciary Committee	Prepare a comprehensive non-immigrant document control system	INS, planned (probably by contract)
Department-wide	OMB	Litigation case-management	Office of the AG, in process
BOP	OMB	Vocational training effectiveness study	BOP, in process
INS	Senate Judiciary Committee	Review of INS ADIT system	ES, INS, planned
INS	OMB	Cost-benefit analysis of INS programs	INS, planned
BOP	Congress	Report on the status of Federal Prison Industries	BOP, FPI, in process

ENCLOSURE C

AUDITS INITIALLY SCHEDULED FOR FY 1980
WHICH ARE NOW POSTPONED

The Director of the Internal Audit Staff has advised that the following audits initially planned for FY 1980 will be deferred until 1981.

- . Security Support Program (U.S. Marshals Service)
- . Witness Security Integrity Audit (U.S. Marshals Service)
- . Non-Immigrant Documentation Control System (Immigration and Naturalization Service)^{1/}
- . Personnel System and Operations (Immigration and Naturalization Service)^{2/}
- . Fugitive Apprehension Program (Federal Bureau of Investigation)
- . Population Management (Bureau of Prisons)
- . Program Monitoring (Office of Justice Assistance, Research and Statistics)
- . Contracting (Office of Justice Assistance, Research and Statistics)
- . ADP Support (Civil Rights Division)
- . Law Enforcement Training (Multi-Organizational)

The following audits are scheduled to commence later in the fiscal year than previously anticipated and will conclude in 1981.

- . Research and Development (Multi-Organizational)
- . Regional Structure (Drug Enforcement Administration)^{3/}
- . Land Acquisition Program (Land and Natural Resources Division)
- . Seized Property and Evidence (Federal Bureau of Investigation)
- . Pharmacy Theft Program (Drug Enforcement Administration)
- . Motor Vehicle Fleet (Bureau of Prisons)

^{1/}The Department's 1980 Authorization Act requires an evaluation of this system. The evaluation will probably be accomplished through contract.

^{2/}The Department's Personnel and Training Staff is participating with the Immigration and Naturalization Service in a study of personnel systems and operations.

^{3/}The Evaluation Staff has a similar but a more encompassing study under consideration.

ENCLOSURE D

INTERNAL AUDIT AND EVALUATION STAFF
PROGRAMMED REQUIREMENTS COMPARED
WITH AVAILABLE RESOURCES
FY 1980

<u>Internal Audit Staff</u>		
	<u>Workyears</u>	<u>Workdays</u>
Direct Audit Work Programmed in Initial Audit Plan	46	10,120
Audits deleted:		
Working Capital Fund	- 1.6	- 350
Debt Collection	- 1.6	- 350
Total deletions	- 3.2	- 700
Audits added:		
GSA Government Furniture	+ 1.6	+ 340
Bureau of Prisons, Internal Inspections Unit	+ 0.4	+ 90
Total additions	+ 2.0	+ 430
Net requirements	44.8	9,850
Available resources	- 32.0	- 7,040
Deficit in audit resources	<u>12.8</u>	<u>2,810</u>
<u>Evaluation Staff</u>		
	<u>Workyears</u>	<u>Workdays</u>
Direct Evaluation Work Programmed by Evaluation Staff	20.5	4,510
Available resources	- 13.5	- 2,970
Deficit in evaluation resources	<u>7.0</u>	<u>1,540</u>

G. MEMO FROM GUY K. ZIMMERMAN, ACTING DIRECTOR, EVALUATION
STAFF, DEPARTMENT OF JUSTICE, TO SUBCOMMITTEE STAFF,
DATED APRIL 15, 1980

COMPLETED EVALUATIONS, MANAGEMENT ASSISTANCE PROJECTS,
AND "CARRY-OVER" WORK FROM PREVIOUS ASSIGNMENTS
(October 1, 1979 through February 25, 1980)

<u>Completed Evaluations</u>	<u>Work Years</u>
U.S. Railway Association Study	.75
Drug Enforcement Administration FLETC Study	.4
U.S. Marshals Service Manpower Allocation Study	.5
 <u>Management Assistance</u>	
Consumer Affairs Program	.25
Committee Management Program	.25
Productivity Improvement Program	.13
Reorganization Proposals	.16
 <u>Carry-Over/Start-Up</u>	<u>1.6</u>
 Total	 4.04

IN PROCESS AND PLANNED EVALUATIONS
AND MANAGEMENT ASSISTANCE PROJECTS
(February 25 through October 1, 1980)

<u>Evaluations</u>	<u>Work Years</u>
Security Programs Study	.13
FOIA/Privacy Act Study	1.4
Complaints of Discrimination Practices Study	.24
U.S. Marshals Service Motor Vehicle Fleet Study	2.2
EOUSA Case Weighting	.7
Federal Detention Study	2.2
Drug Enforcement Administration Regional Office Structure	2.2
Immigration and Naturalization Service Medical Care Needs	.9
Service of Civil Process Study	.9
U.S. Trustees Study	1.1
Federal Bureau of Investigation Background Investigations Study	.9
Witness Security Program Study	2.2
 <u>Management Assistance</u>	
Consumer Affairs Program	.30
Committee Management Program	.30
Productivity Improvement Program	.63
Reorganization Proposals	.20
 Total	 16.50

83233

APPENDIX 2.—LETTER FROM GORDON TUCKER, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, TO SUBCOMMITTEE, DATED JUNE 17, 1980



Office of the Attorney General
Washington, D. C. 20530

June 17, 1980

Mr. Larry Gaston
Subcommittee for Government
Information and Individual Rights
Room B-349C
Rayburn House Office Building
Washington, D. C. 20515

Dear Mr. Gaston:

This is in response to your recent telephone inquiry concerning the Department of Justice Budget Review Committee (BRC). As you know, the BRC is composed of the Deputy Attorney General, the Associate Attorney General and the Assistant Attorney General for Administration. One of the primary functions of the BRC is to receive each year the budget submissions from all of the operating components of the Department, after those submissions have been given rigorous review by the Assistant Attorney General for Administration and staff members of the Justice Management Division. At that point, the BRC meets to establish priorities among the many budget packages. This function has been carried out with extreme diligence and seriousness over the last few years, and the rule has been that each of the three principals on the BRC give these matters their personal attention.

In addition, the BRC does periodically receive the agenda established by the Internal Audit Staff (IAS). The purpose of this is to keep the management of the Department informed of the audit agenda, which is developed independently by the IAS. The BRC will also on occasion advise IAS concerning priorities within that agenda. However, the BRC's role is one of review only in this advisory sense, and not in the sense of exercising control over the audit activities within the Department of Justice.

I hope that this answers your questions satisfactorily.

Sincerely,

Gordon Tucker
Special Assistant to the
Attorney General

(162)

APPENDIX 3.—DEPARTMENT OF JUSTICE REPORT, "THE PERFORMANCE OF INSPECTOR GENERAL FUNCTIONS WITHIN THE DEPARTMENT OF JUSTICE," DATED FEBRUARY 15, 1980



Department of Justice

THE PERFORMANCE OF INSPECTOR GENERAL FUNCTIONS
WITHIN THE DEPARTMENT OF JUSTICE

A REPORT

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE FOR IMPROVEMENTS IN THE
ADMINISTRATION OF JUSTICE

February 15, 1980

(163)

THE PERFORMANCE OF INSPECTOR GENERAL FUNCTIONS
WITHIN THE DEPARTMENT OF JUSTICE

EXECUTIVE SUMMARY

The Department of Justice has completed a report on the performance of Inspector General functions within the Department of Justice. The report describes the results of a study requested by the Committees on the Judiciary of the United States Senate and House of Representatives with respect to establishing an Office of Inspector General within the Department.

Part I of the report outlines the background, purposes and functions of the Office of Inspector General created by the Inspector General Act of 1978 and related legislation. Part II describes the existing and planned mechanisms within the Department for conducting internal audits and investigations. Part III relates the Department's approach to the purposes and functions of the statutory Office of Inspector General. Part IV evaluates the Department's approach and possible changes.

The report concludes (1) that the Department has been and is achieving the objectives of the 1978 Act in its own way; (2) that the Department's approach is effective and does not manifest the shortcomings that existed in other agencies prior to the 1978 legislation; and (3) that the Department's arrangement is one suited to the special characteristics of the Department as the nation's law enforcement agency.

The report finds that OPR's independence would not be enlarged either by giving the Office a statutory charter or by providing for the Presidential appointment of OPR Counsel. Finally, the report suggests that OPR Counsel be required to report regularly and publicly any instance in which the Attorney General declines authority or resources that OPR Counsel requests as necessary to discharge his responsibility.

THE PERFORMANCE OF INSPECTOR GENERAL FUNCTIONS
WITHIN THE DEPARTMENT OF JUSTICE

Table of Contents

	<u>Page</u>
INTRODUCTION	1
Part I--The Office of Inspector General	3
A. Conditions Sought to be Remedied	3
1. Fragmentation and Lack of Resources	5
2. Lack of Independence	6
3. Problems in Cooperation with the Department of Justice and Other Agencies	7
B. Functions of the Inspector General	8
1. Fact-Finding	8
2. Facilitating	8
3. Reporting	9
Part II--The Department of Justice Approach	10
A. The Office of Professional Responsibility	10
1. General Character and Functions	10
2. Screening and Referral	12
3. Conduct and Oversight of Investigations	13
4. Reporting, Recommendation, and Miscellaneous Functions	14
B. The Justice Management Division	15
1. Internal Audit Staff	16
2. Other Relevant Functions	20
C. The Internal Inspection Units	21

D.. Contemplated Changes in Current Operations	22
1. OPR Responsibility Relating to Detection of Waste, Fraud and Error	22
2. Procedure Relating to Employee Complaints and Protection of Whistleblowers	24
Part III--A Comparison of the Department of Justice Approach and the Office of Inspector General	25
A. Safeguards of Institutional Independence	26
B. Duties and Responsibilities	28
C.. Powers	31
D. Employee Complaints	32
E. Reporting Requirements	33
Part IV--Evaluating the Department's Approach and Possible Changes	34
A. Evaluating the Department's Approach	34
1. Functions--Efficacy of OPR	34
2. The Department's Response to Inadequacies that Prompted the 1978 Act	37
B. Possible Changes in the Department's Approach	39
1. The Department's Mission and Operations	39
2. Consolidating Internal Audit and Investigation Functions	42
3. Reporting	44
4. Independence	44
CONCLUSION	47

THE PERFORMANCE OF INSPECTOR GENERAL FUNCTIONS
WITHIN THE DEPARTMENT OF JUSTICE

INTRODUCTION

This report describes the results of a study, undertaken by the Department of Justice at the request of the Committees on the Judiciary of the United States Senate and House of Representatives, with respect to establishing an Office of Inspector General within the Department of Justice. ^{1/} The study--conducted by the Department's Office for Improvements in the Administration of Justice--included examination of pertinent statutes, legislative history and regulations, interviews with Department officials responsible for and knowledgeable concerning relevant Department activities, and interviews with Inspectors General of other executive departments. ^{2/}

The results of the study are set forth below in four parts. Part I, entitled "The Office of Inspector General," outlines the background, purposes and functions of the Office of Inspector General created by the Inspector General-Act of 1978 and related legislation. Part II, designated "The Department of

^{1/} The request was made in the Conference Report of the two committees on the Department's Appropriation Authorization bill for fiscal year 1980, in connection with the establishment of a Special Investigator for the Immigration and Naturalization Service. Conference Report accompanying S. 1157, November 16, 1979, at 22-23.

^{2/} Approximately two dozen officials were interviewed, several on more than one occasion.

Justice Approach," describes the existing and planned mechanisms within the Department for conducting internal audits and investigations. Part III, "A Comparison of the Department of Justice Approach and the Office of Inspector General," relates the Department approach to the purposes and functions of the statutory offices of Inspector General. Part IV, headed "Evaluating the Department's Approach and Possible Changes," sets forth conclusions and recommendations for improving the Department's performance of internal audit and investigation functions.

Part I--The Office of Inspector General

A. Conditions Sought to be Remedied

Commencing in 1977 with the creation of an Office of Inspector General for the Department of Health, Education and Welfare (HEW),^{3/} Congress has enacted legislation creating fifteen such offices in a wide range of federal departments and agencies. ^{4/} Thirteen Inspectors General are governed by the Inspector General Act of 1978; ^{5/} the remaining two, the Inspectors General for the Department of Energy (DOE) and for the Department of Health and Human Services (HHS) (formerly HEW), are governed by separate legislation.^{6/}

In affecting the programs and operations of the agencies to which it applies, the Inspector General Act of 1978 (hereafter "the Act" or "the 1978 Act") can be said to have four

^{3/} See 42 U.S.C. §3521-3527.

^{4/} In addition to the Inspector General for HEW (now the Department of Health and Human Services), Congress has established Inspectors General in the Departments of Agriculture, Commerce, Education, Energy, Housing and Urban Development, Interior, Labor, and Transportation, and in the Community Services Administration, the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, the Small Business Administration, and the Veterans' Administration.

^{5/} See Pub. L. No. 95-452, 92 Stat. 1101 (1978) and Department of Education Organization Act, Pub. L. No. 96-88, §212, 93 Stat. 675 (1979).

^{6/} The Inspector General for the Department of Energy is governed by the legislation creating that Department in 1978. See 42 U.S.C. §7138. The Office of Inspector General in the Department of Health and Human Services continues to be governed by the original provisions regarding HEW. See Pub. L. No. 96-88, §§508(n), 509, 93 Stat. 694-95 (1979).

objectives: 7/ detecting and preventing misconduct; maintaining financial integrity; promoting economy and efficiency; and monitoring administrative problems, deficiencies and corrective actions. To achieve these objectives, the Act charges the Inspector General with performing three major functions: 8/

Fact-finding--the Inspector General is to conduct and supervise audits and investigations;

Facilitating--the Inspector General is to provide leadership, coordination and recommendations for policy actions designed to achieve the objectives of the Act; and

Reporting--the Inspector General is to inform the head of the agency, the Congress and, where appropriate, the Attorney General about the status of the administration of the agency's programs and operations.

The perceived inadequacies of pre-existing audit and investigation units in discharging these functions were the motivating force behind the Act, and many features of the Act were designed to meet specific problems in these areas. The major shortcomings identified in the House and Senate Reports can be grouped into three categories--fragmentation and lack of resources, lack of independence, and problems in cooperation with law enforcement agencies.

7/ This statement is based on an analytical, not literal, reading of the Act.

8/ This analysis reflects an effort to comprehend and to summarize the major functions of an Inspector General and should not suggest an exhaustion of the possible legitimate functions that might be performed by such an official within a given agency. Program evaluation, for example, may be a legitimate, though incidental, function of an Inspector General provided it does not duplicate the work of existing program evaluation units within the agency. See Senate Report at 12.

1. Fragmentation and Lack of Resources.

The Congressional Reports identified the fragmentation of existing inspection units as a major problem. In many agencies these functions were divided among several units, resulting in a lack of overall coordination of auditing and investigative activities, and in restrictions on the scope of these activities imposed by the jurisdictional limitations of particular units. Lack of resources was also cited as a serious problem, frequently consisting of a grossly inadequate level of staffing, and the placement of inspection authority in the hands of officials who were forced to divide their time between oversight of inspections and other responsibilities.

The Act responded to these problems by placing authority over all audits and investigations, and related policy-making, in the hands of a single official who is empowered to procure necessary personnel and services. Although the resources of the Inspector General are limited by the available appropriation, which was not increased by the 1978 Act in itself, it was expected that the existence of an overall authority might result in a more effective allocation of available resources. It was also expected that the Inspector General would become an effective advocate for the appropriation of additional funds for inspection activities, and that such increased allocations would more than pay for themselves through resulting reduction in fraud and waste. 9/

9/ See Act §§4(a)(1), 6(a)(6)-(8); H.R. Rept. No. 584, 95th Cong., 1st Sess. at 5-7 (1977) (hereafter "House Report"); S. Rept. No. 1071, 95th Cong., 2d Sess. at 5-7, 35 (1978) (hereafter "Senate Report").

2. Lack of Independence.

The Congressional Reports also emphasized the need for independence, as to which existing audit and investigation arrangements were deficient in a number of respects. In some agencies investigators were required either to obtain permission from the official responsible for the program to be looked into before commencing an investigation, or to report the results to that official. In such cases the interests in effective investigation, disclosure and correction of deficiencies would conflict with an administrator's interest in avoiding findings of misconduct or inefficiency in a program subject to his control, and investigations that (as subsequent events showed) would have disclosed serious misconduct were often disallowed. Non-statutory Inspector General offices created by administrative action were also perceived as inadequate to insure effective, ongoing suppression of misconduct, since they could be abolished at will by the agency head, as had been done, for example, by then-Secretary Butz in the Department of Agriculture in 1974.^{10/}

The Act responded to these concerns by various measures designed to ensure the independence of the new Inspectors General. The office created by the Act is statutory, and cannot be abolished by administrative action. The Inspector General is appointed by the President and confirmed by the Senate, and can be removed only by the President. He is subject to supervision only by the agency head, or the agency head's delegate of next lower rank,

^{10/} See House Report at 5, 7; Senate Report at 5-6, 23.

and even the agency head has no authority to prevent an audit or investigation directed by the Inspector General. ^{11/}

3. Problems in Cooperation with the Department of Justice and Other Agencies.

The legislative history also emphasized the difficulties confronted by elements of the Department of Justice charged with investigating and prosecuting fraud and other white collar crime in securing cooperation from other governmental agencies under the existing system. The specific problems cited were the lack of a single official with overall authority who could be dealt with by DOJ, and non-referral or serious delays in referral of cases resulting from requirements of prior screening by the legal office of the referring agency.

The Act responded to these and other problems of coordinating enforcement efforts by vesting in the Inspector General authority over all activities likely to turn up matters referable to DOJ or other law enforcement agencies, and by directing explicitly that the Inspector General recommend policy for, and conduct, supervise, and coordinate relationships between the agency and other agencies and entities relating to "the identification and prosecution of participants in . . . fraud and abuse." ^{12/}

^{11/} See Act §3(a)-(b); Senate Report at 7-8, 25-26.

^{12/} Act §4(a)(4)(B); see House Report at 5-6, 13; Senate Report at 6-7, 28.

B. Functions of the Inspector General

As noted above, the statutory Inspector General discharges three major functions: fact-finding, facilitating, and reporting.

1. Fact-finding.

Under the Act, the Inspector General exercises supervisory authority over all audits and investigations within the agency.^{13/} To facilitate discharge of this function and of his other functions, the Inspector General has a variety of specified powers, including a right of access to all records, reports, and other documents of the agency which are relevant to his purposes; the power to initiate investigations and make reports at his own discretion; the authority to request information from other government agencies; the power to subpoena documents; a right of ready access to the head of the agency; and the power to procure necessary personnel and services within the limits set by the available appropriation.^{14/} The Inspector General is also authorized to receive and investigate complaints from employees of the agency, and the Act provides protection of complaining employees from disclosure of identity and reprisals.^{15/}

2. Facilitating.

The Inspector General's functions are not limited to managerial oversight of inspections, but include a responsibility

^{13/} See Act §§2(1), 4(a)(1); House Report at 12-13; Senate Report at 27-29.

^{14/} See Act §6(a); House Report at 14-15; Senate Report at 33-35.

^{15/} See Act §7, Senate Report at 35-37.

to facilitate the agency's attainment of the Act's objectives by providing leadership, coordination and recommendations designed to promote economy and efficiency, and to detect and prevent fraud and abuse. This function includes reviewing existing and proposed legislation and regulations to determine their impact on the achievement of the objectives of the Act, and making recommendations based on these determinations.^{16/}

3. Reporting.

The Inspector General is also responsible for keeping the agency head and Congress informed about problems in his area of responsibility, making recommendations for their correction, and indicating how well corrective measures are working. He is to discharge this function primarily by means of mandatory semi-annual reports which are to include descriptions of problems, recommendations for rectifying them, information on implementation of corrective measures suggested in earlier reports, and summaries of referrals for prosecution, reports to the agency head, and audits. The semiannual reports are submitted by the Inspector General to the agency head, who is then required to forward them to Congress within a specified time period. There is also provision for expedited reporting to the agency head and Congress concerning particularly serious or flagrant problems;^{17/} and the Inspector General is to report expeditiously

^{16/} See Act §§2(2), 4(a)(1)-(3); Senate Report at 27-28.

^{17/} See Act §§2(3), 5(d); House Report at 13-14; Senate Report at 30-33. The Act provides that all semiannual reports are to be made available to the public; but this provision is mentioned only in passing in the legislative materials, and public disclosure appears to be no more than a secondary objective of the Act.

to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law. 18/

Part II--The Department of Justice Approach

The major components of the Department of Justice with responsibility for conducting or overseeing internal audits and investigations are the Office of Professional Responsibility (OPR) and the Internal Audit Staff (IAS) of the Justice Management Division (JMD). In addition, there are internal inspection units in six of the Department's operating organizations--the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), the Immigration and Naturalization Service (INS), 19/ the Bureau of Prisons (BOP), the Marshals Service, and the Law Enforcement Assistance Administration (LEAA).

A. The Office of Professional Responsibility

1. General Character and Functions.

The Office of Professional Responsibility was created by administrative action in late 1975 and began operation in early 1976. 20/ The Office is headed by a Counsel who reports directly

18/ See Act § 4(d).

19/ The relationship of the INS internal inspection unit to the Special Investigator for INS mandated by the DOJ Appropriation Authorization Act, Fiscal Year 1980 (Pub. L. No. 96-132, 93 Stat. 1040 (1979)), is unclear.

20/ See 28 C.F.R. §§0.39-0.39c (general regulations governing structure and operation of OPR).

to the Attorney General or, in some instances, to the Deputy Attorney General, and has a permanent staff of eight: the Counsel, a Deputy Counsel, four Assistant Counsels, a paralegal, and a secretary. Although the permanent staff is small, OPR is authorized to borrow personnel from other components of the Department of Justice as needed for the conduct of particular inquiries, and has had as many as 70 persons at one time detailed for such purposes. Temporary assignment of personnel to OPR requires the authorization of the Attorney General or the Deputy Attorney General and, normally, the agreement of the head of the unit to which the personnel are regularly assigned. 21/

The central function of the OPR is receiving and processing information and allegations concerning conduct by Departmental employees that may be in violation of law, of Departmental regulation or orders, or of applicable standards of conduct. 22/ The Office's main concern is with ethical or criminal misconduct, as opposed, for example, to administrative violations. The major categories of cases dealt with by OPR are abuse of prosecutorial or investigative authority, mistreatment by prison or parole officials, unauthorized release of information, obstruction of justice, fraud against the government, misuse of official position, conflict of interest, improper political activity, and larceny. OPR's jurisdiction extends to all

21/ See 28 C.F.R. §0.39b(d).

22/ See 28 C.F.R. §0.39a(a).

Departmental employees, but the Office usually plays no active role in matters involving clerks or secretaries unless the misconduct charged is serious.

The establishment of OPR was not intended to alter the primary responsibility for investigating allegations of misconduct, which normally remains with (i) the head of the component of the Department for which the employee works, or (ii) the internal inspection unit in the six parts of the Department (FBI, DEA, INS, BOP, Marshals Service, and LEAA) which have such units, or (iii) the appropriate investigative or prosecutive agency when criminal misconduct is charged. ^{23/} Accordingly, in most instances OPR does not conduct the full investigation, but limits itself to a preliminary inquiry designed to determine whether referral for further action is warranted.

2. Screening and Referral.

The bulk of OPR's time is devoted to review and referral of individual cases. When an allegation is received, a pre-referral preliminary inquiry may be conducted, possibly including interviews with the complainant and corroborating parties. An appropriate referral will then be made unless it is absolutely clear that an allegation has no substance (e.g., if it is obviously a result of a psychological aberration of the complainant and could have no basis in fact).

Once a decision to refer has been made, allegations

^{23/} See 28 C.F.R. §0.39b.

involving criminal activity are usually referred to the Criminal Division. Non-criminal allegations are referred to the office, bureau, or division in which the subject of the investigation is employed, except that in the case of the six parts of the Department having internal inspection units, referral is normally to the appropriate inspection unit. ^{24/}

An agency or unit to which an investigation has been referred will report its findings to OPR, with either a statement of the action taken against the employee or a request for advice as to the appropriate action. OPR does not itself prosecute cases or impose administrative sanctions, but it participates in the decision process as to whether a Department employee should be indicted and recommends the imposition of particular administrative sanctions. OPR also assists in securing the resignation of employees in cases in which past experience shows that the employee will be offered the alternative of resigning or being dismissed.

3. Conduct and Oversight of Investigations.

OPR monitors the investigative activities of the six internal inspection units mentioned earlier (in FBI, DEA, INS, BOP, Marshals Service, and LEAA), though normally without close oversight of individual investigations. The internal inspection units are required to report at least monthly to OPR on investigations of matters coming directly to their attention (rather

^{24/} See 28 C.F.R. §0.39a(c)(1)-(2).

CONTINUED

2 OF 3

than being referred to them by OPR). If an investigation by such a unit appears inadequate in light of the investigative files or reports submitted to OPR, OPR may require additional investigation or clarification.

In a relatively narrow class of cases OPR will conduct an investigation itself or directly supervise an investigation on a daily basis rather than refer it to the employing agency or to an internal inspection unit. These cases tend to be particularly sensitive matters or to involve an allegation against the head of an office, bureau, division, or board. The cases actually handled only by OPR attorneys normally involve presidential appointees and allegations that investigations or prosecutions were politically motivated. Unauthorized releases of official information are most frequently handled solely within OPR, but sometimes assistance is secured from personnel in the departmental component in which the disclosure occurred. Complex special cases are investigated by a task force of attorneys and investigators borrowed from other agencies. The members of the task force are detailed to OPR and report only to OPR. Principal examples of this approach include the investigation into ties between the FBI and a private electronics firm, and the investigation of the FBI's conduct of the Martin Luther King, Jr., security and assassination investigations.

4. Reporting, Recommendation, and Miscellaneous Functions.

OPR also makes reports and recommendations, and discharges various other functions. Monthly reports summarizing all current

investigations are submitted to the Attorney General. An annual report is prepared for the Attorney General, reviewing and analyzing the prior year's activities, and recommendations are made for changes in the Department's operations and procedures based on OPR's investigatory findings. 25/

OPR also participates in educational programs for departmental employees relating to ethical responsibilities and OPR activities, and participates in the inspection of component field offices (though the latter function has been limited to DEA so far). OPR has at least one of the six internal inspection units fully audited each year by the Internal Audit Staff of the Justice Management Division, and a public report is made on the findings and conclusions of that audit.

Finally, the Attorney General may assign special functions to the OPR not directly related to internal investigations. 26/ For example, OPR conducted the COINTELPRO Notification Program by which direct victims of FBI "counter-intelligence" programs were notified that they had been the targets of improper actions and were furnished the details of those actions.

B. The Justice Management Division OPR. The Justice Management Division has broad responsibilities in the general areas of organization, management, and adminis-

25/ See 28 C.F.R. §0.39a(f)(3)-(4), (g).

26/ See 28 C.F.R. §0.39a(h).

tration, including such matters as budget and financial management; auditing, personnel management and training, data processing, communications, and security. The Division is headed by the Assistant Attorney General for Administration under the general supervision of the Attorney General and the direction of the Associate Attorney General. 27/

The auditing functions of the JMD are concentrated in the Internal Audit Staff. There are, in addition, three other functions of the division which have some relationship to the general area of auditing or investigation: Departmental liaison with the General Accounting Office (GAO), investigation of complaints of discrimination, and evaluation of program impact and effectiveness.

1. Internal Audit Staff.

The Internal Audit Staff, a component of JMD, is headed by a Director who reports directly to the Assistant Attorney General for Administration, and has three main functions: (1) directing and administering an audit program that focuses on the economy and efficiency of Departmental programs and operations, including financial integrity and regulatory compliance; (2) maintaining oversight of audit policies, standards, programs, and activities in all components of the Department to ensure that they conform

27/ See 28 C.F.R. §§0.70-0.79 (1979) (general regulations governing the Division under its previous designation of "Office of Management and Finance"; new regulations relating to the Division's reorganization as JMD have not yet been issued, but the basic purposes and functions of the agency remain the same).

with standards established by the Comptroller General; and (3) providing staff support, pursuant to 28 C.F.R. §0.39b(d), to the Office of Professional Responsibility in investigations of alleged misconduct or wrong-doing. Discharge of the last general function-- support of OPR--involves both conduct of special inquiries at the request of OPR and referral to OPR of evidence of misconduct which appears in the course of IAS's other activities. 28/

In the conduct of its normal audit and oversight activities, IAS is governed by DOJ Order 2900.1B (11/1/77) (implementing 31 U.S.C. §66a), subject to certain changes effected by a recent reorganization (see discussion at p. 20 infra). The Order provides that the audit jurisdiction of IAS runs to all activities and functions within the Department 29/ except for the audits of records of the recipients of LEAA contracts and grant funds. The responsibility for auditing such contracts and grants is assigned by statute 30/ to the LEAA Administrator, and IAS is

28/ In the last twelve months IAS has, for example, conducted administrative inquiries at the request of OPR into problems involving the Bureau of Prisons, INS officials, Community Relations Service officials, and Antitrust Division officials, and referred to OPR allegations made by an INS official to IAS concerning possible fraudulent contracts, and evidence concerning questionable use of government credit cards by FBI employees.

29/ This is true although the FBI's Office of Inspections also audits the Bureau's operating and financial management activities, and several organizations (DEA, Marshals Service, and BOP) have management review units that report directly to senior level officials. Further, IAS access to certain information contained in FBI investigative files may be limited to ensure that the identity of FBI informants and confidential sources is not disclosed.

30/ See Justice Systems Improvement Act of 1979, Pub. L. No. 96-157, §§ 102(8), 817(b), 93 Stat. 1171 (1979).

barred by regulation 31/ from auditing such activities. However, the performance of LEAA's Office of Audit and Investigation is itself subject to audit by IAS as part of IAS's responsibility for audit of all programs and functions of LEAA. 32/

Order 2900.1B also provides that IAS is to have "complete freedom and authority" to select and schedule organizations, programs, and functions for auditing. Audits by IAS may also be requested by management officials. 33/ The heads of all organizational units within the Department are directed to provide full support to the IAS in its conduct of audits, including granting access to records and employees, giving prompt consideration to findings and recommendations, and initiating appropriate follow-up actions. 34/ Officials of an agency or program being audited are consulted on scheduling and are entitled to submit comments on proposed findings before a report is completed, but in making final decisions on such matters as scheduling and report content, IAS is not subject to the control of the subjects of the audit. 35/ When an audit is completed, the conditions ascertained in the audit, together with appropriate recommendations, are reported.

31/ 28 C.F.R. § 0.76(t).

32/ See DOJ Order 2900.1B, para. 4(a).

33/ See DOJ Order 2900.1B, para. 5(b), 8(a)(1).

34/ See id. para. 5(c).

35/ See id. para. 5(b), 8(a)-(b).

to the Attorney General or other appropriate officials for use in correcting deficiencies or making suggested changes. 36/ During 1979, the IAS audit staff (50 accountants, ADP specialists, program analysts; 7 supporting personnel) issued 43 audit reports on various aspects of the Department's operations, conducted 11 EEO investigations and responded to 3 administrative inquiries.

IAS maintains a follow-up system as to actions taken on the reported conditions and recommendations, and will regard an audit assignment as closed only after receipt of an organization's written response that specified actions have been taken. The head of an audited organizational unit is required to prepare, within a specified time period, a progress report for the Assistant Attorney General for Administration, indicating (1) for each adopted recommendation on which action has been completed, a description of the action taken and an estimate of resulting annual savings or other expected improvements; (2) for each adopted recommendation on which further action is necessary, a description of the action planned and a target date for its completion, together with subsequent quarterly progress reports until all proposed actions have been completed; and (3) for each rejected recommendation, a statement explaining the reasons for its rejection, or a description of alternative courses of action being taken or considered. Disagreements between IAS and management officials as to findings or recommendations, or tardiness or neglect in taking required action, 36/ See id. para. 7(b).

are resolved at the operating level where possible, but significant matters which cannot be resolved at the operating level are referred by the Director of IAS to the Assistant Attorney General for Administration for resolution. 37/

2. Other Relevant Functions.

Under DOJ Order 2900.1B, the Internal Audit Staff performed certain additional functions, related to its audit and investigation responsibilities, which have recently been reassigned to separate components of JMD. Specifically, these functions are GAO liaison, investigation of complaints of discrimination, and program evaluation. 38/

Liaison with GAO is currently carried out within the Office of the Assistant Attorney General for Administration. This function is intended to provide the Department's senior management with a single information source regarding on-going GAO activities within components of the Department and to serve as the focal point between the Attorney General and the GAO in responding to GAO recommendations.

Investigations of complaints alleging discrimination on the basis of race, color, religion, sex, age, or national origin are carried out by the Equal Employment Opportunity Staff of JMD. Such investigations are an integral part of the general EEO program of the Department of Justice.

37/ See id. para. 8.

38/ See DOJ Order 2900.1B, para. 7(a)(4)-(5), (6)(c).

Evaluation of program impact and effectiveness has been assigned in part to JMD's Program Evaluation Staff. One of the purposes of this function is to provide the Attorney General and other senior Department officials with insights on substantive policy and program strategies to meet executive and legislative branch priorities regarding the administration of justice. Evaluations of this sort are not always executive branch initiatives, but are often conducted as a result of requests for program evaluation from Congress, routed through the Attorney General.

C. The Internal Inspection Units

The internal inspection units in six of the Department's operating organizations (FBI, DEA, INS, BOP, Marshals Service and LEAA) vary in size and volume of complaints investigated. In 1979, for example, the one investigator assigned to LEAA's Office of Audit and Investigation (whose staff of 80 professionals audit LEAA's third-party grants and contracts) conducted approximately 5 internal investigations. By contrast, the staff of 46 investigators comprising DEA's Office of Internal Security conducted approximately 127 integrity-misconduct investigations during the same period.

D. Contemplated Changes in Current Operations

1. OPR Responsibility Relating to Detection of Waste, Fraud and Error.

A proposed departmental order, currently at the draft stage, would strengthen the Department of Justice's efforts in detecting and suppressing fraud, mismanagement, and abuse within the Department. The order contemplates additional responsibilities in these areas for the Office of Professional Responsibility; the Internal Audit Staff of JMD; internal audit, inspection, and management review groups within individual components of the Department; and the FBI.

OPR would be charged with overall responsibility for implementation of the order. Its specific duties would include the establishment of policies and procedure for reporting of suspected fraud and malfeasance, and the review of reports submitted relating to such misconduct.

IAS's duties under the order would include incorporating within its normal audit activities measures designed to detect malfeasance and fraud, ensuring that its personnel are adequately trained in fraud detection techniques, referring cases of suspected fraud or malfeasance to OPR in the specified format, and ensuring compliance by internal audit and management review groups with their responsibilities under the order.

The internal audit, inspection, and management review groups similarly would be directed to include as part of their normal review activities measures designed to detect malfeasance, fraud, and incompetence, to ensure adequate training

of their personnel in fraud detection techniques and to report suspected fraud and malfeasance to OPR.

The FBI would be directed to investigate suspected fraud and malfeasance cases referred to it by OPR, and to submit an investigative report to OPR on each suspected case of fraud or malfeasance.

Some aspects of the proposed order would simply formalize existing practice. For example, IAS always has referred suspected fraud cases to OPR, and frequently has conducted inquiries into possible fraud at the request of OPR. The overall effect of the order would be to intensify affirmative efforts by the affected groups in searching out fraud and abuse, and to vest in OPR general authority over the Department's activities in this area.

2. Procedure Relating to Employee Complaints and Protection of Whistleblowers.

Employees of the Justice Department generally enjoy protection from reprisal for disclosure of misconduct under 5 U.S.C.A. §2302(b)(8) (Cum. Supp. 1979). This provision is enforced by the activities of the Special Counsel of the Merit Systems Protection Board pursuant to 5 U.S.C.A. §§1206-1208 (Cum. Supp. 1979).

The FBI is specifically exempted from the protection normally afforded to executive employees under these general provisions, but a special provision, 5 U.S.C.A. §2303 (Cum. Supp. 1979), prohibits reprisal against FBI employees for disclosure of misconduct, and directs the Attorney General to prescribe regulations for enforcing this prohibition. The Attorney General has submitted to the President a proposed order implementing this provision, as well as expanding the current regulations governing OPR. The major changes that would be effected by the order include the following:

- (1) The specification of the class of complaints which OPR is to receive and review would be expanded. 28 C.F.R. §0.39a(a) states that OPR shall receive and review information and allegations "concerning conduct by a Department employee that may be in violation of law, of Department regulations or orders, or of applicable standards of conduct." The proposed order, by contrast, follows the language of 5 U.S.C.A. 2302 (b)(8) (Cum. Supp. 1979) in characterizing the relevant class

of complaints as also including "mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety."

(2) The proposed order states that OPR shall receive and review allegations of reprisal against employees or applicants for complaints falling within the specified class. There is no corresponding provision in the current regulations governing OPR.

(3) The proposed order makes explicit provision for protection by OPR of the confidentiality of complaining employees, corresponding to a like statutory restriction on the Special Counsel of the Merit Systems Protection Board relating to disclosures to the Special Counsel, Inspectors General, and other officials designated to receive such disclosures. 39/

(4) The proposed order authorizes OPR to request the Attorney General to stay any personnel action against an FBI employee if it appears that the action is taken as improper reprisal for a disclosure of information. This is comparable to the authority conferred on the Special Counsel of the Merit Systems Protection Board to request stays of apparently improper personnel action against non-FBI employees. 40/

Part III--A Comparison of the Department of Justice Approach and the Office of Inspector General

The basic functions of the Inspector General established

39/ See 5 U.S.C.A. §1206(b)(1)(B) (Cum. Supp. 1979).

40/ See 5 U.S.C.A. §1208 (Cum. Supp. 1979).

by the 1978 Act and related legislation are (1) to conduct and supervise audits and investigations relating to programs and operations of the agency; (2) to provide leadership and coordination, and recommend policies, regarding activities designed to promote economy and efficiency and to prevent and detect fraud and abuse; and (3) to keep the head of the agency and Congress informed concerning internal problems and deficiencies and about the necessity for and the progress of corrective measures. ^{41/} The discussion in Part II above demonstrates that the organizations having audit and investigation responsibilities within the Department--OPR, IAS, and the six internal inspection units--jointly exercise a comparable range of functions, with the exception that provision of information to Congress is not a central function of any of these organizations. The discussion below describes in greater detail the similarities and differences between the Department's approach and the statutory Inspector General approach in five basic areas: (1) institutional independence; (2) duties and responsibilities; (3) powers; (4) handling of employee complaints; and (5) reporting requirements.

A. Safeguards of Institutional Independence.

As mentioned above, the lack of independence of existing audit and investigation units was a major motive for the 1978 Act. The major Congressional responses to this problem are contained in section 3 of the Act--the Inspector General's

^{41/} See, e.g., 1978 Act, §2.

office is established by statute and cannot be abolished by administrative action; the Inspector General is a Presidential appointee and can be removed only by the President; and even the head of the agency cannot prevent an audit or investigation by the Inspector General.

By contrast, OPR was created administratively and has no statutory guarantee of continued existence. Nor is there any statutory requirement for the existence of IAS or JMD as such, though 31 U.S.C. §66a implies that there must be some operation within an executive agency carrying out financial control functions comparable to those of IAS and JMD.

So far as concerns appointment and removal, the permanent staff of OPR are not political appointees. All are in the civil service and can be dismissed only for cause or misfeasance.

OPR and IAS do not have the extraordinary, legislative assurance of exemption from control by superior executive officials which the last sentence of section 3(a) of the Act grants the Inspectors General. However, substantial safeguards of the independence of their auditing and investigative activities exist under current arrangements. IAS has "complete freedom and authority" to select and schedule organizations, programs, and functions for auditing. ^{42/} Most importantly, this means that a targeted organization has no power to prevent an audit. While OPR's activity is limited in most cases to screening and

^{42/} See DOJ Order 2900.1B para. 5(b).

referral, it too can and does undertake its own investigation of appropriate cases. When it undertakes such an investigation, it acts with the full authority of the Attorney General.

B. Duties and Responsibilities

Section 4 of the 1978 Act identifies five specific duties and responsibilities that are to be carried out by the Inspector General: (1) conducting and overseeing audits and investigations; (2) reviewing existing and proposed legislation and regulations in relation to their effect on promotion of economy and efficiency and prevention of fraud and abuse; (3) recommending and carrying out other activities designed to promote economy and efficiency and prevent fraud and abuse; (4) managing relevant relationships between the agency and other government agencies; and (5) keeping the head of the agency and Congress informed on relevant matters.

In relation to the first point--conduct and oversight of audits and investigations--the Department of Justice does not employ the type of unified command contemplated by the Inspector General legislation. Eight separate organizations--IAS, OPR, and six internal inspection units--have special responsibility for audits and investigations. However, these organizations have cooperated closely in the past in carrying out activities relating to the investigation of fraud and abuse, and a still closer working relationship is contemplated by the proposed order discussed above 43/ which would give OPR general author-

43/ See p. 22, supra.

ity, and IAS special responsibility, in implementing procedures designed to detect and suppress fraud and mismanagement.

The review of existing and proposed legislation and regulations in relation to their effect on promotion of economy and efficiency and prevention of fraud and abuse is not now centralized within the Department. However, JMD reviews legislation for its potential impact on the Department's resources 44/ and appropriate elements of the Department routinely review legislation and regulations, existing or proposed, for their effect on law enforcement activities.

Under section 4(a)(3), the Inspector General exercises a broad function of recommending policies and overseeing other activities designed to promote economy and efficiency and to prevent fraud and abuse. The legislative history suggests that this provision was motivated by the general lack of affirmative programs designed to uncover fraud or abuse in agencies covered by the Act, and by their tendency to rely instead on complaints. 45/ Although the bulk of OPR's investigations in the past has arisen in response to specific complaints and allegations, the proposed order discussed above contemplates extensive affirmative efforts under the general direction of OPR to discover fraud and mismanagement. It is also a normal part of the activities of OPR and IAS to make recommendations for changes in departmental operations.

44/ See 28 C.F.R. § 0.75(q).

45/ See House Report at 5; Senate Report at 27.

and procedures based on their investigatory and audit findings. 46/

Section 4(a)(4) makes the Inspector General responsible for coordinating with other agencies his agency's activities relating to promotion of economy and efficiency and prevention of fraud and abuse, and to identification and prosecution of participants in fraud and abuse. This provision was included largely in response to concerns expressed by the Justice Department regarding liaison with and cooperation from other agencies in investigating and prosecuting fraud and other misconduct. 47/ The Department believed that the existence of a single official in each agency with overall responsibility for audit and investigation functions would greatly facilitate its activities in this area. This rationale is largely inapplicable to the Department of Justice itself, since intra-Department coordination does not raise liaison problems comparable to those which arise in dealing with outside agencies.

The reporting and informational function described in section 4(a)(5) of the Act will be discussed in section E below.

Section 4(b)-(d) of the Act sets out various additional functions of the Inspector General. Section 4(b) indicates that the Inspector General should insure compliance with GAO standards,

46/ OPR, for example, was instrumental in bringing about improvements in the organizational structure of the FBI's internal inspection unit and in the FBI's accounting and procurement practices.

47/ See House Report at 5-6, 13; Senate Report at 6-7, 28.

a function that is performed by IAS within the Department.

Section 4(c) directs the Inspector General to avoid duplication of effort and achieve effective coordination with the GAO. This function is performed by JMD. Section 4(d) directs the Inspector General to refer possible criminal matters to the Department of Justice. As indicated above, IAS and OPR make appropriate referrals of potential criminal cases.

C. Powers

Section 6 of the 1978 Act sets out the principal powers of the Inspector General. These include powers relating to the acquisition of information, including a right of access to all relevant documents and other materials available to the agency, subpoena power, and power to acquire personnel and services.

OPR and IAS jointly have information-gathering powers comparable to, or greater than, those of an Inspector General. DOJ Order 2900.1B para. 5(c) directs the heads of all organizational units to provide "full support and cooperation to the Internal Audit Staff . . . including freedom of access to records and employees." In appropriate cases, OPR can also make use of grand juries in investigation. Thus, its information gathering powers exceed those of an Inspector General, since OPR can compel testimony by means of a grand jury, while an Inspector General's subpoena power probably does not extend to testimony. 48/

48/ See Legislation to Establish Offices of Inspector General: Hearings on H.R. 8588 Before the Subcomm. on Governmental Efficiency and the Dist. of Colum. of the Senate Comm. on Governmental Affairs, 95th Cong., 2d Sess. 39 (1978). (statement of John C. Keeney).

The independent employee and services procurement powers of the Inspector General differ markedly from the corresponding arrangements in OPR. As indicated earlier, OPR has a small permanent staff and borrows additional personnel as the need arises. Temporary assignment of personnel to OPR requires the direction of the Attorney General or Deputy Attorney General and (usually) the consent of the head of the normal employing unit. IAS has no mechanism for a short-term increase in its complement of personnel and must rely on the normal budgetary process for increases in its staff.

D. Employee Complaints

Section 7 of the 1978 Act authorizes receipt and investigation by the Inspector General of employee complaints relating to specified types of misconduct, directs preservation of confidentiality by the Inspector General unless he determines that disclosure of the complainant's identity during the course of an investigation is unavoidable, and prohibits reprisals for making complaints unless the complaint was made "with the knowledge that it was false or with willful disregard for its truth or falsity."

The provisions relating to employee complaints in the proposed Department order discussed above are quite similar. OPR is directed to receive and review complaints relating to the same types of misconduct as those specified in section 7(a) of the Act. Confidentiality is required unless the OPR Counsel determines that "disclosure of the identity is necessary to resolve

the allegation." Protection for non-FBI Department of Justice employees against reprisal is provided by 5 U.S.C. §§2301(a)(9), 2302(b)(8) (Cum. Supp. 1979), and for FBI employees by 5 U.S.C. §2303 (Cum. Supp. 1979). However, the protection afforded by these statutes seems narrower than that afforded by section 7(c) of the Act, since the title 5 provisions afford protection only when the complainant discloses information which he "reasonably believes evidences" the specified types of misconduct, while section 7(c) prohibits reprisal for disclosure of information to the Inspector General unless the complainant knows that it is false or acts in "willful disregard" of its truth or falsity.

E. Reporting Requirements

Section 5 of the Act requires regular reports by the Inspector General to Congress and to the head of the agency detailing such matters as problems and deficiencies, recommendations for improvements, and progress on the implementation of corrective measures.

One difference between the Inspectors General and current operations in the Department is the absence of provision for regular and comprehensive reporting to Congress by OPR and IAS. The scope of internal reporting to responsible officials within the Department, however, is comparable to the internal reporting done by the Inspector General. OPR makes monthly reports to the Attorney General summarizing all current operations and an annual report reviewing

and analyzing the prior year's activities and making recommendations for improvements. IAS makes reports on completed audits to the Attorney General or other appropriate officials, with recommendations for improvements, and monitors compliance with these recommendations. An organizational unit which has been audited is required to submit progress reports to the Assistant Attorney General for Administration on its implementation of corrective measures.

Part IV--Evaluating the Department's Approach and Possible Changes

A. Evaluating the Department's Approach

The 1978 Act sought to improve the performance of federal agencies in four areas: detecting and preventing misconduct; maintaining financial integrity; promoting economy and efficiency; and monitoring administrative problems, deficiencies, and corrective actions. The Department's performance in these areas can be measured, first, in terms of its discharge of the functions necessary to achieve these objectives and, second, in terms of the shortcomings seen to exist in other agencies prior to the 1978 Act.

1. Functions--Efficacy of OPR.

The fact-finding, facilitating, and reporting functions, deemed by the 1978 Act to be instrumental in realizing its purposes, are being performed within the Department, principally by OPR. In assessing the efficacy of the Department's performance of those functions, its ability to detect and prevent misconduct must be emphasized. OPR is the Department's primary mech-

anism for dealing with matters of personnel integrity, and it is OPR's operations that must bear particular scrutiny in measuring the Department's performance.

The OPR arrangement does not and could not exist elsewhere. OPR has a broader mandate than a statutory Inspector General; it measures the adherence of the Department's lawyers and law enforcement officers to stringent standards of professional conduct that are apart from the obligations imposed generally on federal employees by law and administrative regulations. A determination by OPR that a lawyer or law enforcement officer has failed to comply with those standards cuts deeply, both as a matter of professional standing and because such employees, lacking full civil service protections, are more vulnerable to adverse reports than most employees in government service.

The resources available to OPR to perform its functions exceed those available to any statutory Inspector General. While OPR's Counsel has only a small permanent staff, he can call upon the immense investigative and prosecutorial resources of the Department. He can use the FBI to investigate administrative as well as criminal complaints and frequently he has. 49/ No statutory Inspector General has any comparable resource. Unlike an Inspector General,

49/ The history of OPR's operations demonstrates not only that the resources available within the Department exceed the resources available to the Inspector General, but also that it is possible to utilize investigative personnel to investigate complaints against their colleagues. In the U.S. Recording Company investigation, for example, the issue arose whether FBI personnel

[continued]

OPR can direct the course of an FBI investigation, follow up on referrals to United States Attorneys and the Criminal Division, and direct grand jury proceedings. ^{50/}

The existence of these resources has permitted a level of investigative activity fully equal to the need. In 1978 298 complaints were received directly by OPR and 305 matters were closed. In 1979, OPR received 401 complaints or other requests for investigation of Departmental employees and closed 349. ^{51/}

OPR's preeminence in discharging the fact-finding function within the Department will soon be matched by its enlarged role in discharging the facilitating function. With implementation of the proposed order, discussed above, OPR will take the lead responsibility for the detection and reporting of waste, fraud, and abuse in the Department's programs and operations.

could be used effectively to investigate allegations of misconduct against their colleagues within the Bureau. The results of that investigation indicate that FBI agents, operating under OPR supervision, can be used effectively. Moreover, in August 1978, GAO reported favorably on the ability of the Bureau to police its own personnel by virtue of changes made within its internal inspection operations. OPR was instrumental in bringing about improvements in that operation and continues to review and evaluate operations of all the Department's internal inspection units and to recommend changes where necessary.

^{50/} Technically, OPR could also undertake assignments to conduct prosecutions in the cases it develops. However, since OPR is frequently called upon to investigate alleged abuses of prosecutorial discretion, it has determined that, as a matter of policy, it will not seek authority to conduct a prosecution.

^{51/} These figures do not include approximately 1,000 investigations conducted by the internal inspection units and reported, on a monthly basis, to OPR. Nor do they include minor misconduct handled at the field level.

The reporting functions discharged by OPR are also significant. As noted above, OPR keeps the Attorney General fully informed of problems within the Department. Reports are made routinely on a monthly and annual basis and more frequently when warranted by circumstances. OPR's annual reports to the Attorney General are disseminated publicly and are available upon request. The dissemination practice is the same as with IAS reports. At his request, Senator Baucus, for example, has been supplied with IAS reports covering several years and has been assured of receiving future IAS reports on a continuing basis.

2. The Department's Response to Inadequacies that Prompted the 1978 Act.

The legislative history of the 1978 Act shows that it was designed to meet shortcomings in the audit and investigation capabilities of various federal departments and agencies. The perceived shortcomings were significant: problems in cooperating with law enforcement agencies, fragmentation and lack of resources, and absence of an independent entity to perform monitoring functions. Those inadequacies do not exist in this Department's mechanism and processes for self-monitoring.

Since OPR and IAS are components of the Department, inter-agency cooperation obviously presents no problem. OPR itself provides an excellent vehicle for coordination of the activities of the six internal inspection units in the Department.

The internal audit function is effectively consolidated in IAS, with the exception of responsibility for auditing third-party records and performance under contracts and grants awarded by LEAA. However, LEAA's audit performance is itself subjected to internal audit by IAS.

The internal investigation operations within the Department are under the general supervision of OPR, so that even decentralization of these activities presents no serious problem. Indeed, OPR now performs such uniquely effective oversight that consolidating all internal inspection units is most unlikely to add any benefits.

In terms of resources, the Department's internal audit and investigative capabilities are fully adequate. The investigative resources of OPR are Department-wide and are made available in such quantity as is warranted by the needs of a given investigation. The resources available for internal audits are also sufficient.

As to the question of independence, the present structure in the Department achieves at least as much as could be hoped for from an autonomous Inspector General. During more than four years of existence, OPR has functioned completely free of any inhibition in the scope, depth, direction, or any other aspect of its fact-finding functions. The head of OPR has discretion to initiate inquiries, requisition personnel and other resources to carry them through, and determine when they should be brought to a close. Throughout its history, OPR has been given the

authority to initiate any investigation it thought warranted, the means necessary to conduct it, and the freedom to determine its scope and direction. Not a single variance in this practice has been found. Considering how many hundreds of complaints have been received, this is an impressive demonstration of broad independence in fact.

B. Possible Changes in the Department's Approach

As we have seen, the Department is achieving the objectives of the 1978 Act by means that meet its special needs. The Department's approach does not insist on the same degree of centralization of function as the Act does; does not attack the problem of independence in the same way; and does not deal in the same manner with the question of reporting to Congress. This section will consider whether changes should be made in any of these respects, taking account of the Department's primary mission, the character of its operations, and its established methods of accomplishing the goals the Act has set.

1. The Department's Mission and Operations.

The Department is unlike any of the executive agencies for which Congress has established an Inspector General. ^{52/} Those

^{52/} The singular character of the Department is manifested in its relationship to the statutory Inspectors General. In December 1978, President Carter directed the Attorney General to assure that the activities of the Inspector General and of similar officers charged with eliminating waste, fraud, and error in government programs are coordinated with other investigative and prosecutorial activities. In May 1979, President [continued]

agencies have responsibilities for large programs that involve the expenditure of vast sums of public money. In contrast, the Department has only LEAA in a comparable role.

The essence of the Department's mission is law enforcement. The Attorney General is the federal government's chief legal officer, charged generally with the responsibility to defend and to prosecute in court the interests of the United States, and the Department is staffed by large cadres of lawyers (approximately 3,500) and law enforcement professionals (approximately 13,000), who are expected to comply not only with the laws that they enforce but also with the standards of conduct imposed by their professional codes.

The Department's unique character is also reflected in the nature and handling of the complaints that are made about the activities of the Department's employees. The most frequent complaints made to OPR, for example, involve allegations of abuse of investigative and prosecutorial authority. A proper inquiry into such complaints necessitates the utilization of specialized personnel with the legal and law enforcement expertise required to review the propriety of the professional judgment in question. These judgments tend to differ in subtlety, complexity, and grav-

Carter established an Executive Group to Combat Fraud and Waste in Government to assure effective implementation of the Inspector General Act of 1978 and other efforts to combat fraud in government programs. The Deputy Attorney General has served as chairman of the group, and the members include all the statutory Inspectors General. The Department is providing staff support for that group as well as assisting to improve the training of audit and investigative staffs throughout the Executive Branch.

ity from those made about employees in other agencies. For example, delicate judgments about the exercise of prosecutorial discretion that frequently must be made by OPR ordinarily are not within the province of the Inspectors General in other agencies.

At the same time, OPR must exercise caution when reviewing complaints from targets of an investigation or prosecution lest the powers of its office be turned into a mechanism to hinder or delay the proper course of investigation, indictment, or trial. Inspectors General within other agencies do not ordinarily have to be concerned that their operations may result in an obstruction of justice.

The converse of the Department's emphasis on law enforcement as its principal mission is its lack of major programmatic responsibilities. With the exception of LEAA, the Department does not have responsibility for distributing vast amounts of federal funds. Even when LEAA is taken into account, the Department's annual budget is one of the smallest among the major executive departments. Its program operations do not present the same opportunities for fraud and waste that obtain within other agencies. As a consequence, the Department's focus is primarily on matters of personnel integrity rather than matters of financial integrity.

Congress itself has recognized the unique position of the Department. At the very time it was creating Inspectors General in other executive agencies, it declared that it would be "undesirable to superimpose an Inspector General, who is basically

a law enforcement official, on law enforcement agencies." 53/ Of course, a judgment that an Inspector General is inappropriate for the Department does not mean that no one should watch the watchers. 54/ It does suggest, however, that any proposed change in the Department's approach to the monitoring function should take account of the Department's marked differences from other agencies in regard to primary mission and operating characteristics.

2. Consolidating Internal Audit and Investigation Functions.

As has been noted, the internal audit and investigation functions of the Department are less completely centralized than in agencies using the Inspector General model. Consolidation of these functions within the Department could take either of two forms: first, combining IAS and OPR; second, merging IAS and other internal audit staffs on the one hand, and OPR and other internal inspection units on the other hand.

Although IAS and OPR are not now parts of a single entity and although they operate within different lines of authority, they nonetheless mesh closely in their actual functions. Generally speaking, the relationship between the two offices parallels that between an Assistant Inspector General for Auditing and

53/ Senate Report at 14.

54/ Indeed, by establishing OPR several years before the creation of statutory Inspectors General, the Department demonstrated its independent recognition of the desirability of monitoring its own operations.

an Assistant Inspector General for Investigations, in the framework of the 1978 statute. On occasion, when IAS acts under the direction of OPR, the operational relationship comes even closer to the Inspector General model. 55/

Placing control of the audit and investigation functions in one official would not improve the smooth working arrangement that now exists. 56/ Furthermore, the Department has no major, disparate programmatic functions (presenting jurisdictional obstacles to unitary review) that might better be monitored by a consolidated unit. In addition, there is no need for a single official with audit and investigative responsibility to serve as a focal point to cooperate with the Department in investigating and prosecuting fraud cases.

As to the consolidation of all internal audit staffs and of all internal inspection units, at first glance it might seem that there would be some advantage to providing the heads of the IAS and OPR operations, respectively, with organizational control over all internal audit and investigative staffs. There are indications, for example, that the LEAA auditing function could be improved, as well as the internal inspection function within INS, if the

55/ This latter mode would obtain more frequently under the proposed order discussed above.

56/ Interviews with statutory Inspectors General indicate that the current relationship between internal audit and internal investigation within the Department may be as great as within their own agencies. On balance, the minor administrative advantages that might be achieved (e.g., easier communication between IAS and OPR) are outweighed by the disadvantages (e.g., diversion of OPR management time to more narrow financial and procedural matters).

units were under consolidated organizational controls.

Within their respective jurisdictions, however, OPR and IAS have Department-wide oversight responsibilities. Although they lack formal organizational control over unconsolidated internal audit or internal inspection staffs, they have much to say about the conduct of operations within those other units. At the same time, the present decentralization of functions may ensure more rigorous oversight and criticism of the other units than if they were merged into IAS or OPR. 57/

3. Reporting.

A final difference necessitated by the Department's character is in the manner of reporting to Congress. Internal investigations within the Department often focus on alleged abuses of investigatory or prosecutorial discretion and may involve on-going investigations or prosecutions. Prematurely reporting such matters externally can threaten the integrity of the Department's law enforcement mission; such reporting should be reserved to the Attorney General.

4. Independence.

It is clear that OPR's counsel should be free from interference in the proper discharge of the functions of that office. The Department now has, and it should have, a senior official

57/ The present structural arrangements provide a layer of internal review over the reviewers that would be destroyed through a merger of operations. In its first year of operation, OPR requested an IAS survey of the Department's other internal inspection units. OPR has requested that IAS audit the operations of at least one of the other units in each year since.

whose primary mission is internal investigation and whose authority is commensurate with that mission. However, it should be remembered that the mission and authority of this official closely parallel those of the Attorney General. Thus, it may be one thing to recognize the need for such an official; but it is quite a different matter to assert that this official should have investigatory authority and capability paramount to that of the Attorney General. 58/ When it comes to conducting the essential business of the agency, no existing Inspector General has authority that equals, let alone exceeds, that of the head of the agency.

To recognize that as a general matter the Attorney General should have ultimate authority over investigations and prosecutions is not to say that this authority should not be placed elsewhere in an appropriate case. Indeed, this is precisely what the OPR regulation requires: whenever an investigation might be thought to implicate the Attorney General, OPR can obtain necessary authority and resources from either the Deputy Attorney General or the Solicitor General. 59/ The result of this practical arrangement is that the

58/ The fact that, under the Department's approach, OPR Counsel's prosecutive recommendations are subject to the ultimate decision of the Attorney General does not make his functional independence any less than that of the Inspectors General. Congress has charged the Inspectors General to report violations of federal criminal law to the Attorney General. 1978 Act, § 4(d). The Attorney General, in turn, is charged to investigate and to prosecute such matters as part of his responsibilities as the nation's chief law enforcement official. He must exercise a similar responsibility within his own agency.

59/ If referral to the Attorney General--or to the Deputy Attorney General--would be inappropriate (impliedly, where one or the other were the subject of a complaint), OPR's regulation mandates that the matter be referred to whichever of them would be proper or to the Solicitor General. See 28 C.F.R. § 0.39a(c)(3).

authority of both the Attorney General and OPR to discharge their responsibilities is preserved. In sum, then, OPR and IAS are invested with the substance of independence even though the formalities are different from those that characterize the statutory Inspector General. The autonomy of the two offices has not been challenged, and they have established a practice and tradition of acting with independence.

It has been suggested that, although the necessary degree of independence has been achieved in practice, especially the independence of OPR could be enhanced by enacting a statute specifying in detail its powers and authority. A statutory recital of the OPR mission might accentuate OPR's permanence, but it is difficult to see how it could enlarge its freedom of action.

It has also been suggested that the arrangement might be given greater independence by providing for Presidential appointment of the head of OPR. If the appointment is to be at the pleasure of the President, as the 1978 Act provides with respect to Inspectors General, it is hard to see how any greater measure of independence would be accorded than is now true of numerous Presidential appointees in the Department of Justice who are subordinate to the Attorney General and who are commonly replaced by the President at the recommendation of the Attorney General. If it were suggested that the appointment be for a fixed term of years, the Head of OPR would be given different and greater standing than Congress has thought desirable to give to the Inspectors General--a course that does not seem warranted. Thus, it would seem that while the effect

of Presidential appointment conceivably could be to enlarge the OPR Counsel's prestige, it would be unlikely to enhance the Office's freedom of action.

A final possibility is to require the head of OPR to report regularly and publicly on activities of the office. Any fear than an Attorney General might interfere, directly or indirectly, with OPR's functions would be preempted by requiring OPR Counsel to report any instance in which the Attorney General declines authority or resources that OPR Counsel requests as necessary to discharge his responsibility.

CONCLUSION

The Inspector General device is but one way to achieve the objectives of the 1978 Act. The Department has been achieving those objectives in its own way. The Department's approach has proved suited to its unique mission as a law enforcement agency. Its performance of the Inspector General functions has been effective and shows no sign of the shortcomings that necessitated the 1978 legislation to achieve effective monitoring in other agencies. Without a clear demonstration that the Inspector General approach is superior to the Department's arrangement, ^{60/} no dramatic overhauling of the Department's self-monitoring operations is necessary.

^{60/} The Inspectors General are a new phenomenon within the federal government. It is too early to tell whether they have been able to meet the high expectations of the legislation that created them. Their performance may well demonstrate that ours is a government of laws and men, that no structure is perfect, and that the talents, competencies, and motivations of the people involved will have much to do with their performance.

APPENDIX 4.—LETTER FROM CHAIRMAN RICHARDSON PREYER, SUBCOMMITTEE ON GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS, U.S. HOUSE OF REPRESENTATIVES, TO MAURICE ROSENBERG, ASSISTANT ATTORNEY GENERAL, OFFICE FOR IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE, DEPARTMENT OF JUSTICE, DATED MAY 5, 1980 AND REPLY DATED MAY 14, 1980

RICHARDSON PREYER, M.C., CHAIRMAN
ROBERT F. DRINAN, MASS.
BUDEN EUGENE, DELA.
DAVID W. EVANS, ILL.
PETER M. HOSCHKE, PA.
TED WEISS, N.Y.

NINETY-SIXTH CONGRESS
Congress of the United States
House of Representatives
GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-349-B-C
WASHINGTON, D.C. 20515
May 5, 1980

THOMAS M. KINNESS, OHIO
M. CALDWELL BUTLER, VA.
JOHN M. ENLENDORF, ILL.
225-3741

Mr. Maurice Rosenberg
Assistant Attorney General
Office for Improvements in the
Administration of Justice
Department of Justice
Washington, DC 20530

Dear Mr. Rosenberg:

I am sorry you were unavailable on April 24 to testify before the Subcommittee on Government Information and Individual Rights on the Department's report entitled "The Performance of Inspector General Functions Within the Department of Justice." The subcommittee has noted that you testified on the same subject on March 13 before the Senate Committee on the Judiciary. The subcommittee would like to verify for its record a portion of your March 13 testimony.

During the March 13 hearings, Senator Max Baucus was pursuing a line of questioning regarding the Department's objections to the establishment of an inspector general at Justice. You stated you believe the balance of the argument is in favor of leaving undisturbed the present situation because of some of the costs associated with writing a statute creating an inspector general. You referred to the fact that in your view the present system permits a great amount of flexibility and said it seems to you that one loses a lot of flexibility in writing something like this into law. However, you added that if a statute could be written that provided and continued the flexibility of the present situation, this would dispose of a great many problems you see regarding the establishment of an inspector general for the Department of Justice.

Would you please write and let me know whether this is an accurate report of your testimony before the Senate Committee on the Judiciary. Please contact subcommittee staff member Larry Gaston at 225-3741 should you have any questions regarding this request.

Cordially,

Richardson Preyer
Chairman

(214)

215



U.S. Department of Justice

Office for
Improvements in the Administration of Justice

Washington, D.C. 20530

May 14, 1980

Honorable Richardson Preyer
Chairman
Subcommittee on Government Information
and Individual Rights
Committee on Government Operations
Room B-349-B-C Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your letter of May 5, 1980, referring to a part of my testimony on March 13, 1980, before the Senate Committee on the Judiciary. I testified at that time with regard to the report to the Congress dated February 15, 1980, prepared by my Office and entitled "The Performance of Inspector General Functions Within the Department of Justice."

The summary of my testimony contained in your May 5 letter is an accurate summary of the point it addressed, when placed in context, as your letter clearly does. It was my thought that if a statute could be devised that would preserve existing flexibility, a great many problems that would otherwise arise would be preempted. As you may know, I have real doubt that such a statute could ever be drafted.

As I also testified on March 13, one heavy added cost of the statute would be its implication that Congress lacks confidence in the capacity of the Attorney General to police his own house. It would be unfortunate and inaccurate to create such an impression. It should not be done.

Sincerely yours,

Maurice Rosenberg
Maurice Rosenberg
Assistant Attorney General

APPENDIX 5.—ANNUAL REPORT TO THE ATTORNEY
GENERAL, 1979, OFFICE OF PROFESSIONAL RESPONSIBILITY,
DEPARTMENT OF JUSTICE

ANNUAL REPORT TO THE ATTORNEY GENERAL
1979

OFFICE OF PROFESSIONAL RESPONSIBILITY

(216)

TABLE OF CONTENTS

I. OFFICE DUTIES	1
II. INVESTIGATIONS CONDUCTED OR MONITORED BY THE OFFICE OF PROFESSIONAL RESPONSIBILITY	2
A. NUMBER, SOURCE, AND TYPES OF COMPLAINTS REVIEWED	2
B. REPRESENTATIVE MISCONDUCT	3
1. BUREAU OF PRISONS	3
2. OFFICE OF JUSTICE ASSISTANCE, RESEARCH AND STATISTICS	5
3. FEDERAL BUREAU OF INVESTIGATION	5
4. UNITED STATES MARSHALS SERVICE	6
5. DRUG ENFORCEMENT ADMINISTRATION	7
6. IMMIGRATION AND NATURALIZATION SERVICE	8
7. OFFICES, DIVISIONS AND U.S. ATTORNEYS	9
III. ACCOMPLISHMENTS	10
IV. IMPACT OF CIVIL SERVICE REFORM ACT	14
V. AUDIT CONDUCTED	15
OFFICE OF INTERNAL SECURITY, DRUG ENFORCEMENT ADMINISTRATION	15
VI. CONTINUING DIFFICULTIES ENCOUNTERED	17
VII. CONCLUSIONS	25

ANNUAL REPORT TO THE ATTORNEY GENERAL
OFFICE OF PROFESSIONAL RESPONSIBILITY

I. OFFICE DUTIES

Subject to the general supervision and direction of the Attorney General or, whenever appropriate, the Deputy Attorney General or the Solicitor General, the Office of Professional Responsibility has the responsibility to "(r)ecieve and review any information or allegation presented...concerning conduct by a Department employee that may be in violation of law, of Department regulations or orders, or of applicable standards of conduct." (28 C.F.R. §0.39). As a rule, the actual review and investigation of such allegations are conducted by the internal inspection unit of the particular Department component. Monthly reports as to the status of each such investigation are submitted by each internal inspection unit to the Office of Professional Responsibility. If deficiencies are found in the component's handling of any matter, it is the responsibility of our Office to make such deficiencies known and to direct corrective action. Further, in certain instances, the Counsel will determine that a particular allegation is of such an unusual nature that it would be in the best interest of the Department for the inquiry to be directed by the Office itself. In order to aid the Office of Professional Responsibility in the discharge of such duties, provision has been made for the temporary assignment of other

Department personnel to the Office. Such individuals work under the direction of the Counsel, the Deputy Counsel, and four Assistant Counsel.

This is our fourth Annual Report to the Attorney General for the purpose of "reviewing and evaluating the activities of internal inspection units or, where there are no such units, the discharge of comparable duties within the Department". 28 C.F.R. §0.39a(f)(4). As will be evident, we have attempted to report fairly and candidly both the strengths and weaknesses of each of the Department's internal inspection units.

II. INVESTIGATIONS CONDUCTED OR MONITORED BY
THE OFFICE OF PROFESSIONAL RESPONSIBILITY

A. Number, Source, and Types of Complaints Reviewed

During calendar year 1979, the Office of Professional Responsibility directly received 401 complaints or matters from various sources. This represents a 35% increase over the 298 received during 1978. In addition to the 401 complaints or matters directly received, the Office monitored approximately 1200 investigations conducted by the internal inspection units of the various Department components. These totals do not include instances of relatively minor misconduct handled at the field level. During 1979, we closed 349 inquiries and 111 matters remained active at the end of the year.

With respect to the source of the 401 complaints or matters received during 1979, we found that most could be categorized as emanating from the following sources:

- 201 -- Referrals from DOJ Components
- 94 -- Private Citizen Complaints
- 29 -- Complaints from Private Attorneys
- 23 -- GAO Fraud Task Force (GAO "Hotline")
- 54 -- Miscellaneous Sources

We have also examined the types of complaints received during 1979, and we have found that they generally can be classified as follows:

- 49% -- Abuses of Investigative and/or Prosecutorial Authority
- 19% -- Miscellaneous Criminal Offenses (e.g., theft, bribery, etc.)
- 18% -- Violations of Departmental Regulations, Orders, or Standards
- 10% -- Unauthorized Disclosures of Official Information
- 4% -- Conflicts of Interest

B. Representative Misconduct

Following is a list of misconduct investigated during 1979 that is representative of the types of misconduct reviewed by the Office.

1. Bureau of Prisons

(a) A clinical psychologist struck an inmate in the face with the palm of his hand. The psychologist was dismissed, but was reinstated by the Merit Systems Protection Board.

(b) An employee altered records to indicate an inmate had received a lowering of his custody status in exchange for an oil painting done by the inmate. During the investigation, the employee attempted to have an inmate witness give false testimony to the agency. He was dismissed and indicted. He was acquitted at trial.

(c) Through an investigation that used an inmate who was "wired for sound", a correctional officer was arrested for introducing .4 ounces of marijuana. The officer, who was serving his probationary period, was dismissed. He was indicted and convicted of trafficking in contraband and possessing drugs. He was sentenced to 50 days confinement and 3 years probation.

(d) A correctional officer, who allegedly twice before had engaged in sexual relations with female inmates, fathered the child of a female inmate. He was dismissed.

(e) A correctional officer at a Metropolitan Correctional Center (MCC) pleaded guilty to smuggling cocaine to a prison inmate. He was sentenced to three years in jail.

(f) A mailroom clerk at an MCC was found guilty of smuggling cocaine to an MCC inmate. He was sentenced to imprisonment for one year.

(g) A correctional officer at an MCC was convicted for smuggling contraband to MCC inmates. He was sentenced to two years imprisonment (with twenty-two months suspended).

(h) A Roman Catholic priest who was a chaplain and honor unit manager at an MCC pleaded guilty to federal charges of receiving an illegal supplement to his government salary (a free Las Vegas vacation trip arranged by an inmate organized crime figure). He was fired from his employment at the MCC and subsequently sentenced to five years unsupervised probation.

2. Office of Justice Assistance, Research and Statistics

An LEAA employee privately used a government franked envelope to mail used paperback books to a federal prisoner. The employee was orally reprimanded. Last year this same employee was orally reprimanded for using franked envelopes in a private volume mailing.

3. Federal Bureau of Investigation

(a) An agent and supervisor conspired with an informant to steal from interstate rail shipments. The supervisor was dismissed and committed suicide prior to indictment. The agent resigned, pleaded guilty and was sentenced to four years in prison.

(b) An agent disclosed an undercover operation. He was censured, placed on probation and suspended for five days.

(c) A married male agent and a married female agent were involved in an illicit sexual liaison while in new agent training at the FBI Academy. Both agents were dismissed.

(d) An agent reaffiliated with Armed Forces Ready Reserve in violation of FBI regulations and without prior approval. She was dismissed.

(e) An agent engaged in homosexual conduct with a minor. He resigned prior to administrative action being taken against him.

(f) An agent, while intoxicated, revealed his undercover identity and mission in a public restaurant. The agent was censured, placed on probation and suspended for 30 days.

(g) An agent reported to duty while intoxicated. A second agent aware of his condition failed to report the incident to his superiors. The intoxicated agent was censured, placed on probation and suspended for five days. The second agent was censured and placed on probation.

(h) An agent admitted using marijuana prior to entering on duty contrary to facts set forth on her employment application and contrary to a sworn statement she gave during an administrative interview. The agent was censured, placed on probation and suspended for ten days.

4. United States Marshals Service

(a) Two Deputy U.S. Marshals, in an effort to break a residential lease, produced a fraudulent teletype purportedly from the Director which ordered one of the deputies to relocate to a distant city. Both DUSM's were suspended for 14 days.

(b) A Deputy U.S. Marshal used a government vehicle to visit a massage parlor and then charged overtime for the time he spent in the massage parlor. The DUSM was suspended for 30 days.

(c) An off-duty Deputy U.S. Marshal, after first establishing an improper relationship with an impaneled female juror, spent several hours with her in her room in the hotel where the jury was sequestered. The DUSM was suspended for 30 days.

(d) A Deputy U.S. Marshal parked a government vehicle with the engine running and door open while he made a personal phone call. The car was stolen and the DUSM fired six rounds at the fleeing thief. The auto was found the next day destroyed by fire. The DUSM was dismissed.

(e) An off-duty Deputy U.S. Marshal in his personally owned car pursued a citizen's car that had forced the deputy off the road. The deputy chased the citizen's car through a shopping center parking lot and fired one round into the citizen's car. The DUSM was dismissed.

(f) Two Deputy U.S. Marshals, drinking off-duty, became involved in an argument with and physically assaulted a citizen. When other citizens objected to the assault, one DUSM identified himself and his companion as deputies and the other displayed his weapon to intimidate the other citizens into getting out of the area. The DUSM who displayed the weapon was dismissed. The other DUSM was suspended for 14 days.

(g) An off-duty Deputy U.S. Marshal solicited and engaged in sex with a prostitute. He paid her by personal check apparently having first established his credit-worthiness by displaying his credentials and service revolver. He used a government vehicle to pick up and drop off the prostitute. The DUSM was suspended for 45 days.

(h) A Deputy U.S. Marshal engaged in a personal and business relationship with a convicted felon who was a protected witness. The DUSM provided a revolver to the protected witness who returned, unescorted, to the geographical location from which the witness was initially transferred to protect him from danger. During the investigation of these allegations, the DUSM gave a false statement to the investigator. The DUSM was dismissed.

5. Drug Enforcement Administration

(a) DEA and local Task Force personnel falsified reports, improperly associated with defendants and informants, and mishandled evidence. The Special Agent-in-Charge was suspended and two supervisors were demoted.

(b) A Special Agent was observed by local police smoking marijuana. He was stopped, surrendered a small quantity of marijuana to the police and then attempted to flee. The Special Agent was dismissed and indicted. He was acquitted at trial.

(c) A DEA laboratory employee stole and sold narcotics from the laboratory. He resigned subsequent to his arrest and pleaded guilty to one count of theft of government property. He received a two year suspended sentence and was fined \$250.

(d) A Special Agent was the subject of two investigations. During the first investigation concerning an allegation that the agent had established a sexual relationship with a known frequent user of narcotics, the agent made a false statement to the Inspectors. The second investigation found that the agent had been involved in an off-duty barroom fight and subsequently disregarded orders from his supervisor by returning to the same bar and creating another disturbance with the same individuals. The Special Agent was reduced one pay grade.

(e) An explosion in the home of a DEA employee which resulted in serious injury to him led to an investigation which found six DEA weapons in his home, three of which had serial numbers that had been altered or obliterated. In an earlier inventory, the employee had stated that he did not know the whereabouts of these weapons. The employee was dismissed and convicted of having the six DEA weapons in his possession. He is awaiting sentencing.

6. Immigration and Naturalization Service

(a) An inspector forged signatures of other Immigration Inspectors on applications provided by a document vendor in Mexico, acting on behalf of illegal aliens, for monetary gain. The Inspector resigned, was prosecuted, and received a five year sentence.

(b) An INS radio operator lived with an illegal alien and breached security by giving her a photo of himself that showed a sensor map in the background. Sensor maps are highly classified by the Border Patrol as they pinpoint the location of the electronic sensors which are used to detect illegal border crossings. The employee was dismissed.

(c) A detention officer robbed illegal aliens of their belongings while he was off-duty. He was also found to have concealed prior arrests on his INS employment application. He was dismissed for falsifying documents and the unauthorized use of a government vehicle. Prosecution for robbery was declined because the illegal alien victims could not be found to testify.

(d) A Border Patrol Agent physically abused an alien while the agent was off-duty and intoxicated. The agent was dismissed. The Civil Rights Division declined prosecution because of insufficient evidence.

(e) A Detention Officer converted the funds of detained aliens and stole a Service weapon. The employee resigned the same day he was indicted for embezzlement. He was convicted and received 2 years probation.

(f) A Border Patrol Agent was arrested for driving while intoxicated. He resisted arrest and assaulted a police officer in the process. He was suspended for ten days.

7. Offices, Divisions and U.S. Attorneys

(a) A Civil Division Trial Attorney engaged in the private practice of law while employed by the Department. He was asked to resign in lieu of the institution of disciplinary proceedings and did so.

(b) A U.S. District Court Judge made a ruling that two Lands Division attorneys engaged in numerous acts of prosecutorial misconduct. The allegations were totally unfounded and the attorneys were exonerated.

(c) A U.S. Attorney was alleged to have disposed of a case in a manner suggested by a U.S. Senator for whom he once worked. No evidence was found to substantiate the allegation.

(d) A law clerk in a U.S. Attorney's office stole FBI and other government documents and sold them to the subject of a criminal investigation for \$5000. He was arrested and charged with the theft of government property and sentenced to 3 years imprisonment. He served 90 days in jail. The balance was suspended and he was placed on probation for five years.

(e) A U.S. Attorney was alleged to have taken bribes to protect a drug smuggling ring. The allegation was found to be meritless.

(f) A professional employee in one of the offices engaged in outside employment and committed plagiarism. He was asked for and submitted his resignation.

(g) A state Attorney General accused the U.S. Attorney and members of the U.S. Attorney's staff, who were investigating him, of a conflict of interest, of leaking grand jury information, abusing the grand jury process, being politically motivated, and acting unethically. The allegations were found to be meritless, and the state Attorney General was later convicted.

(h) An Assistant United States Attorney became heavily involved in a matter involving the Immigration and Naturalization Service on behalf of family friends without remuneration. He was officially reprimanded.

III. ACCOMPLISHMENTS

During 1979, we continued to improve the efficacy and the efficiency of our operations. Our goal is to go beyond the position of being merely reactive to problems after they have developed, to that of being in a position to identify and correct systemic deficiencies before such situations themselves give rise to problems. The hiring of two additional attorneys during 1979, increasing the size of our staff from four to six attorneys, enables us to progress towards that goal. More specifically, we now have designated particular attorneys to have oversight responsibilities for particular Department components. Not only has this strengthened our excellent day-to-day working relationships with the supervisory personnel in the inspection units of these components, but we are now better able to follow the course of the investigations being conducted by those integrity units.

Our oversight responsibilities have also been substantially enhanced by a change in the reporting requirements of the components. Previously, not all components had been furnishing this Office with monthly reports of allegations of employee misconduct under review by that component, and, further, some components which were furnishing monthly reports to us were not including all allegations of alleged misconduct on those reports. During 1979, we implemented a requirement that all components subject to our oversight responsibilities furnish us with monthly reports which included a listing of all allegations of misconduct under review. We are now in a substantially better position to assess the impact and effectiveness of the integrity programs of each component.

During 1979, we emphasized our relationship with the Office of Professional Responsibility of the Immigration and Naturalization Service (INS). During that year, the INS Acting Commissioner determined that his agency needed a revamping of its integrity operations. We have sought to provide as much assistance as possible in developing an effective INS integrity program. Inasmuch as it is too early to assess the effectiveness of the changes already undertaken, we will continue to place heavy emphasis upon monitoring the activities of this component to insure that the INS program is in fact effective.

We must point out, however, that once before--in our Annual Report for calendar year 1977--we noted that changes had been made in INS operations which should have rectified past problems. We were wrong. For that reason, we have devoted, and will continue to devote, substantial time and resources to INS.

With respect to the integrity programs of other components, we have noted several improvements in those units as well. For example, the FBI's Office of Professional Responsibility has prepared a supervisory manual which summarizes OPR policies and provides written guidelines for administrative investigations and procedures and for the monitoring of disciplinary actions taken against FBI employees.

Other improvements include the publication by the U.S. Marshals Service of semi-annual reports which serve to apprise all employees of the types of misconduct which have been investigated during the prior six-month period. Particular acts of misconduct, with identities deleted, are set forth and methods of avoidance of similar problems for other employees are discussed.

With respect to the Bureau of Prisons integrity unit, this unit began as a one-man Office of Professional Responsibility. As a reflection of the serious concern which the highest level Bureau of Prisons managers have for integrity matters, that one-man office was expanded to include now a Chief, five inspectors, and two clerical inspection assistants. (It was renamed the

Office of Inspections.) This expansion has permitted the Office of Inspections to become more actively involved in audits, program evaluations, and its own investigations of cases arising within the Bureau of Prisons.

In addition to monitoring the integrity programs of Department components, we have been called upon by the Attorney General, during 1979, to perform several sensitive and involved reviews of extremely serious allegations of employee misconduct. In one area, the so-called "Rowe Task Force", pursuant to a 1978 charter from the Attorney General, concluded its investigation of the FBI's handling of former Ku Klux Klan informant Gary Thomas Rowe, Jr., and of the prosecution of United States v. Eaton, et al.--a civil rights case arising out of the murder of Viola Liuzzo. In accordance with its mandate, the Task Force directed its efforts at determining whether there was any evidence substantiating the allegations that Mr. Rowe was responsible for Mrs. Liuzzo's death. The report was completed and submitted to the Attorney General in July 1979.

On another matter, we were asked to review a Bureau of Prisons report detailing its investigation into the events surrounding the death of prison inmate Angel Cristobal. The Bureau of Prisons had determined that Mr. Cristobal's death resulted from suicide. Our own review of the matter, involving an independent examination of

the evidence, the conduct of additional interviews, and the development of further information, led us to confirm the conclusions stated in the report prepared by the Bureau of Prisons.

IV. IMPACT OF CIVIL SERVICE REFORM ACT

Under various provisions of the Civil Service Reform Act of 1978, Government employees are given protection from reprisals in situations where those employees have brought to the attention of appropriate officials instances of violations of law, mismanagement, abuse of authority, gross waste of funds, or a substantial and specific danger to public health or safety. Responsibility for the protection of such Department of Justice "whistleblowers" has rested with the Office of Professional Responsibility, and, on January 16, 1980, the Attorney General signed a Departmental Order revising 28 C.F.R. 0.39 et seq., to include such functions within our jurisdictional mandate.

During 1979, we have on several occasions received and reviewed allegations of reprisals against Department of Justice employees for "whistleblower" activities. In one instance, for example, four Deputy U.S. Marshals alleged that they had been transferred to other duty stations in retaliation for informing several Congressmen of alleged mismanagement. Three of the transfers were upheld by the Merit Systems Protection Board, and one was stayed on the basis that it may have been motivated in part as a reprisal for the deputy's past EEO activities.

With the Attorney General's signing of the Office's new jurisdictional mandate and the increased public awareness of the availability of protections afforded by the Civil Service Reform Act of 1978, we expect that this area will be one of continued growth in terms of the amount of resources we will be required to allocate to such complaints in the future. We firmly believe in what this act seeks to accomplish. We commend the FBI's practice of ensuring, by monitoring for a minimum of three years the personnel files of "whistleblowers", not only that reprisals are not taken against "whistleblowers", but, in addition, that they are not denied any benefits or advancement which they might legitimately have expected based upon their level of performance. We intend to continue to pursue vigorously our duties in this area.

V. AUDIT CONDUCTED

Office of Internal Security, Drug Enforcement Administration

We believe that the Office's oversight responsibilities make it incumbent upon us to ensure that component integrity programs are both effective and efficient. Consequently, in 1979, we asked the Internal Audit Staff of the Justice Management Division to audit the effectiveness of the Drug Enforcement Administration's

Office of Internal Security (OIS). The scope of the audit included a review of OIS' policies, procedures, and practices, and involved interviews with both headquarters and field office personnel.

The auditors found that OIS is meeting its assigned mission to promote and protect the integrity and security of DEA. They concluded, however, that OIS could improve the overall effectiveness and efficiency of its operations by taking positive action on the following issues:

1. OIS needs to establish meaningful, quantitative projection standards and more realistic target dates for the completion of integrity investigations. Moreover, it needs to make full use of available statistical data to evaluate, with a view toward economy and efficiency, the performance of integrity investigations.
2. OIS needs to monitor the internal reporting of integrity matters to ensure that they are brought to OIS' attention and properly investigated.
3. All formal integrity investigations conducted by OIS involve serious allegations of misconduct and should be included in reports to the Office of Professional Responsibility.
4. DEA needs to coordinate properly its current and proposed inspection, evaluation and review activities to minimize overlapping of responsibilities and to prevent duplication of efforts.
5. DEA needs to monitor its disciplinary action practices to ensure more uniformity and equity.
6. OIS could reduce its storage space requirements and administrative expenses by establishing new procedures for file handling and disposal.

OIS has been quite responsive to the recommendations of the Internal Audit Staff. For example, it established as a goal for 1980 the completion of 75% of integrity investigations within 60 days. Previous goals, it was found, were rarely met, and it is believed that the goal for 1980 is far more realistic. With respect to the recommendation regarding the reporting of serious allegations of misconduct to our Office, as we noted previously in this report, we now require all components to provide to us monthly reports of all pending investigations involving allegations of misconduct by component employees. DEA is following that practice at the present time. With respect to the conclusion that DEA needs to practice greater uniformity in applying disciplinary actions against employees who have engaged in misconduct, we have found this to be a Department-wide problem, and one which needs prompt attention at the highest levels of the Department. This matter is discussed further in the next section.

VI. CONTINUING DIFFICULTIES ENCOUNTERED

We believe that the foremost, most pervasive problem noted as a result of our oversight activities is the lack of consistency, both within and among components, as to the punishments meted out for similar types of employee misconduct. We would point out that our Office does not have authority to review

specific punishments ordered in specific cases. However, since the systems employed by the components to impose punishment are clearly an integral part of the integrity programs of the components, we believe that our charter requires that, pursuant to our oversight responsibilities, we be concerned with, and comment upon, systemic deficiencies which can bring these entire programs into disrepute. Inconsistencies in the application of punishments for similar misconduct constitute such a deficiency.

In our view, in order to be a deterrent to misconduct, punishment should be swift, sure, and consistent. Morale suffers where employees of one component sense that they are dealt with more harshly than employees of other components, or where agents within a component feel that other agents in that same component, perhaps assigned to other supervisors or other regions of the country, are dealt with differently. The integrity program itself suffers in such situations.

We have found numerous examples of apparently inconsistent handling of similar offenses. In one situation, a Border Patrolman who "accidentally" discharged his weapon near two Mexican aliens was suspended for only 10 days, whereas another, who was convicted of trespassing for hunting purposes, was suspended for 40 days. Another officer was merely reprimanded for drawing his weapon on an alien. A review of the examples of serious misconduct investigated by the FBI, appearing in an earlier Section of this report, indicates that two new agents who became involved

in a romantic relationship were dismissed, whereas another agent who became intoxicated and compromised an undercover investigation was merely censured, placed on probation, and suspended for 30 days. Moreover, the FBI's dismissal of the two agents involved in a sexual relationship is hard to reconcile with the 45 day suspension of a Deputy U.S. Marshal who engaged the services of a prostitute and paid her by personal check, apparently having established his credit-worthiness by displaying his credentials and service revolver to her.

There is little doubt that this inconsistency of punishment is the result of the absence of definitive Departmental guidelines applicable to all components and the "local" approach to the imposition of punishment, which is favored by all components except the FBI. Under the "local" approach theory, in order to be effective, field supervisors should be able not only to reward, but, also, to punish the conduct of employees. Components which favor this approach argue that the supervisor is more familiar with the employee's prior performance, attitudes, personal factors, and the effect that any given punishment will have on his operation. We believe that, while there may be some merit to this view, it is unavoidable that supervisors who have developed working, and perhaps social, relationships with their subordinates will inherently bring either favorable or negative biases into the process by which punishment determinations are made. Moreover, even when this

element of personal bias is absent, different supervisors simply view the gravity of similar offenses differently, and such supervisors have a wide divergence of opinion as to the appropriate sanctions to impose for the same violations. This is so despite the efforts of many of the components to educate the supervisor and to inform him of other punishments that have been imposed for similar offenses. This situation causes the punishment imposition system to appear to be unfair, arbitrary, and capricious. We might note that this lack of guidance and consistency was noted, in 1978, by Congressman Richardson Preyer, who stated that, in his view, the Office of Professional Responsibility should have the authority to review sanctions and that guidance is lacking to the too numerous field personnel authorized by the components to make punishment judgments.

The FBI appears to have developed an excellent system for dealing with employee misconduct. The number of individuals determining the appropriate range of particular punishment is quite limited and all of those individuals are located at FBI headquarters. A detailed schedule of typical offenses has been developed, and a range of penalties for each offense is set forth. If censure, probation, or suspension for 14 days or less is the prescribed action for a particular offense and the employee is not an Assistant Special Agent in Charge or higher, the Assistant Director of the Administrative Services Division is authorized to take final action on the matter. In all more serious cases, the Director himself makes the final decision.

As we have noted, although some inconsistencies in the imposition of punishment have occurred, overall, the FBI's program has been extremely effective and is perceived at least as having equal and equitable application to all employees.

During 1980, we intend to exercise our oversight responsibilities with respect to this issue and hope to be able to develop a schedule which provides a range of suggested penalties to be imposed for typical offenses. This schedule will be developed after thorough consultation with the heads of the integrity units of all the components and would be intended to apply on a Department-wide basis. Perhaps all components cannot be persuaded to adopt a more centralized approach to punishment, but, if a schedule of punishments can be developed, at least some measure of concrete guidance will be available to field supervisors.

Finally, we must regretfully report that the most serious difficulty which the Office of Professional Responsibility has encountered during 1979 involves delays we have encountered in disposing of integrity matters affecting individuals placed in high-level positions within the Department of Justice. Fortunately, however, integrity questions involving such personnel have been very few. The specifics follow.

In one case, on August 31, 1979, this Office recommended to the Acting Deputy Attorney General that a United States Marshal be asked to resign. Extensive FBI and U.S. Marshals Service investigations conclusively found that this United States Marshal had been engaged in gross mismanagement, abuse of authority, and

total disregard of regulations. Upon the recommendation of the Acting Deputy Attorney General, the Attorney General requested the President's authorization to dismiss the Marshal. This authority was granted in early February 1980, but, as yet, the U.S. Marshal continues to hold office and receive his usual salary. It is difficult to understand why this situation continues to drag on, despite clear Presidential authority to proceed.*

In another case, we recommended in December 1979 that a prosecutor be dismissed. The FBI had conducted an extensive investigation into allegations that this prosecutor had accepted at least two bribes while a state official. The FBI's investigation had substantiated the allegations as to the receipt of one bribe, but the matter was carefully reviewed by the Criminal Division, which, although it agreed with the FBI's factual determinations, did not believe that a successful criminal prosecution could be undertaken. We recommended the dismissal of the prosecutor based partly upon our review of the conclusions of the FBI and the Criminal Division, and partly upon the fact that the prosecutor had volunteered to take, and failed, two separate polygraph examinations on the question of one of the bribes. He "passed" those parts of the first examination regarding the other bribe and that matter was dropped. The chief complainant was

*/ See addendum to this report.

given, and passed, the three polygraph examinations administered to him. After reviewing the FBI report and our reports on our additional investigation, the Acting Deputy Attorney General forwarded the matter to the President with the recommendation that the prosecutor be dismissed since he (the prosecutor) had already informed us that he would not resign. No action has yet been taken against the prosecutor. As a matter of fact, the only action which we can perceive to have occurred is the highly irregular step of allowing the prosecutor's attorney to conduct his own inquiry of the matter and to make his own report to the White House Counsel. The report is believed to have been finished several weeks ago.

We cannot overstate our concern that, unless this matter is concluded quickly and definitively, the very integrity of the Department of Justice is likely to be called into serious question. Inquiries involving high-level officials should be handled as expeditiously and unswervingly as are matters involving all other personnel within the Department of Justice, and the handling of this matter in the way which has occurred appears to us inexcusable because we can see no appropriate motivation for the delays permitted by White House personnel.

The final case which we feel constrained to comment upon involves an investigation conducted by our Office into the activities of a Section within an Office of the Department of Justice. On July 11, 1979, we reported to the Attorney General.

that we had found that the Director of this Office, and another official, had subverted the Department's merit selection system for personal reasons. In view of the serious misconduct involved, we recommended the removal of the Director from his position and the dismissal of the other higher ranking official. Due to the imminent departure of the Attorney General at that time, he directed that the matter be promptly disposed of. Despite the seriousness of the misconduct involved, the Assistant Attorney General to whom the matter was ultimately referred for action permitted the Director to transfer to another city, to which he had long sought a transfer, with no loss of pay whatsoever. With respect to the official, he was ordered to take a two week suspension--at a time he determined to be convenient. That official chose to serve his suspension during the Christmas holidays, when his absence could easily be regarded as a vacation. We doubt that lower-ranking Department officials, against whom similar misconduct was substantiated, would have received equally lenient and convenient "punishments". Such inconsistencies undermine the efforts of the Department's program to punish employee misconduct and point out the absolute necessity for a revision of the Department's punishment imposition mechanisms.

VII. CONCLUSIONS

During 1979, we accomplished our primary mission of overseeing the components' investigations of serious employee misconduct, as well as our mission of investigating especially serious and sensitive allegations of misconduct by using our own staff. We also supervised the activities of the "Rowe Task Force", which concluded its work during the year.


During 1980, we expect to be active in various areas. First, we expect to institute a program whereby the heads of the internal inspection units meet periodically in order to discuss common problems and to attempt to develop a unified response by all components to the similar problems faced by each. As noted previously, the development of a Department-wide schedule of suggested punishments for typical offenses is a priority item. Because we think it necessary that each component be consulted on this matter, the Department's punishment imposition mechanisms will be a main topic on the agenda of our periodic meetings. We will report to you our recommendations for revision of the system after all of the components have been fully apprised of our conclusions and had the opportunity to consider them fully.

We also expect to continue to rely on the ability of the Justice Management Division's Internal Audit Staff to conduct audits and evaluations of other Departmental components. This reliance may become crucial to our recent additional responsibilities in a Department Order, entitled "Responsibilities for the

Detection of Waste, Fraud and Error in Department of Justice Programs". Under the terms of that Order, the Office of Professional Responsibility is responsible for establishing the mechanisms to implement the Order. This also will be a critical matter for our meetings and we will advise you of the mechanisms implemented shortly.

In summary, we intend to become as active as possible, given our present workload and staffing level, to make systemic improvements in the processing of matters within our jurisdictional mandate. The supervision of investigations of specific allegations of misconduct remains our highest priority, for we believe that it is equally important to punish employee misconduct as to clear the names and records of honest, decent employees who are frequently wrongly accused of engaging in misconduct. The Department has a right to expect swift punishment, and employees have an equal right to expect swift exoneration when they have been wrongfully accused.


Respectfully submitted,


MICHAEL E. SHAHEEN, JR.

Counsel
Office of Professional Responsibility

ADDENDUM
ANNUAL REPORT TO THE ATTORNEY GENERAL
1979
OFFICE OF PROFESSIONAL RESPONSIBILITY

Just prior to the submission of this Report on June 19, 1980, the Marshal was asked for his resignation. The resignation was tendered subsequent to this Report's submission and was dated July 1, 1980. The resignation will be effective on August 9, 1980.


Michael E. Shaheen, Jr.
Counsel

APPENDIX 6.—MEMORANDUM FROM KEVIN D. ROONEY,
ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION,
TO THE ATTORNEY GENERAL, DATED JANUARY 7, 1980

UNITED STATES DEPARTMENT OF JUSTICE

JAN 07 1980

The Attorney General

Kevin D. Rooney /s/ KDR
Assistant Attorney General
for Administration

Independent Audit of the Working Capital Fund--INFORMATION MEMORANDUM

It has been some time since the Department's Working Capital Fund (WCF) has been subjected to an independent audit. Accordingly, I have directed that steps be taken to initiate such an audit.

The audit will provide the following:

1. A certified financial statement for the WCF.
2. An assessment of compliance with generally accepted accounting standards and established laws, regulations, policies and procedures.
3. An assessment of the effectiveness of established internal controls.

Since this Division administers and supervises the WCF directly, through the Deputy Assistant Attorney General, Office of the Controller, I deem it most appropriate that the services of an outside auditing firm be obtained. Accordingly, I have initiated a competitive procurement to obtain the required qualified auditing services. While it might have otherwise been appropriate to assign this audit to the Internal Audit Staff, I have not done so in this instance because the Director, Internal Audit Staff previously administered the WCF.

In order to assure that the procurement of an auditing firm, and the administration of the subsequent contract is fully independent of the Justice Management Division (JMD) Controller and the Internal Audit Staff, I have assigned my Special Assistant, Jackie Goff to serve as Contracting Officer's Technical Representative for the resultant contract. I also plan to establish a Technical Evaluation Panel to evaluate the technical proposals received. The panel will be chaired by Ms. Goff and have two other members who are not members of the JMD staff and who have accounting/auditing expertise.

I also plan to have the Technical Evaluation Panel members continue after the contract is awarded to serve as a policy advisory body and to review the audit report when it is developed.

After this initial, basic audit is completed, I expect to continue the effort to bring improvements to the WCF by procuring future auditing and management advisory services to review the rate setting procedure and the rate structure of the WCF, to review and assess fund operating procedures, and general operating and management procedures.

I will keep you advised as this effort proceeds.

APPENDIX 7.—DOCUMENTS RELATING TO THE DEPARTMENT OF JUSTICE'S ESTABLISHMENT AFFIRMATIVE PROGRAM FOR DETECTION OF FRAUD AND ABUSE

A. MEMORANDUM FROM PRESIDENT JIMMY CARTER TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, DATED DECEMBER 13, 1978

THE WHITE HOUSE

WASHINGTON

December 13, 1978

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Steps to Eliminate Waste, Fraud, and Error in Government Programs

The resources of this government must be managed well, free of waste, fraud and inefficiency. The American people believe, and I agree, that managing their tax money is a public trust. That is why I approved a law establishing Offices of Inspector General in twelve major departments and agencies. Today, I am directing that significant features of the Inspector General program be extended throughout the Federal Government. Eliminating waste, fraud, and error should be as important to you as your program objectives.

First, by January 31, each of you should develop for my review a comprehensive plan setting the course for your agency in this overall effort. You should immediately designate a single official, accountable directly to you, to oversee preparation of the plan and to monitor its implementation for you. The plan should include at a minimum:

- ° An analysis of all resources now devoted to the audit and investigation functions and the capacity of your department or agency to prevent and deal with problems of waste, fraud and error.
- ° Your planned approach to using your agency's audit and investigation resources in a concerted effort to deal with issues of waste, fraud and error, especially in those programs and activities you deem most vulnerable.

Second, I expect each of you personally to review and respond to major allegations by the Comptroller General and others of waste, fraud or error.

Third, I would like each of you to submit to me your suggestions on government-wide action I can take to reduce waste, fraud and error.

Fourth, I am assigning the Director of the Office of Management and Budget responsibility for overseeing this program to eliminate fraud and waste for me. He will provide additional guidance as appropriate. He will be responsible for keeping me informed of progress under the program and activities of Inspectors General and their counterparts in the agencies.

Fifth, I have asked the Attorney General to prepare an action plan to assure that investigations by Inspectors General and similar officers are coordinated with other investigative and prosecutorial activities.

Finally, I am directing the Chairman of the Civil Service Commission (or, following its establishment, the Director of the Office of Personnel Management), working with the Attorney General and the Secretary of the Treasury, to improve the training of investigative and audit staffs throughout the Executive Branch.

Jimmy Carter

B. MEMORANDUM FROM JAMES T. MCINTYRE, DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, DATED JANUARY 3, 1979

JAN 3 1979

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: James T. McIntyre, Jr. (Signed) — Jim McIntyre

SUBJECT: Steps to Eliminate Waste, Fraud, and Error in Government Programs

The President has placed the highest priority on the elimination and prevention of fraud, waste, and inefficiency in the use of Federal funds. The Inspector General Act of 1978 gives us additional strength to meet this objective in twelve departments and agencies. In addition, we have strong statutory Inspectors General at the Departments of Energy and Health, Education, and Welfare.

In his memorandum to you of December 13, 1978, the President indicated his wish that significant features of the Inspector General program be extended to the rest of the Federal Government. He has assigned me the responsibility for overseeing this program and providing whatever additional guidance is needed.

You are not being asked to appoint an Inspector General. Nor are we asking you to restructure your agency to carry out the President's directive. Each of you is being asked to designate a single official, accountable directly to you, to oversee your agency's efforts to eliminate waste, fraud, and error. This official will be responsible for preparing the comprehensive plan called for in the President's memorandum. He or she also should monitor the implementation of the plan to assure that your agency adheres to the same rigorous standard of audit and investigative effort that we are expecting from the Inspector General agencies.

Your comprehensive plan of steps to eliminate and prevent waste, fraud, and error in your agency is due by January 31, 1979. It should include any suggestions you may have for government-wide actions we can take in this area, as requested in the President's memorandum.

The principal objective of the plan is to set forth a course of action for your agency and you should include all steps you deem relevant. However, as a minimum, we need the following information included in it:

- o Resource Analysis---a suggested format for this analysis is provided in the attachment.
- o Planned Approach---You should provide a succinct narrative statement describing your planned approach to using your agency's audit, investigation, and other management resources in a concerted effort to deal with issues of waste, fraud, and error; especially in those programs and activities you deem most vulnerable. The narrative should acknowledge activity underway pursuant to my recent request to selected agencies to report on the status of outstanding audit recommendations and on audit plans under OMB Circular A-73. You should include a summary description of those "checks and balances" or systems that are in place or are planned to assure the agency's capability to prevent, identify, and/or deal with problems of waste, fraud, and error. Distinctions should be made with respect to controls applicable to internal agency operations and employees (e.g., computer operations, receipt of supplies, imprest fund, payroll, etc.) and those dealing with agency contractors and grantees.

I have asked Wayne G. Granquist, Associate Director for Management and Regulatory Policy, to assist me in this effort. Please provide him with the name of the accountable official you are designating as soon as possible. Your comprehensive plan should be forwarded to him so that we can report to the President as soon after January 31 as is possible.

Attachment

ATTACHMENT

RESOURCE ANALYSIS

Contact.. Enter the name and telephone number of the individual who can respond to questions relating to the resource data provided.

Part I. Resource Schedule

Office/Division/Unit. Enter the reporting audit or investigation activity.

Budget. Enter the budget authority and outlays for the three fiscal years indicated. Provide unexpended balances for fiscal year 1978.

Staffing. Identify the numbers of full-time permanent employees assigned to the activity who devote more than fifty percent of their time to audit or investigation activities or support for these activities. Include a summary of both filled and vacant positions.

External Support. Identify external organizations (other Federal agencies, State, or local government, or non-governmental) providing audit and investigative support. Provide costs for fiscal years 1978, 1979, and planned in 1980.

Part II. Narrative Statement

Provide a brief summary description of the audit or investigation activities, including their current missions and organizational placements. Highlight significant increases or decreases in funding levels from the current fiscal year to fiscal year 1980 and major initiatives expected to be undertaken during the remainder of fiscal year 1979.

RESOURCE ANALYSIS

ATTACHMENT
EXHIBIT

CONTACT: _____

PART I. RESOURCE SCHEDULE

Office/Division/Unit:

	RESOURCE LEVELS		
	FY 1978	FY 1979	FY 1980 (Planned)
<u>BUDGET</u>			
Headquarters			
Field Offices			
TOTAL			
<u>STAFFING</u>			
Headquarters			
Professional			
Clerical			
TOTAL			
Field Offices			
Professional			
Clerical			
TOTAL			
<u>EXTERNAL SUPPORT</u>			
Organizations			

PART II. NARRATIVE STATEMENT

C. MEMORANDUM FROM MICHAEL E. SHAHEEN, JR., COUNSEL, OFFICE OF PROFESSIONAL RESPONSIBILITY, DEPARTMENT OF JUSTICE, TO JAMES T. MCINTYRE, JR., DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, DATED JUNE 19, 1979



UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF PROFESSIONAL RESPONSIBILITY
WASHINGTON, D.C. 20530

JUN 19 1979

MEMORANDUM FOR: James T. McIntyre, Jr.
Director, Office of Management
and Budget

FROM: Michael E. Shaheen, Jr. *Michael E. Shaheen*
Counsel

SUBJECT: Department of Justice Internal Programs
to Eliminate Waste, Fraud, and Abuse

The purpose of this memorandum is to advise you further of the actions being taken by the Department of Justice (DOJ) in response to the requirements outlined by the President in his memorandum dated December 13, 1978, and by you in your memorandum dated January 3, 1979.

The requirements as they pertain to the Justice Department were of two separate and distinct types; first, those that define Department responsibilities in government-wide activities to eliminate waste, fraud, and abuse; and, second, those concerned solely with the operation of the Department's internal programs.

Deputy Attorney General Benjamin Civiletti responded to the first type in his memorandum to you dated January 2, 1979, subject: Inspectors General and Program Fraud and Abuse. In his memorandum, Mr. Civiletti noted that he had been directed by the Attorney General to supervise Justice Department "initiatives to coordinate government-wide efforts to combat fraud and abuse in government programs." He listed a variety of organizational and professional steps being taken by the Department to fulfill the objectives of the President and Congress to eliminate waste, fraud, and abuse in the Federal government.



This Office, the Criminal Division, and the Internal Audit Staff have been meeting on the second group of requirements spelled out by the President and by you, i.e., to deal with the Department's internal programs. We have begun to develop specific programs to guide and manage DOJ efforts to eliminate waste, fraud, and abuse.

The first program, currently awaiting the Attorney General's signature, revises Title 28, Code of Federal Regulations, to assure that appropriate and coordinated response is made to all "whistle blower" allegations, that "whistle blowers" are protected from reprisal, and that such allegations are promptly and professionally dealt with. The primary responsibility for this program will be lodged with this Office since we are best equipped by reason of experience, expertise, and placement within the Department's organizational structure, to deal with such matters.

The second program proposed for the Attorney General's signature is a DOJ Order titled, Responsibilities For The Detection Of Waste, Fraud, And Error In Department Of Justice Programs. Basically, the proposed Order provides policy and procedures for identifying and reporting potentially illegal and wasteful activities, coordinating subsequent investigations and/or reviews, and, referring for prosecution, if warranted. Primary responsibility for this program will also be placed in this Office.

Finally, we are examining all of the audit, investigative and litigative resources within the Department having responsibility for internal programs and will develop policies and structures to assure the appropriate management of Department efforts to eliminate waste, fraud, and abuse.

We will keep you advised of our progress and furnish you with resource data in the near future.

D. "OFFICE OF PROFESSIONAL RESPONSIBILITY; PROTECTION OF DEPARTMENT OF JUSTICE WHISTLEBLOWERS," FEDERAL REGISTER, VOL. 45, NO. 81, APRIL 24, 1980

27754 Federal Register / Vol. 45, No. 81 / Thursday, April 24, 1980 / Rules and Regulations

DEPARTMENT OF JUSTICE
Attorney General

28 CFR Part 0

(Order No. 833-79)

Office of Professional Responsibility;
Protection of Department of Justice
Whistleblowers

AGENCY: Department of Justice.
ACTION: Final rule.

SUMMARY: This order establishes procedures for the disclosure of information evidencing misconduct by Department employees and provides protection for persons making such disclosures. The purpose of the order is to implement section 2303 of title 5, United States Code, as added by section 101(a) of the Civil Service Reform Act of 1978, Pub. L. 95-454.

EFFECTIVE DATE: January 16, 1980.

FOR FURTHER INFORMATION CONTACT: Michael E. Shaheen, Jr., Counsel, Office of Professional Responsibility, Department of Justice, Washington, D.C. 20530 (202-633-2236).

By virtue of the authority vested in me by 5 U.S.C. 2303, and 28 U.S.C. 509 and 510, Subpart G-2 of Part 0 of Chapter I of Title 28, Code of Federal Regulations, is revised to read as follows:

Subpart G-2—Office of Professional
Responsibility

Sec.
0.39 Organization.
0.39a Functions.
0.39b Confidentiality of Information.
0.39c Stays of Certain Personnel Actions in the Federal Bureau of Investigation.
0.39d Relationship to other Departmental Units.
0.39e Committee on Professional Responsibility.
Authority: 5 U.S.C. 2303 and 28 U.S.C. 509 and 510.

Subpart G-2—Office of Professional
Responsibility

§ 0.39 Organization.

The Office of Professional Responsibility shall be headed by a Counsel, appointed by the Attorney General. The Counsel shall be subject to the general supervision and direction of the Attorney General or, whenever appropriate, of the Deputy Attorney General or the Associate Attorney General or the Solicitor General.

§ 0.39a Functions.

The Counsel on Professional Responsibility shall:

(a) Receive and review any information or allegation concerning conduct by a Department employee that may be in violation of law, regulations

or orders, or of applicable standards of conduct or may constitute mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health or safety. However, this provision does not preempt the primary responsibility of internal inspection units of the Department to receive such information or allegations and to conduct investigations.

(b) Receive and review any allegation of reprisal against an employee or applicant who discloses information pursuant to paragraph (a) of this section. Any disclosure by an employee or applicant to the appropriate internal inspection unit of the Department under this subsection shall constitute disclosure to the Attorney General or the Counsel.

(c) Make such preliminary inquiry as may be necessary to determine whether the matter should be referred to another official within the Department.

(d) Refer any matter that appears to warrant examination in the following manner:

(1) If the matter appears to involve a violation of law, to the head of the investigative agency having jurisdiction to investigate such violations;

(2) If the matter appears not to involve a violation of law, to the head of the office, division, bureau or board to which the employee is assigned, or to the head of its internal inspection unit;

(3) If referral to the official indicated in paragraph (d)(1) or (2) of this section would be inappropriate, to the Attorney General and the Deputy Attorney General or, if referral to both the Attorney General and the Deputy Attorney General would also be inappropriate, to whichever of them would be proper or to the Associate Attorney General or the Solicitor General.

(e) *Receive.* (1) Reports containing the findings of any investigation undertaken upon matters referred under paragraph (d)(2) of this section and the administrative sanction to be imposed, if any sanction is warranted; and

(2) Monthly reports from the internal inspection units setting forth any information or allegations received pursuant to paragraph (a) or (b) of this section and the status of any pending investigations.

(f) Notify within a reasonable period of time any person who has submitted information or made allegations pursuant to paragraphs (a) or (b) of this section of the final result of any investigation undertaken: *Provided*, That such notification is permitted by and accords with applicable statutes and regulations.

(g) Recommend to the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Solicitor General what further action should be undertaken with regard to any matter referred to such official under paragraph (d)(3) of this section, including the assignment of any task force or individual to undertake the action recommended and any special arrangements that appear warranted.

(h) Undertake any investigation of a matter referred under paragraph (d)(3) of this section that may be assigned by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Solicitor General, or cooperate with any other organization, task force, or individual that may be assigned by such official to undertake the investigation.

(i) Submit to the Attorney General and the Deputy Attorney General or, if submission to both would be inappropriate, to whichever of them would be proper or to the Associate Attorney General or the Solicitor General:

(1) An immediate report concerning any matter referred under paragraph (d)(1) or (d)(2) of this section that should be brought to the attention of a higher official;

(2) An immediate report concerning the adequacy of any investigation of a matter referred under paragraph (d) of this section, if the Counsel believes that a significant question exists as to the adequacy of such investigation; and

(3) An annual report, or a semi-annual report if the Counsel determines this to be necessary, reviewing and evaluating the activities of internal inspection units, or where there are no such units, the discharge of comparable duties within the Department.

(j) Submit recommendations to the Attorney General and the Deputy Attorney General on the need for changes in policies or procedures that become evident during the course of the Counsel's inquiries.

(k) Undertake any other responsibilities assigned by the Attorney General including duties relating to the improvement of the performance of the Department.

§ 0.39b Confidentiality of Information.

Whenever any employee or applicant to the Department provides information pursuant to § 0.39a(a) or (b), the Counsel and the internal inspection unit shall maintain the confidentiality of the employee or applicant unless the employee or applicant consents to the release of his or her identity or the Counsel determines that the disclosure

of the identity is necessary to resolve the allegation.

§ 0.39c Stays of Certain Personnel Actions in the Federal Bureau of Investigation.

(a) The Counsel may, with respect to employees of the Federal Bureau of Investigation, request the Attorney General to stay any personnel action for any period which the Attorney General considers appropriate if the Counsel determines that there are reasonable grounds to believe that the personnel action was taken, or is to be taken, as a reprisal for a disclosure of information by the employee to the Attorney General (or the Department official designated by the Attorney General for such purpose) which the employee reasonably believes evidences:

- (1) A violation of any law, rule or regulation; or
- (2) Mismanagement, a gross waste of funds, abuse of authority or a substantial and specific danger to public health or safety.

(b) The Attorney General, when requested to stay a personnel action under paragraph (a) of this section, may stay such action when the Attorney General determines that under the facts and circumstances involved such stay would be appropriate.

§ 0.39d Relationship to other departmental units.

(a) Primary responsibility for assuring the maintenance of the highest standards of professional responsibility by Department employees shall continue to rest with the heads of the offices, divisions, bureaus and boards of the Department.

(b) Primary responsibility for investigating an allegation of unprofessional conduct that is lodged against an employee of the Department normally shall continue to rest with the head of the office, division, bureau, or board to which the employee is assigned, or with the head of its internal inspection unit, or, if the conduct appears to constitute a violation of law, with the head of the agency having jurisdiction over the subject matter involved.

(c) The heads of the offices, divisions, bureaus, and boards shall provide information and assistance requested by the Counsel in connection with reviews or investigations conducted by the Counsel or by any other person assigned to conduct reviews or investigations and shall keep the Counsel informed of major investigations that they are conducting.

(d) Employees of the Department may be assigned to the Office of Professional

Responsibility on a case-by-case basis to conduct such inquiries as may be warranted. However, no investigative personnel shall be assigned except under the specific direction of the Attorney General or the Deputy Attorney General and, in normal course, with the agreement of the head of the unit to which the investigative personnel are regularly assigned. Personnel assigned to the Office shall work under the direction of the Counsel.

§ 0.39e Committee on Professional Responsibility.

The Committee on Professional Responsibility shall consist of Department officials designated by the Attorney General and shall serve as an advisory body to the counsel.

Dated: January 18, 1980.

Benjamin R. Civiletti,
Attorney General.

(FR Doc. 80-12567 Filed 4-23-80; 8-46 am)
BILLING CODE 4410-01-01

E. "RESPONSIBILITIES FOR THE DETECTION OF WASTE, FRAUD AND ERROR IN DEPARTMENT OF JUSTICE PROGRAMS," ORDER 2900.5, DEPARTMENT OF JUSTICE, MAY 30, 1980

**DEPARTMENT
OF JUSTICE**

Order

DOJ 2900.5

May 30, 1980

Subject: RESPONSIBILITIES FOR THE DETECTION OF WASTE, FRAUD AND ERROR IN DEPARTMENT OF JUSTICE PROGRAMS

1. **PURPOSE.** This order establishes responsibilities for the detection and reporting of waste, fraud and error in Department of Justice programs. The order requires that a concerted effort be made to deal with issues of waste, fraud and error, especially in those programs and activities deemed most vulnerable, and that any situations or patterns evidencing waste, fraud or error in government programs be reported and investigated.
2. **SCOPE.** This order applies to all organization units within the Department of Justice.
3. **EFFECTIVE DATE.** This order shall be effective upon issuance.
4. **BACKGROUND.**
 - a. In hearings before the Subcommittee on Governmental Efficiency and the District of Columbia, Senate Committee on Governmental Affairs, the General Accounting Office (GAO) stated that "fraud detection should be a priority effort and that a portion of audit efforts should be devoted to detecting fraud."
 - b. In a report issued to Congress by the GAO in September 1979, entitled "Federal Agencies Can, and Should Do More to Combat Fraud in Government Programs," GAO stated that Federal agencies have not mounted an aggressive and effective effort to detect fraud or surface and expose potential frauds. The report recommended that agencies take a more active, systematic approach to identifying fraud in their programs.

Distribution: OBD/H-2
BUR/H-2

Initiated By: Justice Management ..
Division
Internal Audit Staff

DOJ 2900.5
May 30, 1980

- (3) Reviewing and evaluating reports of suspected fraud and malfeasance to determine the need for investigation.
 - (4) Submitting cases determined to need investigation to the Federal Bureau of Investigation or other appropriate investigative groups within the Department.
 - (5) Reviewing and evaluating investigative reports of suspected fraud or malfeasance and submitting cases of possible violations of law to the Criminal Division for prosecutive action.
 - (6) Maintaining control records on the type, status, and disposition of cases referred to them for investigation.
 - (7) Including in its current reports to the Attorney General, a separate section identifying the type, volume, and disposition of suspected fraud or malfeasance cases referred for investigation.
 - (8) Disseminating information to the Internal Audit Staff and to all internal audit, inspection and management review groups as to the types of fraud or malfeasance that are being disclosed and identifying the types of clues, leads, or techniques that lead to detection of fraud or malfeasance.
 - (9) Disseminating information to management which discloses those circumstances likely to give rise to fraud or malfeasance.
- b. The Internal Audit Staff, JMD, shall, as an integral part of its audit effort, be responsible for:
- (1) Detecting fiscal, programmatic, and/or administrative malfeasance, or fraud, on the part of any official or employee of

Par 8
Page 4

DOJ 2900.5
May 30, 1980

- the Department or its component organizations during the course of planned audit activities or when assigned to perform special reviews in areas that are highly susceptible to fraud or abuse.
- (2) Ensuring that all its professional personnel are adequately trained in fraud detection techniques and are familiar with the reporting requirements of the Office of Professional Responsibility.
 - (3) Including steps in audit programs to test the adequacy and effectiveness of internal controls as a means of detecting areas of potential fraud and disclosing the existence of fraud.
 - (4) Referring matters in which fraud or malfeasance is suspected to the Office of Professional Responsibility in the format prescribed for their review and evaluation, and referring conditions of irresponsibility and incompetence to OPR and appropriate management officials.
 - (5) Providing staff support to investigative organizations when audit expertise is needed to conduct investigations of suspected fraud or malfeasance referred to them.
 - (6) Ensuring that other internal audit and management review groups are performing the necessary tests to detect malfeasance, fraud, irresponsibility or incompetence, and reporting any adverse situations to the Office of Professional Responsibility and to appropriate management officials.
- c. Internal audit, inspections and management review groups within the Department (other than the Internal Audit Staff, JMD) shall, as an integral part of their review activities, be responsible for:

Par 8
Page 5

DOJ 2900.5
May 30, 1980

- c. In a memorandum for the heads of executive departments and agencies dated December 13, 1978, President Carter emphasized that "the resources of this government must be managed well, free of waste, fraud and inefficiency." To meet this challenge, the President directed that positive steps be taken to deal specifically with the issues of waste, fraud, and error.

5. AUTHORITY.

- a. The Budget and Accounting Procedures Act of 1950 (31 U.S.C. 66a) directs the head of each executive agency to "***establish and maintain systems of effective control over and accountability for all funds, property, and other assets for which the agency is responsible, including appropriate internal audit***."
- b. The Criminal Justice Act (18 U.S.C. 287, 371, 641 and 1001) prohibits such types of fraud as filing fraudulent claims; conspiring to defraud the United States; embezzling, stealing or converting of public money, property or records for one's own use or for that of another; and making false statements or entries knowingly and willfully to conceal or cover up a material fact.

6. DEFINITION.

a. Internal Audit Staff, JMD.

Independent audit and review staff within the Justice Management Division (JMD) with a responsibility to audit Departmental programs, functions and activities as a service to management, pursuant to DOJ Order 2900.1C (March 24, 1980).

b. Internal Audit Groups.

Independent review and appraisal staffs established within a Departmental organization to review its programs and functions as a service to management.

DOJ 2900.5
May 30, 1980

c. Internal Inspection Groups.

Inspection review staffs established within the components of the Department to determine whether Department policies, procedures, and regulations are being violated by employees.

d. Management Review Groups.

Management and supervisory personnel assigned to review and appraise program implementation, progress and effectiveness as an integral part of the project, program or activity.

7. POLICY.

This order shall be carried out by the Office of Professional Responsibility (OPR), Internal Audit Staff, JMD, and all internal audit, inspection and management review groups within the Department in the normal course of their review activity or when assigned to perform special reviews in areas identified as highly susceptible to waste, fraud, and inefficiency. Investigation of matters that appear to involve a violation of law, including fraud and malfeasance, shall be accomplished by the Federal Bureau of Investigation or other investigative groups within the Department, as deemed appropriate by the Attorney General or OPR.

8. RESPONSIBILITIES.

a. The Office of Professional Responsibility shall be responsible for:

- (1) Ensuring, with the assistance of JMD, the overall implementation of this order.
- (2) Establishing policies and procedures for the Internal Audit Staff and all internal audit, inspection and management review groups to report suspected fraud and malfeasance to OPR.

DOJ 2900.5
May 30, 1980

- (3) Reviewing and evaluating reports of suspected fraud and malfeasance to determine the need for investigation.
 - (4) Submitting cases determined to need investigation to the Federal Bureau of Investigation or other appropriate investigative groups within the Department.
 - (5) Reviewing and evaluating investigative reports of suspected fraud or malfeasance and submitting cases of possible violations of law to the Criminal Division for prosecutive action.
 - (6) Maintaining control records on the type, status, and disposition of cases referred to them for investigation.
 - (7) Including in its current reports to the Attorney General, a separate section identifying the type, volume, and disposition of suspected fraud or malfeasance cases referred for investigation.
 - (8) Disseminating information to the Internal Audit Staff and to all internal audit, inspection and management review groups as to the types of fraud or malfeasance that are being disclosed and identifying the types of clues, leads, or techniques that lead to detection of fraud or malfeasance.
 - (9) Disseminating information to management which discloses those circumstances likely to give rise to fraud or malfeasance.
- b. The Internal Audit Staff, JMD, shall, as an integral part of its audit effort, be responsible for:
- (1) Detecting fiscal, programmatic, and/or administrative malfeasance, or fraud, on the part of any official or employee of

DOJ 2900.5
May 30, 1980

- the Department or its component organizations during the course of planned audit activities or when assigned to perform special reviews in areas that are highly susceptible to fraud or abuse.
- (2) Ensuring that all its professional personnel are adequately trained in fraud detection techniques and are familiar with the reporting requirements of the Office of Professional Responsibility.
 - (3) Including steps in audit programs to test the adequacy and effectiveness of internal controls as a means of detecting areas of potential fraud and disclosing the existence of fraud.
 - (4) Referring matters in which fraud or malfeasance is suspected to the Office of Professional Responsibility in the format prescribed for their review and evaluation, and referring conditions of irresponsibility and incompetence to OPR and appropriate management officials.
 - (5) Providing staff support to investigative organizations when audit expertise is needed to conduct investigations of suspected fraud or malfeasance referred to them.
 - (6) Ensuring that other internal audit and management review groups are performing the necessary tests to detect malfeasance, fraud, irresponsibility or incompetence, and reporting any adverse situations to the Office of Professional Responsibility and to appropriate management officials.
- c. Internal audit, inspections and management review groups within the Department (other than the Internal Audit Staff, JMD) shall, as an integral part of their review activities, be responsible for:

DOJ 2900.5
May 30, 1980

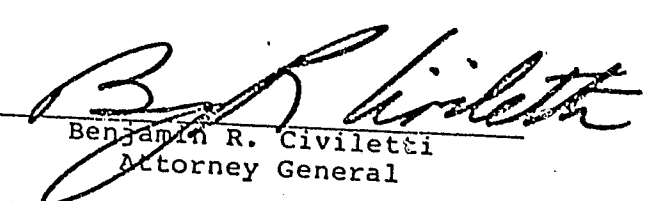
- (1) Detecting fiscal, programmatic, and/or administrative malfeasance, fraud, irresponsibility, or incompetence on the part of any official or employee of the organization or its field components during the course of planned reviews or when conducting special reviews in areas that are highly susceptible to fraud or abuse.
 - (2) Ensuring that all their audit, inspection and management review personnel are adequately trained in fraud detection techniques and are familiar with the reporting requirements of the Office of Professional Responsibility.
 - (3) Including steps in audit, inspection and management review programs to test the adequacy and effectiveness of internal controls as a means of detecting areas of potential fraud and disclosing the existence of fraud.
 - (4) Referring matters in which fraud or malfeasance is suspected to the Office of Professional Responsibility in the format prescribed for their review and evaluation, and referring conditions of irresponsibility and incompetence to OPR and to appropriate management officials.
 - (5) Providing staff support to investigative organizations when audit, inspection or management expertise is needed to effectively conduct investigations of fraud referred to them.
- d. The Federal Bureau of Investigation and other investigative groups within the Department shall be responsible for:
- (1) Investigating suspected fraud and malfeasance cases that are referred to them by the Office of Professional Responsibility.

DOJ 2900.5
May 30, 1980

- (2) Submitting an investigative report to the Office of Professional Responsibility on each matter in which fraud or malfeasance is suspected, in accordance with reporting procedures established by the Office of Professional Responsibility.

9. IMPLEMENTATION.

- a. The Internal Audit Staff, and all internal audit, inspection and management review groups shall be responsible for developing and implementing the necessary approaches and procedures considered relevant to the detection and prevention of waste, fraud, and error. Effective approaches should be documented by integrating them into audit, inspection and review programs used in conducting audits, inspections and management reviews.
- b. Each organization involved in audit, inspection, management reviews or investigative activities shall be responsible for the training of their audit, inspection, and investigative personnel.
- c. The Office of Professional Responsibility shall be responsible for developing the necessary procedures and report formats required to discharge its responsibilities under this order.


Benjamin R. Civiletti
Attorney General

END