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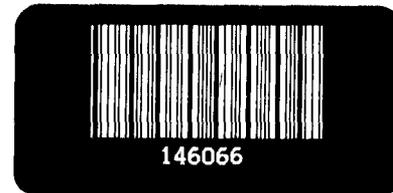
United States General Accounting Office

Report to the Chairman, Government  
Information, Justice, and Agriculture  
Subcommittee, Committee on Government  
Operations, House of Representatives

February 1992

# EMPLOYEE MISCONDUCT

## Justice Should Clearly Document Investigative Actions



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**General Government Division**

B-245771

February 7, 1992

The Honorable Bob Wise, Jr.  
Chairman, Government Information,  
Justice, and Agriculture Subcommittee  
Committee on Government Operations  
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we review the operations of the Department of Justice's Office of Professional Responsibility (OPR)—an office established to review allegations of criminal and ethical misconduct by Justice employees. We reviewed investigations conducted both by OPR itself and by other Justice units in which OPR maintained an oversight role. Specifically we

- analyzed the types of allegations received,
- reviewed OPR's procedures and practices to investigate the allegations,
- reviewed the results of OPR investigations, and
- evaluated the quality of OPR investigations.

Our conclusions are based on reviewing investigative case files and interviewing OPR attorneys. We did not attempt to reinvestigate any of the allegations looked into by OPR.

We reviewed a sample of 150 cases drawn from the 889 cases closed by OPR from January 1988 to May 1990. We randomly selected (1) 100 of the 411 closed investigations conducted by OPR itself and (2) 50 of the 478 closed investigations conducted by other Justice units and supervised or monitored by OPR. To evaluate the quality of OPR investigations we used a panel of GAO officials who subjected 16 of the 100 sampled investigations to a more detailed review, including interviewing the OPR officials responsible for these investigations. OPR cooperated fully with our review and opened its files to our team members. (See app. I for a description of our objectives, scope, and methodology.)

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**Background**

The Attorney General created OPR in December 1975 to ensure that Justice employees continue to uphold the ethical standards applicable to the nation's principal law enforcement agency. Broadly stated, OPR's role is to help protect the integrity of the Department.

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Organizationally, OPR reports directly to the Attorney General.<sup>1</sup> OPR's head, the Counsel on Professional Responsibility, has been in charge of the Office since its inception. OPR's staff consists of a Deputy Counsel, four Assistant Counsels, a paralegal, and two support staff members.

Generally, OPR is responsible for conducting and overseeing inquiries into allegations of misconduct by Justice employees, particularly by Justice attorneys and law enforcement personnel.<sup>2</sup> OPR receives allegations of misconduct from a range of sources, including agency officials and employees, judges, private citizens, and prison inmates. Unless at least two of the OPR attorneys judge the complaint to be not worth pursuing, OPR investigates each allegation or refers it to another Justice unit for investigation.

Once an investigation is completed, OPR reports the results to the Attorney General, the Deputy Attorney General, or other appropriate officials. The unit of the employee against whom the allegations are made—not OPR—is responsible for taking appropriate actions as a result of any investigation. OPR's Counsel said that OPR has no control over the disciplinary actions, if any, the units impose on their employees as a result of OPR investigations. In general, OPR does not recommend specific disciplinary actions unless asked to do so.

OPR maintains files on each complaint it receives. According to OPR officials, the file that an Assistant Counsel generates is generally for OPR's own use. Thus, the files were not intended to be used for providing (1) full documentation of the investigation or (2) a record suitable for review by persons outside OPR. (See app. II for further background about OPR operations.)

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## Results in Brief

OPR investigates allegations that cover a broad range of possible offenses, including allegations of drug use, improper disclosure of grand jury information, and improper acceptance of gratuities. Of the 411 cases handled by OPR from January 1988 through May 1990, we estimate that the allegations of misconduct were substantiated in 9 percent of the cases.

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<sup>1</sup>OPR generally reports the results of its investigations to the Attorney General and the Deputy Attorney General. However, if reporting to both of these officials would be inappropriate, OPR reports to whichever of them would be appropriate or to the Associate Attorney General or the Solicitor General.

<sup>2</sup>The regulations use the terms "preliminary inquiry" and "investigation" to make a distinction between the initial screening of a complaint and the work done to determine whether a complaint is substantiated. OPR classifies each complaint, whether it results in an investigation or is closed after a preliminary inquiry, as a "matter." Therefore, we refer to all of OPR's work as "investigations."

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(See app. I, p. 21, for information about the confidence level and sampling error of our estimates.)

We found that OPR operated in an informal manner. In particular, OPR did not routinely document key aspects of its investigations. The case documentation we reviewed provided little background information and generally did not record the complete scope of and rationale behind the investigations or of decisions reached in the course of the investigations. For example, OPR files did not contain checklists of persons to be interviewed during the investigation or any indications of the reasons decisions were made to interview some persons but not others. Conclusions that allegations were or were not substantiated were generally not explained. In order to understand a case and what was done by OPR, it was often necessary to discuss the case with the OPR attorney who did the work.

Further, our review showed that in many instances, OPR did not pursue all available avenues of inquiry, even when little added time or effort might have been needed. For example, OPR did not always interview the complainants or the subjects of the investigations. In these cases, the files did not contain any indication of the reasons why such avenues were not pursued.

OPR has not made use of investigative guidelines or an operations manual in its work. OPR's Counsel relies on the attorneys' judgment and informal consulting among attorneys within OPR as the basis for making decisions and reaching conclusions about specific investigations. OPR's approach to investigations is one that leaves the decision on the amount of work to be done on any particular matter largely to the judgment of the attorney to whom it is assigned, after discussions with the Counsel and Deputy Counsel.

We cannot conclude, however, based on our review of case files and on our in-depth review of 16 cases, that OPR has not effectively met its objective of protecting the integrity of the Department. Given that the Attorney General and others to whom OPR reports the results of its investigations (1) have not required complete investigative files and (2) have not found OPR's informal methods to be a problem, we find no clear indication of harm that has resulted from OPR's current procedures and modes of investigation. Moreover, our in-depth review of 16 cases and discussions with OPR officials did not reveal that OPR had erred in its investigations or could be faulted in its judgment in any of these cases.

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However, OPR's informal approach to investigations, the limited scope of many of its investigations, and the minimal documentation contained in its files expose it and the Department to a range of risks. For example:

- If OPR's informality were to lead it to conclude an investigation prematurely, the integrity of the Justice Department could be compromised.
- If asked to defend a past investigation against a charge that it was not aggressively pursued, OPR probably would not have sufficient documentation to defend its efforts. If, to answer questions raised about a past OPR investigation, OPR or an appropriately authorized outside person needed to review the investigation based only on the contents of its files, the review would yield little.
- If an OPR Assistant Counsel were to retire or otherwise become unavailable, the knowledge possessed by that attorney of specific cases—because not documented in the files—would become unavailable.

It should be noted that other Justice units—for example, OPRs in the Federal Bureau of Investigation (FBI) and the Drug Enforcement Administration (DEA)—have guidelines for investigating allegations of employee misconduct, which, among other things, require complete documentation of investigation results.

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## Overview of OPR Case Load Statistics

OPR investigates allegations that cover a broad range of possible offenses, including drug use, assault, improper disclosure of grand jury information, and improper acceptance of gratuities. The 411 cases OPR investigated were often opened on the basis of more than one allegation. For example, someone might have alleged that an Assistant U.S. Attorney (AUSA) used perjured information during a trial and had also released grand jury information. Table 1 shows the frequencies of the allegations received by OPR for the 150 cases we reviewed.

**Table 1: Frequency of Allegations In OPR Cases Reviewed by GAO**

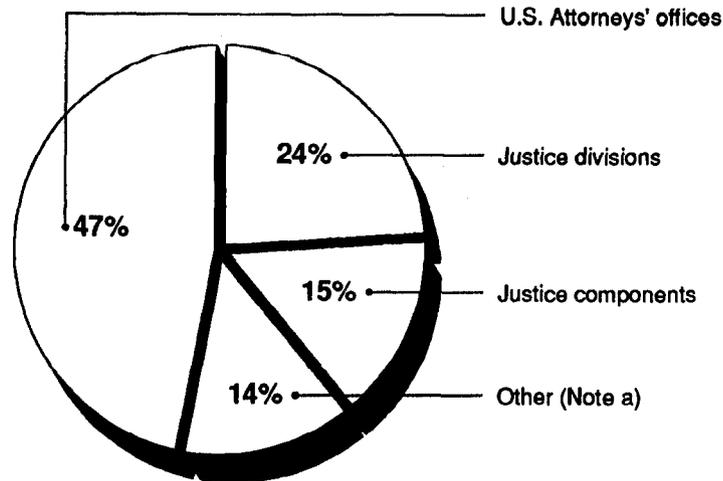
Allegations	Number of cases	
	Cases OPR did	Cases OPR oversaw
Obstruction of justice	5	0
Fraud	4	8
Drugs	7	5
Release of classified or grand jury information	8	1
Abuse of prosecutorial authority	23	1
Perjury	8	1
Unprofessional/unethical conduct	37	17
Release of other information	8	1
Mismanagement/waste	5	7
Other <sup>a</sup>	21	16

<sup>a</sup>Includes such allegations as assault, failure to report an arrest, theft, noncompliance with travel regulations, selling Justice parking spaces, or mistreatment of prisoners.

Of the 411 cases it investigated, OPR substantiated the allegations of misconduct in 9 percent of the cases and did not substantiate the allegations in 67 percent of the cases. For the remaining 24 percent, OPR closed the cases for a variety of reasons without completing an investigation of the allegations. For example, the case might have been closed at the outset if the individual was not a Justice employee and, therefore, OPR had no jurisdiction to investigate the allegations. Occasionally, the allegations were about events or information that was too old to investigate, the allegations did not contain sufficient data to investigate, or the allegations were withdrawn.

As shown in figure 1, of these 411 cases, almost half involved allegations against officials in U.S. Attorneys' offices. Another 24 percent of the subjects were employed by divisions within the Department, such as the Civil, Criminal, Antitrust, and Justice Management Divisions; 15 percent worked in Justice components, such as the FBI and DEA. However, as mentioned above, the allegations were substantiated by OPR in only 9 percent of the investigations.

Figure 1: Subjects of OPR Investigations



<sup>a</sup> Involved allegations against individuals in more than one unit (10 cases), individuals who were not Justice employees (2 cases), a former Justice employee (1 case), and an unknown subject (1 case).

We sampled 50 of the 478 cases that were handled by other investigative units and supervised or monitored by OPR to obtain general information about these types of cases. These results are not projectable to all 478 cases.

Of the 50 cases reviewed, the allegations were substantiated in whole or in part in 9 cases and not substantiated in 25 cases. For the remaining 16 cases—as with those done by the OPR attorneys—the allegations were not investigated and the cases were closed for similar reasons.

As shown in figure 2, of the 50 cases, 14 involved allegations against FBI officials and 14 involved allegations against Bureau of Prisons staff. (See app. III for additional data on the 150 cases we reviewed.)

**Figure 2: Subject of Investigations Done by Other Justice Units and Supervised or Monitored by OPR**



<sup>a</sup>Involves allegations against officials in other Justice divisions and components, such as the U.S. Marshals Service, Justice's Civil or Tax Division, or the U.S. Attorneys' offices.

<sup>b</sup>Involves allegations against individuals who were not Justice employees (two cases) and individuals in more than one unit (one case).

## OPR Operating Procedures

OPR's Counsel told us that he has chosen to operate OPR on an informal, collegial basis. In reviewing the files, we found that the degree of documentation in the case files varied widely from one case to the next. According to OPR officials, the level of documentation varies in accordance with the relative importance of the matters under review.

Reflecting the Counsel's desire to operate OPR on an informal basis, OPR does not have an operations manual or guidelines governing how attorneys are to conduct investigations.<sup>3</sup> In contrast, other Justice units—the FBI and DEA OPRs, for example—have guidelines for investigating allegations of employee misconduct. These guidelines establish, among other things, requirements for interviewing complainants, subjects, and witnesses concerning the alleged misconduct and documenting the results of the interviews.

<sup>3</sup>According to OPR officials, OPR follows the policies and procedures in the United States Attorneys' Manual. The manual provides instructions for handling such things as litigation and criminal investigations.

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In discussing OPR operations, the Acting Attorney General said that OPR has done a good job generally in investigating and reporting on employee misconduct. He added that its reports were balanced and fair.

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### OPR Does Not Require Extensive File Documentation

OPR does not require its attorneys to maintain the files in a particular manner, nor does it require them to create a table of contents. These conditions affected, to some degree, our ability to determine the scope of each investigation from the documentation contained in the files. For example, because some of the interview notes were illegible, we could not ascertain who had been interviewed or what had been said without asking the responsible OPR attorney.

According to OPR officials, every OPR file must contain certain documentation. All of the 150 case files we reviewed contained an OPR case-opening summary form that generally consisted of a one-paragraph statement reiterating the allegation and identifying the complainant, the subject of the allegation, and the attorney assigned to the case. Similarly, all of the 150 files had another OPR form that indicated how long the files were to be retained and showing the signatures of responsible OPR officials, the date the case was closed, and a one- or two-sentence statement as to whether the allegation was or was not substantiated. Such statements might read, for example:

"Allegations determined to be without merit."

"Subject is no longer a Dept. employee. Public Integrity is handling."

"Unauthorized disclosure allegation substantiated. Matter referred to OIG for consideration of disciplinary action. No further OPR action required."

"Matter being handled administratively by FBI."

"Allegation substantiated. Employee censured."

Many of the files contained interview notes. Generally, these notes were handwritten and often difficult for us to read. In a few instances, the Assistant Counsels had transcribed their interview notes and included them as typed summaries in the files. In contrast, the files that contained interviews conducted by other Justice units, such as the FBI, included typed summaries much more often than handwritten notes. None of the OPR files had any indications or lists of persons who might reasonably have been interviewed about the allegation in question. Thus, it was not possible for

us to determine from the files if OPR attorneys had talked with all of the key individuals involved in a case, including the person making the allegation or the subject of the investigation.

In the files of the 100 cases we reviewed in which OPR had done the investigation, 70 had a closing letter (or report) to an agency official and/or the complainant about the conclusions OPR had reached in its investigations. Of the 50 cases that we reviewed that OPR had supervised or monitored, 24 had an OPR closing letter and 19 had a closing letter by the agency that did the investigation; 10 of the cases had a closing letter from both.

The closing letters for both groups varied in the amount of detail explaining the investigation. The letters tended to contain only a reiteration of the allegation, an indication that OPR had reviewed the facts, and a statement that it had found that there was no merit to the allegation. For example, in a closing letter to the Director, Executive Office for U.S. Attorneys, OPR wrote that:

"We have reviewed [the subject's] response, together with its attachments, to [the complainant's] allegations. Based upon the information provided, we are satisfied that [the subject's] actions were not improper. Accordingly, we consider the matter to be closed. Please advise both the U.S. Attorney and [the subject]."

"Thank you for your continuing cooperation."

A few of the closing letters were more detailed, adding information about what specifically had been done and how conclusions had been reached. For example, in a six-page letter to a U.S. Attorney about a case in which an allegation had been made by a judge, OPR provided details of (1) the background of the allegation, (2) its inquiry into the allegation, (3) the results of its inquiry, and (4) its conclusion.

Although most of the files had opening and closing forms, interview notes, and some type of close-out letter, very few contained indications of the reasoning or analysis performed by OPR in reaching conclusions about the allegations. GAO panel members noted during their discussions with the OPR attorneys that much of the background information, reasoning, and justifications presented by the attorneys were not documented in the files.

For example, one of the cases reviewed by the GAO panel involved an allegation that an AUSA had been involved in gambling. The panel found that, from the notes in the files, it appeared that OPR officials had interviewed four other AUSAs and the subject. Two of the AUSAs said that they thought

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the subject had been gambling, another AUSA said that he had heard something about the subject's name in connection with a gambling case, and the fourth AUSA said that he did not know if the subject had been gambling. The subject denied the allegation. It was not clear from the case file why OPR then concluded that the allegation was not substantiated. When the panel interviewed the Assistant Counsel responsible for the investigation, he said he had relied on the fact that none of the AUSAs could say that they had any direct knowledge of the subject's gambling. Further, the Assistant Counsel said he and another Assistant Counsel doing the interviewing had found the denial offered by the subject credible and had relied, in part, on the observation that the subject appeared upset that someone had impugned his reputation and had insisted on knowing who had made the accusations. The Assistant Counsel said that on the basis of the information from the other AUSAs and the subject's denial, OPR had concluded that the allegation did not have any merit.

The Acting Attorney General said that he would be concerned about lack of documentation in the files when OPR substantiates an allegation, because of the resulting disciplinary actions that might be taken. He said he would expect to see more supporting documentation in OPR's files when allegations are supported.

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### OPR Does Not Always Follow Through on Investigative Leads

All investigative leads are not always followed by OPR attorneys. OPR officials said that the attorneys are given broad latitude in (1) deciding the scope of work to be done on any particular matter and (2) informing the Counsel or Deputy Counsel when they believe that they have done enough work to substantiate an allegation, to show the allegation to be without merit, or when additional work is not warranted. Thus, it is generally the attorney's judgment as to when leads are to be followed.

In some case files, it appeared that OPR had not interviewed persons relevant to the respective investigation. For example, in one case we reviewed, an AUSA was alleged to have released grand jury information about the complainant and to have perjured himself during a trial about releasing that information. The OPR attorney for this investigation said he had talked with the state police officer who was the alleged recipient of the grand jury information about the complainant. The police officer had said he did not recall the complainant or ever having talked to the complainant. According to the OPR attorney, the police officer had also said that he had never talked to the AUSA who was the subject of OPR's investigation. The OPR attorney said that he did not talk to the complainant or the subject. He said it was

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his opinion that there was no need to interview them because of the statements made by the state police officer. OPR had concluded that the allegations had no merit. We noted that the complainant had indicated in a letter to OPR that he had evidence to support his claim, and we asked the OPR attorney why he didn't try to find out what that evidence was. The attorney said that the letter from the complainant had been received after OPR had closed the files and the attorney did not think there was sufficient reason to reopen the matter. He said that this was a judgment call and he could have called the complainant but had chosen not to do so.

In another case reviewed by the GAO panel, OPR received information about possible drug use by Justice employees. Justice's Office of Security had received, from the Office of Personnel Management, a copy of an arrest record of a Justice employee and a background investigation report on another Justice employee. According to the arrest record, the Justice employee had been arrested and charged with using and/or selling drugs. The background report indicated that the other employee had allegedly used drugs. Further, the Security Office indicated to OPR that two other Justice employees might also be using drugs. The OPR attorney who did the investigation said he and a Security Office official had interviewed the employee who had been arrested about the alleged drug use. That employee resigned, in lieu of being fired, shortly after the investigation. We asked the attorney if he had interviewed the other Justice employees identified by the Security Office or any other Justice employees within the division where the subjects were employed because the case file did not contain such information. He said he had not, but had asked that an official from Justice's Office of Security interview one of the other subjects. He further said that the Justice division where the subjects had been employed had requested that OPR hold off further investigations pending the imminent resignation of the other employees alleged to be using drugs. All of the employees involved did resign, according to the Assistant Counsel. One of the employees had resigned because of a dispute about not being selected for a higher graded position. It was not known whether the other employees had resigned because of similar disputes or because of potential adverse actions.

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### Opportunity Exists for OPR to Identify Systemic Problems

According to the regulations establishing OPR, it also has the responsibility to make recommendations to the Attorney General on the need for changes in Department policies. We asked OPR officials if they analyzed the allegations and results of their investigations to identify any systemic problems or patterns that would warrant changes in Justice policies or procedures.

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They said that they did not usually do such analyses and added that benefits could result from doing so. For example, in one of the cases reviewed by the GAO panel, a support staff member allegedly destroyed government papers. The U.S. Attorney's office in which the subject worked, during its own inquiry about the matter, allegedly coerced the subject into taking a lie detector test. OPR's main concern in doing its investigation centered on the issue of the subject's being coerced into taking this test. During our interview with the OPR attorney who investigated this case, it was determined that he had not gone beyond the specific circumstances of this U.S. Attorney's office. OPR did not, for example, examine the issue of whether there might be a systemic problem of inadequate guidance Department-wide—not just unit-specific—about authorizing and administering lie detector tests.

Additionally, we noted that OPR does not regularly determine the results of investigations referred to other Justice units or what, if any, disciplinary actions were taken as a result of the investigations it did or ones it supervised or monitored. In our review of the 150 cases, it was not evident from the files what the final results were and what disciplinary actions, if any, had been taken in 37 cases (14 cases OPR had done and 23 cases it had supervised or monitored). We asked OPR attorneys about the results of and actions taken for these 37 cases. The attorneys did not know the results or actions taken for all of these cases; upon following up with other Justice officials, they were able to determine the results for 35 of the 37 cases. For the remaining two cases (which were monitored cases), the investigative results were unknown because, according to OPR officials, nothing further had been done by the offices to which OPR had referred the cases.

In commenting on our draft report, Justice said that when its caseload was smaller, OPR monitored the disciplinary actions of the Department's components rather closely. According to Justice, however, OPR discontinued its practice of keeping its files open until disciplinary action had been taken in response to a directive from a previous Deputy Attorney General. As a result, Justice said that OPR had ceased tracking all disciplinary actions taken by Justice components. Justice added that the regulations establishing OPR make it clear that its role vis-à-vis the component internal inspection units is to review and evaluate their performance. Because the internal inspection units also have no disciplinary authority, Justice said that OPR is not mandated to evaluate the imposition of disciplinary actions. Nevertheless, according to Justice, OPR has commented upon disciplinary problems that it has observed; as a result, corrective steps have been taken.

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## Conclusions

We assessed OPR's efforts against its primary mission, which is to investigate allegations of misconduct by Department employees and to report the results to the Attorney General and others as appropriate. Broadly stated, its role is to help protect the integrity of the Department.

Among the cases we reviewed, we found none in which the outcome was inconsistent with what we could learn of the cases from the files and from our discussions with the responsible OPR attorneys. Since we did not attempt to reinvestigate any of the allegations we reviewed, we cannot conclude that, had OPR conducted its investigations more thoroughly or with a more systematic approach than at present, different case outcomes would have resulted. Therefore, we cannot conclude on the basis of our review that OPR is falling short in carrying out its mission to report to the Attorney General on the results of its investigations.

However, we found OPR's mode of operation to be highly informal. We encountered repeated instances of lack of documentation in case files, reaching conclusions without interviewing all apparently relevant parties, not pursuing all investigative leads, and not following through after completing investigations to determine whether the unit responsible for any disciplinary measures had taken appropriation action.

We believe that OPR's level of informality gives rise to the potential for future harm to its capacity to carry out its mission and ultimately risks harm to the Department. In relying on the memories of its attorneys as the sole repository, in many instances, for extensive case information, OPR leaves itself vulnerable in situations where it may become necessary, for a range of possible reasons, to reconstruct past cases.

Similarly, not consistently following all investigative leads—including routine measures often requiring no more than one or two phone calls—risks an incorrect outcome, and, in a more serious matter, may result in compromising the Department's integrity. If certain steps are not taken in an investigation—whether for lack of resources or time or for other reasons—the decisions not to take such steps should at least be documented in the case file.

We believe that OPR should take several relatively simple steps requiring minimal amounts of time and resources to reduce its current level of risk. For example, OPR could prepare a (1) list of potential individuals to be interviewed, (2) chronology of the investigative steps taken, and (3) summary of how the conclusions of cases were reached. By keeping track

of this type of information, each case file would clearly reflect what has been done and its rationale. This could point out leads that had not been followed and identify systemic problems that warrant attention by the Office of the Attorney General. This would also minimize the risks associated with the information currently being retained within the memory of the Assistant Counsel who did the investigation.

## Recommendations

While recognizing OPR's limited resources, we believe that OPR operations could be improved. We recommend that the Attorney General direct the Counsel, OPR, to take the following measures:

- Establish basic standards for conducting OPR investigations. These standards could be adapted from procedures used by other Justice units.
- Establish standards for case documentation, including requirements for the contents of each case file such as a listing of potential interview subjects in the case, a chronology of actions taken, and a rationale for actions taken or not taken and for decisions reached.
- As appropriate, review the case files to identify any possible systemic changes that might be needed to Justice's procedures and operations.
- Follow up more consistently on the results of misconduct investigations done by other units and what disciplinary actions, if any, were taken as a result of all misconduct investigations—both those done by OPR attorneys and those done by other units within Justice. This information should be made part of the files.

## Agency Comments and Our Evaluation

In commenting on a draft of this report (see app. IV), Justice agreed that OPR's recordkeeping merits some improvements. Accordingly, Justice said that OPR intends to take the following actions in response to our recommendations:

- OPR plans to put its standards for conducting investigations into writing, but will continue to rely predominantly on the United States Attorneys' Manual for procedural guidelines.
- OPR plans to establish standards for case documentation. The standards will include the rationale for actions and decisions taken.
- OPR plans to continue to submit recommendations on the need for changes in policies or procedures that become evident during the course of its inquiries. However, while OPR plans to continue to evaluate its cases to identify systemic problems, it does not believe that a formal, structured process for such evaluation is necessary.

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- OPR plans to include within each substantiated case file the results of the disciplinary process.

In our opinion, the proposed actions, if properly implemented, will generally address our recommendations. However, we are concerned by a theme that ran throughout Justice's comments—the assertion that we had misunderstood OPR's operations. More specifically, Justice said that we did not understand that OPR makes decisions on the amount of resources to spend on each case, that it most thoroughly documents its most serious cases, that it believes this approach provides it with adequate documentary support for its decisions, and that it had little doubt that a review of the complaint and the responsive documentation contained in any OPR file would be adequate for disclosing to a reviewing attorney the rationale for choosing a particular investigative strategy and for rebutting any claim that an investigation had not been adequately pursued. Using this theme, Justice challenged our sampling procedure because we eliminated extremely small and extremely voluminous files from our review. Justice asserted that by doing this, we precluded reviewing the most well-documented files and that our conclusion that better documentation is needed was therefore predictable.

We understand OPR's operations very well and agree that the resources spent on its investigations should vary according to the significance of the allegations. We too use judgment in deciding the amount of resources and effort needed to do our reviews. Further, we concur with OPR that it should exercise judgment in its efforts to more thoroughly document cases that it considers most significant and serious; this is a commonly accepted practice.

However, we disagree with Justice's assertion that OPR's files contain sufficient documentation per se and that our conclusion to the contrary was predictable given our sampling procedure. Our analyses of 150 randomly selected cases showed that the case files, for the most part, did not document key decisions and the rationale for conclusions.

To verify our conclusion about case documentation, we convened a GAO panel of two attorneys and an investigator and asked them to review some of the 150 cases previously reviewed by our audit team. We judgmentally selected 16 cases for the panel's review, eliminating cases that were voluminous or small. We eliminated these cases to focus the panel's analysis on the types of cases that represent the majority of OPR's investigations. The panel's review confirmed that OPR's case file documentation did not stand

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alone. To fully understand the rationale for key decisions and resulting conclusions, the panel had to interview the Assistant Counsels who were responsible for the investigations.

Similarly, Justice said that we had misunderstood OPR's processes in observing that OPR needed a formal structured process through which to analyze its cases and identify possible systemic departmental changes that might be needed. Again, we understand the process but—perhaps in this case—we did not communicate our point as clearly as we should have. We agree that OPR has identified some needed changes in various operations and has been a catalyst in bringing about those changes. However, we noted that OPR usually reported such needed changes to the departmental unit involved in the OPR investigation. Our point was not that OPR needed a formal structured system for identifying and reporting such changes. Rather, our point was that OPR should be alert to changes that could have Department-wide versus unit-specific applicability and to report such changes for consideration at the departmental level. We continue to believe that OPR should bring this perspective to bear when considering its cases.

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As agreed with the Subcommittee, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

If you have any questions about the contents of this report, please call me on (202) 275-8389. The major contributors to the report are listed in appendix V.

Sincerely yours,



Lowell Dodge  
Director, Administration  
of Justice Issues



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**Abbreviations**

AUSA	Assistant U.S. Attorney
DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
INS	Immigration and Naturalization Service
OIG	Office of Inspector General
OPR	Office of Professional Responsibility

# Objectives, Scope, and Methodology

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At the request of the Chairman, Subcommittee on Government Information, Justice, and Agriculture, House Committee on Government Operations, we reviewed the operations of Justice's OPR. Specifically, we agreed to review the universe of cases closed during the period of January 1, 1988, through May 31, 1990, to

- collect information on the contents of OPR case files, and
- reach some conclusion about the quality of the work done by OPR.

Our conclusions are based on reviewing investigative case files and interviewing OPR attorneys. The OPR officials not only provided unlimited access to their case files but made themselves available to answer our questions. We did not attempt to reinvestigate any of the investigations. We did our work in Washington, D.C., at OPR. We also interviewed officials of FBI, DEA, Justice's Office of Inspector General (OIG), and Justice's Public Integrity Section who work with OPR and have related responsibilities. We discussed their investigative policies and procedures, but did not verify whether these are being implemented.

OPR provided us with a computer printout identifying all of the cases closed during our time frame. According to the printout, OPR closed 889 cases during this period. OPR attorneys told us that the computer printout may not be completely up to date and that they do not routinely verify the data entered for each case. The attorneys also told us that their level of involvement varied in these cases. About half of the cases initiated by OPR are investigated by OPR attorneys and about half are investigated by other units, for example FBI/OPR, DEA/OPR, or Justice's OIG. For this latter group of cases, Justice's OPR involvement would be mainly one of supervising or monitoring the investigation done by the other units.<sup>1</sup>

Because of this difference in how cases are handled by OPR, we stratified our universe into two groups—cases OPR identified as ones that they “conducted” and cases that they identified as ones they “monitored or supervised.” The computer system used by OPR does not indicate OPR's role in each case. Instead, each attorney reviewed his own list of cases from the printout and identified those cases that he investigated and those cases that

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<sup>1</sup>The OPR attorneys said that there were some differences between the cases in which they supervised the investigating units and those cases in which they only monitored the other units' efforts. In cases they supervised, they said that they would have a closer working relationship with the staff doing the investigation. In cases they monitored, they would, for the most part, merely review the results of the investigation. Since OPR identified only 77 of the 889 cases as ones in which OPR attorneys supervised the work of other units, we chose to group these two categories together for purposes of this review.

he supervised or monitored. In all, the OPR attorneys identified 411 cases as investigated and 478 cases as either supervised or monitored.

To obtain information about the contents of OPR files, we selected separate random samples of cases to review from the cases that OPR investigated and those it monitored or supervised. Because our focus was primarily on the cases that OPR officials were directly responsible for, we randomly selected a sample of 100 cases of the 411 OPR investigated so that the results would be projectable at the 95-percent confidence level with a sampling error of less than 10 percent. In other words, if we drew repeated samples from the universe of 411 cases, then 19 out of 20 samples would produce estimates within 10 percent of the true proportion obtained by examining all cases. Thus, if we estimate that 45 percent of the files had a certain attribute, we are 95-percent certain that the "true" figure is between 35 and 55 percent. When the estimates are less than 10 percentage points, the error is not evenly distributed on either side of the estimate. However, the overall range of the sampling error remains less than 10 percent.

We also chose a random sample of 50 cases from those OPR monitored or supervised to obtain information about the contents of those types of files for illustrative purposes. These data may not be generalized to all of the cases OPR monitored or supervised.

We developed a data collection instrument to standardize the information we gathered during our review of OPR files. We used the same instrument in reviewing the files of both types of cases. We reviewed cases involving complaints against the highest level officials within Justice as well as those against clerical and support staff. When the answers to questions were not apparent from the documents in the files, we interviewed the attorney responsible for that case to collect the information.

In order to draw any conclusions about the quality of OPR's work, we judgmentally selected 16 cases to be reviewed in detail from our sample of 100 cases. Cases were chosen so that each of the OPR attorneys would have cases selected. We also attempted to represent the different types of cases they handle (by allegation and subject's position in the Department) and the variety of results of their efforts (e.g., allegation substantiated or not, discipline imposed or not). Finally, we considered the amount of work documented in the files (we chose those that appeared to have the average amount, not extremely little or voluminous) and the particular subject

matter of the investigation so as to avoid cases made outstanding by their celebrity alone.

A review panel of GAO officials—consisting of the Director, Administration of Justice Issues; a senior attorney; and an investigator—did a detailed review of these 16 cases. This panel was formed to balance various perspectives in evaluating OPR's efforts. The panel members independently reviewed the cases, and then together interviewed the responsible attorneys to learn more about specific aspects of the cases and to obtain more detailed knowledge about OPR's investigative processes.

We did our work from June 1990 to July 1991 in accordance with generally accepted government auditing standards.

# Background

Standards of conduct for Justice employees are contained in Title 28, Part 45, of the Code of Federal Regulations. Employees are to conduct themselves in a manner that creates and maintains respect for the Department and the U.S. Government and are to observe specific ethical standards. The Attorney General created OPR in December 1975 to ensure that Justice employees continue to uphold the standards applicable to the nation's principal law enforcement agency.

Title 28, Part 0, of the Code of Federal Regulations requires that Justice's OPR receive and review any allegation that a Justice employee has violated any laws or applicable standards of conduct. OPR is primarily concerned with investigating misconduct allegations against Justice employees in attorney, criminal investigative, or law enforcement positions.<sup>1</sup> OPR may also supervise or monitor investigations of employee misconduct done by other Justice units, such as Justice's OIG and the FBI's and DEA's OPRs. Among other things, OPR is to

- determine whether the allegation should be referred to another unit in Justice, such as the Criminal Division, OIG, or FBI's OPR;
- generally notify the person who made the allegation of the final results of its review within a reasonable period of time; and
- make recommendations to the Attorney General on the need for changes in policies and procedures that become evident in the course of OPR's investigations.

According to OPR officials, OPR was established to be responsive to the Attorney General. OPR's Counsel, who has been in charge of the Office since its inception, said that he operates OPR in an informal manner. Again, according to OPR officials, the data in the files that an Assistant Counsel generates as a result of investigations are generally for OPR's use. Thus, OPR files were not intended to be used (1) for providing documentation of an investigation or (2) by others outside OPR.

The unit of the employee against whom allegations are made, not OPR, is responsible for taking appropriate actions as a result of any investigation. The regulations establishing OPR provide that the

<sup>1</sup>According to Justice, OPR also serves as an advisory office of attorneys for internal inspection units and Department officials. While OPR does not give advisory opinions on ethics or other topics, a large part of its workload consists of giving legal advice and rendering opinions about ongoing internal investigations conducted by the Department's components.

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"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."

OPR's Counsel said that OPR has no control over what actions, if any, the units impose on their staff as a result of OPR investigations. Typically, OPR sends a memorandum to the employee's unit advising it that OPR has done an investigation about allegations of misconduct, found the allegations to be substantiated, and is forwarding the matter for whatever action the unit deems appropriate. In general, OPR does not make recommendations regarding what disciplinary actions should be taken, unless it is asked to do so.

Each year, OPR receives hundreds of allegations of criminal and ethical misconduct by employees at all levels within Justice and its components. The allegations cover a broad range of possible offenses, including assault, improper disclosure of grand jury information, and improper acceptance of gratuities. The allegations originate from a variety of sources, including judges, prison inmates, law enforcement officials, and private citizens. From January 1, 1988, to May 31, 1990, OPR closed 889 cases. OPR's attorneys investigated 411 of these 889 cases and oversaw the investigations done by other Justice units for the remaining 478 cases.

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## **OPR'S Operations**

OPR is headed by a Counsel on Professional Responsibility. According to the Counsel, OPR has always sought to have a small number of staff members, reflecting the position that a large permanent staff is neither necessary nor desirable. For that reason, OPR's office procedures reflect its philosophy of a small, informal office and permit it to operate with a wide degree of flexibility. For example, OPR does not have an operations manual or any specific guidelines governing how each attorney is to conduct an investigation. OPR's Counsel said that, because of the small staff, he did not want to use OPR staff resources to write procedures and instructions for the attorneys; rather, he prefers to focus OPR's limited resources on dealing with the allegations it receives. Nor did he see the need for the attorneys to spend a lot of their time writing letters and memorandums if, in their judgment, these documents were not needed. The Counsel said that he expects the Assistant Counsels to use their professional judgment to decide how best to carry out their investigations. As a result, he gives the Assistant Counsels very broad latitude in determining the scope of each investigation and the merits of the allegations. In addition, the Counsel relies on the close collegiality he has created, especially his working relationship with the staff, when making decisions and conclusions about each investigation.

For example, the Assistant Counsels are to keep him informed as to whether further investigative efforts would be warranted. They are also to inform him when their investigation is sufficient to substantiate or not substantiate an allegation.

OPR officials said that their opinion of the seriousness and significance of the allegations and potential impact on Justice—in their words, the “detonation potential” of a matter—are key factors in deciding how each case is to be handled. They said that on the basis of their initial review of the allegations, they try to assess the potential impact on the Department. In other words, all cases are not alike and therefore require varying amounts of investigative effort.

When an allegation is received by OPR, the Counsel or Deputy Counsel reviews and assigns it to one of the Assistant Counsels. The Assistant Counsel reviews the allegation and then meets with the Counsel or Deputy Counsel to discuss whether it warrants investigation. If the allegation is to be pursued, they then would decide if OPR should investigate the allegation itself or refer it to another unit. If they decide that OPR will investigate the allegation, they next decide on the scope of their effort. During the investigation, the Assistant Counsels meet with the Counsel or Deputy Counsel, as needed, to discuss status. The Assistant Counsels also discuss aspects of their cases amongst themselves and assist each other in doing the investigations, on an as-needed basis. The Counsel and Deputy Counsel review all reports or correspondence before they are sent; they also review the final decision to close a case.

OPR's Counsel said that he made a conscious decision about not requiring full documentation in the files of every investigation. The degree of record-keeping for any given case is left, for the most part, to each Assistant Counsel's judgment. According to OPR's Deputy Counsel, the files generated by OPR were never compiled for the purpose of providing (1) full documentation of the investigation or (2) a record suitable for review by persons outside of OPR, such as GAO auditors. The data in the files that an Assistant Counsel generates during an investigation are generally for OPR's use. As a result, much of the knowledge about each case resides within the individual Assistant Counsel's memory.

The types of documentation in the files reviewed varied on a case-by-case basis. Generally, each case file contains

- OPR's case-opening form (a short paragraph about what is alleged, who made the allegation, and against whom the allegation is made);
- correspondence sent to OPR from the complainant, the subject, and others involved in the issue;
- attorney notes of interviews and telephone conversations;
- letters to the unit head and to the complainant describing the results of the investigation; and
- OPR's close-out form (a preprinted form with a section for writing one or two sentences about the results of the investigation).

Some of the files may not contain all of these items. For example, some may not have any attorney notes.

## OPR'S Relationship With Other Justice Investigation Units

The regulations establishing OPR state that the primary responsibility for investigating allegations against Justice employees "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 . . ." Consequently, Justice has several offices with responsibilities similar to those of OPR. These offices have the primary responsibility for overseeing their employees' conduct and investigating misconduct allegations made about employees within their units. For example, the FBI and DEA each have an OPR. The Department's OIG also investigates allegations of employee misconduct. OPR has oversight responsibility of the operations of the FBI and DEA OPRs and some of OIG's operations.

Justice's OIG was established pursuant to Public Law 100-504, the Inspector General Act Amendments of 1988. This legislation, among other things, transferred to OIG three internal inspection units formerly in the Bureau of Prisons, the U.S. Marshals Service, and the Immigration and Naturalization Service (INS). Under the legislation, OPR retained its jurisdiction over investigating misconduct allegations against Department employees in attorney, criminal investigative, or law enforcement positions.

Under the legislation, OIG was given responsibility for audits and program management reviews, as well as for investigating waste, abuse, and misconduct allegations against personnel not employed in attorney, criminal investigative, or law enforcement positions. Under the terms of a memorandum of agreement between OPR and OIG on responsibilities for investigations, OIG investigates—under OPR direction—misconduct cases involving Bureau of Prisons, U.S. Marshals Service, and INS employees in criminal investigative and law enforcement positions.

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**Appendix II  
Background**

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As previously stated, OPR may refer some of the allegations it receives to these other investigative units. If OPR refers an allegation to another unit, OPR oversees the work done by that unit. OPR officials told us that the amount of oversight and involvement in the referred cases varies on a case-by-case basis and could range from directly supervising the unit's staff doing the investigation to reviewing the unit's investigative reports.

# Overview of OPR Cases

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## Description of the Files

We reviewed the files of 100 cases OPR investigated and 50 cases it supervised or monitored. The sample of 100 is projectable to the universe of the 411 cases that OPR investigated. All of our estimates are made at the 95-percent confidence level with a sampling error of less than 10 percent. The sample of 50 supervised or monitored cases is not projectable to the universe of 478 cases, however, without a large error rate. We reviewed these files to collect data on OPR's caseload and operations in addition to obtaining information about the individual cases.

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## Data From Cases OPR Investigated

All of the cases we reviewed contained a typed synopsis of the allegation, who made the allegation, who was being investigated, and when the case was opened. Similarly, all of the cases had an OPR form that showed how long the records were to be kept, the results of the case, the attorney of record, approval to close the case, and the date the case was closed.

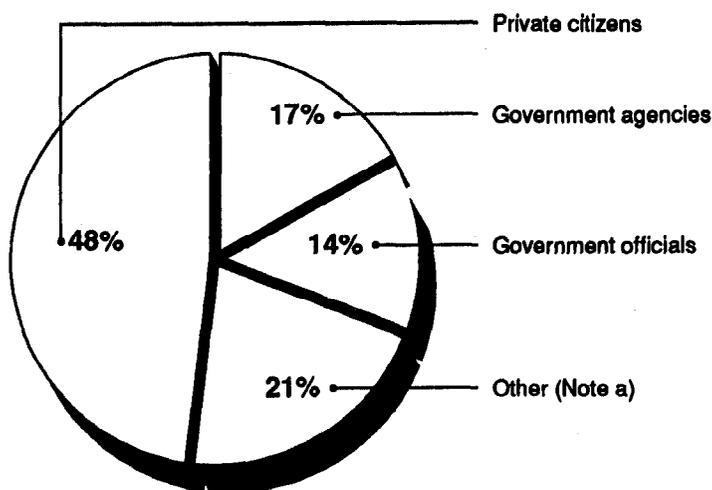
From the contents of the files, we compiled the following information about the cases that OPR investigated.

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## Types of Complainants

Allegations of wrongdoing or unethical activities were received from a variety of sources in the 100 cases we reviewed. The allegations were either received directly by OPR or referred to OPR by others. From reviewing the files to determine who made the original allegations, we estimate that allegations were made by private citizens (we included groups and organizations in this category) in 48 percent of the cases; by other government agencies in 17 percent of the cases (including one from another OPR/OIG); by other government officials in 14 percent of the cases; and by other sources, such as prison inmates or anonymous sources, in 21 percent of the cases (see fig. III.1).

Figure III.1: Original Sources of Allegations in OPR Cases



<sup>a</sup>Includes inmates and anonymous sources.

Reasons Cases Were Opened

The allegations that were the basis for opening the 411 cases often included more than one incident. For example, someone might have alleged that an Assistant U.S. Attorney used perjured information during a trial and had released grand jury information about the case. For such a situation, we indicated that the type of allegation was both (1) release of classified or grand jury information and (2) perjury/subornation of perjury. Table III.1 shows the frequencies of various types of allegations received by OPR for the 100 cases we reviewed.

Table III.1: Frequency of Allegations in OPR Cases Reviewed by GAO

Allegation	Number of cases
Obstruction of justice	5
Fraud	4
Drugs	7
Release of classified or grand jury information	8
Abuse of prosecutorial authority	23
Perjury	8
Unprofessional/unethical behavior	37
Release of other information	8
Mismanagement/waste	5
Other <sup>a</sup>	21

<sup>a</sup>Included such allegations as assault, failure to report an arrest, theft, noncompliance with travel regulations, selling Justice parking spaces, or mistreatment of prisoners.

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**Subjects of OPR  
Investigations**

Of the 411 cases that OPR attorneys investigated, almost half (47 percent) involved allegations against officials in U.S. Attorneys' offices. Another 24 percent of the subjects were employed in Justice divisions, such as the Civil, Criminal, or Antitrust Divisions. Fifteen percent of the subjects were in Justice component agencies, such as the FBI or INS. The remaining 14 percent involved allegations against individuals in more than one unit (10 cases), individuals who were not Justice employees (2 cases), a former Justice employee (1 case), and an unknown subject (1 case).

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**Allegations Substantiated**

We estimate that the allegations were substantiated for 9 percent of the 411 cases investigated by OPR; 67 percent were not substantiated.<sup>1</sup> (As previously indicated, some of the cases had more than one allegation or more than one subject.) For the remaining 24 percent of the cases, conclusions other than the substantiation/unsubstantiation of allegations were reached. Many of the cases we reviewed were not really investigations of alleged wrongful acts or were cases that, for various reasons, OPR did not investigate. Such cases included ones with subjects who were found not to be Justice employees or who had resigned or retired before the investigation was completed, ones in which the events or information were too old to warrant investigation, or ones where the allegations were not specific enough to investigate or were withdrawn. In these and similar situations, OPR would not conduct an investigation or would close the case almost immediately after an initial inquiry.

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**Actions Taken Against Justice  
Employees**

OPR does not have the authority to determine the disciplinary actions that should be taken when an employee is found to have committed a wrongful act or unethical deed nor does it routinely make recommendations about disciplinary actions. Instead, OPR refers the matter to the appropriate unit for determination. OPR's Counsel told us that he would make a recommendation if the subject's employing unit requested one. Data on the results of cases were not always in the files or were unclear as to the specific action taken. Since OPR is not responsible for this phase of an investigation, it does not ascertain the final outcome of every case.

Cases may result in more than one action; for example, if an allegation was substantiated, the subject may have received both a letter of reprimand and

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<sup>1</sup>With respect to the actual allegations that were substantiated, five cases involved Justice headquarters staff, one involved staff members in a regional OIG office, two involved staff in U.S. Attorneys' offices, and one involved an INS employee.

a suspension. Table III.2 shows the frequencies of various actions taken in cases investigated by OPR and for which the allegations were substantiated.

**Table III.2: Frequency of Actions Taken In Cases OPR Investigated and Substantiated the Allegations**

Action taken	Number of cases
Employee resigned	5
Employee dismissed and convicted	1
Letter of reprimand	1
Employee demoted and reassigned	1
Other <sup>a</sup>	3

Note: Includes only cases reviewed by GAO.

<sup>a</sup>Includes one case in which an employee's bonus was delayed and a temporary employee was not rehired, and two cases in which no action was taken because (1) the subject resigned before the investigation began and (2) no further action was deemed warranted.

As previously noted, the allegations were found to be without merit for 67 percent of the cases. In some of these cases, although no disciplinary actions were required, actions were noted in the files—for example, the employee resigned, inappropriate remarks were noted and discussed with the subject, or the matter was referred to another unit. Similarly, although conclusions other than the substantiation/unsubstantiation of the allegations were reached for 24 percent of the cases, some actions were noted in the case files—for example, prosecution was declined, the employee resigned, or the matter was referred to another unit.

**Types of Closing Documents**

We estimate that 70 percent of the 411 files of OPR-investigated cases contained a formal letter or report written by OPR closing the case. This letter or report may have been as simple as a typed memo to the file citing that OPR found no merit to the allegation or a letter detailing the work OPR did and how it reached its conclusions. In some of the cases, this document was addressed to the complainant, meeting the requirement that OPR inform complainants of the results of investigations. Eighteen percent of the files contained formal closing letters/reports that were prepared by another investigative unit; these may also have been provided to complainants. However, many files contained no such documentation. Ten percent of the cases in our sample contained informal closing documents, such as handwritten notes to the file.

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**Data From  
Supervised/Monitored  
Case Files**

We also reviewed 50 of the 478 cases that OPR supervised or monitored. While we cannot project the results of this review to the universe of 478, information similar to that developed from our projectable sample of the cases that OPR investigated can be generated.

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**Subjects of Investigations**

The subjects of the allegations were employed in the following units. Fourteen of the subjects were FBI officials, and another 14 were Bureau of Prisons staff. Nineteen were employed by other Justice divisions or components. Two subjects were not Justice employees; the remaining case had multiple subjects who were employed by different units.

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**Types of Complainants**

Government agencies made the original allegation in 13 of the cases. Seven allegations were made by private citizens and six by government officials. The remaining 24 complainants fell into an "other" category that included anonymous callers and prison inmates.

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**Reasons Cases Were Opened**

As previously noted, a case may be opened on the basis of multiple allegations—e.g., abuse of authority and perjury—so the number of allegations in the cases we reviewed was greater than 50. Seventeen of the allegations involved unprofessional or unethical behavior. Eight allegations involved fraud, seven involved mistreatment of prisoners, seven involved waste or mismanagement, and five involved the sale and/or use of drugs. The 20 remaining allegations included bribery or extortion, unauthorized release of information, telephone harassment, or unreported arrest.

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**Allegations Substantiated**

Five of the cases in the sample were fully substantiated, and four were substantiated in part.<sup>2</sup> Twenty-five cases were unsubstantiated, 13 were closed without a determination of substantiation being made (for reasons similar to those described in the OPR-investigated sample); in the remaining 3 cases, OPR could not determine whether the allegation was substantiated.

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<sup>2</sup>Of these nine allegations that were substantiated, four involved staff at the FBI, and the other five each involved staff of different Justice components—Justice headquarters division, U.S. Marshals Service, DEA, INS, and Bureau of Prisons.

**Actions Taken Against Justice Employees**

As previously noted, there may be more than one result for each of the 50 cases, and the files did not always contain clear information about the actions taken. Table III.3 shows the actions taken for those nine cases in which the allegations were substantiated in whole or in part.

**Table III.3: Frequency of Actions Taken in Cases OPR Supervised or Monitored and Substantiated the Allegations**

Action taken	Number of cases
Prosecution declined	1
Prosecuted and convicted	1
Oral reprimand	1
Letter of reprimand	2
Leave without pay (6-10 days)	2
Leave without pay (more than 15 days)	1
Employee resigned	1
Other <sup>a</sup>	3

Note: Includes only cases reviewed by GAO.

<sup>a</sup>Includes such actions as the employee was counseled, the employee was put on probation, and the action(s) taken were unknown.

As previously noted, the allegations were found to be without merit for 25 cases, and no disciplinary actions would have been required. Although the allegations were found to be without merit, some actions were noted in the files—for example, the employee resigned, prosecution was declined, or the matter was referred to another unit. Similarly, although conclusions other than the substantiation/unsubstantiation of the allegations were reached for 16 cases, some actions were noted in the case files—for example, a letter of reprimand may have been issued, the subject was dismissed or resigned, or the matter was referred to another unit.

# Comments From the Department of Justice

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. Department of Justice

Washington, D.C. 20530

NOV 15 1991

Mr. Richard L. Fogel  
Assistant Comptroller General  
United States General Accounting Office  
Washington, D.C. 20548

Dear Mr. Fogel:

In response to your request to the Attorney General of November 1, 1991, the Department of Justice is providing its comments on the General Accounting Office's draft report entitled "Justice's Office of Professional Responsibility: Actions Taken During Investigations Should Be Clearly Documented." We appreciate the opportunity to respond to GAO's draft report. The Department's comments will assist in correcting some of the report's findings, more fully explaining certain of the report's other findings, and putting the report's conclusions in proper perspective.

The Department is pleased that the General Accounting Office's Management Review of the Office of Professional Responsibility has determined that OPR has "effectively met its objective of protecting the integrity of the Department." Moreover, GAO concluded that OPR had neither "erred in its investigations [n]or could be faulted in its judgments \* \* \*."

Clearly, the procedural aspects of OPR's operations which GAO criticizes have not affected the substance of OPR's investigations. Indeed, those primarily administrative issues must be considered in the context of GAO's ultimate conclusions that OPR has effectively safeguarded the integrity of the Department, conducted unerring investigations, and exercised sound judgment.

OPR has for years resisted pressures to overly "bureaucratize" its operations. It has intentionally kept its permanent staff complement small because of its philosophy that "bureaucratic bloat" leads to inefficiency. Nevertheless, at the time the GAO review commenced, OPR -- faced with a burgeoning caseload -- was moving on its own initiative toward a more systematized, but still streamlined, approach to its record-keeping. Its goal was to take

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a fresh look at its practices and procedures<sup>1/</sup> and to make them as efficient as possible with little or no increase in its budget. To assist it in this regard, OPR welcomed the GAO review and cooperated fully with GAO's efforts. By making its files and staff totally available to the audit team, OPR hoped to gain the benefit of GAO's insights into how its operations could be improved. With that as background, our specific comments on the GAO's Report of its Management Review follow.

The draft GAO audit report's main concern appears to center on the fact that the audit team found OPR's methods "informal." OPR operates in a manner not inconsistent with the operation of other offices within the Department. For example, GAO notes that OPR "relies on the attorneys' judgment and informal consulting among attorneys within OPR as the basis for making decisions and reaching conclusions \* \* \* [as well as] leav[ing] the decision of the amount of work to be done on any particular matter largely to the judgment of the attorney to whom the matter is assigned \* \* \* ." Throughout the Department, attorneys are consistently given the discretion, in consultation with appropriate supervisors, to determine the nature and scope of their investigations. We find no reason in the GAO report why OPR should be in any different posture with respect to the discretion given to its attorneys.

We note that GAO found that "unless at least two OPR attorneys judge the complaint to be not worth pursuing, OPR investigates each allegation or refers it to another Justice unit." Similarly, it takes the judgment of at least three, usually four, OPR attorneys to conclude a matter that OPR investigates itself. Normally, two OPR Assistant Counsel work on every OPR-conducted inquiry. Both Assistant Counsel, and usually both the Deputy Counsel and the Counsel, read the final investigative product. On less significant matters that OPR does not investigate itself, at least one Assistant Counsel and the Deputy Counsel review the matter before it can be considered closed. Accordingly, "informal" cannot be understood to involve, in this instance, a "haphazard" or "cavalier" process. OPR's procedures are "informal" only in the sense that they have not been reduced to writing.

In a similar vein, the GAO report postulates that informality could lead to the premature conclusion of a matter and thereby compromise the integrity of the Department. That formulation ignores the fact

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<sup>1/</sup> For example, prior to the issuance of GAO's report, OPR hired a management specialist whose responsibilities include analyzing OPR's procedures and recommending changes to make OPR's operations more efficient.

See comment 1.

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that the Department hires attorneys whom it believes can be entrusted to exercise sound discretion regarding when a matter may be concluded. OPR is no different. Moreover, the mere documentation of the stages of an investigation has little effect on the result. Nor is a well documented investigation necessarily a thorough investigation. Rather, it is the investigation itself which determines the exposure of the Department to a potential compromise of integrity. GAO has specifically concluded that OPR's investigations have effectively met its obligation to protect the integrity of the Department and that OPR's judgment can not be faulted. Accordingly, assuming, *arguendo*, that there is a risk of compromise, GAO's own conclusions demonstrate that the risk is, at best, minimal.<sup>2/</sup>

GAO was also concerned about the level of documentation contained in OPR's files. We believe that the files contain adequate documentation to rebut any claim that an investigation had not been adequately pursued. In this instance, GAO's overly generalized statement is based on an apparent misconception -- found throughout the report -- that all inquiries conducted by OPR are identical. Rather, OPR evaluates each matter on its own merits and documents the file accordingly. While GAO acknowledges this in a few portions of its report, the report's conclusions appear to ignore this fact and its implications. We have little doubt that a review of the complaint and the responsive documentation contained in any OPR file would disclose to a reviewing attorney the rationale for choosing a particular investigative strategy.

In addition, GAO expressed concern about the loss of information if an OPR Assistant Counsel were to leave the office.<sup>3/</sup> We find

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<sup>2/</sup> As noted in footnote one, *supra*, OPR has in place a thorough system of internal controls over its work product. In the Department's view, the potential "risk" to the Department from an OPR investigation is no greater than any other Departmental inquiry. In fact, the potential "risk" may be significantly lower because of OPR's "informal" procedures which encourage full discussion of all OPR matters by all OPR attorneys.

<sup>3/</sup> GAO's concern is not unique to OPR. Department files can not possibly reflect everything known to those who participate in complex investigations. When attorneys leave the Department, their knowledge of specific cases can be lost unless efforts are made to debrief them about their cases before they depart. Sometimes even this is not sufficient. For that reason, it is not unusual for former Assistant United States Attorneys engaged in private law  
(continued...)

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See comment 2.

that concern to be unsupported by OPR's experience. Despite the fact that a number of Assistant Counsel have left OPR over its sixteen year existence, OPR has never had to contact one to discuss any OPR case which he or she handled. OPR has found that its files have always contained sufficient documentation to respond to whatever contingency required the examination of a closed file.<sup>4/</sup>

GAO notes that the component OPRs have specific guidelines which establish requirements regarding who is to be interviewed and how files are to be documented. Again, we believe that GAO has made a tenuous, overly broad generalization. Although the component OPRs, which are staffed by criminal investigators, do have these guidelines in place, we do not believe that they have abandoned their discretion as to the manner, in which various types of investigations are to be conducted.<sup>2/</sup> Just as DOJ/OPR determines the level of effort to be expended on any particular case and documents the file accordingly, the components have and exercise similar discretion.

Long ago, OPR made a deliberate decision not to expend its finite resources on documenting files in accordance with an "audit checklist" standard. Instead, it chose to concentrate those resources on the conduct of the investigation itself. Accordingly, as OPR explained to GAO, different files are documented in different ways depending upon the relative seriousness of the allegations, the credibility of the complainant, and other factors. As a result, although all OPR files do not contain the same level of documentation, we believe that each one contains sufficient information to

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<sup>2/</sup>(...continued)

practice to be retained as special employees to handle cases on which they worked during their tenure with the Department. This practice preserves case knowledge that would otherwise be lost.

<sup>4/</sup> Ironically, OPR is authorized to destroy files in which allegations are determined to be without merit after a six-month retention period. But for OPR's retaining its files for a longer period as a matter of prudence, many of the files GAO included in its review would have been destroyed.

<sup>2/</sup> For example, FBI/OPR guidelines state that "every logical lead" -- not "every lead" -- will be investigated. Clearly, the guidelines themselves inherently require the exercise of judgment to determine what is and what is not logical.

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determine who was interviewed, generally what was said, and what other evidence was collected to resolve the allegation.<sup>5/</sup>

Now on pp. 7-13.

In its detailed criticisms of OPR's operating procedures (pages nine - seventeen of the draft report), GAO identified four areas needing improvement: file documentation, the handling of leads, the identification of systemic problems, and post-investigation follow-up.

With respect to file documentation, the GAO report ignores the fact that the best evidence of what a witness said in an interview, other than an expensive verbatim transcript, consists of the contemporaneous notes of the interviewers, rather than a typed summary of the interview. Even in instances where typewritten summaries are prepared, interview notes are retained in OPR files.<sup>1/</sup> In addition, the GAO overlooked the many instances in

See comment 3.

<sup>5/</sup> We do not accept the GAO report's conclusion that "if asked to defend a past investigation against a charge that it was not aggressively pursued, OPR probably would not have sufficient documentation to defend its efforts." OPR investigations have been criticized in the past and reviewed by non-OPR attorneys at the request of various Attorneys General. This was explained to the audit team, and although complete files pertaining to those investigations were offered to the team for review, it chose not to review them. In each instance (including one which involved a complete re-investigation by an outside entity), OPR's findings and conclusions were found to be correct and proper, and its files to be fully adequate.

<sup>1/</sup> Regarding this point, the GAO draft report noted that OPR files contained "hand-written interview notes that were often difficult" for the audit team to read. "In a few instances, the Assistant Counsel had transcribed their interview notes and included them as typed summaries in the files. In contrast, the files which contained interviews [sic] conducted by other Justice units such as the FBI included typed summaries much more often than hand-written notes." FBI procedures also call for the retention of hand-written notes of interviews of witnesses. This requirement exists because of the not infrequent occasions on which the accuracy of FBI typed summaries are called into question during trials. In those instances, the hand-written interview notes are frequently turned to. In addition, on more than one occasion, FBI Special Agents who were conducting joint investigations with DOJ/OPR borrowed OPR attorneys' hand-written interview notes to help them produce more accurate "typed summaries." OPR does not  
(continued...)

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which OPR utilized a court reporter to take a verbatim transcript of an interview.<sup>1/</sup>

We also question GAO's reference to the audit team's inability to determine from the file whether "OPR attorneys talked with all of the key individuals involved in a case, including the [complainant] or the subject of the investigation." In our view, that information is available in the files -- both from the interview notes which clearly reflect the name of the subject of the interview and from memoranda or correspondence in the file. Moreover, the mere inclusion of a checklist of persons interviewed provides no assurance that "all of the key individuals involved in a case" have been interviewed. It would represent only the attorney's judgment regarding the individuals who should be interviewed given the facts of the specific case.<sup>2/</sup>

<sup>1/</sup> (...continued)  
recall any instances in which the agents complained about the illegibility of those notes.

<sup>2/</sup> OPR uses court reporters in cases it considers of particular significance. Some OPR files also contain verbatim transcripts of testimony given before grand juries. GAO was not given access to these transcripts or to other grand jury information in OPR files because federal law prohibits its disclosure in these circumstances.

<sup>2/</sup> In this regard, two examples of OPR investigations cited in the GAO report require additional comment. In each instance, the summary of the inquiry contained in the GAO report is not incorrect, as far as it goes. In the first case, the audit team's problem with the inquiry was that not all investigative leads were followed in the case, that is, that the complainant and the subject had not been interviewed and that after the matter had been closed in OPR, the complainant wrote a letter indicating that he had evidence to support his claim. As correctly noted by GAO, the OPR Assistant Counsel with responsibility for the case chose not to pursue that lead. What is not mentioned in the GAO report, but what is documented in the OPR file on the matter, is that the complainant was a former law enforcement officer who was fired from the Department of Justice and was later convicted of a federal charge arising from his employment. His complaint was directed at the Assistant United States Attorney who had prosecuted him. In addition, the file also includes information about the subject Assistant United States Attorney's testimony under oath refuting the allegation. The OPR Assistant Counsel followed OPR's standards  
(continued...)

See comment 4.

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GAO notes that OPR's closing letters varied greatly in the amount of detail which was included. That observation is entirely consistent with OPR's philosophy of devoting to each case the resources which in OPR's judgment the allegations merit.<sup>10/</sup> Accordingly, OPR's more complex cases would merit a more lengthy and detailed closing communication while a simple case would tend to be treated

<sup>2/</sup>(...continued)

and exercised judgment about whether to expend further OPR resources pursuing the matter. The GAO report earlier had stated that its "in-depth review" of OPR cases and discussions with OPR officials "did not reveal that OPR had erred in its investigations or could be faulted in its judgments" in any of the cases it reviewed. This was one of the cases the GAO team reviewed.

The second example cited related, according to GAO, to "an allegation that an AUSA had been involved in gambling." The GAO team's problem with this case was that it was not clear from the file why OPR had concluded that the allegations were not substantiated. Not included in the GAO audit report were the following additional factors which lead to that conclusion and which were explained to the audit team. First, the allegations consisted of rumors that an AUSA had placed bets on college football games. Second, the rumors had occurred three years prior to OPR's receipt of the allegations. Finally, in the intervening three years, no further evidence or rumors of any gambling by the AUSA came about, and, as noted, none of the individuals interviewed had any direct knowledge of any gambling activity by the AUSA. Their only knowledge of the matter was their having heard a rumor three years before. As noted, this was one of the cases GAO reviewed in reaching its conclusion that OPR did not err in any of its investigations and could not be faulted in its judgments.

<sup>10/</sup> The example cited by GAO (page twelve of the draft report), which on its face indicates that it is a summary disposition of a matter decided on the basis of written submissions, is another example of GAO's checklist approach. The information provided in the written submission from the subject clearly spelled out the issues and the response thereto. Then, much as a court would do, OPR weighed the arguments on both sides and reached a decision on the claim of misconduct -- in the instance cited, rejecting the complainant's contention that misconduct had occurred. Even courts do not set forth their reasoning in detail on every matter presented.

See comment 5.

Now on p. 9.

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in more summary fashion.<sup>11/</sup> This observation illustrates GAO's basic misunderstanding of the process by which judgments are made regarding the amount of effort and resources to be expended in any particular matter.<sup>12/</sup>

<sup>11/</sup> In one instance, the GAO report acknowledged this practice and did not disapprove of the results. The draft report states that "a few of the closing letters were more detailed, adding information about what specifically was done and how conclusions were reached. For example, in a six page letter to a U.S. Attorney about a case where an allegation was made by a judge, OPR provided details of (1) the background of the allegation, (2) its inquiry into the allegations, (3) the results of its inquiry, and (4) its conclusion." OPR offered the GAO audit team more examples of just this type of OPR file. The audit team did not review those files. In this regard, we must point out that the GAO team's very methodology ruled out *ab initio* a review of well-documented OPR files. As stated in Appendix I of its report, the audit team, in selecting cases for further review, considered the amount of work documented in the files and excluded those files which were either "extremely little or voluminous[sic]." Since OPR most heavily documents the matters it considers most significant and serious, and requires less documentation in its less significant matters, the GAO audit team's methodology virtually precluded review of most well-documented OPR files. The report's conclusion that OPR should better document its files was therefore a predictable result.

Another issue we must point out concerning the audit team's methodology relates to the comments of the Acting Attorney General. Page ten of the draft report states that he found OPR's reports to be "balanced and fair." Three pages later, his response to what clearly was a hypothetical question is reported as only partially hypothetical. We question why the subjunctive mood was not used throughout that passage.

<sup>12/</sup> Another possible area of misunderstanding may be OPR's use of closing forms. The GAO report does not distinguish between the statement contained on OPR's closing form and the rationale for making investigative conclusions. In the vast majority of cases, the information contained on the OPR closing form is merely a short-hand statement of the investigative conclusions to be recorded in the OPR case tracking system. This form was never intended to be a complete explanation of the reasoning behind any particular closing. In a few cases, however, generally where facts become immediately apparent which would preclude OPR from taking further action on the matter, e.g., when the complaint involved a former employee, the closing sheet could be used as the sole method  
(continued...)

See comment 6.

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With respect to GAO's observation that OPR does not always follow through on all investigative leads, we must again point out that GAO has misunderstood the nature of OPR's operations. OPR does not expend the same amount of resources on each case it receives. OPR constantly makes judgments as an inquiry progresses regarding the likelihood of substantiating the underlying allegations. If sufficient evidence exists indicating that an allegation is false, it is illogical and inefficient to pursue marginal leads which have little or no likelihood of changing the existing quantum of proof.<sup>12/</sup> The exercise of this type discretion -- terminating investigations when it appears that the proof is lacking -- is common in investigative and prosecutive components of the Department, such as U.S. Attorneys Offices.

In observing that systemic problems are not identified by OPR, GAO has misunderstood OPR's processes. The GAO draft report states that the audit team "asked OPR officials if they analyzed the allegations [they received] and the results of their investigations to identify any systemic problems or patterns that would warrant changes in Justice policies or procedures. They said that they did not usually do such analyses and added that benefits could result from doing so." The question that was actually posed to OPR was not whether it identifies systemic problems or patterns and recommends changes in Justice Department policies and procedures based on its inquiries, but whether OPR systematically pulls and formally reviews and analyzes closed cases looking for problems or patterns. In fact, although OPR has not engaged in a formal analysis of closed cases, it routinely seeks to identify problems in the Department which come to its attention during the course of its investigations and to recommend changes in policies and procedures. This practice, rather than one which awaits the closing of inquiries and the later compilation of several (or many)

<sup>12/</sup> (...continued)

to both record that fact and close the matter since it would be closed without further inquiry. Moreover, there appears to be little distinction between a note to the file that the subject is no longer a Department employee and the recordation of that fact on the OPR closing form. Finally, such a formal closing is only necessary because, as a control measure, OPR's computer system requires that once a case number is issued, the file must be formally closed -- the case number cannot simply be reassigned to a new matter.

<sup>13/</sup> See, for example, the first case discussed in footnote nine.

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recurrences of the same problem, affords the Department the opportunity for more timely correction of identified problems. Examples abound.<sup>14/</sup> Indeed, the example of the coerced polygraph

<sup>14/</sup> A few examples of instances in which OPR took action to identify and correct systemic problems follow.

Shortly after OPR was created, it supervised an extensive grand jury investigation into certain FBI procurement practices. As a result of that investigation and OPR analysis of its findings, FBI procurement practices were changed.

OPR investigated allegations that a U.S. Attorney wrote a letter to the sentencing judge seeking leniency on behalf of a federal defendant (who had recently been convicted in another district) which was inconsistent with the sentencing position taken by the local U.S. Attorney. Based upon its investigation, OPR determined that the Department had not issued any guidance with respect to that issue. OPR proposed a Departmental policy statement on the issue. As a result, the Office of Legal Counsel drafted such a policy, the Attorney General adopted it, and directed that all Department employees strictly adhere to the policy in making any communications on behalf of any federal defendant.

Based on findings from a joint investigation with the FBI, changes were made in the manner in which payments to informants are documented.

An OPR investigation into the use of the Department's aircraft led OPR to determine that the Department's regulations governing aircraft usage did not specify who, if anyone, was authorized to accompany official travelers. That issue was brought to the attention of the Justice Management Division and it was addressed in a subsequent revision of the regulations.

In an investigation of prosecutorial misconduct, OPR identified the use of grand jury witness summary statements by prosecutors as creating a potential for abuse or for unwarranted allegations of misconduct. Accordingly, OPR recommended that the Executive Office for United States Attorneys consider including a provision in the U.S. Attorney's Manual which would forbid the use of grand jury witness summary statements.

During an investigation, OPR learned that a U.S. Attorney had put in place an office-wide policy that severely restricted the types of political activities employees could engage in. For example, the policy prohibited employees from making a contribution to a political campaign. Because the policy prohibited activities that were specifically allowable under the Hatch Act, OPR expressed concern to the Executive Office for United States Attorneys about the improper restrictions placed on employees' rights. The policy was reviewed and subsequently amended.

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cited by GAO to support its conclusion that OPR ignored opportunities to correct systemic problems is actually an example of the contrary, and indicates that OPR addressed a problem before it had the opportunity to become "systemic."

In the entire history of OPR, there had never been another reported instance of an employee's being coerced into taking a polygraph examination. Moreover, as OPR explained to the GAO panel, the allegation was reported to OPR by the Executive Office for United States Attorneys (EOUSA), which was fully aware of the problem. Most importantly, however, OPR's memorandum to EOUSA reporting the results of its inquiry specifically recommended that EOUSA take action to remind all U.S. Attorney and EOUSA personnel of the Department's requirements for reporting misconduct allegations. If those requirements had been followed in this case, the question of a coerced polygraph would never have become an issue.<sup>15/</sup> Finally, as a result of OPR's memorandum, EOUSA directed a memorandum to all EOUSA managers advising them that under no circumstances were they empowered to authorize polygraph examinations and that any request for a polygraph examination should be referred either to EOUSA's Legal Counsel Office or directly to OPR. Those documents were in the file reviewed by the GAO audit team.

Finally, GAO noted that OPR did not regularly determine what, if any, disciplinary actions were taken as a result of the investigations it conducted or monitored. In the past, when its caseload was smaller, OPR monitored the disciplinary actions of the Department's components rather closely. In response to a directive from a previous Deputy Attorney General, however, OPR discontinued its prior practice of keeping its files open until disciplinary action had been taken. As a result, OPR ceased tracking all disciplinary actions taken by the components. Moreover, the regulations establishing OPR make clear that its role vis-a-vis the component internal inspection units is to review and evaluate their performance. Because the internal inspection units also have no disciplinary authority, OPR is not mandated to evaluate the imposition of discipline. Nevertheless, OPR has commented upon disciplinary problems which it has observed<sup>16/</sup> and, as a result, corrective steps have been taken.

<sup>15/</sup> The employee was directed to take the polygraph examination or have an adverse inference drawn from his/her refusal based upon completely erroneous advice given by an EOUSA manager who had no authority to authorize polygraphs.

<sup>16/</sup> See, for example, OPR Annual Reports to the Attorney General for the years 1978, 1979, 1980, and 1984.

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As we noted above, GAO concluded that OPR has effectively met its objective of protecting the integrity of the Department, has conducted unerring investigations, and has exercised sound judgment. The relatively minor administrative points which the GAO report raises amount to nothing more than its disagreement with the approach taken by OPR during the investigative process. Indeed, as we have explained above, GAO's misunderstanding of the Department's internal investigative processes,<sup>17/</sup> together with its belief that "checklist" investigations are somehow inherently superior without regard to the final product, has caused it to focus unnecessarily on these procedural issues. Nevertheless, OPR does not totally disagree with GAO that there is some merit to record-keeping improvements.

With that in mind, OPR responds as follows to the draft GAO report's recommendations.

-- OPR is prepared to put its standards for conducting investigations into writing. OPR will continue, however, to rely, as

<sup>17/</sup> For example, page four of the draft report mentions that the audit team could not understand why OPR chose to conduct its own inquiry into an allegation made against a support employee rather than referring the matter to one of the "other Justice internal units, which is OPR's usual practice." GAO apparently did not understand the notion that the only matters that are referred to internal inspection units are those that pertain to that component's own employees. In the example cited by GAO, the subject employee was employed by a component with no internal inspection unit of its own. In those instances, OPR (before the advent of the Department's Inspector General) would conduct its own inquiry except for the most trivial of allegations.

The draft report also does not mention many of the other functions OPR performs. OPR serves as an advisory office of attorneys for the internal inspection units and for Department officials. While OPR does not give advisory opinions on ethics or other topics, a large part of its workload consists of giving legal advice and rendering opinions about ongoing internal investigations being conducted by the Department's components. This is not an insignificant function and its importance is evidenced by the fact that the head of OPR is titled "Counsel" and the professional staff consists of a "Deputy Counsel" and "Assistant Counsel;" the head of OPR is not a "director" or a chief "investigator."

See comment 7.

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do other Department of Justice units, predominantly on *The United States Attorneys' Manual* for procedural guidelines.<sup>18/</sup>

-- OPR is prepared to establish standards for case documentation.<sup>19/</sup> These standards will not, however, include a listing of potential interview subjects in a case since such a list serves no OPR purpose. The standards will include the rationale for actions and decisions taken. The standards will not include a requirement to justify actions not taken since such a requirement would not further OPR's mission.

-- OPR will continue its practice, as required by regulation, to submit recommendations on the need for changes in policies or procedures "that become evident during the course" of its inquiries. 28 C.F.R. §0.39a(j). While OPR will continue to evaluate its cases to identify systemic problems, it does not believe that a formal, structured process for such evaluation is necessary. OPR will be alert to trends indicating systemic patterns and problems and will make recommendations to correct them, as appropriate.

-- OPR will return to its former practice of including within each substantiated case file the results of the disciplinary process.

The Department believes that these actions will favorably resolve each of the GAO report's recommendations. As noted earlier in these comments, we very much appreciate the opportunity to review

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<sup>18/</sup> The GAO draft report's attempt to equate the Department's OPR with FBI/OPR and DEA/OPR for guideline purposes is misplaced. OPR explained to the audit team that while the functions of those offices were similar to OPR's, they could not be equated for standards or "guidelines" purposes. DOJ/OPR, as a matter of policy, if not necessity, hires only experienced attorneys for its staff. During its sixteen-year history, only two attorneys did not have extensive Department of Justice work experience before joining OPR's staff; both, however, had extensive litigation experience in private law practice. If this situation were to change, and OPR were to perceive a need for a guidelines manual of its own, OPR would draft one.

<sup>19/</sup> By codifying such standards, however, OPR does not intend to abandon its discretionary approach to investigations. OPR will continue to evaluate cases on their individual merit and will not treat all cases as equal. Accordingly, its standards will continue to be sufficiently flexible to allow for the exercise of sound discretion.

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the draft report and think that the audit and the report have been helpful to the Office of Professional Responsibility by assisting it in focusing on its own ongoing management initiatives to improve its operations. The Department of Justice hopes that the General Accounting Office finds these comments of interest and assistance. The Department also strongly recommends that this comment procedure become a part of every audit conducted in the Department.

Sincerely,

  
Harry Flickinger  
Assistant Attorney General  
for Administration

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The following are GAO's comments on the Department of Justice's letter dated November 15, 1991.

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## GAO Comments

1. We said that informality—not by itself, but along with limited scope and minimal documentation—could lead to expose OPR and the Department to a range of risks.
2. While OPR has not had to contact former Assistant Counsels concerning their investigations, this situation may not continue. OPR is vulnerable, in our opinion, to risks associated with inadequate documentation in the files regardless of its staff turnover rate.
3. OPR did suggest some specific cases for our review. We did not include them, however, because they were not part of our random sample.
4. Justice correctly points out that the complainant in the cited example was a former law enforcement officer who was fired from Justice and later convicted of a federal charge arising from his employment, and that his complaint was against the Assistant U.S. Attorney who had prosecuted him. Although the complainant was fired and subsequently convicted, his allegation could still have been valid. This is an example of OPR not pursuing a lead. From the documentation in the files, however, it was not clear that these factors were part of the rationale the Assistant Counsel considered in his decision not to follow up on this lead. Further, he did not cite these factors to us during our interview with him about this issue.
5. The additional factors that led OPR to conclude that the gambling allegations had no merit were not documented in the file. Thus, we had to discuss this case with the attorney to understand fully the events and decisions involved in the case.
6. The wording in the report was changed to recognize the hypothetical situation.
7. On the basis of Justice's comments, this example was deleted.

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