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BY THE COMPTROLLER GENERAL

113017

Report To The Congress

OF THE UNITED STATES

From Quantity To Quality: Changing FBI Emphasis On Interstate Property Crimes-- A Supplement

This Supplement contains GAO's analysis and response to the Department of Justice's comments on the draft of the issued report.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

On May 8, 1980, we issued our report, "From Quantity to Quality: Changing FBI Emphasis On Interstate Property Crimes" (GGD-80-43), without comments from the Department of Justice. The Department, by letter dated December 21, 1979, was asked to provide written comments on the report but had not at the time the report was finalized.

Chapter 2 of this report contains the formal comments submitted by the Department of Justice and our evaluation. This discussion is preceded by a brief restatement in chapter 1 of our findings, conclusions, and recommendations contained in the issued report.

The Department of Justice supports our recommended changes to legislation but has taken issue with the remaining findings, conclusions, and recommendations. As a result, the Department gave no indication that substantial changes would be forthcoming in either prosecutive or investigative policies and practices. We believe the evidence presented in the report demonstrates that existing Federal policies and practices insure that the FBI will continue to handle many nonquality property crime matters without solution and/or prosecution. At the same time, the FBI will be duplicating the work of State/local law enforcement agencies contrary to the cause of improving relationships with such agencies.

Copies of this report are also being sent to the Director, Office of Management and Budget; the Attorney General; and the Director, Federal Bureau of Investigation.

A handwritten signature in cursive script, reading "Thomas R. Abate".

Comptroller General
of the United States

REPORT SUPPLEMENT

GAO COMMENTS ON THE DEPARTMENT
OF JUSTICE'S REPLY TO THE GAO
REPORT, "FROM QUANTITY TO QUALITY:
CHANGING FBI EMPHASIS ON INTERSTATE
PROPERTY CRIMES" (GGD-80-43)
ISSUED ON MAY 8, 1980

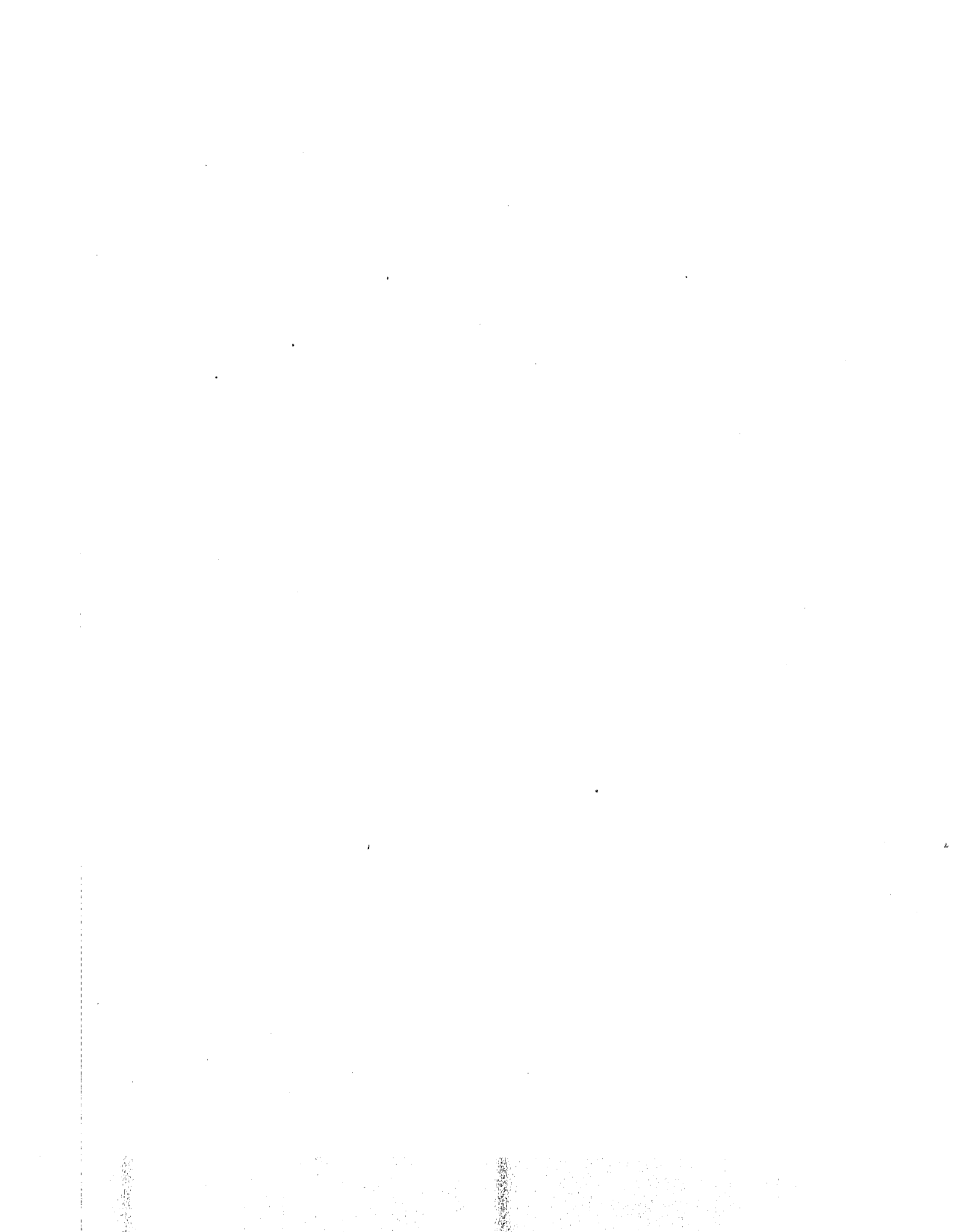
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This portion of the May 1980 report contains the Department's comments and our analysis of them.

The Department supports our recommended change to legislation but has taken issue with the remaining findings, conclusions, and recommendations. As a result, the Department gave no indication that substantial changes would be forthcoming in either prosecutive or investigative policies and practices. We believe the evidence presented in the report demonstrates that existing Federal policies and practices insure that the FBI will continue to handle many nonquality property crime matters without solution and/or prosecution. At the same time, the FBI will be duplicating the work of State/local law enforcement agencies contrary to the cause of improving relationships with such agencies.

After thoroughly evaluating the Department's comments, we believe that our original recommendations are still valid.

Copies of this supplement are being sent to the appropriate congressional appropriation and legislative committees; the Director, Office of Management and Budget; the Attorney General; and the Director, Federal Bureau of Investigation; and others who may request it.

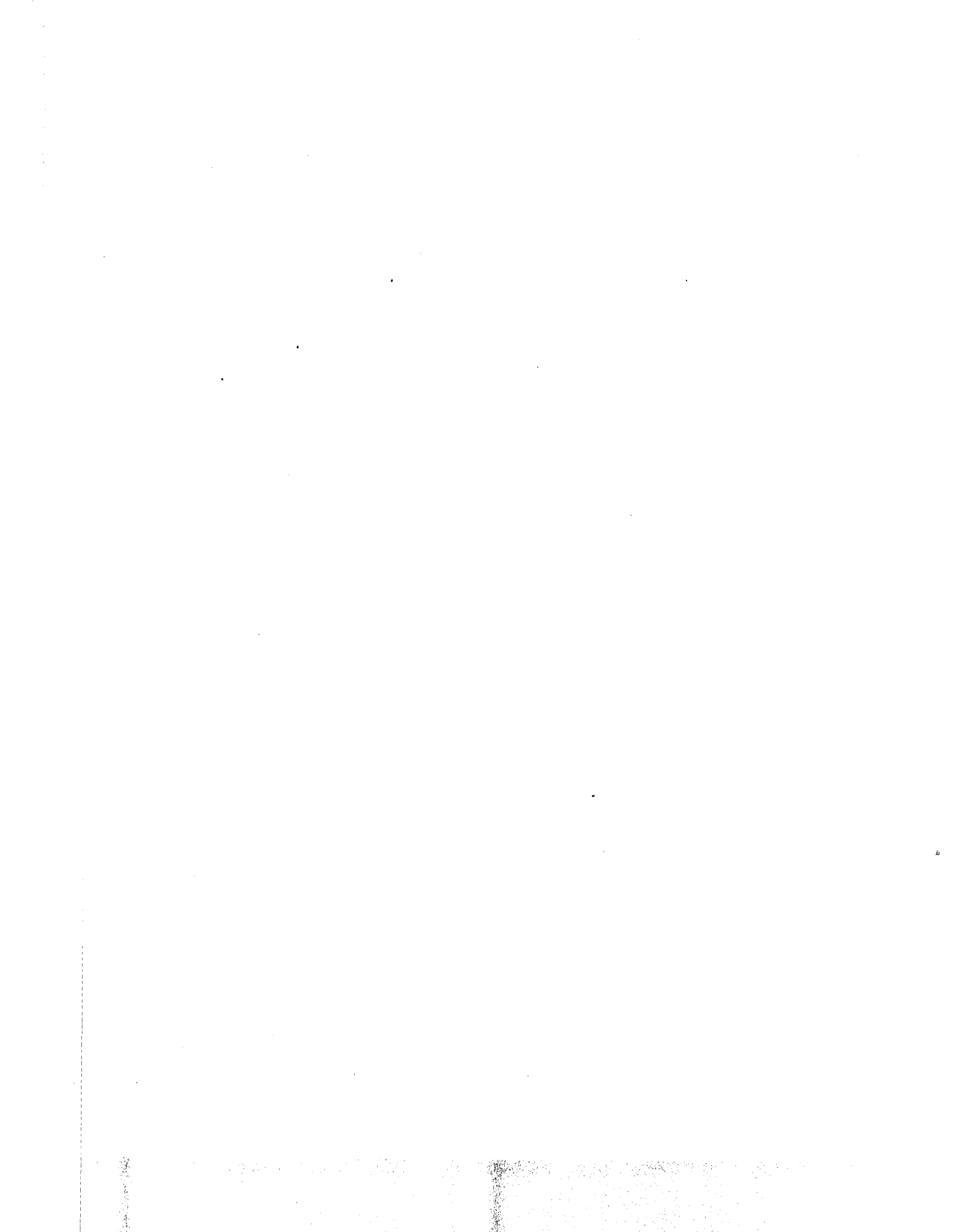


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ABBREVIATIONS

FBI	Federal Bureau of Investigation
GAO	General Accounting Office
PCI	Priority Case Indicator



CHAPTER 1

RESTATEMENT OF OUR FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

The Federal Bureau of Investigation (FBI) has recognized that with its limited resources it could never adequately investigate all crimes within its jurisdiction. In 1975 the FBI implemented a "quality over quantity" concept in case workload to eliminate marginal investigations or matters not warranting Federal attention.

To achieve its strategy of concentrating on quality cases, the FBI must rely on State and local police and prosecutors. Justice Department policymakers clearly support this strategy, but it has not been effectively integrated into day-to-day operations of FBI field offices and U.S. attorneys' offices. In the property crimes area, conflicting requirements and a lack of reliance on State/local assistance all work to perpetuate the FBI's heavy load of nonquality (low priority), unproductive cases.

About 70 percent of the \$30.3 million the FBI spent to investigate property crimes in fiscal year 1978 was devoted to nonquality cases. As a result, the FBI's impact on major property criminals and organized theft-ring operations has not been as effective as possible.

Within the Justice Department, officials disagree about the types of cases the FBI should be involved in from the outset and those that should be left to local authorities. All can agree, however, that minimizing FBI involvement in nonquality cases is the first step to adequately attacking the Nation's worsening property crime problem.

Our study at six FBI field offices--Atlanta, Cleveland, Detroit, Miami, Newark, and New York--showed that the FBI's investigations in fiscal year 1978 of property crime matters were mostly unproductive. Our study of 467 sample cases showed that 93 percent were not prosecuted. Of these cases, about 50 percent were either closed by the FBI or declined for prosecution by U.S. attorneys because they did not involve a Federal violation. Only 14 percent of the cases investigated resulted in the FBI recovering stolen property. (See p. 6 of our issued report.)

The FBI will not fully achieve a quality property crime caseload until U.S. attorneys' prosecutive policies and FBI investigative priorities are coordinated. Currently, the FBI believes it should concentrate its investigations on interstate shipment thefts of over \$50,000, while U.S. attorneys have prosecutive guidelines that require FBI involvement in many thefts far below that amount. The FBI has also tried without success to limit its investigations of interstate transportation of stolen property to quality cases of \$50,000 or more. However, U.S. attorneys require FBI involvement in offenses that exceed \$5,000, the amount established by law as being a Federal offense. (See pp. 22 to 28 of our issued report.)

Although limiting FBI involvement in cases where Federal jurisdiction is lacking or uncertain is a readily accepted goal, it is not easily implemented. Our study showed that in 253 of the 467 sample cases, the FBI never attempted to coordinate with the State/local police. Further, 56 percent of the cases were closed or declined because of no Federal violation (no Federal jurisdiction). Improved coordination between the FBI and State/local law enforcement agencies is needed to determine the appropriate role of each in the initial investigation of property crimes and in the disposition of cases investigated by the FBI but closed without prosecution at the Federal level. (See p. 15 of our issued report.)

By concentrating resources on major interstate property thefts, the Government is much more likely to prosecute major property criminals and thieves and recover substantial amounts of stolen property. Of the 32 sampled cases prosecuted, 26 were quality cases. In these quality cases, 113 subjects were prosecuted as compared to only 8 subjects in the 6 nonquality cases prosecuted. Although the FBI recovered property in relatively few cases, the value of property recovered on quality cases was about \$3.1 million compared to about \$141,000 for nonquality cases. (See pp. 8 and 10 of our issued report.)

If field offices were more aggressive in identifying major property crime problems and then targeting them for action, better results could be achieved. One field office using the targeting concept over a 2-year period arrested 65 top thieves and recovered \$4.5 million in stolen property. Yet, only 512 of the 47,487 interstate property crime investigations made by the FBI during fiscal year 1978 were target cases. (See p. 18 of our issued report.)

RECOMMENDATIONS TO THE ATTORNEY GENERAL

We recommended that the Attorney General direct U.S. attorneys to change their prosecutive policies for property crimes to agree with the FBI's quality criteria.

We also recommended that the Attorney General require the FBI to

- minimize FBI involvement in property crimes not warranting a Federal presence by developing guidelines that stress greater reliance on State and local law enforcement agencies,
- maximize its efforts against major interstate property crimes by more aggressively identifying and investigating top property criminals, and
- revise its quality criteria to exclude cases where Federal jurisdiction is uncertain.

RECOMMENDATION TO THE CONGRESS

We recommended that the Congress strike the reference to \$5,000 from the statute governing the interstate transportation of stolen property so that Federal jurisdiction can be directed to those offenses where an expenditure of Federal resources would have the most impact on the Nation's property crime problem. This would bring interstate transportation of stolen property violations in line with other property statutes by not requiring a monetary standard for determining Federal jurisdiction.

CHAPTER 2

DEPARTMENT OF JUSTICE COMMENTS

AND OUR EVALUATION

The Department of Justice generally disagreed with the conclusions and recommendations in our report and, instead, defended the U.S. attorney and FBI practices we identified as being stumbling blocks to the FBI's attainment of a quality property crime caseload. Moreover, the Department gave no indication that any substantial changes would be forthcoming in either prosecutive or investigative policies and practices. In so doing, the Department stated that Federal, State, and local law enforcement relationships were best addressed only after a study of all facets of the problem.

Given the immense magnitude of any study attempting to consider intergovernmental law enforcement issues in their entirety and the unlikely prospect of it ever being done, we believe the Department's comments raise serious questions about its commitment to making the most effective use of Federal resources. We further believe the Department of Justice has ignored the substantial objective evidence in our issued report showing that existing Federal policies virtually insure that the FBI will continue to investigate many nonquality property crime matters without solution or prosecution. And, at the same time, the FBI will be duplicating the work of State/local law enforcement agencies and be doing nothing to advance the cause of improving relationships with such agencies.

Following is a discussion of the comments submitted by the Department of Justice along with our evaluation. For the sake of convenience, we have grouped the comments and our evaluations under the six major topical headings presented in our issued report.

MOST FBI PROPERTY CRIME INVESTIGATIONS ARE UNPRODUCTIVE (See pp. 6 to 12 of our issued report)

The Department contends that the FBI has shown a marked turnaround since the period covered by our review and is directing greater emphasis toward quality cases as evidenced by the following:

--During fiscal year 1979, 53 percent of all cases opened were classified as a priority case in the FBI's priority case indicator, (PCI) system.

--During the fourth quarter of fiscal year 1979, 78 percent of all investigative time spent on general property crimes was devoted to PCI investigative work.

We agree that FBI statistics seem to indicate progress toward quality cases. However, our review showed that a substantial number of cases categorized as quality cases were not even Federal matters. As shown on page 12 of our issued report, 49 percent of our sampled PCI cases were closed or declined because they did not involve any Federal violation. We also identified numerous cases that should have been identified as nonquality. For example, classifying all full-trailer-loss cases as quality cases can distort the resources being associated with quality cases. Consequently, the FBI's current quality caseload statistics are misleading. Secondly, even accepting the fiscal year 1979 statistics at face value, 47 percent of all cases opened involved non-PCI matters and about 22 percent of agent investigative time in the fourth quarter of 1979 was being spent on such matters instead of on quality top thief target cases in which the FBI could have a greater impact. We believe these statistics point out the need for the FBI to place greater reliance on State and local authorities to resolve these nonquality matters.

The Department contends that the FBI's quality caseload posture was significantly altered after our review because the FBI changed its PCI criteria for fiscal year 1979. We disagree that adoption of the new PCI criteria would increase the number of matters that would be categorized as quality, and we contend that the overall lack of a quality caseload still exists. In the first place, the changes affected only the theft from interstate shipment and interstate transportation of stolen property classifications--the interstate transportation of stolen motor vehicle classification remained unaltered. Secondly, the types of cases that generally would be considered as PCI matters in fiscal year 1979, that were not PCI in 1978, were coming from the non-PCI category of cases that we examined for fiscal year 1978. For example, an interstate transportation of stolen property case involving a theft from a private residence was not

considered a PCI matter in fiscal year 1978 but would be a PCI matter in fiscal year 1979 if the theft value exceeded \$50,000. Our analysis showed that such cases were mostly unproductive and not quality matters. In the table on page 7 of our issued report, we showed that of the 137 non-PCI cases sampled in the 2 classifications affected by the new PCI criteria, only 2 cases were prosecuted with the vast majority being administratively closed by the FBI. In the table on page 11 of our issued report, we further showed that the majority of these cases were either closed or declined because no Federal violation existed. Consequently, we reiterate our concern that the FBI's quality caseload statistics under the current system for classifying PCI cases does not accurately portray FBI progress in attaining a quality caseload.

The Department stated that we looked at only closed cases during our study and contends that if we had considered many ongoing quality investigations we would have gotten a different picture. To the contrary, we have no reason to believe that a review and evaluation of pending cases would provide a perspective different from what we obtained from looking at closed cases. We wish to point out that the FBI had more than 36,000 property cases pending at the time of our review and that every one of these cases had been opened using the very same guidelines, policies and practices that we have concluded need to be substantially revised and strengthened. Further, we believe that the Department's position is self-serving and ignores the objective evidence presented in our report. For instance, the FBI has erroneously designated many cases (pending and closed) as quality that really involve nonquality matters. The Department provided extensive statistics that showed in fiscal year 1979 that 5 of 6 FBI offices we visited increased their efforts by devoting a greater amount of resources to PCI matters. We noted, however, that this increase did not necessarily result in greater recoveries. We do agree with the Department that the greater benefit is from good PCI cases. Therefore, we reemphasize our position that the FBI must make every effort to not waste resources on non-PCI matters. Further, we wish to point out that we asked for and were willing to review and evaluate pending cases. However, we were denied access to pending cases which the Department now contends would have painted a different picture.

The Department took issue with our statement that only 27 percent of its cases were presented to the U.S. attorneys for prosecutive opinions. It said that a more accurate statement would be that the FBI presented 100 percent of the cases to U.S. attorneys for prosecutive opinions wherein the investigation indicated they should be reviewed for possible prosecution. The Department further stated that it would be unproductive to present every case or complaint.

We agree that not every case needs to be presented to the U.S. attorneys for a prosecutive opinion. In fact, many cases should not even be investigated because of the low quality of the case. We emphasize that even after the FBI's own screening process, the U.S. attorneys prosecuted only one of every four cases presented. Only 27 percent of the cases investigated were worthy of sending to the U.S. attorneys for a prosecutive opinion and, in our opinion, this low figure indicates the FBI is investigating many cases which never see the light of day. Another way of looking at this problem is that, of the 96 cases presented to the U.S. attorneys, 33 were declined because of no Federal violation, low dollar value, or not being within the U.S. attorneys' guidelines. As a result, the FBI expended unnecessary resources on one-third of the cases it referred for a prosecutive opinion. Therefore, we wish to stress that the FBI must insure that it relies to a greater extent on State/local authorities, thus conserving its own resources.

The Department said that when an investigation determines no Federal violation exists, our suggestion that the FBI reclassify cases logged as PCI would be administratively difficult and costly. We agree that it may be costly for the FBI to go back and reclassify cases. However, the FBI has in place a system, referred to as control files, that would eliminate the need to reclassify cases. These files are used to store any allegations received that the FBI determines not worthy of investigation. We believe that the FBI could use such files to control allegations that are received which are subsequently turned over to State/local authorities or until the FBI determines a Federal violation occurred. In fact, in one field office visited, the FBI reduced considerably the number of cases opened by using more actively the control file system. However, if the FBI placed more reliance on State/locals initially there would be no need to open any case until it was determined that a Federal presence is warranted and needed.

The Department stated that it considers it important to point out that it is the policy of the FBI, when cases are declined by the U.S. attorney but reasons exist justifying a re-presentation of the case, to re-present the case to the U.S. attorney. The Department said that it was unable to determine, on the basis of the data in our report, whether or not any of those PCI cases declined were re-presented to the U.S. attorney. We agree that the FBI has in place a policy to re-present cases to U.S. attorneys, however, we did not find a single instance where the FBI resubmitted a case. Further, the low number of cases reaching the U.S. attorney and the few successfully prosecuted serve as an indicator that much of the FBI's efforts do not deserve handling at the Federal level. Further, the FBI should be contacting U.S. attorneys at the outset of a quality case investigation to determine the likelihood of such cases ever getting prosecuted if solved. Such a procedure would avoid needless expenditure of FBI resources.

FBI INVESTIGATIONS OF NONQUALITY CASES
ARE COSTLY (See pp. 12 to 15 of our
issued report)

The Department stated that it appears we are dealing simply with case numbers rather than concentrating on investigative effort spent by special agent personnel on individual cases when we say 11 of every 15 property crimes were closed without presentation to the U.S. attorney. The Department said FBI field offices are instructed to utilize good judgment in handling investigative matters so that they spend the minimum amount of time on minor, unproductive, or non-prosecutable matters. Our report shows, however, that a substantial effort is being expended by the FBI on cases that are not even presented to the U.S. attorneys for a prosecutive decision. We agree with the Department that field offices should not expend an inordinate amount of time on minor cases; but many cases remained open for extended periods of time, and numerous auxiliary offices assisted in such cases. Because 11 of every 15 cases did not result in obtaining a prosecutive decision, we reemphasize why we believe the FBI needs to rely more on State/local authorities to handle initially the reported allegations. We believe such an approach would save, or at least minimize, the FBI's involvement in minor cases and allow these resources to be devoted to major target or top thief cases.

FEDERAL/STATE COORDINATION LACKING
AT THE INVESTIGATIVE AND PROSECUTIVE
LEVELS (See pp. 15 to 18 of our
issued report)

The Department stated that the FBI is vitally concerned about property crimes and recognizes that a significant national problem exists. This is why we believe the FBI has a responsibility to maximize its impact on property crime by directing available resources to resolving major or quality problems. However, chapter 2 of our issued report depicts a high level of FBI involvement with numerous insignificant and unproductive property crime offenses. FBI involvement in these cases duplicates or preempts local efforts. The FBI should also be placing greater reliance on the local authorities to handle the more significant property crime offenses. Because this currently is not being done, FBI and police coordination is not what it otherwise could be.

The Department stated that the FBI cannot mandate investigative priorities to local authorities nor can it wait for a request from local authorities before it commences an investigation, because it would seriously weaken investigative efforts by the FBI. We are not recommending that the FBI should or could mandate investigative priorities for local authorities. Our position is that the FBI should be implementing the mandate of the Attorney General that offenses which can be investigated equally well by Federal or local authorities should be left to local law enforcement agencies. Pages 15 and 16 of our issued report showed that the police already play an important role in combating property crimes, and we point out that the investigative steps essential to solving a property crime are relatively routine and straightforward procedures that the local authorities are generally capable of doing. We do agree, however, with the Department's contention that the local authorities in some instances may lack the expertise or investigative personnel to handle certain property crime investigations, but on such occasions the FBI should stand ready to assist the local authorities when requested. Only in this way will true coordination take place and will FBI investigative resources be used most efficiently and effectively.

We do not concur with the Department's position that relying more on local authorities would seriously weaken FBI investigative efforts to solve a case. As pointed out on pages 32 and 33 of our issued report, the FBI does not immediately respond to all major property thefts. In fact, on the basis of available data for 89 cases, our review showed that the maximum elapsed time before the FBI began its investigation ranged from 18 to 36 calendar days. Further, in 45 of the 89 cases, the FBI did not even receive notification until some time after the theft. More than 7 calendar days had elapsed in 25 of these cases. In addition, our statistics (see tables on pp. 7 and 11 of our issued report) show that about 50 percent of all cases are either closed or declined because a Federal violation did not exist or a subject could not be identified. These facts, in our opinion, support our contention that no harm will result from letting the local authorities do the initial screening and analysis on these cases. Thus, if the local authorities can handle the investigation, FBI involvement will not be necessary.

In response to our recommendation that the FBI cooperate with local authorities who seek assistance, the Department said it has recently ruled that the FBI has no authority to continue to cooperate with local authorities in an investigation when the activity in question does not constitute a violation of Federal law. In that ruling, it was noted such activity would result in the FBI's incurring costs which are not within the FBI's appropriation for expenses "necessary for detection and the prosecution of crimes against the United States." On the other hand, FBI personnel and the results of investigations and records are made available in response to subpoenas and demands of courts or other authorities in accordance with Attorney General Order No. 501-73. However, prior approval by the U.S. attorney is required for the release of testimony, disclosures or turnover of documents.

We agree with the Department that it may not be appropriate to provide Federal assistance for those violations which are solely State/local jurisdiction. However, we believe that because of the significant number of cases closed because of no Federal violation, the FBI should place greater reliance on the State/locals to make the determination as to assistance needed by the FBI. The FBI should then stand ready to supplement the State/local efforts if the need arises and Federal jurisdiction also exists.

The Department agreed that although some local law enforcement agencies have demonstrated a willingness and capability to respond to crimes, this is not always the case. Local law enforcement agencies suffer from manpower constraints and jurisdictional considerations that many times hamper them in conducting investigations. In addition, many departments work on an 8-hour shift basis, and when the shift ends continuity of the investigation loses its momentum. On the other hand, the policy of the FBI is to continue an investigation in a comprehensive manner until all investigative leads have been exhausted. Our study showed that many local law enforcement agencies are willing and capable of responding to crimes once they know about them. Just because there may be some jurisdictions incapable of handling these matters is no reason for the FBI not to attempt, whenever possible, to obtain assistance or allow local officials to handle the cases they can. Again, we restate that the FBI should stand ready to assist local officials whenever the need arises.

The Department, in response to our recommendation that cases closed by the FBI or declined by the U.S. attorney be referred to local authorities, said that FBI offices are required, when appropriate, to assure that property theft cases are presented for handling to State/local authorities having jurisdiction. In this regard, our issued report states that cases handled by the FBI, but not prosecuted by the U.S. attorneys, must reach local authorities for their prosecutive opinion. The Department said what this statement ignores is that it is sometimes impossible to discuss investigations with local authorities because of the possible corruption existing among locals or because the release of information furnished to the FBI by informants would compromise the identity of the informant. We agree with the Department, as pointed out on page 17 of our issued report, that the FBI is required to refer any matter not considered for prosecution by the U.S. attorney to the State/local authorities having jurisdiction, unless it is inappropriate to do so. This FBI requirement, however, was not being implemented as shown on pages 16 and 17 of our issued report. Therefore, we believe the FBI must reemphasize its policy regarding case referrals, realizing that its failure to make referrals could result in prosecutable cases not being handled locally.

The Department said the FBI presently utilizes Form FD-532 (5/9/79) to refer interstate transportation of stolen motor vehicle matters to local authorities. In other property crime investigations, letters from the FBI field divisions are used to refer matters to local authorities. Their

forms and letters, however, were not made available for our review. We do not believe they are used very often, since the FBI agents who reviewed our sampled cases with us could not find evidence of such forms when asked about specific case referrals.

The Justice Department stated that the actions we proposed with regard to the establishment of working U.S. attorneys' Federal/State Law Enforcement Committees have already been implemented through its overall program to improve and coordinate Federal and State prosecutions of crimes. The Department said that there are now approximately 45 States which have active Federal/State law enforcement committees. Of these 45 committees, approximately 37 are formal, structured and designated under the Department's program. In the eight other districts, the U.S. attorneys conduct liaison with State and local officials through State and local associations. The Department stated further that, in addition to the progress in creating Federal/State law enforcement committees, the Attorney General and the Criminal Division have recently established, at the national level, an intergovernmental Executive Working Group which held its first meeting in January 1980.

We are pleased with the Department's success in establishing Federal/State Law Enforcement Committees which hopefully will assist in minimizing and improving the law enforcement efforts of both the Federal Government and State Governments. However, we wish to emphasize that the Department must make every effort to insure that these committees are operating effectively, because, as shown on page 18 of our issued report, 4 of the 10 States covered by our review had no plans to form a committee. Of the remaining six States, three had problems with making their committees work, two were just starting their committees, and only one State had what could be termed an operable committee with adequate representation from the Federal, State, and local level. In addition, the establishment of the new intergovernmental group, although a new and unproven concept, is a positive step. However, even with the establishment of the new group, we do not believe that our recommendations will have been fully implemented until the Attorney General specifically instructs the FBI to rely more heavily on State/local authorities for assistance. We believe that a stated policy is needed to minimize the FBI's involvement in property crimes and to require the referral to State/local authorities of all cases declined by U.S. attorneys or closed administratively by the FBI.

OPPORTUNITY EXISTS FOR THE FBI TO
HAVE A GREATER IMPACT ON MAJOR
PROPERTY CRIME (See pp. 18 to
20 of our issued report)

We agree with the Department's assessment that the Nation's worsening property crime problem will not be alleviated until certain top thieves, fences, and major criminal groups are removed from their criminal activities. With regard to our recommendation that the FBI maximize its impact on major interstate property crimes by being more aggressive in identifying and investigating top property criminals, the Department said that, in January 1979, the FBI directed that investigative effort be focused on the targeting of top thieves, fences, and organized criminal groups involved in property crime violations. The Department said that it agreed with us on the importance of this activity, and the FBI is stressing this to its field offices. The Department anticipates that this new effort will constitute a much more significant element in the property crimes area within the next few years.

We believe that the FBI's action in January 1979 to identify and target top property criminals restated the commitment of FBI headquarters management to place more emphasis on this type of investigative work. But, on pages 18 to 20 of our issued report, we showed that FBI management has been trying to increase its investigations of top thieves and property criminals since June 1973 and has achieved only limited success. We also pointed out that the FBI has opportunities presently available to further investigate property crimes committed by these top property criminals but that individual FBI field offices were resisting in some cases due to the lack of available resources. We believe that the FBI will continue to meet with limited success in its targeting efforts until its involvement with nonquality property crime investigations is minimized. We further contend that the elimination of its nonquality case-load will free the resources needed in the field offices to handle a greater number of target cases.

The Department pointed out that we said on page 10 of our issued report that 30 percent of the closed cases studied were not prosecutable because of an inability to identify a subject or gather sufficient evidence for prosecution. The Department said the FBI cannot anticipate, prior to investigation, whether or not a subject will be identified or that

sufficient evidence is available to do so. The only way this can be determined is through actual investigative effort. Actually, the number of FBI cases not prosecutable because of inability to identify a subject or gather sufficient evidence was much greater than 30 percent when one considers that the FBI closes most cases citing the inability to prove a Federal violation when in fact the majority of these also had no suspect identified. Law enforcement officials readily admit that the circumstances surrounding most property crimes makes them highly unlikely to be solved. In our opinion, this is just another reason why the FBI should focus on the more complicated major property crimes, as they are more likely to produce leads and their solution will certainly have more impact. Again, we state that the FBI should follow the policy of relying more on State and local investigative agencies and stand ready to assist when called upon.

U.S. ATTORNEY PROSECUTIVE POLICIES
NOT COORDINATED WITH FBI QUALITY
CRITERIA (See pp. 23 to 30 of
our issued report)

The Department disagreed with our recommendation that the U.S. attorneys change their prosecutive policies to agree with the FBI's current criteria for quality property cases. The Department stated that it is not true that U.S. attorneys' criteria require the FBI to investigate matters of lower monetary values, nor any matters which the FBI locally or nationally deems wasteful or fruitless. The Department said that it merely means that the U.S. attorney would accept for prosecution a worthwhile case which meets other standards warranting Federal prosecution. The Department further stated that allowing the FBI to investigate leads of a lesser monetary value promotes the highly desirable result of providing a greater volume of potentially prosecutable cases to the U.S. attorney, who then is able to apply sound prosecutive judgment that is not usually available to the investigator, and to determine the cases best suited for further development and prosecution.

We disagree with the Department that there is no benefit or justification for increasing the minimum monetary limit of cases that U.S. attorneys prosecute to \$50,000. We wish to remind the Department of the wealth of objective evidence presented in our issued report which showed that the U.S. attorneys only prosecuted 8 of 107 cases below \$50,000.

Further, the FBI expended investigative resources on 99 cases it believes were nonquality and which resulted in no Federal prosecutions. The problem with not revising the prosecutive level is that the FBI continues to believe that it must investigate each case and obtain a prosecutive decision before deciding to close it. However, if a dollar limit were established, then the FBI would merely investigate the case until such time that it could be substantiated that it was below the dollar value established. As shown on page 25 of our issued report, the establishment of blanket declinations in one field office resulted in a 52-percent decrease in cases and nearly a 50-percent decrease in the average agent hours spent on the theft from interstate shipment violations. Thus, by not aligning the monetary value of the U.S. attorneys' prosecutive guidelines with the FBI's quality case criteria, the Department of Justice is wasting limited resources on nonproductive cases when these resources could be more appropriately used on higher quality cases.

The Department further said it is unwise for U.S. attorneys' prosecution policies and practices to be made more uniform, due to regional and local differences in criminal practices, economics, and other factors. The Department stated that U.S. attorneys' prosecutive guidelines must retain flexibility to prosecute violations. We agree that establishing formal national prosecutive guidelines is extremely difficult, but we do not believe this is cause for avoiding such guidelines. Without guidelines which formally allow the FBI to deemphasize investigations not likely to be prosecuted by the U.S. attorneys, the FBI cannot effectively allocate its resources to have maximum impact on major crime problems and thus achieve the objectives of the quality over quantity management approach. Therefore, we believe that prosecutive guidelines should be developed nationally by the Department and, if supplement guidance is necessary, locally by the U.S. attorneys for the interstate theft area. Obviously, care must be taken to make sure that such guidelines are sufficiently flexible to allow the U.S. attorneys the necessary decisionmaking latitude to deal with special circumstances. The guidelines--even though formal--should be handled in a way which is commensurate with their sensitive nature. Additionally, it seems to us that it is incongruous for the FBI to establish national quality standards for investigations and not have complementary guidelines governing the prosecution of such cases.

FBI INVESTIGATIVE GUIDANCE NOT FOLLOWED
OR INADEQUATE (See pp. 30 to 34 of
our issued report)

The Department disagreed with our recommendations that guidelines be prepared which would (1) require the FBI to refer to local authorities for initial disposition any interstate property violations not qualifying for immediate FBI investigations, (2) prohibit the opening of interstate transportation of stolen property cases unless interstate movement had been positively determined, and (3) stress the importance of relying more on the local police to make the initial determination of Federal jurisdictional authority. The Department said that the practical effect of an absolute floor on FBI investigations and U.S. attorneys' prosecutions would be that no investigations could even begin.

We disagree with the Department's position. What we are saying is that the FBI needs to place greater reliance on State/local authorities and supplement, not supplant, their investigative efforts. Our study showed that very little in the way of accomplishments is achieved from the nonquality cases, and in many instances no Federal violation exists. Therefore, we believe that greater benefits would be realized if Federal agencies placed greater reliance on State/local authorities, thereby saving Federal resources for higher quality cases beyond the capability of the local authorities. Because many of the cases are worked by State/local authorities, duplicative effort also would be avoided. We cannot understand why the Department is taking such a strong stand against allowing the States to have a more active role in the property crime area, thereby reducing the resources expended by Federal agencies.

In response to our recommendation that the FBI revise its quality criterion to exclude cases where Federal jurisdiction is uncertain, the Department said that one of the first steps in a property crime investigation requires that the FBI determine quickly whether or not Federal jurisdiction exists. Without a determination of jurisdiction, FBI investigative efforts cannot lead to Federal prosecution. Therefore, all FBI offices are required to promptly establish whether or not Federal jurisdiction exists. FBI investigations terminate when the initial investigation indicates no interstate aspect. However, should evidence of interstate activity be revealed, then the FBI's earlier preliminary investigation becomes an essential part of the necessary

process to show not only that a crime has been committed, but that the recovered property is in fact the property that was stolen in another State. The Department consequently did not believe any changes to FBI investigative policy were required, instead believing current policy was adequate.

We cannot accept the Department's contention that those cases where Federal jurisdiction is uncertain should continue to be handled as quality matters. We recognize, of course, that there may be a limited number of cases, not necessarily classifiable as a quality matter, where the Department needs to resolve an important jurisdictional issue through litigation. But as page 10 of our issued report shows, 50 percent of the FBI quality cases sampled ended up closed or declined because no Federal jurisdiction existed. This is a significant number of cases, and their inclusion in FBI quality caseload statistics makes those statistics misleading. Further, we do believe the FBI should discourage the incurring of investigative costs, which can be considerable (see page 13 of our issued report), on property crimes that do not involve violations of Federal law. In this regard, the FBI could better implement the Attorney General's policy of relying on local authorities by letting those authorities assist in the initial determination that a Federal violation exists, and that a Federal presence is necessary to resolve the matter.

The Department takes issue with our suggestion that thefts of full-trailer-load shipments with a dollar value below \$50,000 should not be investigated by the FBI. The Department does not agree with our reasoning, because its investigative experience tells it that thieves capable of handling trailer loads of merchandise generally have access to large fencing and criminal redistribution networks that should be of special interest to the FBI. In addition, even though the merchandise in a full-trailer-load theft might be under \$50,000 when the value of the tractor and trailer involved are considered, most times the total value would be over \$50,000. On the basis of FBI's experience, full-trailer-load thefts in and of themselves are symptomatic of significant fencing and theft ring activity and thereby demand investigative attention.

Our review of eight cases classified as full-trailer-load shipments does not support the Department's position. The eight cases identified as quality by the FBI involved thefts of an entire shipment when in fact less than \$50,000 was involved even when the tractor and trailer were considered in the value. Further, we did not find a single

instance in which the case was prosecuted or led to the discovery of greater criminal activity. We have agreed that if the total value of the loss is \$50,000 or over, the case is a quality case and may deserve FBI presence. What we are suggesting is a change in FBI policy eliminating the requirement that the FBI should investigate when merely an entire shipment is reported stolen when in fact the total loss is less than \$50,000. We wish to remind the Department that the police can coordinate with the FBI on such cases requiring a Federal presence, and the Department has the total flexibility to handle thefts of an entire shipment regardless of the dollar value when the local authorities are unable to do so.

The Department said it agrees that the FBI needs to concentrate resources on quality cases; however, it added that the FBI needs to maintain investigative discretion, and sheer monetary value of stolen property is not the only criterion to measure a quality case. The Department added that, in certain instances, the significance of the subjects involved will play a greater part in the FBI's decision to enter a matter than simply the monetary value of stolen property. Our study showed that most cases of low dollar value were also not significant in terms of the number or type of subjects investigated and such cases were not prosecuted when solved. FBI field offices were investigating cases that do not warrant a Federal presence which were also being investigated by State/local officials. We believe that, if the FBI can specifically justify that a case warrants its presence, then we agree that the FBI should so investigate the matter as long as the State/local authorities are not capable of handling the matter.

The Department stated that we noted correctly that agents are not required to determine whether property moved in interstate commerce before opening a case. The Department said this is correct because the FBI needs to be aware of crimes committed in order to prioritize its investigations, both under the specific statutory investigative categories, as well as under its top thief target activity. Without this awareness of crimes being committed in the field division territories, the FBI could not exercise investigative discretion aimed at utilizing investigative resources in the most efficient manner. The FBI in effect would be limiting itself when, in fact, it needs to make accurate assessments of where investigative resources should be directed. In addition, from the supervisory standpoint, it is advisable to open cases so that FBI field supervisors can

chart the work activity of special agents assigned to their squads. By selectively opening cases within the present investigative criteria, the field supervisor is given an overview of work assignments for each of his assigned special agents, which allows him to direct their activity and evaluate their effectiveness.

As a result of the FBI's policy of not determining whether property moved in interstate commerce before opening a case, a substantial number of cases categorized as quality matters end up with no Federal violation being established. Of 32 cases in our sample opened solely because the theft amount exceeded \$50,000, only 2 cases involved a Federal violation. We believe, therefore, that the FBI policy for opening interstate transportation of stolen property cases over \$50,000 should be changed to parallel existing FBI policy for opening cases under \$50,000. In the latter instance, policy states that agents are not to investigate unless sufficient evidence exists to indicate the stolen property was transported in interstate commerce or that organized crime figures were involved.

The Department, in response to our suggestion that new guidelines concerning the handling of nonquality cases be established, said the FBI believes it presently has adequate criteria concerning minimization of FBI efforts in nonquality cases. What the report is addressing is a lack of compliance in certain instances on the part of FBI field divisions in opening nonquality cases. At the present time, the FBI is attempting to establish procedures whereby its Inspection Division, which audits FBI operations on a regular basis, would analyze property crime cases being investigated to insure a preponderance of investigative time is being spent on quality matters.

We do not agree that the FBI criteria concerning minimization of FBI efforts in nonquality cases is adequate. As stated on pages 30 to 32 of our issued report, the FBI needs to revise interstate transportation of stolen property guidelines by emphasizing more reliance on local officials to handle nonquality cases and to determine the need for Federal involvement on quality cases over \$50,000. We do agree, however, that the FBI's Inspection Division should be held responsible for assessing field office compliance with existing and suggested new guidelines to ensure that investigative time is spent on quality matters. Further, on page 34 of our issued report, we pointed out that in 69 of 76 sampled

cases, the FBI guidelines for presenting the facts of minor complaints to U.S. attorneys early had not been followed. By monitoring and reporting on noncompliance, the FBI will be in a better position to evaluate the field offices' lack of compliance with FBI guidelines and then take corrective action where necessary.



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

MAY 02 1980

Mr. Allen R. Voss
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Voss:

This is in response to your request to the Attorney General for the comments of the Department of Justice (Department) on your draft report entitled "From Quantity to Quality: Changing The FBI Role In Interstate Property Crimes."

The draft report tangentially raises several issues of Federal-State law enforcement that reach beyond the rather limited scope of interstate thefts. These broad issues, such as the propriety of establishing any type of prosecution and investigation guidelines and the necessity for close cooperation between Federal and local law enforcement agencies, would be more appropriately treated in a definitive study which squarely addresses these issues in their entirety. In general, the report recommendations call for goals which would be beneficial to Federal and state law enforcement efforts. The precise means which are proposed by the draft report may not, however, be the most efficacious methods to produce the result of more successful prosecution of interstate property crimes. In some cases, the steps suggested in the draft report have already been taken by the Department.

The draft report recommendations contained in Chapter 2 suggest that the Attorney General take certain actions through the U.S. Attorneys' Federal-State Law Enforcement Committees to maximize the effectiveness of Federal, state and local law enforcement agencies in combating property crimes. The proposed actions have already been implemented by the Department as part of an overall program to improve and coordinate Federal and state prosecutions of crimes. The Department, through the U.S. Attorneys and the Criminal Division, has had an ongoing program to increase the number of Federal districts and states participating in the Federal-State Law Enforcement Committees and to enhance the

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effectiveness of their discussions and operations. Through the combined efforts of the Criminal Division and the U.S. attorneys, there are now approximately 45 states which have active Federal-State Law Enforcement Committees at the state or district levels representing an overall increase of approximately ten new such committees which were formed and became operational during 1979. Of the 45 committees, approximately 37 are formal Federal-State Law Enforcement Committees, structured and designated under the Department of Justice program. In the eight other districts with Federal-state committees, the U.S. attorneys conduct liaison with state and local officials through the counterpart existing state and local associations of law enforcement agencies.

The Criminal Division makes frequent and concerted efforts to increase the number of such Federal-state committees by sending letters and current information packages of reports and articles on Federal-state prosecution issues to U.S. attorneys three or four times annually, encouraging the establishment of Federal-State Law Enforcement Committees, and encouraging the U.S. attorneys to enter local prosecution agreements for dual jurisdiction offenses. Sample formats of model prosecution agreements have been provided by the Criminal Division to the U.S. attorneys for this purpose. Such agreements usually provide generally that the U.S. attorney prosecutes those offenses included under the Department or attorney's jurisdiction and included in their policies and practices of prosecution. State or local authorities usually prosecute other violations of local laws.

U.S. attorneys whose districts do not have formal committees or working committees report to the Criminal Division that they regularly have meetings with their state and local counterpart officials to discuss and coordinate dual jurisdiction prosecutions of referred cases which involve no Federal violation or which are more suitable for prosecution by local authorities. Thus, in almost all Federal districts, there is a cohesive program of coordination with local law enforcement authorities which is spearheaded by the U.S. attorneys.

In addition to the progress in creating Federal-State Law Enforcement Committees, the Attorney General and the Criminal Division have recently formally established at the national level an inter-governmental Executive Working Group which in January 1980 had its first in a series of regular meetings with the other participating members--the respective Presidents of the National District Attorneys' Association (NDAA) and the National Association of Attorneys General (NAAG). One of the key functions of the Executive Working Group is to support Federal-State Law Enforcement Committees and encourage their expansion. The Criminal Division regularly informs U.S. attorneys of developments and progress

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made by the Executive Working Group. In addition, the quarterly information packages which are sent to all U.S. attorneys by the Criminal Division include topic materials for discussion at the meetings of the various Federal-state committees. These topic materials include reports on prosecution of dual jurisdiction offenses, statistical reports, media articles, and reports of the NDAA and NAAG dealing with Federal-state law enforcement coordination.

Federal and state coordination of prosecutions of cargo theft as a dual jurisdiction offense was the most recent topic reported to U.S. attorneys by the Criminal Division. The U.S. attorneys' efforts to coordinate interstate cargo theft prosecutions with their state and local counterparts have begun to yield very encouraging results. Citing a recent article entitled, Most Wanted Man: An FBI Agent, which the Criminal Division provided to U.S. attorneys, from a trucking industry publication, Heavy Duty Trucking (July 1979), the Criminal Division report to U.S. attorneys notes the importance of law enforcement liaison for the trucking industry and the success that certain trucking firms are experiencing in having cargo theft cases prosecuted by local authorities.

Through Federal-state coordination efforts, there has been considerable progress made in special cargo security working groups, also known as "City Campaigns," in which several U.S. attorneys have been participating in some of the following cities: Atlanta, Baltimore, Boston, Chicago, Dallas/Fort Worth, Detroit, Houston, Los Angeles/Long Beach, Miami, New Orleans, New York, Philadelphia, San Francisco/Oakland, San Juan, and Seattle/Tacoma. In addition to encouraging the industry to institute security and accountability measures, these groups provide a valuable vehicle for liaison with the transportation industry which can enhance the industry's understanding of the difficulties in prosecuting cargo thefts, as well as encouraging greater industry reliance of state and local authorities for the enforcement of these offenses. The U.S. attorneys who are not already participating in a cargo security working group functioning in their districts have been encouraged by the Criminal Division to participate in such groups.

In light of the above efforts, we believe the objectives of the General Accounting Office's (GAO) recommendation in Chapter 2 are being met in that the U.S. Attorneys have already taken an active leadership role to improve the overall coordination of law enforcement activities in their respective districts and in particular in relation to interstate property crimes.

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The recommendations in Chapter 3 of the draft report relate to factors restricting the FBI's attainment of quality caseloads. In contradiction to the statements on page 26 and in the first recommendation of Chapter 3, there are justifiable differences between the FBI and the U.S. attorneys' standards for determining which cases are worthy of investigation or prosecution. The report states that the FBI's "quality" criteria for theft cases require a theft of over \$50,000 or violence in connection with the theft, yet the U.S. attorneys which GAO visited had established lower monetary values for proceeding with prosecutions. It is not true, as stated in the report, that the U.S. attorneys' criteria require the FBI to investigate matters of lower monetary value, or any matters which the FBI locally or nationally deems wasteful or fruitless. It merely means that the U.S. attorney would accept for prosecution a worthwhile case, which meets other standards warranting Federal prosecution. Allowing the FBI to investigate leads of a lesser monetary value promotes the highly desirable result of providing a greater volume of potentially prosecutable cases to the U.S. attorney, who then is able to apply sound prosecutive judgment that is not usually available to the investigator, and to determine the cases best suited for further development and prosecution.

For districts which already employ blanket declination agreements as discussed on pages 25-26 of the report, there is neither any benefit nor justification in increasing the minimum monetary limit of cases that U.S. attorneys prosecute to \$50,000, as suggested in the first two recommendations of Chapter 3 and on page 26. There is some merit to one aspect of the second recommendation in Chapter 3. It is unwise, as suggested in the second recommendation, for U.S. attorneys' prosecution policies and practices to be made more uniform, due to regional and local differences in criminal practices, economics, and other factors. However, it is necessary, as suggested in the second recommendation of Chapter 3, that the U.S. attorneys' prosecutive guidelines retain flexibility to prosecute, and therefore that the FBI retain the flexibility to investigate those matters not meeting the general boundaries of the U.S. attorneys' usual local practices or the FBI's usual local quality criteria, but which involve highly exceptional circumstances warranting Federal involvement. It is vitally necessary for the sound administration of the criminal justice system, both Federally and locally, to ensure such flexibility and to avoid creating easily publicized national uniform "limits" on Federal prosecutions and investigations. Any such uniform rules would virtually ruin the deterrent value of criminal prosecutions, and could even invite the commission of interstate property crimes falling just short of the

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publicized "limits" by providing potential interstate thieves and seasoned rings of thieves with a handy guide for avoiding not only Federal prosecution, but also Federal detection through FBI investigations.

We agree with the recommendation on page 36 of the draft report that the reference to \$5,000 should be stricken from the law and no monetary standard required for determining Federal jurisdiction. As stated in the previous paragraph, requiring a monetary standard is counterproductive to Federal prosecutions and investigations and effectively serves notice on the entire potential criminal community that major crimes of somewhat smaller magnitude could escape Federal detection and prosecution.

We disagree with the third recommendation on page 35 of the report that the FBI be prohibited from even opening any cases which lack "priority" status under the suggested guidelines or which later may be seen to duplicate the work of state or local authorities. The practical effect of an absolute floor on FBI investigations and U.S. attorneys' prosecutions would be that no investigations could even begin, barring a spectacular hijacking of a vehicle in interstate transport. This would be particularly true if the minimum limit were established at \$50,000 as suggested in Chapter 3. At the present time, in numerous U.S. attorneys' offices, there are pending cases which are part of very sophisticated operations and networks which steal, among other things, items such as automotive parts and motorcycle parts. The individual value of any such automotive part would not reach \$50,000, nor is it always possible to show that any one specific individual is responsible for a total of \$50,000 worth of property thefts. It ultimately may be possible, however, following further investigation by the U.S. attorney's office, to show that the aggregate value of thefts attributable to one specific individual is \$50,000 or more. It may also be possible likewise for the U.S. attorney to develop good conspiracy cases against clearly organized criminal conspiracies. However, if the proposed GAO recommendations were in effect, the U.S. attorneys would never be able to pursue these types of cases at all. There are many logistical and strategic difficulties involved in developing cases against sophisticated criminal enterprises. The process of building a case requires one brick at a time--the first brick, and indeed many of the other bricks, may not have a value of \$50,000.

The entire area of prosecutive guidelines for U.S. attorneys is necessarily a sensitive topic which is currently under advisement within the Department. All available

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information is being considered in order to ensure the most effective and equitable administration of criminal prosecutions in interstate property thefts as well as in all other areas of Federal criminal violations.

The FBI is vitally concerned about property crimes and recognizes that a significant national problem exists. The General Property Crimes Program (GPCP) of the FBI is responsible for addressing property crime within the jurisdiction of the FBI, particularly that of a patterned, commercialized or major nature, looking toward reduction of this criminal activity through the arrest and prosecution of the top thieves, fences, and organized criminal groups involved.

In terms of indicators expressing the magnitude of property crime as a national problem, the Uniform Crime Reporting Program Index, which lists seven classifications of crime, property crimes represent 90 percent of the total reported index crimes in the United States. 1/ The U.S. Senate Select Committee on Small Business stated in 1974 that more than \$2 billion worth of stolen goods were being resold in the United States each year. The Associated General Contractors of America estimate that thefts of heavy equipment total \$500 million annually and the recovery rate of heavy equipment ranges from only 5 to 10 percent. 2/ The Department of Transportation states that cargo theft related losses in United States commerce is in excess of \$1 billion. 3/ The National Crime Information Center (NCIC) Vehicle Analysis as of December 31, 1979, revealed that 6,677 truck tractors and 74,237 automobiles have never been recovered. 4/ Conservatively, the FBI estimates the total value of this stolen property at \$456,406,000. 5/ This figure does not include incidental costs caused by these thefts such as loss of business, time and money spent

1/ "Crime in the United States 1978," FBI Uniform Crime Reports, released October 24, 1979, page 35.

2/ Time, May 15, 1978, page 74.

3/ Department of Transportation Report to the President on the National Cargo Security Program, March 31, 1977, page 16.

4/ NCIC printout, dated December 31, 1979.

5/ Based on average value of \$35,000 for truck tractors and \$3,000 for automobiles.

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by victims based upon their loss, increased insurance expense, and increased costs of goods and services to the public as a result of property theft.

During the fall of 1977, the FBI's GPCP was assigned a Priority II status relative to the overall national law enforcement goals established for the Department. Commensurate with this lower priority, the GPCP expended 945 special agent work years in property crime investigative effort. Subsequently, during fiscal years 1978 and 1979, at the time when special agent manpower was being reduced and the President mandated the redirection of resources to Priority I matters, special agent work years expended in fiscal years 1978 and 1979, were 809 and 596, respectively. The FBI has proposed that the Department consider including property crime in a Priority I status. This proposal is based in the significant impact such crime has on the American public now and in the future. The Department is currently studying this proposal.

GAO recommends the FBI develop specific guidelines that place greater reliance on state and local law enforcement agencies so as to minimize FBI involvement in property crimes not warranting a Federal presence. The FBI recognizes that in most property crime violations, concurrent jurisdiction exists with local authorities. However, GAO suggests in its report that the FBI wait for a request from local authorities before they commence investigation. We believe this waiting period would seriously weaken investigative efforts by the FBI in that their involvement in the investigation would be delayed pending local efforts to solve a case, and if it was not solved, the FBI would be called after the fact in a matter where the trail leading toward identification of subjects and recovering stolen property would tend to be "cold."

It must be understood the FBI cannot mandate investigative priorities to local authorities. They also have manpower problems and in some instances lack the expertise to properly handle property crime investigations. In addition, many local police departments are unable to provide investigative follow-through because of continually new demands placed on their investigative personnel. Many departments operate on the premise that if the FBI will not handle an investigation, they have no intention of investigating the matter. Therefore, we believe the recommendation that the FBI transfer certain property crime investigations to local authorities for handling could create an investigative

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vacuum such as that described in the Blackstone Study and in a GAO report of February 27, 1978, entitled "U.S. Attorneys Do Not Prosecute Many Suspected Violators Of Federal Laws." ^{6/} In these instances it was noted prosecutable violations have "dropped through the cracks" of the overall law enforcement structure in the United States.

GAO recommends the FBI maximize its impact on major interstate property crimes by being more aggressive in identifying and investigating top property criminals. During January 1979, the FBI redesigned one phase of its investigative activities which directed, where appropriate, that investigative effort be focused on the targeting of top thieves, fences, and organized criminal groups involved in property crime violations. This investigative effort was designated Top Thief Target (TTT) activity and encourages investigative personnel to follow such subjects from one area to another when these individuals are involved in criminal endeavors. This aspect of the GPCP places the FBI in a position where evidence is collected before a crime is committed with a view to arresting top thieves prior to their commission of a crime and thereby thwarting their criminal activities.

TTT activity is based on the premise that when major top thieves are convicted of violations, and thereafter incarcerated, they will be removed as a threat to potential property crime victims. By economically managing investigative resources and utilizing them in a concentrated manner on active major thieves, the FBI can make a significant contribution to reducing regional property theft. When a field division identifies their targets, either individuals or gangs involved in property crime, and continues to follow their activity even when they move to another territory, the opportunity for collecting solid evidence on which to base an arrest increases sharply. Previously, the FBI limited itself in such investigations because it did not physically move with the subjects beyond the territory in which special agent personnel conducting the investigation were assigned. Now,

^{6/} The former study surveyed referrals of interstate transportation of stolen motor vehicles and the latter report relates to U.S. attorneys prosecutable workload.

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utilizing the TTT concept, selective targets can be designated, and special agents can move with targeted individuals and gangs through surveillance and informant coverage to other areas where they intend to commit thefts and catch them in the act. ^{7/} These movements are closely monitored and previously approved by FBI Headquarters. Our analysis indicates that the offices which have registered significant accomplishments in TTT are those that concentrate investigative manpower on certain top thief targets and continue surveillance and informant coverage as long as it is known that the subjects are actively planning or in the process of executing a theft. This ability to move, with previous FBI Headquarters approval, adds significant impact to the FBI investigations.

We agree with GAO as to the importance of this activity and its emphasis by our Field Divisions is being stressed. We anticipate that TTT activity will constitute a much more significant element in GPCP within the next few years.

GAO recommended the FBI revise its quality criterion to exclude cases where Federal jurisdiction is uncertain. One of the first steps in a property crime investigation requires that the FBI determine quickly whether or not Federal jurisdiction exists. Without a determination of jurisdiction, our investigative efforts cannot lead to Federal prosecution. Therefore, all FBI offices are required to establish promptly whether or not Federal jurisdiction exists. FBI investigations terminate when the initial investigation indicates no interstate aspect. However, should evidence of interstate activity be revealed, e.g., recovery of property in another state, then our earlier preliminary investigation becomes an essential part of the necessary process to establish probable cause which will show not only that a crime has been committed but that the recovered property is in fact the property that was stolen in another state. We do not believe any changes are required in this area as this is presently addressed by investigative policy. In addition, this area of concern, which impacts on resource management and allocation, is reviewed on a regular basis by the FBI's Inspection Division.

GAO recommended the FBI refer cases to local authorities that are closed or that are declined for Federal prosecution. At the present time, FBI offices are required, when appropriate, to assure that property theft cases not being Federally prosecuted are presented for handling to state or local authorities having jurisdiction. In this regard, the

^{7/} Special Agent-in-Charge (SAC), Memorandum dated January 31, 1979, page 4, and FBI teletype and airtel to all offices, dated March 13, 1978 and June 15, 1979, respectively, and SAC memorandum 41-77, dated September 20, 1977.

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last sentence of paragraph 3, page 5 of the GAO report states that cases handled by the FBI, but not prosecuted by the U.S. attorney, must reach local authorities for their prosecutive opinion. One thing this statement ignores is that it is sometimes impossible to discuss investigations with local authorities because of possible corruption known to exist and because of information furnished to the FBI by FBI informants, whose confidentiality would be compromised in some instances through the release of raw data they have furnished. The FBI presently utilizes Form FD-532 (5/9/79) to refer interstate transportation of stolen motor vehicle matters to local authorities. In other property crime investigations, letters from the FBI field division SAC are used to refer matters to local authorities.

GAO also recommended the FBI, in referring violations to local authorities, cooperate with the use of investigative personnel if local authorities seek assistance. We note, as it concerns furnishing investigative assistance in matters without Federal jurisdiction, that the Department has recently ruled the FBI has no authority to continue to cooperate with the local authorities in an investigation when the activity in question does not constitute a violation of Federal law. In that ruling, it was noted such activity would result in the FBI's incurring costs which are not within the FBI's appropriation for expenses "necessary for detection and the prosecution of crimes against the United States." On the other hand, FBI personnel and the results of investigations and records are made available in response to subpoenas and demands of courts or other authorities in accordance with Attorney General Order No. 501-73. However, prior approval by the U.S. attorney is required for the release of testimony, disclosures or turnover of documents.

GAO notes during fiscal year 1978, the primary period covered during their survey, only 37 percent of all property crime cases opened were classified by the FBI as quality cases. This refers to the FBI's designation of cases as Priority Case Indicator (PCI) cases. Unfortunately, from the standpoint of this survey, the FBI did not begin specific classification of such property crime violations into PCI categories until SAC memorandum dated September 18, 1978 was prepared, which required field divisions to change the subdivision of property crime classifications in line with a new breakdown which identified PCI matters. We note during fiscal year 1979, 53 percent of all cases opened were classified as PCI. On the other hand, GAO noted during the period of their survey, 54 percent of total agents' investigative time was recorded as PCI. However, during the fourth quarter of fiscal year 1979, 78 percent of all investigative time spent on GPCP was devoted to PCI investigative work. Furthermore, through November 1, 1979 of fiscal year 1980, 81 percent of all investigative time was spent on PCI matters. Thus, the FBI has shown a marked

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turnaround since the period covered by the GAO survey as it concerns greater concentrated emphasis on quality cases. The statistics utilized by GAO cover a period immediately following the initiation of a new concept of identifying quality cases that is not representative of what the FBI is presently doing.

There are several statements in the report where we believe amplification is desirable. Our comments are provided below and referenced to the specific pages involved.

In the last sentence of paragraph 1, page 2, the report states that 10 percent of the FBI's total agents were assigned to the GPCP during fiscal year 1978. This commitment has been reduced--principally because of the Priority II status of the Program--to seven percent investigative time spent on the Program during fiscal year 1979.

In sentence 2 of paragraph 2, page 5, GAO suggests the FBI remove cases logged as PCI when investigation determines no Federal violation exists. At a point in the investigation when it is determined no Federal violation exists, the case is closed. Administratively it would be difficult and costly to go back and remove these particular cases from data logged on the Monthly Administrative Report data.

In sentence 1 of paragraph 1, page 6, GAO noted that the Bureau's investigative efforts in connection with general property crimes in the six field divisions surveyed during fiscal year 1978 were mostly unproductive. We submit GAO looked only at closed cases during their survey and thereby did not consider many ongoing quality investigations that have and will produce excellent results. 8/ The following statistical accomplishments were recorded by these field divisions for fiscal years 1978 and 1979. 9/ We do not consider these accomplishments as an unproductive effort.

8/ GAO letters to the FBI, dated April 18, 1978 and October 20, 1978, note that GAO will only review closed cases.

9/ 1978 data derived from Resource Management Report for fiscal year ending September 30, 1978; 1979 data derived from Resource Management Report for fiscal year ending September 30, 1979.

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Office	Convictions		Arrests Locates Summons	PCI Per- cent	Recoveries	Potential Economic Loss Prevented
	Misdemeanor	Felony				
Atlanta						
FY 78	1	37	28	60	\$ 1,625,241	\$ 196,000
FY 79	-	26	25	71	1,351,207	1,073,000
Cleveland						
FY 78	4	38	34	28	1,059,933	----
FY 79	-	21	24	73	615,295	----
Detroit						
FY 78	5	49	61	47	980,200	1,200
FY 79	1	41	17	60	1,273,197	10,000
Miami						
FY 78	-	20	21	48	753,831	35,395,018
FY 79	-	9	15	32	136,286	399,819,000
Newark						
FY 78	18	52	29	67	8,137,505	365,440
FY 79	17	36	33	80	7,078,378	----
New York						
FY 78	3	35	68	77	7,901,046	2,020,000
FY 79	4	48	24	83	4,012,289	809,252
Total 1978	31	231	241	-	\$20,457,756	\$ 37,977,658
Total 1979	<u>22</u>	<u>181</u>	<u>138</u>	<u>-</u>	<u>\$14,466,652</u>	<u>\$401,711,252</u>

In sentence 1 of paragraph 2, page 6, GAO notes the FBI presented only 27 percent of its cases to U.S. attorneys for prosecutive opinions. We believe a more accurate statement would be the FBI presented 100 percent of the cases to U.S. attorneys for prosecutive opinions wherein investigation indicated they should be reviewed for possible prosecution. We believe it would be unproductive for the FBI to present every case or complaint received concerning property crime violations to the U.S. attorneys for a prosecutive opinion. This also would constitute an added burden to the U.S. attorneys offices.

Sentence 2 of paragraph 2, page 6, notes that 11 of every 15 property crime cases were closed without presentation to the U.S. attorney. It appears GAO is dealing simply with case numbers rather than concentrating on the investigative effort spent by special agent personnel on individual cases. We say this because FBI field divisions are instructed to utilize good judgment in handling investigative matters so that they spend the minimum amount of time on minor, unproductive, or nonprosecutable matters.

In sentence 3 of paragraph 2, page 6, GAO notes that the U.S. attorneys prosecuted only one of every four property crime cases presented. Federal law enforcement, as presently structured, dictates the FBI present for

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prosecutive consideration those cases which investigation indicates are prosecutable. It is the policy of the FBI not to urge prosecution or suggest that no prosecution be undertaken. The determination as to whether the case will be prosecuted is the function of the U.S. attorneys, whereas the function of the FBI is to conduct a thorough investigation of cases in a legal and ethical manner and to carry an investigation to a logical conclusion.

In the table compiled by GAO on page 7 of their report, we note a listing of PCI cases in the GPCP presented to the U.S. attorneys with a breakout of those declined and those prosecuted in the field division territories surveyed by GAO. The listing points out that only 50 percent of the theft from interstate shipment cases, 22 percent of the stolen car cases, and 14 percent of interstate transportation of stolen property cases were prosecuted. In this connection, we consider it important to point out that it is the policy of the FBI, when cases are declined by the U.S. attorney but reasons exist justifying a re-presentation of the case, to authorize the division SAC or designated assistant SAC (ASAC) personnel to make such re-presentations of the case to the U.S. attorney. ^{10/} Based on the data furnished we are unable to determine whether or not any of those PCI cases declined were re-presented to the U.S. attorney.

Paragraph 1, page 9, of the report notes the greater potential for total accomplishments in handling PCI cases as opposed to those of a non-PCI nature. The FBI is very aware of the greater potential in handling principally PCI matters, and the 81 percent investigative time being spent early during the first quarter of fiscal year 1980 on PCI matters indicates our concentration on these type matters.

Sentence 1 of paragraph 5, page 10, notes that 30 percent of the closed case studies were not prosecutable because of an inability to identify a subject or gather sufficient evidence for prosecution. We note the FBI cannot anticipate, prior to investigation, whether or not a subject will be identified or sufficient evidence is available to do so. The only way this can be determined is through actual investigative effort.

In the last two sentences of paragraph 3, page 12, GAO suggests that thefts of full trailer load shipments with a

^{10/} Manual of Investigative Operations and Guidelines, Volume III, page 972, 2-5.2.

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dollar value below \$50,000 should not be investigated by the FBI. We do not agree with GAO's reasoning because our investigative experience tells us that thieves capable of handling trailer loads of merchandise generally have access to large fencing and criminal redistribution networks that should be of special interest to the FBI. In addition, even though the merchandise in a full trailer load theft might be under \$50,000 when the value of the tractor and trailer involved are considered, most times the total value would be over \$50,000. Based on the FBI's experience, trailer load thefts in and of themselves are symptomatic of significant fencing and theft ring activity and thereby demand our investigative attention.

Sentence 3 of the first paragraph, page 13, notes that it is incumbent on the FBI to concentrate resources only on quality cases. We agree with this statement completely, but point out that the FBI needs to maintain investigative discretion, and in some instances sheer monetary value of stolen property is not the only criterion by which a quality case can be measured. In certain instances, the significance of the subjects involved will play a greater part in the FBI's decision to enter a matter than simply the monetary value of the stolen property.

Sentence 3 of paragraph 2, page 13, indicates that during the period GAO surveyed closed cases in fiscal year 1978, agents did considerable work on non-PCI matters. We submit that this condition has changed markedly in fiscal year 1979 and is changing again in fiscal year 1980, where we note 81 percent of the FBI's investigative time is being spent on PCI matters.

Sentence 7 of paragraph 2, page 16, notes that local authorities in all the territories surveyed demonstrate a willingness and capability to respond to crimes once they know of them. Although this may be true in certain local law enforcement agencies, it is not always the case. Local law enforcement agencies suffer from manpower constraints and jurisdictional considerations that many times will hamper them in conducting investigations. In addition, many departments work on an 8-hour shift basis, and when the shift ends continuity of the investigation loses its momentum. On the other hand, the policy of the FBI is to continue investigation in a comprehensive manner until all investigative leads have been exhausted.

Paragraph 2 on page 19 describes attempts to create a viable top thief program. A SAC memorandum, dated January 31, 1979, restructured this activity and it is now identified as

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"Top Thief Target" investigation. This activity encourages investigative personnel to follow top thieves and fences from one area to another when the subjects are involved in criminal endeavors. The extent of the FBI's present activity in this area cannot simply be viewed by looking at the time logged in the Time Utilization Record-Keeping System (TURK). This results from the fact that the investigative concepts embodied in the TTT activity are intertwined within the framework of major substantive investigative efforts being conducted in other investigative classifications, such as theft from interstate shipment, interstate transportation of stolen property, interstate transportation of stolen motor vehicles and theft of Government property. In many such instances, the manpower effort is captured for TURK in other substantive classifications (15, 26, 52, or 87) and does not appear in the specific TTT (87c) subclassification.

Pages 19 and 20 of the report cite FBI field officials as stating that they are unable to handle all the property theft activity of which they are aware in their territories because of manpower constraints. We have previously noted in this analysis that GPCP has been designated a Priority II matter and thereby does not command the attention of FBI agents that is received by Priority I matters. The FBI has recommended to the Department that property crime be elevated to a Priority I status. This move would thereby allow for increased investigative manpower to be utilized in those areas where FBI field divisions are aware of property crime conditions warranting Federal involvement.

In addition, in a January 11, 1980 communication, each SAC was directed to closely examine crime areas in their territory where there is a demonstrated investigative need. Thereafter, they are to address these crime problems in the PCI category in other than Priority I programs as long as the manpower is utilized effectively and quality results are achieved.

Paragraph 5 on page 21 suggests greater reliance be placed on local authorities to minimize FBI involvement in matters not warranting Federal presence. The FBI does not enter such cases but refers them to local authorities.

Paragraph 7 on page 21 recommends excluding from investigation all cases where property is valued at less than \$50,000 and where Federal jurisdiction is uncertain. Because of the varying prosecutive guidelines under which the FBI operates in its 59 field divisions, this criteria cannot be

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implemented nationally. However, by its very nature, when Federal jurisdiction is uncertain, investigative effort spent can be wasted and the FBI attempts to avoid such situations.

In sentence 2 of paragraph 1, page 31, GAO notes that agents are not required to determine whether property moved in interstate commerce before opening a case. This observation is correct because, as previously stated, the FBI needs to be aware of crimes committed in order to prioritize its investigations both under the specific statutory investigative categories, as well as under its TTT activity. Without this awareness of crimes being committed in the field division territories, the FBI could not exercise investigative discretion aimed at utilizing investigative resources in the most efficient manner. The FBI in effect would be limiting themselves when, in fact, they need to make accurate assessments of where investigative resources should be directed. In addition, from the supervisory standpoint, it is advisable to open cases so that FBI field supervisors can chart the work activity of special agents assigned to their squads. By selectively opening cases within the present investigative criteria, the field supervisor is given an overview of work assignments for each of his assigned special agents, which allows him to direct their activity and evaluate its effectiveness.

Paragraph 3 on page 33 of the report suggests establishment of new guidelines concerning the handling of nonquality cases. The FBI believes it presently has adequate criteria concerning minimization of FBI efforts in nonquality cases. What the report is addressing appears to be a lack of compliance in certain instances on the part of FBI field divisions in opening nonquality cases. At the present time, the FBI is attempting to establish procedures whereby its Inspection Division, which audits FBI operations on a regular basis, would analyze property crime cases being investigated to insure a preponderance of investigative time is being spent only on quality matters.

In final analysis, we believe that the FBI's shift from quantity to quality cases during the past 5 years has been significant. While not discussed as an integral part of GAO's draft report, the negative impact of the Freedom of Information and Privacy Acts on high quality informants is directly related to the FBI's ability to change its role in interstate property from the quantity to the quality approach. The Department is convinced that the informant is one of the most effective tools in law enforcement today at the local, state or Federal level. This is a fact of life in the real world in which the FBI conducts property crime investigations. Investigative experience has shown that

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higher quality property crime cases are primarily dependent upon high quality informants. Without such quality informant coverage, the shift from quantity to quality would have suffered a rockier transition. The effect that high quality informant coverage can exert on the quality of cases developed, investigated and prosecuted by Federal law enforcement is critical to the FBI's changing role.

The Freedom of Information Act (FOIA) was enacted in 1966 and amended in 1974. Essentially its purpose was to allow public access to information maintained by Federal executive agencies. The Privacy Act, also enacted into law during 1974, emphasizes protection of an individual's personal privacy by controlling the collection, maintenance, retention, and dissemination of personal information. While the intent of these laws is commendable, in practice their enforcement has created severe problems for most Federal executive agencies, and since the FBI is a large repository of information, it has been one of the hardest hit. Experience with these Acts indicates clearly the FBI is not now receiving vital information previously provided by informants and other sources who had been very helpful in property crime investigations. FBI field personnel have advised that informants are seriously concerned about a number of things that are happening today as a result of both Acts.

Informants are not convinced the FBI can preserve their confidentiality under provisions of the FOIA, although the FBI believes it can afford such protection. The Department recognizes that little bits of data obtained under the Act, when pieced together, add up to enough total information to point to the identification of a particular informant. We know that organized crime has an interest in trying to identify FBI informants. It is important in this context to note from whom most FOIA requests are coming. A substantial number of requests are received from persons identified as prisoners, and this figure is escalating. The FBI's experience indicates that in many instances the requests are being made for the purpose of identifying informants who may have been partly responsible for the prisoner's incarceration. Informants are not convinced the FBI can continue as the guarantor of their confidential relationship with the FBI. More troubling is the fact that the FBI can provide examples from a cross section of our society showing refusals of informants and others to furnish information because of a perceived fear of disclosure under FOIA. Because of the seriousness of this problem and its effect on quality informant recruitment, development, and maintenance, the FBI is concerned about its ability to effectively identify and work on quality interstate property crimes.

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We appreciate the opportunity to comment on the report.
Should you desire any additional information, please feel
free to contact us.

Sincerely,



Kevin D. Rooney
Assistant Attorney General
for Administration

(184350)



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