

GAO

Report to Ranking Minority Member,
National Security, International Affairs,
and Criminal Justice Subcommittee,
Committee on Government Reform and
Oversight, House of Representatives

March 1995

DEPARTMENT OF
JUSTICE

Office of Professional
Responsibility's
Case-Handling
Procedures





Office of Special Investigations

B-295415

March 31, 1995

The Honorable Karen Thurman
Ranking Minority Member, National Security, International
Affairs, and Criminal Justice Subcommittee
Committee on Government Reform and Oversight
House of Representatives

Dear Mrs. Thurman:

This report responds to a request from Representative Bob Wise, former Chairman of the Information, Justice, Transportation and Agriculture Subcommittee and subsequent discussions with the office of former Subcommittee Chairman Gary Condit, concerning the Office of Professional Responsibility (OPR), Department of Justice. Mr. Wise requested that we (1) determine if the recommendations in a February 1992 GAO report¹ on OPR had been implemented and (2) obtain information on OPR's handling of referrals.

Our February 1992 report recommended that OPR (1) establish basic standards for conducting investigations, (2) establish standards for case documentation, (3) review case files to identify possibly needed systemic changes to Justice procedures and operations, and (4) follow up more consistently on the results of misconduct investigations conducted by other Justice components and maintain the follow-up information in the case files.

On May 12, 1992, OPR issued its new standards for investigation and case documentation. (See app. I.) We agreed with the Chairman's office to allow time for implementation and delayed our work at OPR until April 15, 1993.

Background

The Attorney General created OPR in December 1975 to ensure that Justice employees continue to uphold high ethical standards; or broadly speaking, OPR helps protect the integrity of Justice. As such, it conducts investigations and oversees inquiries into allegations of criminal or ethical misconduct involving Justice employees in investigative, litigative, and prosecutive positions. At the time of our review, the OPR staff consisted of eight attorneys—the Counsel on Professional Responsibility, the Deputy

¹Employee Misconduct: Justice Should Clearly Document Investigative Actions (GAO/GGD-92-31, Feb. 7, 1992).

Counsel, and six Assistant Counsels; three support staff (a management analyst, law clerk, and a legal technician); and two clerical staff.

Results in Brief

OPR's procedural standards for investigating and documenting cases (the first and second recommendations) addressed only those cases that OPR staff actually investigated—7² of the 106 cases in our review (see table 1). In three of the seven OPR investigations, the application of OPR's investigative and documentation standards was questionable.

OPR's new procedures addressed GAO's recommendation regarding case file reviews to identify systemic problems in Justice procedures and operations. OPR reviewed 1992 and 1993 case files and forwarded the identified problems to the Deputy Attorney General.

According to a senior OPR official, the OPR standards did not cover cases that OPR monitored or supervised or cases that involved other matters, such as preliminary reviews of complaints. These cases were not subject to any formalized case file documentation requirements.³

²Of the 106 cases we reviewed, OPR management originally categorized 17 as OPR investigations. However, OPR later advised us that 10 of the cases it had originally identified as investigations should have been listed in a different category and reduced the number of OPR investigations to 7. OPR considered 9 of the 10 cases it deleted to be preliminary reviews (and captured in the "other" category); 1 was a supervised matter. However, based on OPR's case category criteria, we determined that four of the nine cases OPR considered to be preliminary inquiries were actually OPR investigations. In three of those cases, OPR failed to follow its investigative and documentary guidelines.

³At the time of our review, OPR cases fell within the following four general categories: (1) Investigations: OPR staff independently conducted the investigation or worked "hand-in-hand" with component investigative staff. (2) Supervised cases: OPR staff supervised an investigation conducted by another Justice component, such as the Federal Bureau of Investigation (FBI)/OPR or Drug Enforcement Administration (DEA)/OPR. (3) Monitored cases: OPR staff reviewed an investigation conducted by another Justice component. The review/monitoring function, according to OPR management, could occur as the case unfolded or at the conclusion of a component's investigation. OPR conducted the review to ensure that complaints had been appropriately addressed. (4) Other cases: This category included matters that did not fit the previous categories, such as preliminary reviews of complaints, Office of the Inspector General (OIG) jurisdictional matters, and administrative or management issues. Although the "other" category was not used in our Feb. 1992 report, OPR staff advised us that some OPR cases did not fit the investigative, monitored, or supervised categories. We used the "other" category to capture this information.

Table 1: Case Categories

Case category	Number of cases	Percent of total
Investigations	7	6.6
Supervised	4	3.8
Monitored	59	55.7
Other	36	33.9
Total	106	100.0

Although most OPR cases were not subject to the standards, we reviewed them in an effort to determine whether OPR consistently followed up on misconduct investigations conducted by other Justice components—the fourth GAO recommendation. We found inconsistencies in how OPR monitored and supervised investigations by other Justice components and questioned OPR's handling of some cases in the "other" category.

Finally, OPR told us that, except for the Office of Inspector General (OIG), it had no formal referral procedures (i.e., memoranda of understanding or agreement) with any Justice component. In addition, most referrals of potential fraud, waste, and abuse from the GAO Hotline concerning Justice go directly to the OIG.

Questionable Application of Standards in OPR Investigations

We questioned OPR's application of its investigative and documentation standards in three of the seven investigations. For instance, regarding the investigative standards, OPR's failure to follow a lead to its logical conclusion resulted in the Department's continued employment of an individual suspected of being involved in drug activity, who also allegedly provided acquaintances with information on pending drug investigations. The individual allegedly had access to critical computer databases that contained law enforcement-sensitive information. We located a Justice employee who matched the subject's description and informed OPR. According to later file documentation, OPR determined that the employee we had located was the individual in question. A reference in the OPR file noted that "unfortunately - they [GAO] got us on this one."

In addition, OPR investigative case files were not always clearly and completely documented. One of the seven investigative case files lacked adequate documentation of significant conversations between OPR representatives and the management official who initially handled the complaint. It also did not indicate that any effort was made to determine the full extent of the alleged abuse. A second file lacked copies of court dispositions specifically related to the case's resolution. In another

instance, neither the complainant nor the subject was interviewed; and these omissions were not approved by OPR management, both standard requirements. (See app. I.)

Implementation of Recommendation for Needed Systemic-Change Review

The third recommendation in our February 1992 report was that OPR review its case files to identify any possible systemic changes that might be needed in Justice's procedures and operations. OPR's May 1992 procedures stipulate that such a review occur "at least annually."

During the period of our analysis, an OPR Assistant Counsel reviewed closed cases to identify possible systemic problems. According to a senior OPR official, problems were uncovered during this review—which covered the period 1992 through 1993. OPR provided information on these findings and suggested changes to the Department's procedures/operations in a memorandum to the Deputy Attorney General.

The findings concerned complaints against Department of Justice personnel pertaining to inadequate disclosure of information to defendants and closing arguments by prosecutors. In the first instance, OPR recommended that all prosecutors, especially junior staff, be trained on disclosure policies in the various judicial circuits. In the second instance, OPR advised that prosecutors assigned to a particular U.S. Attorney's office had developed a tendency to urge juries, during closing arguments, to "send a message to the community" in reaching verdicts. OPR considered this to be inappropriate behavior and brought it to the attention of management officials for action.

Implementation of Investigative Follow-Up Recommendation

Although OPR's new procedures did not address following up on investigations conducted by other Justice components, OPR tracked most cases it referred during our review. We found inconsistencies in how OPR supervised and monitored investigations by other Justice components.

Case-Referral Tracking

Although most referrals are being tracked—and remain in an open status until resolved—we found instances in which cases were closed upon referral to the Bureau of Prisons, Immigration and Naturalization Service, DEA, and Public Integrity Section.

Prior to 1985, OPR tracked all case referrals in its case-tracking system. At that time, cases remained open until OPR was advised by the investigative component that the matter had been resolved. In 1985, a Deputy Attorney General reviewed OPR's caseload and decided there were too many open cases. This official directed that all matters in OPR's case-tracking system be closed upon referral to a component. As a result of our 1992 report, all matters, including referrals, were to be tracked by OPR.

Cases Referred— Supervised, Monitored, and “Other”

Of the 106 cases in our review, OPR supervised 4 and monitored 59 that were investigated by other Justice components. We found inconsistencies in how OPR supervised and monitored these matters—incomplete documentation in one supervised case, little actual monitoring of some cases, lack of critical documentation in monitored cases, and misclassification of cases. Further, we questioned how OPR closed some “other” cases.

OPR management staff explained that case files of matters not investigated by OPR staff may lack documentation. According to OPR management, since the departmental investigative component is to maintain the main file, the OPR files were never intended to “stand on their own.” Further, OPR case files in the supervised, monitored, and “other” categories were not created to provide complete documentation of a component's investigation or for review by others outside OPR.

Supervised Cases

The four supervised cases contained the following allegations: failure to report misconduct (e.g., waste or fraud); obstruction of justice/cover-up; prosecutorial misconduct; and unauthorized disclosure of grand jury material to the media. In one of the four cases, involving alleged prosecutorial misconduct, the file reflected a history of the FBI's work. However, case file documentation ended in December 1992, containing no record of a critical OPR/complainant interview that, we were told, occurred after that date. In all of the supervised cases, the allegations were unsubstantiated.

Monitored Cases

The 59 cases monitored by OPR staff involved many allegations pertaining to investigations of misconduct performed by various investigative components of Justice. The most common allegations involved prosecutorial misconduct; unprofessional or unethical behavior; drug-related incidents; fraud; abuse of authority or misuse of official position; threats (physical and verbal abuse and harassment, including

sexual harassment); and negligence, dereliction, or improper performance of duties.

OPR management explained that staff reviewed monitored cases for investigative adequacy and returned them, if necessary, to the investigative component with instructions for needed additional work. We found only one instance in which OPR had returned a case with such instructions. Nearly half of the monitored cases had been assigned to a management analyst and a law clerk for the adequacy review. OPR occasionally marked closed cases—received from component agencies—as “monitored” after a cursory review and merely filed them. For instance, we found several OPR monitored cases with instructions from OPR management to simply “open, count and close.”

We questioned OPR’s handling of cases it monitored. For example, in one instance, a case file did not contain a copy of a complaint against a U.S. Attorney—or an explanation of the complaint’s dismissal by a grievance committee. However, OPR, at this U.S. Attorney’s request, had prepared a formal concurrence with the committee’s treatment of the case. Such requests and the lack of documentation supporting them were not unusual, according to a senior OPR official. According to this official, OPR may be vulnerable in such an instance by not verifying information, but OPR staff often relied on the trustworthiness and integrity of the U.S. Attorney staff in situations such as this.

In addition, OPR’s classification process was inconsistent. For instance, some cases identified by OPR as “monitored” appeared to be “investigations” because OPR itself had performed the investigative work.

“Other” Cases

The 36 “other” case files included preliminary OPR reviews, OIG jurisdiction cases, and Justice management issues. In some instances, Assistant Counsels judged cases not to merit a full OPR investigation and resolved them in a “preliminary review stage.” We were told that OPR often reviewed cases for substance and closed them if they did not merit a further expenditure of resources.

We questioned OPR’s decision to close cases without receiving results as to their outcomes. For example, OPR closed cases concerning serious allegations of unprofessional or unethical behavior when it referred them to the Bureau of Prisons, Immigration and Naturalization Service, DEA, and the Public Integrity Section. Although OPR is responsible for helping to ensure that Justice employees uphold high ethical standards, OPR did not

ask for, expect, or maintain a response from the components concerning its investigative outcome.

OPR Referral Procedures

We were told that OPR had no formalized referral procedures with any Justice components except the OIG and that OPR considered each matter on a case-by-case basis before it decided whether to investigate it or refer it to another departmental component. Information related to OPR referral policy is found in Attorney General Order No. 1638-92, dated December 11, 1992.⁴ Usually, OPR staff independently investigated allegations directly affecting departmental attorney staff and misconduct allegations of a very sensitive nature involving high-level Justice officials.

In most other instances, departmental components investigated the cases. In addition, most referrals of potential fraud, waste, and abuse from the GAO Hotline concerning the Department of Justice are provided directly to Justice's OIG for handling. Because of a long-standing jurisdictional dispute with the OIG, OPR had a formal written agreement with that component. However, according to a senior OPR official—with the exception of OPR referrals involving the OIG—OPR had no memorandums of understanding or memorandums of agreement with other departmental OPRs or investigative components (i.e., U.S. Marshals Service, Immigration and Naturalization Service, and Bureau of Prisons). OPR management explained that it needed no formal referral procedures with most components.

Agency Comments

The Department of Justice provided written comments on a draft of this report. Justice generally disagreed with our report's findings, stating that the report "is based on faulty assumptions about what OPR does and how it does it." Justice's concerns generally involved what it termed as our (1) artificial categorization of OPR's caseload, (2) failure to acknowledge OPR's right of discretion in carrying out its work, (3) inappropriate insistence on the importance of consistency in OPR's investigative and oversight responsibilities, and (4) inflammatory statement of facts. Our findings are based on interviews of OPR staff and in-depth analyses of OPR's own files. It is significant to note that OPR provided the case category

⁴Order No. 1638-92, entitled "Jurisdiction of the Office of the Inspector General and the Office of Professional Responsibility with respect to allegations of misconduct by Department of Justice Employees," sets forth procedures for investigating allegations of misconduct by Justice employees. It is noted that GAO/OGC-94-24, B-256322, dated Apr. 15, 1994, questioned the legality of some aspects of Order No. 1638-92. However, Department of Justice order 1931-94, dated Nov. 8, 1994, superseded 1638-92. The new order provides more detail concerning the jurisdiction of Justice/OPR, FBI/OPR, DEA/OPR, and Justice/OIG regarding the investigation of allegations of misconduct by Department of Justice employees.

definitions used in this report and differentiated its caseload according to those definitions. Furthermore, OPR's position on case-handling procedures is clearly documented in this report. In some instances, we have revised our report for clarification purposes. Justice's complete written comments, and our evaluation, are presented in appendix II.

Methodology

We reviewed closed OPR case files and interviewed OPR staff attorneys at OPR in Washington, D.C., between April 15, 1993, and June 6, 1994. We reviewed all 106 OPR cases opened on or after May 12, 1992 (the effective date of OPR's new case-handling procedures), and closed as of April 15, 1993. With the assistance of OPR staff, we categorized the cases as consistently as possible with the case categories used for our previous review. We subsequently identified four case categories: investigated, supervised, monitored, and other.

We used OPR's May 12, 1992, procedures as a guide for analyzing OPR's case work. These procedures, which are attached as appendix I, are divided into three sections: (1) OPR Standards for Conducting Investigations, (2) OPR Standards for Case Documentation, and (3) Periodic Case Reviews for Systemic Problems.

We will send copies of this report to the appropriate congressional committees; the Attorney General; and the Inspector General and the Counsel on Professional Responsibility, Department of Justice. We will also make copies available to others upon request. If you have questions concerning these issues, please contact me, or Assistant Director Barbara Cart of my staff, at (202) 512-6722.

Sincerely yours,



Richard C. Stiener
Director

Contents

Letter	1
Appendix I OPR's May 1992 Procedural Standards	12
Appendix II Comments From the Department of Justice	15
Appendix III Major Contributors to This Report	24
Table	Table 1: Case Categories 3


Abbreviations

DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
GGD	General Government Division
OGC	Office of the General Counsel
OIG	Office of the Inspector General
OPR	Office of Professional Responsibility
OSI	Office of Special Investigations

OPR's May 1992 Procedural Standards

Memorandum



Subject New OPR Procedures	Date May 12, 1992
To All OPR Staff	From  Michael E. Shaheen Jr. Counsel

Attached is a copy of new OPR procedures which are effective immediately. These procedures were written in response to the GAO Management Review of this Office and are self-explanatory.

I. OPR Standards for Conducting Investigations

All OPR investigations shall be conducted in accordance with the policies and guidelines set forth in the United States Attorneys' Manual and shall:

1. include an interview of the complainant¹,
2. pursue all logical investigative leads,
3. include an interview of the subject,²
4. sufficiently address the allegations made by the complainant.

II. OPR Standards for Case Documentation

All files on OPR matters shall include appropriate case documentation. At a minimum, such documentation shall include:

1. a copy of the complaint,
2. all case-related correspondence,
3. documentation of each interview conducted,
4. documentation of all significant investigative activity,
5. all documentary evidence obtained during the inquiry,

¹ In appropriate circumstances, an interview of the complainant may be omitted. Such an omission must be approved by the Counsel or Deputy Counsel, and the reasons for the omission must be documented in the case file.

² In appropriate circumstances, an interview of the subject may be omitted. Such an omission must be approved by the Counsel or Deputy Counsel, and the reasons for the omission must be documented in the case file.

6. documentation explaining a decision not to conduct an interview of the complainant or the subject of the complaint,
7. documentation containing the rationale for the disposition of the matter,
8. a case chronology,
9. OPR case closing form,
10. the disciplinary action taken in substantiated matters.

III. Periodic Case Reviews for Systemic Problems

All OPR case files will be reviewed periodically, but at least annually, to identify any possible systemic problems that might necessitate changes to the Department's procedures and operations. Any such problems will be brought to the attention of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or other appropriate Department official.

Comments From the Department of Justice

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



U.S. Department of Justice

Washington, D.C. 20530

DEC 29 1994

Richard Stiener
Director
Office of Special Investigations
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Stiener:

In response to your request to the Attorney General of December 14, 1994, the Department of Justice is providing its comments on the General Accounting Office's draft report entitled "Department of Justice Office of Professional Responsibility's Case-Handling Procedures." We appreciate the opportunity to respond to GAO's draft report.

The stated purpose of the draft report was to determine whether the recommendations in a February 1992 GAO report^{1/} on OPR had been implemented and to obtain information on OPR's handling of referrals. The February 1992 GAO report had recommended that OPR (1) establish basic standards for conducting investigations; (2) establish standards for case documentation; (3) review case files to identify possibly needed systemic changes to Justice procedures and operations; and (4) follow up more consistently on the results of misconduct investigations conducted by other Justice components and maintain the follow-up information in the case files.

As you know, and in response to these recommendations, OPR agreed (1) to put its standards for conducting investigations into writing; (2) to establish standards for case documentation; (3) to include within each substantiated case file the results of the disciplinary process; and (4) to continue its practice to submit recommendations on the need for changes in policies and

^{1/} Employee Misconduct: Justice Should Clearly Document Investigative Action (GAO/GGD-92-31, Feb. 7, 1992).

Appendix II
Comments From the Department of Justice

- 2 -

procedures "that become evident during the course of its inquiries."² However, OPR explicitly stated that "[b]y codifying . . . standards [for investigations], . . . OPR does not intend to abandon its discretionary approach to investigations. OPR will continue to evaluate cases on their individual merit and will not treat all cases as equal."³ On May 12, 1992, Michael E. Shaheen Jr., Counsel, issued OPR's new procedures applicable to investigations undertaken by OPR.⁴

Unfortunately, the results of GAO's review, as set forth in the draft report, indicate that it disregarded OPR's reservation of discretion and, in fact, faults OPR precisely for exercising legitimate discretion in evaluating and handling cases individually rather than treating all cases within a given category the same. While we have specific objections to certain comments and findings in the report, we generally find the report's analysis flawed throughout because of its failure to acknowledge, as has every Attorney General since OPR's creation, OPR's legitimate exercise of discretion in carrying out its work.

To illustrate this point, we note, for example, that the report criticizes OPR for "inconsistencies in how OPR supervised

² November 15, 1991 letter from Harry Flickinger, Assistant Attorney General (AAG) for Administration, to Richard L. Fogel, Assistant Comptroller General, United States General Accounting Office, in response to GAO draft report, at 12-13.

³ Id. at 13 n.19.

⁴ The draft report is incorrect in stating that OPR issued its new standards for investigations and case documentation "[o]n May 12, 1992, the day after the then Chairman's request for this review." In fact, the new standards were issued in response to the recommendations in the February 1992 GAO report and more than a month before the Department was notified [on June 17, 1992] that the Chairman of the Government Information, Justice, and Agriculture Subcommittee, House Committee on Government Operations, GAO, had requested a review of the new procedures. On May 28, 1992, AAG Flickinger had notified the Chairman of the Senate Committee on Governmental Affairs that OPR had "developed and internally published standards for conducting investigations, documenting case files, and reviewing case files for systemic problems."

In the relatively few instances -- such as this one -- where the draft report is specific, it is replete with similar incorrect statements which, whether intended or not, create a false impression about OPR's responsiveness to GAO's earlier recommendations and its general competence in carrying out its mission.

See comment 1.

See comment 2.

Appendix II
Comments From the Department of Justice

- 3 -

and monitored . . . matters -- incomplete documentation in one supervised case, little actual monitoring of some cases, lack of documentation in monitored cases, and misclassification of cases. Further, we questioned how OPR closed some "other" cases.² This criticism and others like it throughout the draft report demonstrate how profoundly GAO continues to misunderstand OPR's mission and its method of operating.⁶

As OPR informed GAO on many occasions throughout this review process, there are in fact two kinds of cases: those cases that OPR handles itself and other matters that it refers to Department components for review and, where necessary, investigation. Moreover, as OPR cases are reviewed and worked preliminarily by OPR attorneys, many of them, in the sound discretion of the attorneys handling the matters, are deemed not to warrant a full investigation.⁷ In other instances, investigations are required and, in those cases, OPR attorneys have consistently complied with the OPR procedures for conducting investigations and case documentation.

To the extent the draft report specifically faults OPR's handling of its investigations, it does so based on GAO's classification of the matters as investigations, not on OPR's. Thus, the report states that despite the fact that OPR considered nine

⁶ GAO draft report at p.10.

⁶ Thus, the draft report reflects in essence that GAO developed a methodology for its review which imposed artificial and after the fact categories on OPR matters and then criticized OPR for not handling the matters within those categories consistently. In so doing, GAO ignored the fact that the appropriate exercise of discretion in each case sometimes necessitates, and certainly justifies, inconsistent treatment of matters within the same category. The pursuit of consistency for its own sake, while apparently a goal of GAO, has never been and is not OPR's nor the Department's. As Emerson noted, "[a] foolish consistency is the hobgoblin of little minds adored by little statesman and philosophers and divines."

⁷ For example, a matter might appear on first review to be significant; however, after only limited OPR action, which might be nothing more than obtaining court transcripts or other records, the allegations fall of their own weight and the matter is closed accordingly without further investigation. OPR's exercise of discretion in determining the nature and scope of investigations is not dissimilar to that exercised by attorneys throughout the Department in their investigations and prosecutions.

See comment 3.

See comment 4.

Appendix II
Comments From the Department of Justice

- 4 -

See comment 5.

cases to be preliminary reviews, and not full investigations requiring compliance with the May 12, 1992 procedures, GAO determined on its own that four of those cases were in fact investigations. Having placed those cases in the "investigations" category, the report then faults OPR for not complying with its May 12, 1992 procedures. To the extent OPR did not follow those procedures in those cases, it was because they were not full investigations.

See comment 6.

Moreover, with respect to these matters, GAO misstates facts that are highly inflammatory. For example, GAO classified one case as an investigation even though OPR closed the matter after a preliminary review indicated that the subject was not a Department employee. GAO then criticized OPR's "investigation" as lacking "attention to detail" despite the fact that the file reflects a substantial effort to identify the subject's place of employment.⁵ In addition, GAO claimed that OPR's "inability to identify an employee, resulted in the Department's continued employment of a suspected drug dealer" (Emphasis added.) In fact, the allegations concerned drug use -- not drug dealing -- and, while the matter is still pending, there is no evidence that the subject engaged in drug dealing of any kind.

See comment 7.

Cases which the Counsel and Deputy Counsel determined did not warrant handling by OPR, were referred to the appropriate component agency for review. OPR did not categorize these cases, except at the insistence of GAO, as "monitored," "supervised" or "other." Such categories are artificial and do not properly reflect OPR's handling of these matters. Indeed, categorizing cases in this way, as we noted in response to the previous GAO review, fails to recognize the unique nature of each case and that the level of involvement of OPR personnel in the matter will necessarily vary depending on the facts of that case. Thus, a matter could, in GAO terms, initially be handled as a "supervised" matter and subsequently become a "monitored" matter, as further information was developed, or vice versa. Moreover, despite the fact that the draft report faults OPR for not doing

⁵ In this case, an allegation by a convicted felon that a Department employee was engaging in drug use and sexual activity in the basement of "USDOJ" was referred to OPR by the FBI's Office of Professional Responsibility. OPR attempted to identify the subject through Justice Employee Data Service (JEDS) which includes all Department employees except the FBI. Because the referral came from FBI/OPR, we did not check the Bureau's personnel records. During its review, GAO did so and identified the subject as a support employee in the FBI. OPR subsequently referred the matter to FBI/OPR for investigation. The matter is pending.

Appendix II
Comments From the Department of Justice

- 5 -

so, OPR never represented to GAO that it monitored all cases by individual file review. As OPR's Annual Reports indicate, "Monitoring is accomplished through periodic reports submitted to the Office, the review of investigative findings in certain cases, and frequent contacts with inspection unit employees."⁹

GAO's criticism of OPR because matters were reviewed by "support employees" rather than an Assistant Counsel is equally misplaced. The report assumes in its criticism that the matters were reviewed by low level clerks. That assumption is baseless and, in fact, incorrect. The qualifications of the professionals who reviewed the cases are extremely high. One is a GS-15 with 22 years of experience in the Department, including more than three years in OPR, one and a half years in the office of the Department's Assistant Inspector General for Investigations, two and a half years in the Office of Professional Responsibility at the Immigration and Naturalization Service and two years on the staff of the President's Commission on Organized Crime. The other is a GS-13 who was at the time a law student who had three years of experience in OPR and four years with the Executive Office of Immigration Review. She has since graduated from law school, been accepted into the Attorney General's Honors Program, and is now an attorney in OPR.

For the reasons set out above, the draft report is based on faulty assumptions about what OPR does and how it does it. In addition, and as noted, it is replete with inaccuracies and misstatements.

It is also significant that even GAO's artificial categorization of OPR's caseload is now moot. The Department has continued to refine OPR's mission and method of operation. These refinements culminated with a completely revised jurisdictional order approved by the Attorney General on November 8, 1994.

Under the revised order, OPR will concentrate its efforts on investigations of the Department's attorneys who are the subject of misconduct allegations which arise from their activities in investigation, litigation, and provision of legal advice.¹⁰ The order reaffirms that the primary responsibility for investigation of allegations of misconduct against employees of the Federal Bureau of Investigation and the Drug Enforcement Administration

⁹ See, e.g., OPR's Annual Report To The Attorney General, 1992, at 3.

¹⁰ In order to carry out its revised mission as effectively and efficiently as possible, OPR has substantially increased its attorney staff. There are presently a Counsel, Deputy Counsel, 10 Assistant Counsel and one Staff Attorney.

See comment 8.

See comment 9.

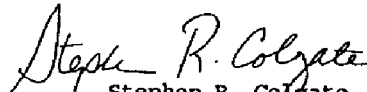
Appendix II
Comments From the Department of Justice

- 6 -

lies with the Offices of Professional Responsibility of the FBI and DEA respectively. The role of the Department's OPR with respect to those agencies is to be purely one of oversight. With respect to the investigations OPR conducts, it will continue to document its files according to the standards set forth in Mr. Shaheen's May 12, 1992 memorandum.

The Department of Justice hopes that the Government Accounting Office finds these comments of interest and assistance.

Sincerely,



Stephen R. Colgate
Assistant Attorney General
for Administration

See comment 9.

The following are GAO's comments on the Department of Justice's letter dated December 29, 1994.

GAO Comments

1. We are not questioning OPR's "reservation" of discretion regarding its casework but rather how well OPR adhered to its new procedural guidelines. We found that only OPR investigations (7 out of 106 cases) were subject to the new guidelines. Cases that were either supervised or monitored by OPR staff, as well as cases in the "other" category (99 out of 106 cases), were not measured by that standard. However, in order to respond to the Congress, we analyzed these cases in an effort to determine whether OPR consistently followed up on misconduct investigations conducted by other Department of Justice components.
2. GAO's February 7, 1992, report, entitled Employee Misconduct: Justice Should Clearly Document Investigative Actions, contained the following statement by a Department of Justice official: "OPR is prepared to establish standards for case documentation." By letter dated May 11, 1992, Representative Wise requested that GAO conduct an inquiry at OPR to determine whether the changes recommended in our February 1992 report had been implemented. By memorandum dated May 12, 1992, OPR Counsel Michael Shaheen provided a copy of the new OPR procedures to all OPR staff stating that the procedures "were written in response to the GAO Management Review of this Office" and were "effective immediately." In June 1992, we met with Justice officials concerning Representative Wise's request. Because OPR's new procedures had been in place for a brief time, we decided to revisit the matter at a later date to allow OPR an opportunity to implement its new procedures. We have deleted from the report the specific reference to the then Chairman's request for our review.
3. OPR management told us that its new standards applied only to OPR investigations. Therefore, in order to test OPR's compliance with its new procedures, it was necessary to differentiate between OPR investigations and the other types of cases it handles. In that regard, we met with OPR officials and discussed, in detail, the type of work they do, how they conduct their business, and how they handle case work administratively. Based on these conversations, it was agreed that OPR's work fell into four case categories: investigations, supervised, monitored, and other.
4. We found that in nearly half of its investigations, OPR staff did not comply with the new procedural guidelines.

5. OPR officials originally indicated to us that 17 cases were OPR investigations. However, they later stated that 10 of these cases were more appropriately captured in categories other than investigations. Based upon OPR's definition of an OPR investigation, our review of the 10 case files revealed that 4 were actually OPR investigations and should remain in that category. Further, we determined that in three of these four cases, OPR failed to follow its procedural guidelines.

6. One of the conclusions in GAO's February 1992 report stated that OPR, by "not consistently following all investigative leads—including routine measures often requiring no more than one or two phone calls—risks an incorrect outcome, and, in a more serious matter, may result in compromising the Department's integrity." In this particular case, the Department claims a "substantial effort" was made to locate an employee suspected of being involved in illicit activity. However, it was a lack of effort on OPR's part—and the premature closing of this OPR investigation—that prompted us to delve further. After making one phone call, we located an individual who matched the subject's description, and we passed this information along to OPR. At the time of our review, this subject was alleged to have been involved in a number of illicit activities, to include drug use as well as the sale of drugs at the Department of Justice. As Mr. Colgate's response indicates, an investigation of this subject is ongoing. We have revised the language in the report concerning OPR's efforts in this case and the subject's alleged drug activity.

7. OPR provided us with a definition for each of the case categories, i.e., investigations, supervised, monitored, and other. Because OPR's guidelines applied only to its investigations, it was necessary to develop a clear understanding of case types in order to conduct a fair appraisal of its investigative work. In addition, OPR provided GAO with a report (called a "closed case report") from its "case tracking system." This report contained information on the 106 cases that fell within the time period of our review. It is significant to note that OPR staff, not GAO personnel, identified each of the 106 cases listed in the "closed case report" as either an investigation, supervised, monitored, or other case.

8. Mr. Colgate states that these OPR support staff are qualified, and we do not dispute that they are. We did not describe these individuals as "low-level clerks" as Mr. Colgate implied in his comments. However, we have clarified the report to reflect the titles of the support staff at that time.

9. Although our report does not specifically concern OPR jurisdictional issues—focusing more on OPR procedural matters—Mr. Colgate states that a new Department of Justice jurisdictional order—order number 1931-94, entitled: “Jurisdiction For Investigation of Allegations of Misconduct by Department of Justice Employees”—renders our findings “moot.” We question this observation.

Justice order 1931-94, which supersedes order 1638-92, does provide more detail concerning the jurisdiction of Justice investigative components (i.e., DEA/OPR, Justice/OPR, Justice/OIG, and FBI/OPR). However, as Mr. Colgate notes, Justice/OPR will continue to perform an oversight role concerning the work of the other Justice investigative components in their handling of alleged misconduct investigations. In addition, the new order states that DEA/OPR and FBI/OPR shall notify Justice/OPR and Justice/OIG of the existence of investigations of employees of their respective agencies and, in all cases, DEA/OPR and FBI/OPR shall report the results of their investigations to Justice/OPR and Justice/OIG. Finally, Mr. Colgate states that OPR “will continue to document its files according to the standards set forth in Mr. Shaheen’s May 12, 1992, memorandum.”

Considering that (1) our report questioned OPR’s oversight of cases (i.e., supervised or monitored) it handled and (2) we found that nearly half of OPR investigations did not follow the procedures set forth in Mr. Shaheen’s May 12, 1992, memorandum, our report findings are not “moot.” We have added a reference to the new Justice internal order to our report.

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