

June 1988

**DEFENSE
PROCUREMENT FRAUD**

**Justice's Overall
Management Can Be
Enhanced**



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

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June 29, 1988

The Honorable William Proxmire
Chairman, Subcommittee on National
Security Economics
Joint Economic Committee
Congress of the United States

The Honorable Charles E. Grassley
Ranking Minority Member
Subcommittee on Courts and
Administrative Practice
Committee on the Judiciary
United States Senate

This report discusses problems the Department of Justice faces in managing defense procurement fraud investigations and makes recommendations to the Attorney General that would improve his ability to manage this high priority area. As requested, this report also provides information on current case management practices for the defense procurement fraud area and data on prosecutions, convictions, sentences, and resources devoted to government fraud, drugs, organized crime, and public corruption cases.

As arranged with the Subcommittees, unless you publicly announce the contents of the report earlier, we plan no further distribution until 30 days from the date of this report. At that time, we will send copies to the Attorney General, the Secretary of Defense, the seven U.S. attorney offices we visited, and other interested parties and make copies available to others upon request.

A handwritten signature in cursive script that reads 'Richard L. Fogel'.

Richard L. Fogel
Assistant Comptroller General

to help distinguish the different prosecutive efforts required for different types of cases. Better information could help Justice assess the extent to which this high priority program is using resources nationwide effectively and efficiently.

Principal Findings

Lack of Complete and Timely Data on Case Status

Since 1982, Justice headquarters has been attempting to capture some basic information for all of its fraud investigations and prosecutions through its Fraud and Corruption Tracking System. However, this system does not contain information on all defense procurement fraud referrals because Justice officials said the investigative agencies do not always submit the forms needed to enter a referral into the system. The extent of underreporting is not known.

The system also does not contain current information on the status of a significant portion of the referrals in the system primarily because Justice attorneys are not always reporting the disposition of the referrals. For example, Justice attorneys had not reported whether they had accepted or declined 286 (about 42 percent) of the 680 defense procurement fraud and related referrals sent to their offices between October 1, 1983, and May 31, 1987. Most of these referrals had been with Justice for a year or more. U.S. attorney office officials said that the administrative burden associated with completing the required forms, and questionable benefits to their organizations, were the primary reasons that the information is not always submitted.

Resources Devoted to Prosecuting Defense Procurement Fraud Not Known

Justice does not know how many attorneys are being used for defense procurement fraud investigations and prosecutions because the Criminal Division and U.S. attorney offices are not required to gather this information. Such information would enable Justice to monitor the amount of effort being devoted to this priority area and compare resources expended to results achieved.

Both Criminal Division and U.S. attorney office officials said they need more staff for this area. A case weighting system that distinguishes between the amount of prosecutive effort needed for different kinds of cases would be one useful tool for helping assess resource needs.

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Abbreviations

CIDC	Army Criminal Investigative Command
DCAA	Defense Contract Audit Agency
DCIS	Defense Criminal Investigative Service
DLA	Defense Logistics Agency
DOD	Department of Defense
FACT	Fraud and Corruption Tracking
FBI	Federal Bureau of Investigation
NIS	Naval Investigative Service
OSI	Air Force Office of Special Investigations

-
- the use by contractors of vast legal and/or accounting resources in defending defense procurement fraud cases; and
 - the difficulty in locating knowledgeable and/or responsible officials, and sources of correspondence and documentation.

Justice Components Responsible for Federal Criminal Offenses Involving Defense Procurement Fraud

The Criminal Division at Justice headquarters and the U.S. attorney offices are responsible for the criminal prosecution of defense procurement fraud. The Criminal Division's Defense Procurement Fraud Unit is supposed to initially receive and review for prosecutive merit all referrals submitted by investigative and auditing agencies involving significant instances of alleged defense procurement fraud. The Unit has responsibility for some referrals and assists U.S. attorney offices with others. However, the U.S. attorneys, for the district where the alleged criminal acts occurred, handle most of the defense procurement fraud referrals that have prosecutive merit. The decision on who will handle what referrals is made on a case-by-case basis considering a number of factors, such as the work load of the offices, complexity of the case, multidistrict aspects of the case, special expertise needed, and U.S. attorneys' requests for assistance. According to a Criminal Division official, on referrals where there is a question about whether the Unit or the U.S. attorney office will handle the referral, Criminal Division and U.S. attorney office officials attempt to reach an agreement. The Assistant Attorney General for the Criminal Division resolves any disputes.

Brief descriptions of the authority, responsibility, and organization of the Criminal Division and U.S. attorney offices follow.

Criminal Division

The Criminal Division generally exercises supervision over the enforcement of federal criminal laws and is headed by an Assistant Attorney General. The Division has sections devoted to major criminal activities, such as fraud, organized crime and racketeering, narcotics and dangerous drugs, and public integrity. The Fraud Section is responsible for directing and coordinating the federal effort against fraud, focusing primarily on program and procurement fraud, securities, commodities, and bank fraud. The Section has a special Defense Procurement Fraud Unit that handles defense procurement fraud matters and cases. Justice refers to investigations and other activities requiring over 1 hour of attorney time as "matters."

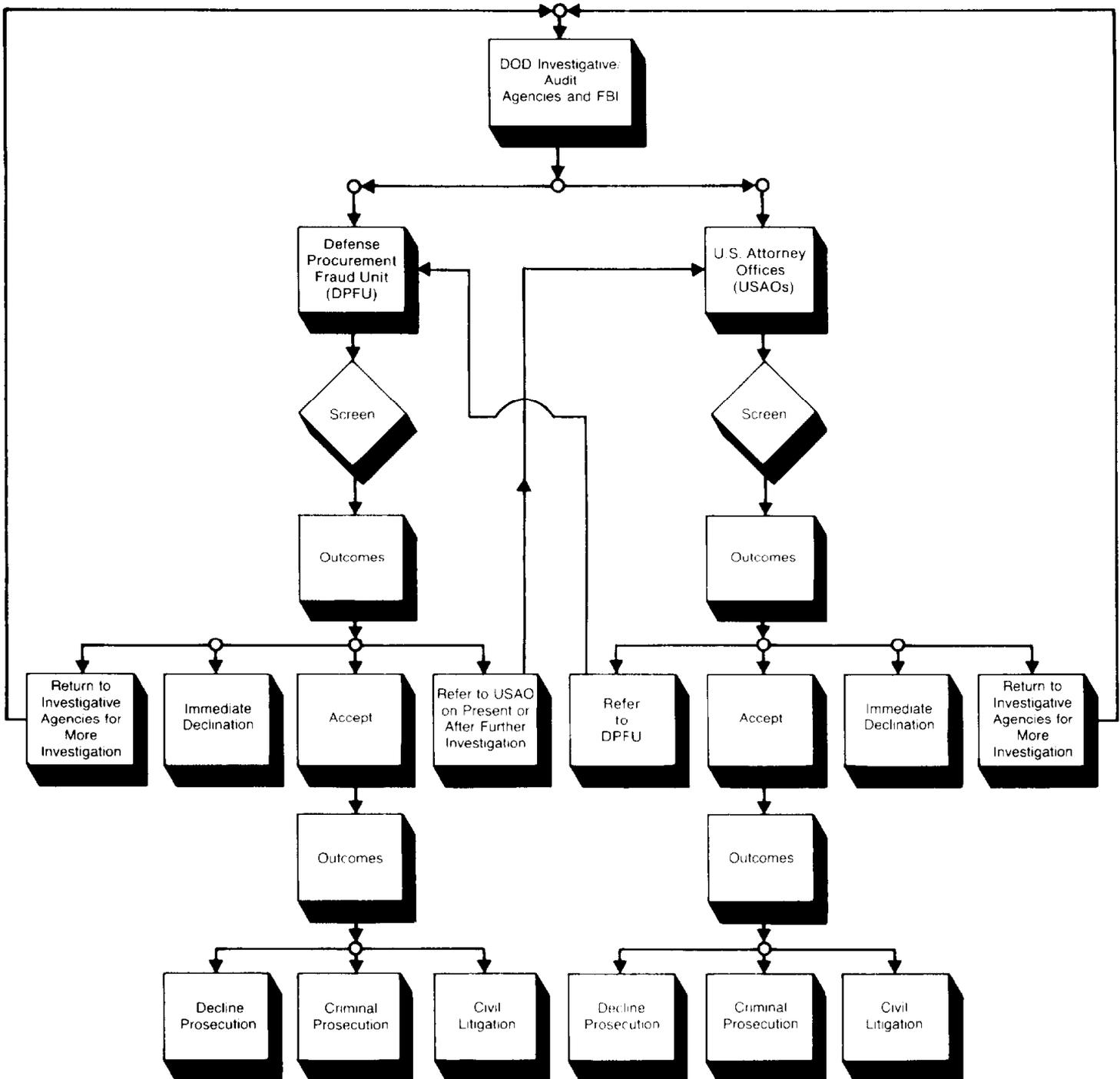
of a clearly defined nationwide enforcement program establishing procurement fraud as a priority and providing guidance, expertise, and support to investigators and attorneys. Beginning in 1982, Justice and DOD undertook several initiatives related to improving the effectiveness of the defense procurement fraud referral, investigation, and prosecution processes.

Department of Justice Initiatives

- In 1982, the Criminal Division developed the Fraud and Corruption Tracking (FACT) System to track all government fraud cases from initial referral to Justice through final disposition. On October 1, 1983, DOD began reporting information to FACT on defense procurement fraud referrals. Also, in 1982 the Criminal Division established the Defense Procurement Fraud Unit within the Fraud Section to (1) concentrate Justice and DOD resources on defense procurement fraud, (2) screen significant defense procurement fraud allegations for possible prosecution, and (3) prosecute a small number of nationally significant defense procurement fraud cases. The Unit is composed of Fraud Section attorneys, an attorney from Justice's Civil Division, attorneys from each of the three military services and the Defense Logistics Agency (DLA), investigative liaisons from the four DOD investigative agencies² and the Federal Bureau of Investigation (FBI), and an audit advisor from the Defense Contract Audit Agency (DCAA).
- In 1983, the Attorney General established the Economic Crime Council to serve as an advisory body to Justice on matters related to economic crime enforcement. Chaired by the Associate Attorney General, the Council's membership includes 21 U.S. attorneys and officials from the Criminal, Civil, Antitrust, and Tax Divisions, and the Criminal Investigation Division of the FBI. In 1984, the Council targeted defense procurement and health care benefits as economic crime areas in which stronger enforcement and deterrence were needed.
- In 1984, Justice and DOD entered into a memorandum of understanding setting forth the policy and procedures for investigating and prosecuting crimes involving corruption, fraud, theft, and embezzlement.
- In April 1988, Justice sponsored a 3-day conference on defense procurement fraud issues, which was attended by attorneys, investigators, auditors, and contracting officers.

²The DOD investigative agencies are DCIS, the Army Criminal Investigation Command (CIDC), the Naval Investigative Service (NIS), and the Air Force Office of Special Investigations (OSI).

Figure 1.1: Referral, Screening, and Prosecution Process for Defense Procurement Fraud



In the field, we interviewed officials at seven U.S. attorney offices located in the districts of central and southern California, eastern and southern New York, New Jersey, Massachusetts, and eastern Pennsylvania. Five of the seven offices were in the top 10 in number of defense procurement fraud referrals received during the period of October 1, 1983, through May 31, 1987. We selected the other two offices because one office was in close proximity to two of the top 10 offices and the other one recently had successfully completed a lengthy investigation which resulted in a guilty plea and fines, penalties, and damages of about \$5 million. We also visited field offices of the FBI, DCAA, and DOD's criminal investigative agencies that provide support to attorneys in prosecuting defense procurement fraud cases. The results of our review are limited to the organizations and/or locations we visited, and we do not know to what extent the conditions we identified at the seven U.S. attorney offices visited exist at the other 87 U.S. attorney offices.

In doing our work, we obtained work load and other statistical data from various management information systems maintained by Justice, the Judiciary, and DOD. We did not conduct a reliability assessment of the data obtained from the management information systems and thus cannot attest to the accuracy of the data provided. Further, we did not review open or closed case files on defense procurement fraud referrals, investigations, and prosecutions, and thus did not verify the accuracy of the management and recordkeeping practices described in this report.

Our review was done from June 1987 through April 1988. It was done in accordance with generally accepted government auditing standards. We did not obtain written agency comments on this report. However, the results of the review and recommendations were discussed with officials from Justice headquarters, the seven U.S. attorney offices visited, and the DOD investigative and auditing agencies. They generally agreed with the findings and recommendations.

(2) assess the demands on investigative and prosecutive resources required for defense procurement fraud and other government fraud cases, (3) identify patterns and trends in corrupt and fraudulent practices, (4) monitor delays in case processing, and (5) provide data on enforcement accomplishments.

Problems With FACT

The FACT System has not been an effective management tool because the participating organizations (investigative agencies and Justice components handling the fraud referrals) have not been furnishing the required data to make it a complete, reliable system. U.S. attorney office officials said that the administrative burden associated with completing the required forms and questionable benefits to their organizations were the primary reasons that the information is not always submitted.

For the period October 1, 1983, through May 31, 1987, the FACT System showed that Justice received 680 defense procurement and DOD-related fraud referrals involving 1,184 subjects for bribery of government officials, conflict of interests, antitrust violations, and procurement fraud. Of the 680 referrals, 599 (88 percent) were sent to U.S. attorney offices for action, 75 (11 percent) to the Criminal Division, and 6 (1 percent) to another Justice headquarters litigative division. As of September 1987, 211 referrals (31 percent) had been accepted, 183 referrals (27 percent) had been declined, and 286 referrals (42 percent) were pending action. As of January 1988, the FACT System showed that Justice components obtained indictments on 180 subjects, of which 113 were convicted, 5 were acquitted, and 62 were pending final court action.

The majority of the 286 pending referrals had been with the Justice components for a year or more, and Justice does not know whether these cases have been accepted, declined, or are still pending. The Criminal Division, which operates the FACT System, is aware that the information recorded in the system does not (1) account for all of the fraud referrals sent to Justice and (2) accurately reflect the current status and disposition on those referrals recorded in the system. Criminal Division officials said that one of the principal reasons for the large pending referrals was due to attorneys not returning their copy of the FACT System form indicating the disposition of the case. In addition to not knowing the status of referrals, Criminal Division officials said that not all defense procurement fraud referrals are being reported to the FACT System because investigators are not submitting the required forms.

In a July 29, 1987, memorandum to all Section Chiefs and Office Directors, the Assistant Attorney General for the Criminal Division emphasized the importance of the Division's automated information systems. He told these officials that their performance evaluations would include an assessment of their efforts to ensure that all data entries are timely, accurate, and complete. This memorandum was initiated as a result of our review, a Justice Management Division review, and an inquiry by the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies. The Subcommittee asked Justice to update the work load estimates contained in the Division's fiscal year 1988 budget request. After querying the status of investigations and cases in the automated case tracking system, the Assistant Attorney General said in his memorandum that the Division was unable to respond to the Subcommittee's request. His reason was that the Division's case tracking system did not have reliable information to reflect the investigative and litigative work being handled to support the request for additional resources.

Number of Attorneys Devoted to Defense Procurement Fraud Investigations and Cases Not Known

Justice does not know how many attorneys are being used to investigate and prosecute defense procurement fraud because the Criminal Division and U.S. attorney offices are not required to gather this information. We believe having information on resources expended for an area like defense procurement fraud would enable Justice to monitor the amount of effort being devoted to this priority issue and to compare, over time, the resources expended to the results achieved. One way to determine the amount of attorney resources devoted would be to require attorneys to record the amount of time they spend in this area.

Justice's case management systems were designed, according to Justice officials, to capture time spent on specific cases, but this aspect of the systems is not being used. Although the U.S. attorney offices' and Criminal Division's primary case tracking systems have the capability to capture time spent on individual cases, there is no requirement that they report time in this manner. According to officials from the Criminal Division, they do not have a need for this type of data because they expect supervisors to keep track of what attorneys are doing. With regard to defense procurement fraud cases, officials said they generally know how many attorneys are devoted to this area because the Division has the Defense Procurement Fraud Unit whose attorneys are dedicated to working these cases.

The federal judiciary has recognized the value of having a quantifiable basis to account for case complexity in assessing their resource needs. To obtain management information to estimate those needs, the judiciary uses a case weighting system to help quantify the work load burden of the different cases heard by federal judges, and to determine if additional judges are needed. The case weights were developed from time studies that measured the amount of time judges spent on different types of cases. Under the judiciary's weighting system, a case weight of 1.0 represents the average time spent on a case. Cases which are relatively simple and do not require much time on the judge's part, such as heroin distribution, have a weight of less than one. A case requiring more than the average amount of a judge's time, such as a bribery case, has a weight greater than one.

To use the case weighting system in assessing resource needs, the judiciary takes the actual case filings for each district court for the most recent 1-year period and multiplies each case by the weight assigned for that case. The weighted cases are then totalled for each period and divided by the number of judgeship positions authorized for the district. The calculations result in an average weighted caseload for each authorized full-time district court judgeship position. Currently, when the weighted cases per judgeship position exceed 400, the judiciary uses this in conjunction with other factors, such as case type mix and area population characteristics, to justify additional judgeship positions before Congress. The case weights are updated periodically.

According to a Justice official who is leading the Department's productivity improvement effort, a case weighting system would be a useful management tool. Officials from all of the U.S. attorney offices we visited supported the need for a case weighting system. For example, officials from the southern district of New York said that a case weighting system would show that their district's work load consists of many large, complex, multidefendant cases, a fact which is not reflected by their caseload statistics. Although officials from five of these offices believe such a system would be difficult to develop, they said that a case weighting system would help Justice to allocate resources among the U.S. attorney offices.

Justice officials told us that defense procurement fraud investigations, especially the defective pricing and cost mischarging cases, are highly complex and time consuming. Officials from both the Defense Procurement Fraud Unit and the seven U.S. attorney offices said they need additional attorney and/or support staff to do their work. We believe

- The current and anticipated work load by types of defense procurement fraud (cost/labor mischarging, defective pricing, product substitution, etc.) and the organization's strategies and priorities for handling this work load. To obtain information on anticipated work load, Justice will have to get input from the various investigative and auditing groups.
- The attorney resources being devoted to and needed to handle the current and anticipated work load.
- Objectives to be accomplished and milestones for accomplishing them. For example, an objective could be to reduce the pending caseload by a certain number within a specified period of time.

In developing the management plans, each of the components should be asked to address what special problems or issues are affecting their efforts to successfully prosecute the complex defense procurement fraud cases involving cost/labor mischarging and defective pricing and whether different strategies are needed for such cases. Management officials and attorneys we interviewed said that these types of cases are difficult to investigate and prosecute because of the (1) complexity of the defense procurement process, (2) ambiguity of the rules and regulations governing the DOD procurement process, (3) need for detailed and extensive analysis of voluminous accounting and performance data, and (4) vast legal and accounting resources large defense contractors use to defend themselves during defense procurement fraud investigations.

Criminal Division officials agreed that preparing written plans for the defense procurement fraud area and periodically updating them to assess progress would be a good idea. They added that it may be difficult to obtain the cooperation of U.S. attorneys in preparing, updating, and sending the plans to headquarters. One official cited as an example that in February 1987, the Attorney General sent a memorandum to all U.S. attorney offices asking them to report to him about their efforts concerning bank fraud. The Fraud Section Chief said that his office followed up with several letters requesting the information, but as of May 1988, most of the U.S. attorney offices had not provided the information.

Officials from four of the seven U.S. attorney offices we visited generally agreed with the need for plans for the defense procurement fraud area. Officials from three of the four offices said they did some planning in this area but either did not document it or included it in broad plans covering the entire white-collar crime area. Officials from one of the four offices expressed some reservations because of the administrative burden planning may impose on their office. They also said that for the

Chapter 2
Justice's Management of Its Defense
Procurement Fraud Operations Can Be
Enhanced With Better Oversight Information

what needs to be done to ensure that an interagency tracking system is in place that will provide complete, accurate, and timely information on fraud referrals and cases. The Attorney General should also develop a means for determining the amount of attorney resources being spent on defense procurement fraud and pursue the development of a case weighting system. In addition, the Attorney General should select those U.S. attorney offices that investigate a large number of defense procurement fraud referrals and then direct these offices and the Criminal Division to prepare written management plans and update them periodically to assess progress.

prosecuted in the geographical area where the alleged crimes were committed, Unit attorneys are on travel for extended periods of time. Criminal Division officials said that the extensive travel requirement also contributes to attorney turnover.

The Chief of the Defense Procurement Fraud Unit said that in about the last 5 years, the Unit has lost eight Criminal Division attorneys, primarily to the private sector. Five of the attorneys, who had 60 to 70 years of combined experience, left between March 1986 and August 1987. This left the Unit with five Criminal Division attorneys as of August 1987. According to three of these attorneys, they had been with the Unit for approximately a year. One said she had little or no experience prosecuting defense procurement fraud cases, and the other two said they had experience in litigating defense procurement fraud cases. The Unit Chief said that attorney turnover moderately affects the Unit's ability to do its job, but the extent varies from case to case. According to a Criminal Division official, 10 Criminal Division attorneys were assigned to the Unit as of May 1988.

Officials in four of the seven U.S. attorney offices we visited said that attorney turnover was a problem, but the extent of the problem cited varied among the offices. For example, officials in the central district of California said that attorney turnover is a significant problem because the defense procurement fraud experience that attorneys take with them takes time to regain. Further, one official in this office said that some cases may not have been indicted because of attorney turnover. Officials in the eastern district of Pennsylvania said that attorney turnover is a problem to some extent in that it can affect the completion of cases. After an attorney leaves the office, they said it takes time for another attorney to become familiar with the case. Officials from the other three U.S. attorney offices did not cite attorney turnover as a problem in handling defense procurement fraud cases.

Officials at five U.S. attorney offices said that support staff (paralegal and/or clerical staff) turnover was a problem. For example, a U.S. attorney office official from the Massachusetts district said that attorneys are having to do administrative tasks that should be done by support staff, and as a result, his office's handling of defense procurement fraud cases has been affected. Officials from the other two U.S. attorney offices did not cite support staff turnover as a problem.

Justice has authority under 28 U.S.C. 548 to set the annual salaries of assistant U.S. attorneys, not to exceed the rate of basic compensation

In addition, management uses other means to monitor the status of cases. According to officials in the Criminal Division's Fraud Section and two of the seven U.S. attorney offices visited, attorneys are required to provide periodic written status reports to update management on the status of their cases. For example, in the central district of California, attorneys must submit a written report about twice a year showing the status of those cases that have not reached the indictment stage. Beginning in May 1987, the Fraud Section attorneys were required to prepare and submit detailed case review memorandums, which should be updated at least every 90 days. According to the Fraud Section Chief, these reports will serve as the basis for regular reviews of all cases. Also, officials in two U.S. attorney offices said that they use reports generated from the U.S. attorney office case management system to monitor the status of cases.

Both the Criminal Division's Fraud Section and the seven U.S. attorney offices visited have indictment and declination procedures. According to officials in these offices, attorneys seeking authority to return an indictment can either prepare a prosecution memorandum or orally discuss their reasons for wanting to prosecute. Generally, the memorandums and discussions cover applicable laws and anticipated defenses. The attorneys' reasons for wanting to prosecute are reviewed and approved by various management officials. For example, in the Criminal Division's Fraud Section, prosecution memorandums are reviewed by the Section Indictment Review Committee.² After consideration by the Committee, the Committee Chairman prepares a memorandum describing the Committee's views and recommendation regarding the indictment. This memorandum, together with the prosecution memorandum and other related documents are forwarded to the Fraud Section Chief for his decision. According to officials in the U.S. attorney offices visited, the U.S. attorney in each district has the final authority in deciding whether or not to prosecute a case. U.S. attorneys make their decisions based on recommendations from other management officials and, in some offices, an Indictment Review Committee.

According to officials in the Criminal Division's Fraud Section and the seven U.S. attorney offices, attorneys who decide not to prosecute also

²In situations involving defense procurement fraud, the Indictment Review Committee consists of the Fraud Section's four Deputy Chiefs and the Chief of the Defense Procurement Fraud Unit. The Chairman of the Indictment Review Committee may also invite other Fraud Section attorneys to participate in the indictment review if he believes their presence would be of assistance.

management may assign additional attorneys to assist. U.S. attorney officials said that attorneys from DOD and/or the Defense Procurement Fraud Unit are usually not assigned to work on cases handled by their offices. Officials also said that the process for assigning attorneys to work on other criminal cases is similar to the process for defense procurement fraud cases.

According to Justice statistics, the average caseload handled per assistant U.S. attorney in fiscal year 1987 was 134. At the seven U.S. attorney offices visited, attorneys within these offices said they were handling between 2 and 135 cases. Attorneys at these offices said that their caseloads are varied and consist of defense procurement fraud cases as well as other types of criminal cases. Defense Procurement Fraud Unit attorneys said they were handling between 2 and 11 cases each, involving various types of defense procurement fraud.

Investigation Plans

Based on its review of three Navy claims investigations, the Criminal Division's Office of Policy and Management Analysis recommended in July 1983 that investigation plans be prepared, reviewed, and approved by top level management. Our review showed that this recommendation has generally not been implemented.

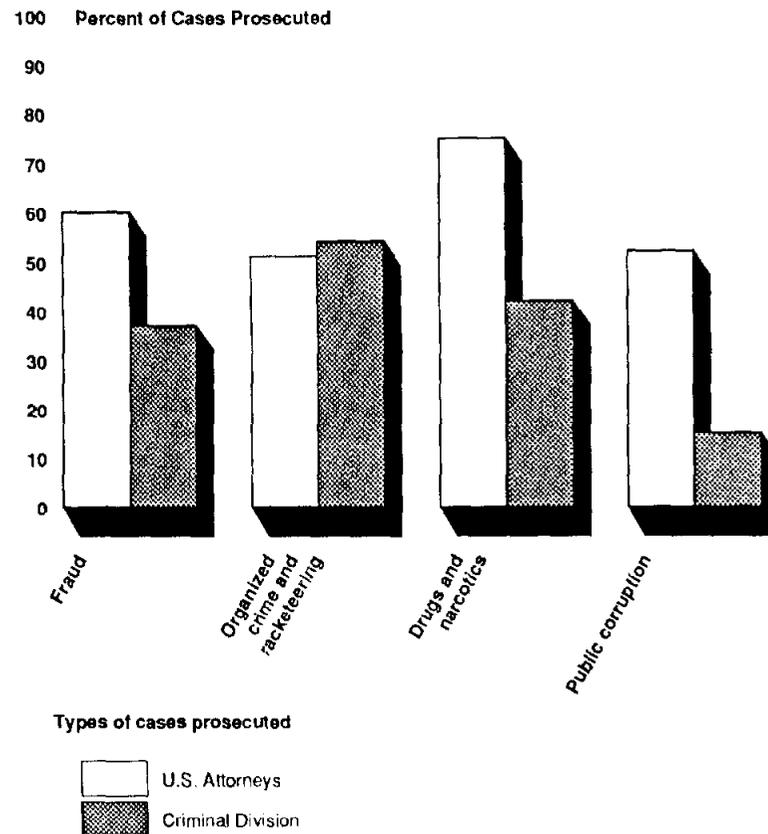
Attorneys in the Criminal Division and the U.S. attorney offices we visited said that they generally do not prepare or use written investigation plans in developing defense procurement fraud cases. Although a formal plan is not written, attorneys interviewed said that they develop and orally discuss a planned course of action for investigating a case with investigators. Some attorneys said they maintain informal notes on what has been discussed and agreed upon. When attorneys provided reasons for not developing written plans, their explanations included:

- It would be unproductive for attorneys to develop and update written plans for defense procurement fraud cases because the direction of the investigation is often changed after obtaining new information.
- Attorneys do not have adequate time to develop and update written plans.

We found that in certain instances, written investigation plans are prepared during the course of a defense procurement fraud investigation. For example, for cases which he personally handles, the Defense Procurement Fraud Unit Chief said he inputs investigation plans into the Unit's case tracking system. According to this official, the plan will

Appendix
 Comparative Data on Prosecutions,
 Convictions, and Sentences Involving Fraud
 and Other Criminal Offenses and Attorney
 Resources Devoted to These Areas

Figure I.1: Average Prosecution Rates,
 Fiscal Years 1983-1986



Number of cases prosecuted are as follows:

Fraud: U.S. Attorneys=18,159; Criminal Division=130

Organized crime and racketeering: U.S. Attorneys=558; Criminal Division=862

Drugs and narcotics: U.S. Attorneys=21,480; Criminal Division=66

Public corruption: U.S. Attorneys=754; Criminal Division=132

Figure I.2 shows that conviction rates (the sum of defendants pleading guilty and convicted by trial divided by the total number of defendants whose cases have been terminated) were slightly higher in the Criminal Division than U.S. attorney offices for the crime areas compared.

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prison sentences. In comparison, 69 percent and 44 percent of the convicted public corruption and fraud offenders, respectively, received prison sentences. The median sentence imposed on defendants convicted of fraud ranged from zero months for false claims and statements, bank, lending and credit, and commodity fraud, to 24 months for securities fraud.

**Table I.1: Prison Sentences for
Convicted Federal Offenders, July 1983
through October 1986^a**

Offense	Number of defendants	None	1 yr or less	13 months to 5 yrs	Over 5 yrs
Fraud	11,909	56%	20%	21%	3%
False Claims	3,905	61	18	19	2
Income Tax	2,532	43	29	25	3
Bank	2,709	62	18	18	3
Lending, Credit & Insurance	2,364	56	20	21	2
Bankruptcy	196	47	16	20	17
Securities	132	28	11	54	8
Commodity	71	66	21	13	0
Organized Crime & Racketeering	2,793	22	14	37	27
Drugs & Narcotics	39,066	14	13	51	23
Public Corruption	79	32	24	37	8

^aPercentages may not add to 100 percent due to rounding.

During the same period, those offenders convicted of fraud and public corruption offenses were more likely to receive probation (see table I.2). For example, 81 percent of the fraud and 76 percent of the public corruption offenders received probation, while 47 percent of organized crime and racketeering and 25 percent of drugs and narcotics offenders received probation.

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**Appendix
Comparative Data on Prosecutions,
Convictions, and Sentences Involving Fraud
and Other Criminal Offenses and Attorney
Resources Devoted to These Areas**

**Table I.2: Probation Periods for
Convicted Federal Offenders, July 1983
through October 1986^a**

Offense	Number of defendants	None	1 yr or less	13 months to 5 yrs	Over 5 yrs
Fraud	11,906	20%	9%	71%	1%
False Claims	3,903	21	14	65	0
Income Tax	2,532	23	3	74	0
Bank	2,709	16	11	73	0
Lending, Credit & Insurance	2,363	19	8	73	0
Bankruptcy	196	31	8	60	1
Securities	132	39	1	60	0
Commodity	71	10	11	79	0
Organized Crime & Racketeering	2,792	53	4	43	0
Drugs & Narcotics	39,761	75	1	24	0
Public Corruption	78	24	3	73	0

^aPercentages may not add to 100 percent due to rounding.

Attorney Resources

Table I.3 shows for fiscal years 1985 through 1987 the number of attorney positions used in selected crime areas—narcotics and drugs, organized crime and racketeering, public integrity or official corruption, and fraud or white-collar crime.

**Table I.3: Attorney Resources Used in
Selected Criminal Enforcement Efforts,
Fiscal Years 1985-1987**

Criminal Division/Justice Headquarters^a	Fiscal Years		
	1985	1986	1987
Narcotics & dangerous drugs	19	21	20
Organized crime & racketeering	132	140	133
Public integrity	22	23	23
Fraud	37	41	40
U.S. Attorney Offices^b			
Narcotics	302	307	317
Organized crime ^c	308	336	344
Official corruption	108	109	112
White-collar crime	441	480	505

^aRepresents number of attorneys on board at end of fiscal year.

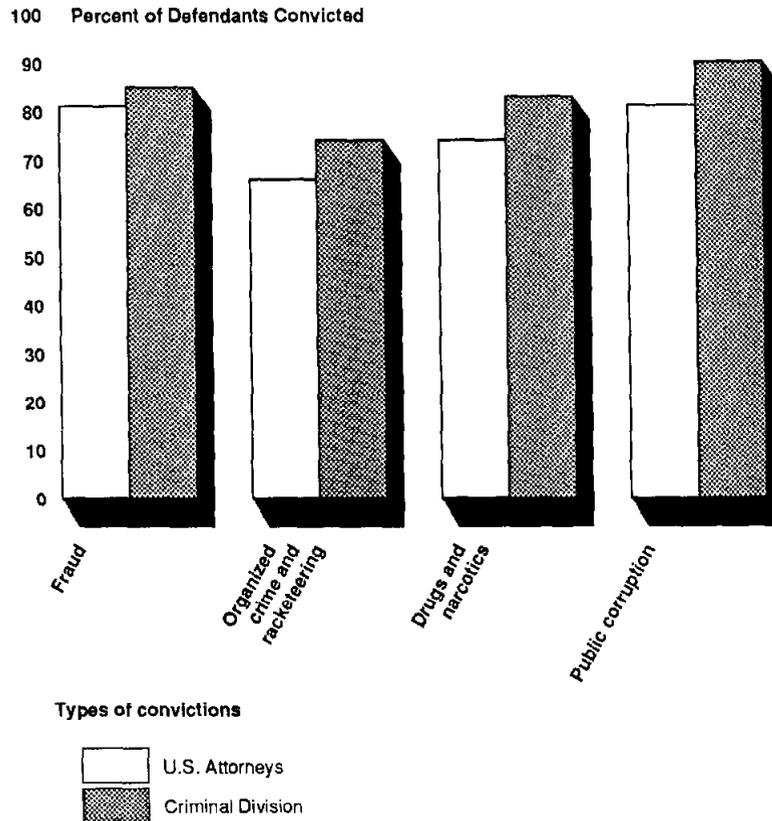
^bRepresents the average full-time attorney positions which were calculated based on the total number of attorney hours devoted to each enforcement effort.

^cIncludes attorneys working on Organized Crime Drug Enforcement Task Forces.

Source: Criminal Division statistics were provided by the Criminal Division's Office of Administration. U.S. attorney offices statistics were obtained from the United States Attorneys' resource summary reports (USA-5) for the fiscal years presented.

**Appendix
Comparative Data on Prosecutions,
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**Figure I.2: Average Conviction Rates,
Fiscal Years 1983-1986**



Number of defendants convicted are as follows:

Fraud: U.S. Attorneys=16,591; Criminal Division=205

Organized crime and racketeering: U.S. Attorneys=1,024; Criminal Division=1,700

Drugs and narcotics: U.S. Attorneys=27,561; Criminal Division=398

Public corruption: U.S. Attorneys=691; Criminal Division=220

Sentences

Based on the data provided by the Administrative Office of the United States Courts which covered the period from July 1983 through October 1986, criminal offenders convicted of organized crime or racketeering and drugs or narcotics offenses were more likely to receive prison sentences than those convicted of fraud and public corruption. As table I.1 shows, 87 percent of the convicted drug offenders and 78 percent of the convicted organized crime and racketeering offenders received

Comparative Data on Prosecutions, Convictions, and Sentences Involving Fraud and Other Criminal Offenses and Attorney Resources Devoted to These Areas

This appendix provides requested information on prosecutions, convictions, and sentences for federal offenses in the white-collar crime (fraud), organized crime and racketeering, drugs and narcotics, and public corruption areas, and attorney resources devoted to these areas. Because there is no one standardized case management system which tracks cases from initial investigation through court disposition and sentencing, we judgmentally selected similar offense categories from each of the systems in tabulating this data. Officials from both Justice and the judiciary generally agreed that our selection of offense categories was reasonable for the comparisons made.

Because there are many variables that can affect prosecutions and convictions, conclusions should not be drawn on the comparisons made. For example, developing sufficient evidence to prove criminal intent in defense procurement fraud is more difficult, according to Justice officials, than proving a person has committed a drugs or narcotics crime.

U.S. attorney office statistics were developed from data provided by the Executive Office for U.S. Attorneys.¹ This office produces statistical and management reports for use by the Office of Management and Budget, Congress, and Justice. Criminal Division statistics were obtained from Justice's prior years' budget submissions to Congress. A Criminal Division official told us that they did not have an automated case tracking system until 1986. Sentencing data was obtained from the Administrative Office of the United States Courts' Federal Probation Sentencing and Supervision Information System.

Prosecution and Conviction Rates

At U.S. attorney offices, the average prosecution rates (cases filed divided by the sum of matters terminated without indictments and cases filed) during fiscal years 1983 through 1986 was highest for the drugs and narcotics area, followed by fraud, public corruption, and organized crime and racketeering. The Criminal Division's average prosecution rates over the same period were lower than those at U.S. attorney offices for drugs and narcotics, fraud, and public corruption, and about the same for organized crime and racketeering (see fig. I.1).

¹Generally, we included offense codes involving significant crimes, such as manufacturing and distribution of narcotics, and excluded crimes of less consequence to the public such as personal possession of drugs.

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Problems and Practices in Investigating and
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often include a timetable delineating decision and periodic review dates. In addition, the Criminal Division's Fraud Section Chief requires his attorneys to provide as part of a case review memorandum a description of the investigative steps planned. An assistant U.S. attorney in the district of New Jersey said that a written investigation plan may be prepared in sensitive cases; however, he said he has only done so on one occasion. According to officials in the eastern district of New York, attorneys are required to provide a brief general description of the initial planned steps that will be taken during the investigation.

prepare a declination memorandum stating the reason(s) for the declination. Declination memorandums are reviewed and approved by various management officials.

Recordkeeping

In August 1985, we issued a report on Justice's management of three investigations into alleged false statements made by contractors in shipbuilding claims submitted to the Navy.³ We reported that Justice did not maintain written records or memorandums that would show when and how staff were assigned and used, length of time the staff worked on an investigation or investigative task, what kinds of direction and guidance were provided to the staff, how often supervisory visits were made, and what was discussed and decided at various meetings.

Officials at Justice's Criminal Division and six U.S. attorney offices visited, said that while they maintain records to show when an attorney is assigned to a case, they generally do not keep records showing how staff was used, when staff is released, the extent of attorney turnover on a case, and the number of staff days spent on a case. However, several officials said that they do maintain personal notes of supervisory actions, topics discussed at meetings, and when decisions were made. An official at the seventh office said that he and his staff maintain such records.

According to officials we interviewed, assignment of attorneys to defense procurement fraud cases is based on a number of factors including the complexity of the case and the attorney's experience, abilities, caseload, and interest in the subject area. The more experienced attorneys will usually be assigned to the more complex defense procurement fraud cases.

At the Defense Procurement Fraud Unit, the Chief of the Unit said that usually from one to three attorneys are assigned on a part-time basis to a defense procurement fraud case depending on the stage of the investigation. In addition to the Unit attorney, an attorney from DOD and/or an assistant U.S. attorney may be assigned to assist on a case. At the seven U.S. attorney offices, officials said that generally one attorney is assigned on a part-time basis to work on a defense procurement fraud case. However, during specific phases of an investigation, such as a grand jury proceeding, an attorney may work full time on the case or

³Information On Three Investigations by the Department of Justice Into Navy Shipbuilding Claims (GAO/GGD-85-70, Aug. 1, 1985).

provided for Executive Level IV. To deal with the salary problem for its clerical staff, in 1987, Justice prepared a legislative proposal to exempt non-attorney positions at U.S. attorney offices from the competitive service and to administratively set the salaries of these positions. Officials at the Executive Office for U.S. Attorneys said that this proposal was submitted to the Office of Management and Budget for clearance, which as of June 1988 had not been obtained.

Attorney Supervision

Criminal Division officials said that complex and difficult defense procurement fraud cases involving defective pricing/cost mischarging schemes require close supervision like other complex criminal cases, such as organized crime. Likewise, officials at U.S. attorney offices visited also said that supervision of defense procurement fraud cases is similar to that provided to other criminal cases.

According to Defense Procurement Fraud Unit attorneys, they receive both written and verbal guidance from their supervisors. Generally, attorneys in the U.S. attorney offices said that when they receive management guidance on defense procurement fraud cases, it is usually verbal rather than written. For the most part, management officials said that supervision of defense procurement fraud cases is generally done on an as needed basis. They said that they hold meetings with attorneys to discuss the status of their cases and to provide assistance when requested.

Attorneys we talked to said that they are expected to keep their supervisors informed of the status of their cases. When needed, they ask for advice and discuss with their supervisors any problems and concerns that they might have. Attorneys in both the Defense Procurement Fraud Unit and the U.S. attorney offices visited said that the guidance they have received was adequate, timely, and provided on an as needed basis.

Case Monitoring

The amount of case monitoring by management varies and depends upon the importance and sensitivity of the case. For example, two of the seven U.S. attorney offices visited have established a priority system to identify cases, including defense procurement fraud cases, that management believes should be classified as priority cases due to their public visibility or sensitive nature. Such cases are monitored more closely than other cases. For example, the Criminal Division Chief in the eastern district of Pennsylvania said that the list of priority cases is reviewed and updated weekly.

Problems and Practices in Investigating and Prosecuting Defense Procurement Fraud Cases

During the 1980s, four reports and a paper were prepared by Justice, GAO, and congressional staff discussing the problems and/or management practices in investigating alleged fraud by six major defense contractors, who submitted contract claims to DOD totalling at least \$1.6 billion.¹ Each of the investigations lasted several years, and Justice declined to prosecute five contractors for various reasons, such as adequate legal defenses and insufficient evidence. In the other investigation, criminal proceedings were brought against the contractor, who was subsequently acquitted. The reports and paper discussed one or more of the following problems encountered during the lengthy investigations: staff turnover and attorney inexperience, inadequate supervision and monitoring, and lack of written investigation plans. One report also said that Justice did not keep records showing how it managed defense procurement fraud investigations.

The sections below discuss staff turnover problems and management practices involving attorney supervision, case monitoring, recordkeeping, and investigation plans currently used for individual defense procurement fraud investigations.

Staff Turnover

The Chief of the Defense Procurement Fraud Unit as well as managers and/or attorneys at several U.S. attorney offices visited said that turnover among attorney and/or support staff has had an impact on their prosecutive effort. According to officials, the primary reason for staff turnover is the higher salary structure available to the attorney and support staff in the private sector. Further, because cases generally are

¹Review of Navy Claims Investigations, Office of Policy and Management Analysis, Criminal Division, U.S. Department of Justice, July 22, 1983.

Information On Three Investigations by the Department of Justice Into Navy Shipbuilding Claims (GAO/GGD-85-70, Aug. 1, 1985).

Fraud Against The Government - Department of Defense, prepared by an FBI agent and assistant U.S. attorney and presented at an FBI in-service training session on November 12, 1985.

Justice Department: Investigation of Alleged Fraud in an Air Force Contract (GAO/GGD-87-31BR, Jan. 29, 1987).

Justice Department Investigation Of Defense Procurement Fraud: A Case Study, a staff report presented to the Subcommittee On National Security Economics, Joint Economic Committee, and Senate Subcommittee on Administrative Practice and Procedure, Committee on the Judiciary (Mar. 19, 1987).

plans to be useful, U.S. attorneys must receive clear instructions from headquarters on what should be included in the plans.

Officials from three of the U.S. attorney offices we visited did not think that defense procurement fraud plans were needed for their offices—one said that they did not handle enough cases to justify preparing a plan, and the other two said plans were more suited for the organized crime and drugs/narcotics areas. We believe that although there would be some administrative effort required to prepare and update written management plans, the oversight information that they would provide would be useful to the Attorney General and Congress.

Conclusions

Justice's overall management of its decentralized defense procurement fraud efforts could be enhanced if it had basic oversight information. Justice does not have complete information on the number and status of defense procurement fraud referrals that could be used to provide useful oversight information on progress and problems. The Criminal Division agrees and has been attempting to make improvements to Justice's FACT System.

Also, Justice does not know the amount of attorney resources being spent on defense procurement fraud. Information on resources spent would enable Justice to monitor the amount of effort being devoted to the issue and to compare, over time, the resources expended to the results achieved. We believe that information on the amount of attorney resources being spent on this high priority is needed. There may be ways short of having attorneys charge time to specific cases—such as modifying the U.S. attorney monthly resource summary report (USA-5)—that could provide this information. In addition, we believe Justice should pursue the development of a case weighting system to help assess and justify resource needs.

Finally, we believe that written management plans and periodic updates of those plans in the defense procurement fraud area would be a useful tool which would enhance Justice's oversight of how this priority is being addressed. Further, the plans and their updates would provide Justice with a basis for comparing actual to planned progress and identifying problems needing corrective action.

Recommendations

We recommend that the Attorney General reassess the operation of the FACT System with regard to defense procurement fraud to determine

case weighting would be one useful management tool for Justice to assess its resource needs.

Justice Has Not Developed Management Plans for the Investigation and Prosecution of Defense Procurement Fraud

While defense procurement fraud has been a top white-collar crime priority at Justice, the Criminal Division and the U.S. attorney offices responsible for the criminal prosecution of defense procurement fraud have not prepared written management plans outlining their current and future efforts in this area. Because Justice does not know (1) the overall status of its defense procurement fraud work load or (2) the amount of resources being spent in this area, we believe that the need for written management plans is even more critical. Justice's effectiveness and progress in the defense procurement fraud area could be assessed if each of its organizations handling defense procurement fraud cases prepared a written plan and updated it periodically.

The Department Resources Board, comprised of top level policy officials, was established by the Attorney General in 1985 to improve the planning, programming, and budgeting processes of Justice. The Board is supposed to assist the Attorney General in strategic/long-range planning and policy development to ensure the implementation and accomplishment of the Attorney General's program priorities. An official from the Justice Management Division, which provides staff support to the Board, said that neither the Board nor any other Justice headquarters component has developed formal written plans.

In one area, the Attorney General has imposed a written planning requirement for the Department's Organized Crime Strike Force efforts. On January 20, 1988, the Attorney General directed each U.S. attorney in a district in which a Strike Force is active to submit a written plan to identify and address organized crime conditions in his or her district. The Attorney General said that these plans are to be updated annually, but he did not delineate what information was to be in the plans. The plans were to be submitted by May 1, 1988, and a Justice headquarters official said the U.S. attorneys submitted their plans as required.

We believe that written plans would be useful for the Attorney General in overseeing the management of the defense procurement fraud area by the various decentralized offices that are responsible for prosecuting these cases. Such plans and periodic updates of those plans would provide a basis for comparing actual to planned progress and identify problems needing corrective action. At a minimum, the plans for each of the Justice organizations should include information on the following:

Officials from the Executive Office for U.S. Attorneys said it would be difficult to obtain the cooperation of attorneys in charging their time to specific cases. Officials from all of the U.S. attorney offices we visited were opposed to tracking attorney time spent on individual cases. Officials at four of these offices were opposed because they said it would place an administrative burden on their staff, or the data captured would be unreliable. Officials at three offices were opposed because they saw no value in recording the amount of time attorneys spend on individual cases.

U.S. attorneys do report estimates on the number of positions utilized in certain programs by submitting a "Monthly Resource Summary Report" (USA-5) to the Executive Office for U.S. Attorneys. This form asks the offices to estimate the number of attorney, paralegal, and clerical positions devoted to program categories covering management and administration, appellate litigation, criminal and civil litigation, and debt collection. Criminal categories cover nine program areas, including official corruption, organized crime, white-collar crime, and narcotics.²

While this form does not identify resources devoted to defense procurement fraud, officials at one U.S. attorney office said that the USA-5 form could be modified by adding a category for defense procurement fraud to capture this information. This would be an alternative for management to obtain information on attorney resources devoted to defense procurement fraud.

Case Weighting System Can Help in Assessing and Justifying Additional Resource Requirements

According to Justice officials, the Criminal Division and U.S. attorneys currently have no quantifiable way of assessing the complexity of and amount of time spent by attorneys on the different types of cases. In assessing their resource needs, Justice considers all cases within broad program categories, such as white-collar crime, as equal. However, all cases within program categories are not equal in complexity and the amount of attorney time needed to investigate and prosecute them. If Justice had a quantitative way to assess its caseload that took into account the differences in types of cases, management could use that information as one tool for estimating resource needs and allocating resources.

²The appendix to this report shows the attorney resources devoted by the Criminal Division and U.S. attorney offices for selected criminal enforcement efforts for fiscal years 1985 through 1987.

Criminal Division officials also told us that investigative agencies are not sending all referrals that should be sent to the Defense Procurement Fraud Unit for screening. Instead, some referrals that meet the criteria for submission to the Unit are being submitted by investigators directly to U.S. attorney offices because of their close working relationships with assistant U.S. attorneys. If FACT forms are not submitted for referrals sent directly to U.S. attorney offices, Justice headquarters has no knowledge of the referrals. The officials did not know nor did we determine the extent of these problems.

In a 1986 audit report on the FACT System, the Justice Management Division concluded, among other things, that some of the system's users were not satisfied because the reports generated by the system were not accurate, timely, and useful. Criminal Division officials said they were aware of the system's problems and were attempting to correct them at the time of the audit. In February 1987, the President's Council on Integrity and Efficiency surveyed 18 Offices of Inspectors General and the FBI about the FACT System. Of the 18 agencies responding to the questionnaire, 9 said that assistant U.S. attorneys were frequently declining or accepting cases without updating the FACT System, 6 said this occurred occasionally, and 2 said this occurred infrequently. One agency did not respond to this question. Thirteen of the responding agencies answered specific questions regarding the standard monthly reports produced by the FACT System. Over half of these said the reports are not timely and the information is not accurate, complete, or reliable. Based on the questionnaire results, the President's Council has formed a working group to examine the feasibility of using the Inspectors General information systems to track the disposition of referrals sent to Justice.

Justice Efforts to Improve the Information

According to Criminal Division officials, the FACT System has experienced operational problems because of incomplete information on the number and status of fraud referrals. As a result, the types of analyses for which the system was developed generally have not been made.

Criminal Division officials said that they have attempted to improve the quantity and quality of the data being reported to the system. For example, the Criminal Division has been encouraging attorneys assigned to government fraud cases to ensure that a FACT form has been submitted to Justice by the investigative agency at the time of referral. In addition, the Criminal Division has been contacting those U.S. attorney offices which have been late in reporting the disposition of fraud referrals to obtain their cooperation for timely inputs to the FACT System.

Justice's Management of Its Defense Procurement Fraud Operations Can Be Enhanced With Better Oversight Information

Justice's management of its defense procurement fraud efforts would be enhanced if it had (1) complete and timely information on the number and status of defense procurement fraud referrals and cases, (2) data on attorney resources being spent in this area, and (3) written management plans on its enforcement effort. The highly decentralized nature of Justice's defense procurement fraud enforcement effort heightens the importance of Justice having adequate information to oversee how effectively the area is being managed. For example, accurate and complete case status information would alert Justice to any backlogs of pending cases. Information on resources spent would enable Justice to monitor the amount of effort being devoted to the issue and to compare, over time, the resources expended to the results achieved. Management plans and periodic updates of those plans would provide a basis for comparing actual to planned progress and identify problems needing corrective action.

Officials in the Criminal Division and U.S. attorney offices we visited said they need additional attorneys and support staff to handle the highly complex and time-consuming defense procurement fraud cases that have been referred. However, Justice has not provided these components with a measurement system that would help support their requests for additional resources by documenting the amount of prosecutive effort required to handle these cases.

Lack of Complete and Timely Information on the Number and Status of Defense Procurement Fraud Referrals and Cases

For an effective and coordinated effort to investigate and prosecute defense procurement fraud, Justice should have complete and current information on the status and disposition of fraud referrals sent to it by the DOD investigative organizations and the FBI. In this regard, in 1982 Justice implemented the automated FACT System, as authorized by the President's Council on Integrity and Efficiency¹ and the Office of Management and Budget.

The FACT System was intended to be a management tool by which Justice components handling government fraud referrals, including defense procurement fraud, would be able to obtain information on fraud, corruption, and other crimes and ensure that national law enforcement priorities are being met. Further, the information collected would enable Justice to (1) produce periodic reports notifying agencies on the status of their referrals as they progressed through the criminal justice system,

¹Membership on the President's Council on Integrity and Efficiency includes the statutory Inspectors General and other key executive branch representatives.

situations, such as when they lack the staff or expertise to conduct the investigation.

Objectives, Scope, and Methodology

In June 1987, we were requested by the Chairman of the Subcommittee on National Security Economics, Joint Economic Committee, and the Ranking Minority Member of the Subcommittee on Courts and Administrative Practice, Senate Judiciary Committee, to assess Justice's overall management of its defense procurement fraud investigations and determine whether improvements are needed (see ch. 2). We were also requested to answer a number of questions concerning how individual cases are managed, including (1) what types of management controls are used during the course of an investigation; (2) what are the average number of attorneys assigned to a major case and the amount of attorney turnover; and (3) what types of records are maintained that would show when and how staff were assigned and used, supervisory actions, and matters discussed at meetings (see ch. 3). Further, we were asked to compare prosecution and conviction rates of the Criminal Division and U.S. attorney offices for government fraud, drugs, organized crime, and public integrity, determine the average sentences imposed for these major crimes, and identify attorney resources devoted to these areas (see appendix).

In response to this request, we interviewed 138 officials from Justice and DOD to (1) ascertain the practices followed for managing criminal cases and (2) determine how these departments coordinate defense procurement fraud investigations and prosecutions. We interviewed attorneys and investigators who were identified by the heads of the offices and units we visited as having worked on defense procurement fraud.

In Washington, D.C., we interviewed officials at

- Justice's Criminal Division Fraud Section (including the Defense Procurement Fraud Unit), Organized Crime and Racketeering, Narcotics and Dangerous Drugs, and Public Integrity Sections, and the Justice Management Division;
- the Executive Office for U.S. Attorneys;
- the FBI's Governmental Fraud Unit; and
- DOD's Office of the Inspector General and the DCIS, Army's CIDC, Navy's NIS, Air Force's OSI, DCAA, and DLA.

Department of Defense Initiatives

- In 1982, DOD created the Defense Criminal Investigative Service (DCIS). Since its establishment, DCIS agents have assumed a major role in investigating alleged defense procurement fraud.
- In 1983, DCAA and DOD's investigative agencies entered into a memorandum of understanding outlining coordination procedures for government fraud cases. DOD also established specialized training programs for defense procurement fraud and other white-collar crimes.

Referral, Investigation, and Prosecution of Defense Procurement Fraud Cases

As figure 1.1 shows, Justice receives defense procurement fraud referrals primarily from DOD's four investigative agencies, DCAA, and the FBI. DCAA, through its auditing of defense contractor records, refers reports of suspected accounting fraud, such as cost mischarging and defective pricing, to the Defense Procurement Fraud Unit for screening at the same time the reports are forwarded to the appropriate DOD investigative agency. The investigative agencies are generally supposed to refer to the Unit (1) all significant procurement fraud matters in which the government's estimated loss is \$100,000 or more, or which involve a major defense contractor; (2) any cases involving defective or substituted products that adversely affect the lives or safety of government personnel; (3) corruption investigations involving civilian employees or military officers with substantial responsibilities; (4) investigations involving a widespread pattern of corruption at a specific facility; and (5) matters involving classified contracts. Investigative agencies can also send referrals directly to the appropriate U.S. attorney office.

After receiving and reviewing the referrals, the Defense Procurement Fraud Unit and/or the appropriate U.S. attorney office will take one of the following actions:

- Accept the referral for criminal investigation and possible prosecution or civil action.
- Return the matter to the investigative agency recommending further investigation and identifying the information which should be developed.
- Decline the matter.

Also, in screening cases the Defense Procurement Fraud Unit can identify a matter that has prosecutive merit and refer that matter to the appropriate U.S. attorney office based on the information developed to date or after further investigation by the referring investigative agency. Further, U.S. attorney offices can refer matters to the Unit in certain

U.S. Attorney Offices

U.S. attorneys are appointed by the President for a 4-year term with the advice and consent of the Senate (28 U.S.C. 541). They are generally responsible for prosecuting federal crimes in the 94 federal judicial districts (28 U.S.C. 515, 516, and 519).¹ They are subordinate to the Attorney General and their litigative efforts are subject to his supervision. Because U.S. attorneys are subject to removal only by the President and are geographically separated from Justice headquarters, they have traditionally conducted their operations with a great deal of autonomy. U.S. attorneys possess a considerable degree of operating independence by the virtue of their stature in their local community and the expectation that they will address the crime conditions within their jurisdictions. As a result, U.S. attorneys exercise significant discretion in prosecutive policies and the management of their offices.

Generally, each U.S. attorney office has a criminal and civil unit, and each unit is responsible for prosecuting and litigating cases within their respective area. Some of the larger U.S. attorney offices located in urban centers have sections which handle or monitor the prosecution of white-collar crime cases within their district.

Initiatives Undertaken in the Defense Procurement Fraud Area

Beginning in the late 1970s, the difficulties associated with prosecuting defense procurement fraud cases became a concern at Justice. Although Justice successfully prosecuted several cases involving bribery, falsification of test data, and labor mischarging, in the late 1970s and early 1980s it declined to prosecute several cases after lengthy investigations of alleged procurement fraud by five major shipbuilders. Justice declined to prosecute four of the five for various reasons, such as insufficient evidence of criminal violations. Members of Congress expressed concerns about whether Justice adequately managed these and other major investigations involving large defense contractors.

Based on its investigative experiences, Justice identified several problems hampering effective investigation and prosecution of defense procurement fraud. These problems included: (1) a lack of communication among DOD auditors and investigators and Justice prosecutors; (2) a long lead time for investigators and prosecutors to learn government contract law and procurement practices; (3) a lack of systematic coordination among procurement officials, investigators, and attorneys; and (4) a lack

¹ Although 94 U.S. attorney offices currently exist, there are only 93 U.S. attorneys because 1 U.S. attorney administers the activities performed by the judicial districts in Guam and the Northern Mariana Islands.

Introduction

The Attorney General has given a number of areas high enforcement and prosecution priority in the Department of Justice. These include narcotics, organized crime, terrorism, and white-collar crime. The Attorney General has placed the investigation of defense procurement fraud as a top white-collar crime priority because defense contracts represent a major portion of the federal budget and have had a history of being vulnerable to fraud. For fiscal year 1988, the Office of Management and Budget estimates that defense procurement expenditures for weapons, equipment, and ammunition alone will total about \$79 billion.

While defense procurements are susceptible to various fraud schemes, Justice and the Department of Defense (DOD) have agreed that the following are the most serious types of defense procurement fraud:

- Product Substitution: This scheme refers to attempts by contractors to deliver goods or services that do not conform to contract requirements. Contractors do not inform DOD of the discrepancies, and they seek reimbursement based upon delivery of conforming products or services.
- Defective Pricing: Under the Truth in Negotiations Act, defense contractors generally are required in non-competitive contracts to submit cost or pricing data and certify that such data are accurate, complete, and current. Fraud associated with defective pricing involves the deliberate concealment or misrepresentation of significant cost elements. This includes falsification or alteration of supporting data and/or submission of inaccurate or incomplete cost or pricing data.
- Cost/Labor Mischarging: This deception occurs whenever a contractor charges the government for costs which are not allowable, not reasonable, or which cannot be directly or indirectly allocated to the contract.
- Corruption in Contracting: This type of fraud refers to the payment of kickbacks or bribes to a government procurement officer.

According to Justice officials, defense procurement fraud cases such as those involving complex cost/labor mischarging and defective pricing schemes are difficult to prosecute criminally. Management officials and attorneys at Justice cited the following problems that complicate handling these cases:

- the complexity and ambiguity of the defense contracting process and procurement regulations;
- the acquiescence of some government officials in tolerating potential fraud to obtain their equipment and weapons systems;
- the need for detailed and extensive analysis of voluminous accounting and performance data;

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Development of Management Plans

One of the Attorney General's management initiatives is the development of strategic/long-range plans to assess the implementation and accomplishment of his priorities. In January 1988, the Attorney General imposed a written planning requirement for Justice's Organized Crime Strike Forces. While defense procurement fraud has been a top white-collar crime priority of Justice, the Criminal Division and the U.S. attorney offices responsible for the prosecution of defense procurement fraud have not prepared written management plans outlining their current and future efforts in this area. GAO believes that if such plans were developed and updated periodically, Justice could better assess progress and problems in this top priority area. The plans should include information on (1) the current and anticipated work load and strategies and priorities for handling it, (2) attorney resources being devoted and needed, and (3) objectives to be accomplished and milestones for accomplishing them.

Recommendations

To enhance the effectiveness of Justice's overall management of the procurement fraud area, GAO is making several recommendations designed to provide management with better information so that management can make more informed decisions regarding the allocation and use of scarce resources. (See pp. 24 and 25.)

Agency Comments

GAO did not obtain written agency comments on this report. However, the results of the review and recommendations were discussed with officials from Justice headquarters, the seven U.S. attorney offices visited, and the DOD investigative and auditing agencies. They generally agreed with the findings and recommendations.

Executive Summary

Purpose

If recent reports about possible wrongdoing by Department of Defense (DOD) procurement officials and defense contractor officials result in convictions for illegal activities, the country may have witnessed one of the biggest procurement scandals in its history. About a year before the current procurement fraud investigation became public, Senators Proxmire and Grassley asked GAO to assess whether the Department of Justice had an effective overall strategy to coordinate the defense fraud efforts of all 93 U.S. attorneys and Justice's own investigative and prosecutive resources. Thus, GAO's work viewed Justice's efforts in a broader context than the current investigation which is being conducted under one U.S. attorney.

Background

The Attorney General has given a number of crime areas high enforcement and prosecution priority. These include narcotics, organized crime, terrorism, and white-collar crime. The investigation of defense procurement fraud is a top priority in the white-collar crime area. From October 1, 1983, through May 31, 1987, Justice statistics showed that 180 individuals were indicted for defense procurement and related fraud and 113 were convicted.

In 1982, Justice established the Defense Procurement Fraud Unit within the Fraud Section of its Criminal Division. The Unit's primary functions are to review for prosecutive merit all significant defense procurement fraud referrals submitted by investigative and auditing agencies and prosecute a small number of the referrals. U.S. attorney offices, however, handle most of the referrals. U.S. attorneys are presidential appointees who set their own enforcement priorities and conduct their operations with a great deal of autonomy.

Results in Brief

Justice's overall management of its defense procurement fraud investigations could be improved. Justice does not have complete or timely information on a significant number of defense procurement fraud referrals and does not know the amount of attorney resources spent in the effort.

Neither the Criminal Division nor the U.S. attorney offices have developed written plans that identify their defense procurement fraud efforts and would allow comparison of planned with actual accomplishments. But officials from both units said they need additional attorney and support staff to handle defense procurement fraud cases, many of which are highly complex and time consuming. Justice does not have a system

