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The Federal Bureau of Investigation (FBI) has improved its system for handling allegations of impropriety and misconduct by its employees by creating the Office of Professional Responsibility (OPR). The Office's responsibilities are to oversee and control investigations of major allegations, coordinate with the Department of Justice (DOJ), and monitor related disciplinary actions. However, detailed written criteria for categorizing major and minor allegations and written procedures for assigning or conducting inquiries do not exist, nor has the DOJ developed criteria governing which inquiries it should handle itself. Such criteria are important to assure that allegations are handled fairly, promptly, and uniformly and to prevent possible abuse. Better statistical information on the number and types of major and minor allegations and the related disciplinary actions would give both the FBI and DOJ-level OPAs a better basis for monitoring and controlling internal inquiries. (Author/DJM)

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STATEMENT OF
VICTOR I. LOWE, DIRECTOR, GENERAL GOVERNMENT DIVISION
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION
AND INDIVIDUAL RIGHTS
HOUSE GOVERNMENT OPERATIONS COMMITTEE
ON THE
FEDERAL BUREAU OF INVESTIGATION'S
CONDUCT OF INTERNAL INQUIRIES
CONCERNING ALLEGATIONS OF IMPROPER
CONDUCT BY FBI EMPLOYEES

Mr. Chairman and Members of the Subcommittee:

As you requested, our testimony today will focus on how the FBI conducts internal inquiries concerning allegations of impropriety or misconduct by FBI employees. We have been reviewing these activities as part of an overall audit of the FBI's internal review operations. Therefore, I would first like to briefly summarize the status of our overall review before addressing your specific interest.

Prior to September 1976, the FBI's internal review functions were scattered among three different independent entities--Inspection Division, Office of Planning and Evaluation, and Finance and Personnel Division. We have included in Appendix I an organization chart and a brief description of the internal review responsibilities of each entity.

In the past, little emphasis was placed on comprehensive financial, efficiency and effectiveness, and program results reviews. Primary emphasis was put on the Inspection Division's annual inspection of each FBI field office and headquarters division. These inspections were compliance oriented and the resulting findings and recommendations related only to the specific field office or headquarters division reviewed.

In September 1976, the FBI began revising its internal review policies and procedures and reorganized its internal review functions under the Planning and Inspection Division with three separate offices--the Office of Inspections, Office of Planning and Evaluation, and Office of Professional Responsibility. Appendix II includes a current organization chart and a description of the internal review responsibilities of each office.

The FBI's reorganization and continual efforts to improve its internal review operations have resulted in several improvements. These include:

- making those responsible for internal review functions reportable directly to the Director of the FBI, thus making them more independent,
- facilitating coordination among the various internal review groups,
- making inspections more efficiency and effectiveness oriented,
- increasing financial audit capabilities, and
- initiating program results reviews.

These changes are a step in the right direction. However, the FBI could further strengthen its internal review operations by

- improving its staffing and planning of internal review operations,
- providing more adequate audit-related training to its internal auditors and inspectors, and
- coordinating more closely with the Department of Justice's internal audit.

Mr. Chairman, I would like to stress that the FBI has solicited our views and ideas for improvements in its internal review functions and has willingly listened to our suggestions for improvements. Additionally, we have been provided access to the information needed to conduct our review.

I will now discuss our observations on the FBI's handling of internal inquiries concerning allegations of impropriety or misconduct by FBI employees.

STANDARDS OF CONDUCT

The 19,000 FBI employees, like all Department of Justice employees, are required to conduct themselves in a professional and proper manner both on and off the job. Regulations concerning the standards of conduct are provided to all FBI employees upon entering duty. They are advised that as members of the law enforcement community they must obey not only the letter of the law, but the spirit of the law as well in actions of both a personal and official nature.

Under the September 1976 reorganization, the FBI's Office of Professional Responsibility (OPR) became centrally responsible for monitoring and coordinating the handling of violations of the standards of conduct. The Office is responsible for supervising and/or investigating all allegations of "criminality, moral turpitude, or serious misconduct" on the part of FBI employees. It monitors all disciplinary actions taken against FBI employees and acts as liaison with the Department of Justice's Office of Professional Responsibility.

In the past, the gravest allegations were investigated by the Inspection Division. All other matters were investigated by the heads of field offices or headquarters divisions under the supervision of the Finance and Personnel Division. This Division retained its responsibilities for recommending and administering all disciplinary actions and for supervising the investigation of minor infractions.

In announcing the establishment of the FBI's OPR, Director Kelley reemphasized that the heads of field offices and headquarters divisions are responsible for insuring that the standards of conduct are followed. They are also responsible for assuring that allegations of misconduct against persons assigned to them are properly investigated and administered.

Whether an allegation is considered major or minor, and how and by whom it is handled depends on its nature and gravity and the position of the FBI employee involved. The extent of liaison with the Department's Office of Professional Responsibility and of disciplinary action imposed also depends on these factors.

MAJOR INQUIRIES

The FBI has not developed specific written criteria for the types of allegations which should be referred to the FBI's OPR and treated as a major inquiry. The Bureau considers allegations of "criminality, moral turpitude, or serious misconduct," as major. According to headquarters instructions to field offices, any serious allegation against an FBI official (generally at the GS-15 level and above) is to be handled or supervised by FBI's OPR as a major inquiry as are any serious allegations against other FBI employees. FBI officials said that they would prefer to set broad standards rather than specific standards and require that all major allegations be reported to FBI's OPR. They believe broad standards provide

greater assurance that FBI's OPR will be advised of all serious allegations.

Allegations of misconduct by FBI employees are usually made by private citizens. However, some are made by other FBI employees, and the news media, or referred by other law enforcement agencies, other Federal executive agencies or Members of Congress.

Upon receiving an allegation, FBI's OPR determines whether it should investigate the matter or let the appropriate field office or headquarters division handle it. FBI's OPR will normally conduct the inquiry if it involves any allegation against a special agent in charge or assistant special agent in charge of an FBI field office, or an FBI Headquarters official at the GS-15 level and above. It would also conduct the inquiry if the allegation involves more than one organizational entity or if it could have major implications for the FBI as an agency.

FBI's OPR may notify the FBI Director or the Department of Justice's Office of Professional Responsibility depending upon the seriousness of the allegation or the individual involved. Generally, if the allegation involves a criminal matter, the administrative action, if any, would be held in abeyance until the criminal investigation is completed. If the Department of Justice's Office of Professional Responsibility elected to handle the allegation, the FBI would take no further action until the Department referred the matter back to it.

Generally, matters are assigned to the special agents in charge of field offices or the assistant directors in charge of headquarters divisions for investigation and are personally handled by them or their supervisory personnel. The FBI does not have specific procedures or instructions on how to conduct an inquiry. It relies on the investigative experience and abilities of its personnel. FBI officials told us that no standard procedures exist because most inquiries are unique and the circumstances will determine how it should be conducted. They told us that depending on the nature of the allegation, the subject of the allegation may be the first person to be contacted, or he or she may be the last person to be contacted.

Upon completion of an inquiry, the field office or headquarters division forwards the results to FBI OPR, together with various affidavits concerning the allegation. The special agent in charge or assistant director also includes any aggravating and/or mitigating circumstances about the allegation, and his recommendation for disciplinary action, if warranted.

FBI's OPR reviews the facts concerning the inquiry to determine if it was conducted completely and logically. It can direct the investigating office or division to do additional work or it may perform its own investigation. When satisfied with the completeness of the investigation, FBI's OPR forwards the matter to the Administrative Summary Unit within the Finance and Personnel Division. FBI's OPR

said it does not comment on the recommended disciplinary action. In order to keep the investigative and adjudicative processes separated, FBI's OPR does not recommend disciplinary action on inquiries it handles.

The Administrative Summary Unit reviews the recommended disciplinary action to determine if it is appropriate and consistent with actions taken previously. If the Unit disagrees with the recommendation, both its and the investigating unit's recommendations are forwarded to the Assistant Director of the Finance and Personnel Division for a decision and implementation. Although the Assistant Director will implement recommendations on all minor matters, decisions on serious matters, including those involving FBI officials, will quite often be forwarded up the chain of command. Recently, the Bureau has decided to establish ad hoc "review boards" in cases involving FBI officials which would recommend administrative actions to the Director. Members of the boards would be appointed by the Director.

Number and types of major inquiries

Until recently the FBI did not maintain a statistical reporting system for inquiries of major allegations. FBI's OPR maintained a card index containing information on each inquiry it supervised and/or conducted, but it had not utilized the cards for statistical reporting purposes. FBI's OPR compiles a monthly report for the Department of Justice's Office of Professional Responsibility, but at the Department's request

these reports include only the "most serious" of the major allegations plus a sampling of all other allegations handled.

In June 1977 we requested a listing of the types of major allegations handled by FBI's OPR as well as information on the sources of the allegations, the positions of the subjects of the allegations, and any disciplinary action administered as a result of the inquiry. FBI's OPR has since decided to continue to produce this listing periodically for its own management purposes.

The listing provided to us showed that FBI's OPR supervised and/or investigated 162 major allegations during the period January through May 1977. About one-third of the allegations involved more than one FBI employee. The allegations were made against employees at all levels of the FBI--clerks, special agents, special agents in charge of field offices, and FBI Headquarters officials. However, the vast majority affected special agents having direct contact with the public.

Our analysis of the types of allegations showed that

- Seventy-four allegations concerned abuses of investigative authority, such as special agents being disrespectful or harrassing or intimidating individuals in the course of an investigation.
- Thirty-two allegations related to work performance, such as not conducting an adequate investigation.

--Twenty-seven allegations concerned a wide variety of personal misconduct, such as driving while intoxicated or sexual misconduct.

--Twelve allegations concerned criminal misconduct either while on or off duty, such as allegations of bribery or shoplifting.

--Seventeen allegations related to a wide range of other types of allegations.

Of the 162 allegations, 92, as shown in Appendix III, were made directly to FBI Headquarters or field offices through telephone calls or letters by private citizens or agents or as a result of an FBI criminal investigation. The remaining 70 allegations were brought to the Bureau's attention by the Department of Justice, State or local police, other Federal agencies, the news media, the President, or Members of Congress as a result of allegations originated by private citizens.

Fifty-six of the 162 allegations were still pending as of the end of May 1977. However, of the 106 allegations on which inquiries were completed, 21 resulted in disciplinary action and the remainder were proven to be unfounded. Appendix IV shows the types of actions taken against the 30 individuals in these cases. Disciplinary actions taken varied from an oral reprimand to dismissal. No individuals were prosecuted as a result of these allegations.

We reviewed 10 major inquiries to determine the overall adequacy and completeness. It appears from our review of

documentation that the inquiries were conducted in a complete and thorough manner. It also appears that the subjects of the allegations were provided adequate opportunity to respond orally and in writing to the allegations.

The following are synopses of three of the inquiries we reviewed.^{1/}

--An FBI official was stopped by police for speeding and driving while intoxicated. Because he was close to home and was a law enforcement officer, the police did not arrest him, but reported the incident to the FBI. The official responded to the charges in two affidavits. FBI's OPR requested the second affidavit since it did not feel the official fully addressed the charges in the first affidavit. The official stated he did not report the incident to his superiors because he had not actually been arrested. The Finance and Personnel Division recommended that the official be censured, placed on probation, suspended for 5 days, and transferred. Various recommendations from higher officials, including the Director, concurred with this but also debated whether the individual should be demoted one or two grade levels. The official was censured, placed on probation, transferred, and demoted one grade level.

--A special agent voluntarily admitted having an extra-marital relationship. He stated the facts of the case in an affidavit. The agent's field office initially recommended censure, probation, and 5 days suspension. The matter was reviewed by FBI's OPR which was satisfied and forwarded it to the Finance and Personnel Division. The Division agreed with the field office recommendations but added that the agent should be transferred to another field office and be relieved of his supervisory duties. These recommendations were implemented.

--A special agent was accused by an informant of extra-marital relations, physical abuse of his wife, falsifying expenses and several breaches of security,

^{1/}We did not request the names of individuals involved in cases reviewed because we did not believe they would serve a useful purpose.

including revealing to an unauthorized individual the sensitive nature of his assignments. The agent denied all allegations except for revealing the nature of his assignment. The agent's field office recommended censure, probation, and the transfer of the agent to another field office. The matter was reviewed by FBI's OPR and forwarded to the Finance and Personnel Division which concurred with the censure, probation, and the transfer of the special agent.

MINOR INQUIRIES

Just as with major inquiries, the FBI has not defined in writing criteria for those allegations or infractions to be handled as minor inquiries. Generally they involve minor personal misconduct or substandard work performance. The inquiries are generally conducted by the appropriate field office or headquarters division. The Administrative Summary Unit within the Finance and Personnel Division reviews the documentation relating to the inquiry to insure that it is complete, and that the recommended penalties are consistent with those imposed in the past. It either agrees with the recommended penalty or refers it and an alternative to the Assistant Director of the Finance and Personnel Division. The Unit also handles the preparation and processing of letters of censure--the instrument for imposing penalties for infractions.

Numbers and types of minor inquiries

As with major inquiries, the FBI did not gather routine statistical information on the investigation of minor allegations of misconduct. We requested a listing of the numbers and types of minor inquiries conducted during the period June

through September 1976. We later requested the same information for the period January through April 1977, a period following the reorganization. The total number of inquiries could not be determined without reviewing all personnel files. The Administrative Summary Unit, therefore, prepared a listing for us from a temporary file of letters of censure.

The listing showed the FBI handled 557 allegations or infractions^{1/} involving letters of censure during the two 4-month periods. As shown in Appendix V, 350 of these allegations and infractions related to poor work performance. This includes such infractions as the erroneous identification of fingerprints by a clerk or failure to meet established levels of productivity in the fingerprint area. It also includes instances where a special agent did not conduct a particular criminal investigation in accordance with established regulations. Of the remaining allegations and infractions, 75 involved personal misconduct, both on or off the job; 47 involved the loss of Government property, such as credentials or a weapon; 21 involved tardiness; 16 "serious indiscretion;" and 48 involved a variety of other allegations.

We have reviewed 12 of the minor inquiries included in the two 4-month periods to determine how they were handled.

^{1/}The listing did not cover all inquiries, but only those cases in which disciplinary actions were imposed. Likewise, it did not include cases in which individuals resigned or were dismissed since a letter of censure would not have been prepared. Included in this listing would be major inquiries where a disciplinary action was imposed through a letter of censure.

The cases were simple and straightforward because they involved one of the specific standards of conduct, to which FBI employees are informed they must adhere when they start employment. Our review of case documentation did not reveal any major discrepancies in the way the matters were handled.

The following are synopses of four of the minor matters we reviewed.^{1/}

- A fingerprint examiner failed to meet the minimum production level for the third time in 9 months. The employee replied in writing that he would concentrate more on his production. The Identification Division recommended the employee be censured since this was the third offense. The recommendation was implemented.
- An unmarried clerk and her boyfriend were temporarily living together and had engaged in numerous physical fights which affected her attendance at work. The employee signed an affidavit stating the facts of the case and agreeing to discontinue the relationship. Her employing division recommended she be censured and placed on probation for her violation of Bureau rules. The Finance and Personnel Division recommended censure, probation, and suspension for 5 days, particularly because of the physical fights. The latter recommendation was implemented.
- A fingerprint examiner failed to meet minimum accuracy standards for identifying fingerprints within a 6-month period. The employee responded in writing that she had no explanation for failing to meet the standards. The Identification Division recommended the employee be censured, placed on probation, and suspended for 3 days. The recommendation was implemented. The employee was advised she would be removed from fingerprint work if no improvement was shown.
- Over a 5-year period, an overweight special agent changed the record of his weight on a medical report

^{1/}We did not request the names of individuals involved in cases reviewed because we did not believe they would serve a useful purpose.

to a weight that would meet FBI standards for his height. The special agent explained that he had great difficulty losing weight, that he was in good health, and that his weight did not affect his job performance. However, he regretted making the changes and would take steps to reduce his weight. The Finance and Personnel Division recommended that the special agent be censured, be placed on probation, and take measures to correct his weight problem.

LIAISON WITH DEPARTMENT OF JUSTICE

As indicated earlier, FBI's OPR is responsible for coordinating with the Department of Justice's Office of Professional Responsibility on matters involving allegations of impropriety and misconduct on the part of FBI employees. There are no specific written guidelines concerning the types of matters about which the Department's Office of Professional Responsibility wants to be informed. Rather, the two offices have a mutual understanding that the Department's Office of Professional Responsibility should be informed on matters which by their very nature are "serious," or those matters involving a high field office or headquarters official. The Department's Office of Professional Responsibility then has the option of conducting the inquiry itself, although it generally has not exercised that prerogative since the creation of FBI's OPR.

Upon completion of each inquiry reported to the Department, FBI's OPR provides a written report summarizing the inquiry. Officials of the Department's Office of Professional Responsibility said that they have been extremely satisfied with the completeness of the reports and have not had to request FBI's OPR to obtain additional information.

Since August 1976, just prior to the creation of its OPR, the FBI had provided the Department's Office of Professional Responsibility a summary report on all serious allegations plus a sampling of all other allegations received during the month. However, the report does not provide a complete picture of all the allegations categorized as major and handled by the FBI's OPR. For example, during the period February through April 1977 FBI's OPR reported to the Department that it opened 25 "serious" inquiries. However, during the same period of time, it actually opened 105 "major" inquiries.

Officials of the Department's Office of Professional Responsibility stated the current report provides enough information for their purposes without being too voluminous and believed that they are being advised of the most significant allegations. However, on the basis of information provided to us, we believe the FBI's OPR should have included additional allegations in its report to the Department's Office of Professional Responsibility because they appeared to be as serious as some of those reported. Thus, we believe that summary statistical information on all major inquiries handled by the FBI's OPR should be provided to the Department level OPR to insure that the FBI is fulfilling its responsibility of advising the Department of all serious allegations of misconduct on the part of FBI employees.

SUMMATION

The FBI has improved its system for handling allegations of impropriety and misconduct by FBI employees by creating OPR

and making it centrally responsible for overseeing and controlling the investigation of major allegations, coordinating with the Department of Justice, and monitoring related disciplinary actions. Placing these functions in one office within a division directly reportable to the FBI Director should provide greater control over the handling of alleged improprieties.

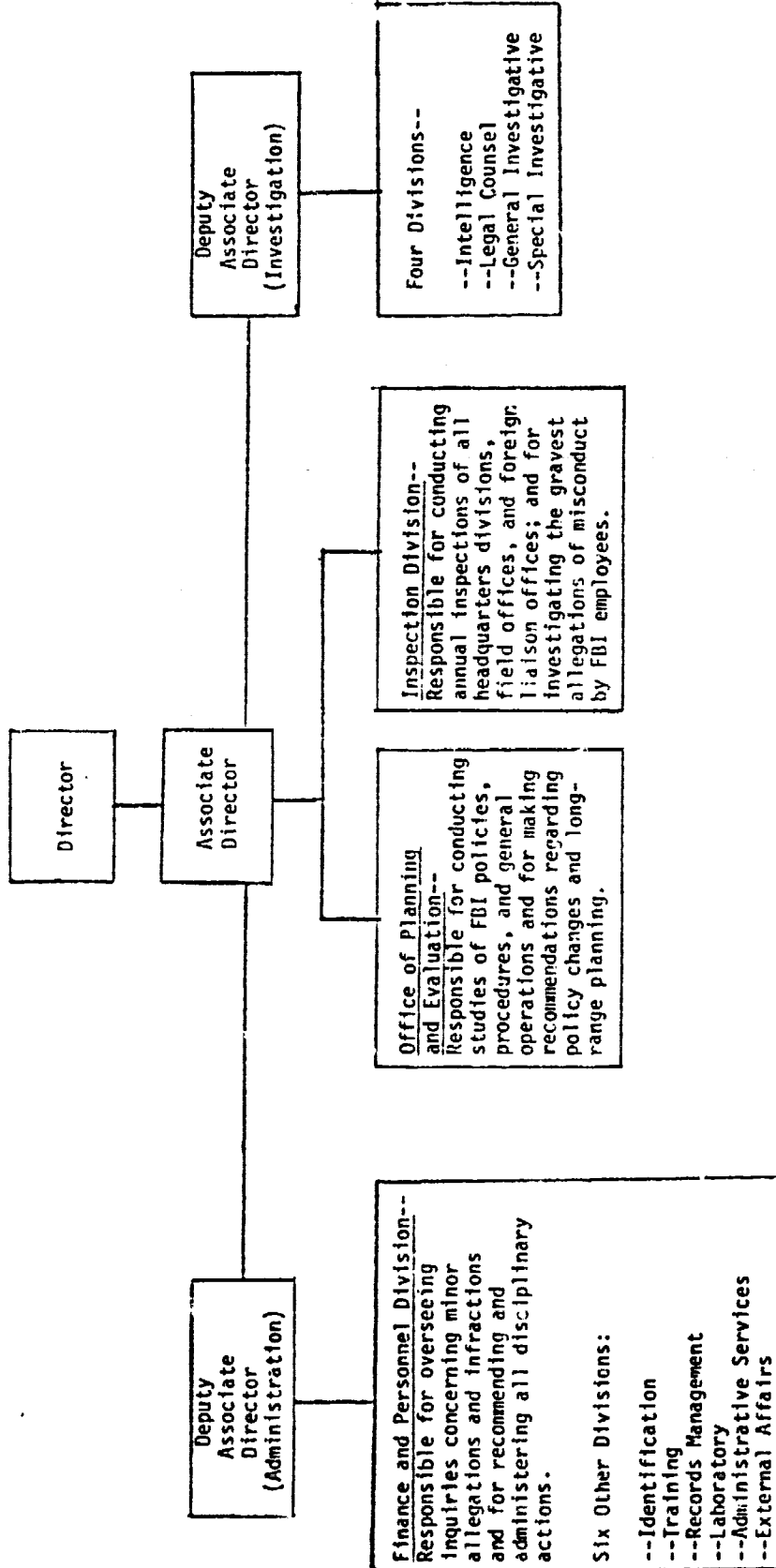
However, the FBI has not established detailed written criteria for categorizing major and minor allegations, or written procedures for assigning and conducting the inquiries. Nor has the Department of Justice developed written criteria and standards governing the types of inquiries which should be referred to and handled by the Department. Such procedures and criteria are important to assure that allegations are handled fairly, promptly and uniformly, and to prevent any possible abuse.

Finally, better statistical information on the number and types of major and minor allegations and the related disciplinary actions would give both the FBI- and Department-level OPRs a better basis for monitoring and controlling internal inquiry activity.

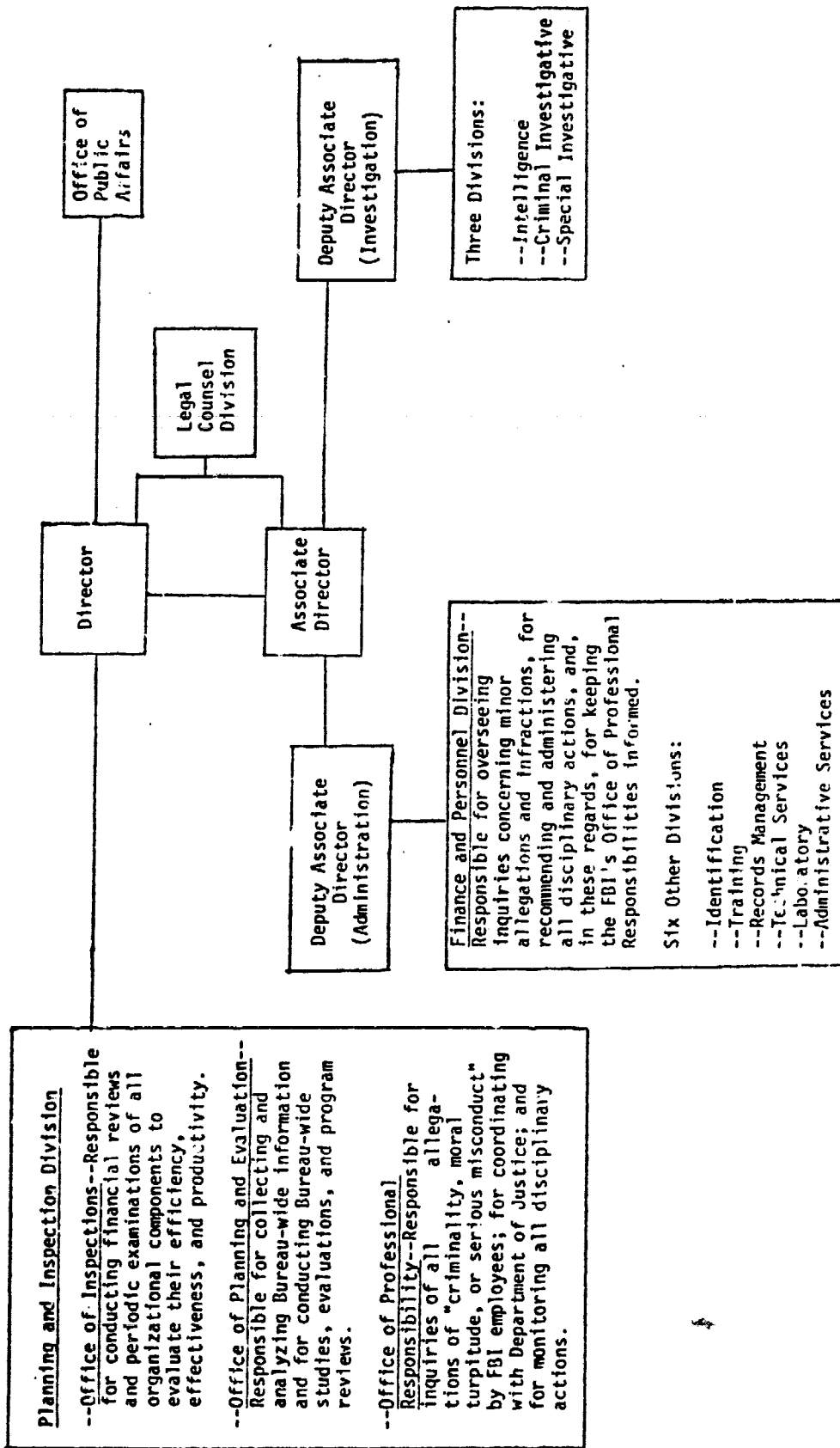
This concludes my prepared statement. We hope this information and the information in our final report will assist the Subcommittee. We would be pleased to respond to any questions.

ORGANIZATION OF FBI'S INTERNAL REVIEW OPERATIONS

PRIOR TO SEPTEMBER 1976



CURRENT ORGANIZATION OF FBI INTERNAL REVIEW OPERATIONS



SOURCES OF MAJOR ALLEGATIONS HANDLED BY
FBI'S OFFICE OF PROFESSIONAL RESPONSIBILITY

JANUARY - MAY 1977

<u>Sources of Allegations</u>	<u>Number</u>	<u>Percent</u>
<u>DIRECT</u>		
Letters and telephone calls to:		
FBI Headquarters	51	31
FBI Field Office	31	19
FBI Agents or Other Employees	7	4
FBI Criminal Investigations	<u>3</u>	<u>2</u>
Subtotal	92	56
<u>INDIRECT</u>		
Department of Justice (including U.S. Attorneys)	23	14
Local or State Police	13	8
Other Federal Agencies	8	5
News Media	8	5
Letters to President	6	4
Congressional Correspondence	6	4
Court Actions	4	3
Other	<u>2</u>	<u>1</u>
Subtotal	70	44
Total	<u>162</u>	<u>100</u>
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APPENDIX IV

DISCIPLINARY ACTIONS TAKEN AS A
RESULT OF INQUIRIES HANDLED BY
FBI'S OFFICE OF PROFESSIONAL RESPONSIBILITY
JANUARY - MAY 1977

Total inquiries during 5-month period		162
Pending inquiries (as of May 31, 1976)	56	
Closed inquiries proven to be unfounded	<u>85</u>	<u>141</u>
Total inquiries involving disciplinary action		<u>21</u> ---
Disciplinary Actions:		
Oral Reprimand		4
Letter of Censure		5
Letter of Censure, Probation		8
Letter of Censure, Probation, Transfer		2
Letter of Censure, Probation, Transfer and 10-day Suspension		2
Dismissal		6
Resigned		<u>3</u>
Total		<u>30</u> a/ --

a/Thirty persons were involved in the 21 cases in which disciplinary action was taken.

TYPES OF ALLEGATIONS AND INFRACTIONS RESULTING
IN LETTERS OF CENSURE DURING THE PERIODS
JUNE - SEPTEMBER 1976 AND JANUARY - APRIL 1977

<u>Types of Allegations and Infractions</u>	<u>Number</u>	<u>Percent</u>
<u>Work Performance</u>		
Clerical performance - Erroneous identification of fingerprints or low productivity	231	41
Result of inspection - Agent performance	73	13
Failure to follow proper procedure/substandard work	46	8
Total Work Performance	<u>350</u>	<u>62</u>
<u>Serious Indiscretion</u>	<u>16</u>	<u>3</u>
<u>Tardiness - abuse of leave policy</u>	<u>21</u>	<u>4</u>
<u>Failure to properly safeguard or loss of:</u>		
Credentials	14	2
Government property	29	5
Weapon (including personally owned weapon for official use)	4	1
Total Loss of Property, etc.	<u>47</u>	<u>8</u>
<u>Other</u>	<u>48</u>	<u>9</u>
<u>Personal Misconduct (on-the-job)</u>	<u>12</u>	<u>2</u>
<u>Personal Misconduct (off-the-job)</u>		
Immoral conduct	33	6
Traffic violations	20	4
Other	10	2
Total Personal Off Duty	<u>63</u>	<u>12</u>
Total Letters of Censure	<u>557</u>	<u>100</u>
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