

GAO

Testimony



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Justice Management:

The Value of Oversight
Has Been Demonstrated

Statement of
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Before the
Committee on the Judiciary
House of Representatives



Mr. Chairman and members of the Committee, thank you for the invitation to testify on the authorization of the Department of Justice's budget for fiscal year 1992. Pursuant to requests of this and other congressional committees, the General Accounting Office has often assisted Congress during the past several decades in conducting oversight of the Department, its divisions, and its component agencies.

RESULTS OF GAO OVERSIGHT

Immigration and Naturalization Service

In our management review of the Immigration and Naturalization Service (INS), we found that INS was in need of strong leadership to balance its dual roles of enforcement and service.¹ Over the past decade, weak management systems and inconsistent leadership have allowed serious problems at INS to go unresolved.

The problems we found had undermined INS' effectiveness. We recommended that the Attorney General take immediate action to ensure INS put in place sound management systems. Although much remains to be done, I am pleased to report that since our report was issued, both Justice and INS have moved systematically to improve the INS management framework.

Debt Collection

Last summer, we testified on the rapid growth of delinquent debt and on the Department's deficient collection efforts.² We observed that Justice lacked a system to track, manage, and collect in a timely fashion civil debt referrals from other federal agencies -- over \$5 billion.

Subsequently, the Department appointed an Associate Deputy Attorney General for Debt Collection to centralize the Department's debt collection efforts. The Department has also committed to issuing a long term strategy to manage civil debt collection more systematically. Both actions are critical first steps to management of this program.

Bureau of Prisons

It is possible to achieve significant potential cost savings in the Bureau of Prisons' (BOP) multibillion dollar expansion

1Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems (GAO/GGD-91-28, Jan. 23, 1991).

2U.S. Department of Justice: Overview of Civil and Criminal Debt Collection Efforts (GAO/T-GGD-90-62, July 31, 1990).

program.³ Between 1980 and 1989, the federal inmate population increased from 19,025 to 53,347, or 180 percent. Inmate populations are projected to further increase to 125,478 by 1999.

Projected costs could reach \$2.9 billion by fiscal year 1995 and substantially more if additional expansion is approved to accommodate BOP inmate projections for 1999. These amounts represent only a down payment on the ultimate cost of expansion; BOP estimates that operating facilities over their useful life costs 15 to 20 times the construction costs.

We found that if BOP modified the standards used in computing the need for additional facilities, it could substantially reduce--if not eliminate--its request for \$315 million in expansion funds requested for fiscal year 1992 and any additional prison expansion funding in fiscal years 1993 and 1994. The modified standards we proposed are already being embraced by state and local governments.

Asset Seizure and Forfeiture

At the end of 1990, Justice had a seized asset inventory of \$1.4 billion dollars which was being managed by the Marshals Service. We found that substantial savings were possible through better oversight and consolidation of the seized asset management programs of Justice and the Bureau of Customs.⁴ The Department has taken some action on our recommendations to implement improved internal controls over asset management and disposal, but program consolidation is still under consideration.

Information Resources

On June 27, I testified before the Subcommittee on Economic and Commercial Law, of this Committee that the Department is not adequately managing its automated data processing (ADP) resources or providing adequate computer security.⁵ Senior Department officials acknowledge that they have not effectively fulfilled their ADP management responsibilities--a matter of particular concern in light of the Department's plans to spend over \$2.7 billion for information technology and related services between fiscal years 1991 and 1995. After more than a decade, the Department still does not have a well integrated case management

³Federal Prisons: Revised Design Standards Could Save Expansion Funds (GAO/GGD-91-54, Mar. 14, 1991).

⁴Asset Forfeiture: Opportunities For Savings Through Program Consolidation (GAO/T-GGD-91-22, Apr. 25, 1991).

⁵Serious Questions Remain About Justice's Management of ADP and Computer Security (GAO/T-IMTEC-91-17, June 27, 1991).

system and is at least 3 years from its goal of having one.

Although part of overall ADP management, the requirement for computer security deserves special attention. Serious security vulnerabilities exist with life-or-death implications for those whose safety depend on anonymity. The Department has not taken all of the actions necessary to ensure that its highly sensitive computer systems are adequately protected.

Last summer, computer equipment exccessed by the U.S. Attorney's office in Lexington Kentucky, was later found to contain highly sensitive data, including grand jury material and information regarding confidential informants. In February, a different U.S. Attorneys office cautioned federal and local officials that, again, sensitive data that could potentially identify agents and witnesses may have been compromised. Our review showed similar patterns of neglect and inattention nationwide.

The foregoing examples illustrate the need for and benefit of effective congressional oversight of Department programs. Our ability to provide assistance to Congress in these reviews depended on obtaining reasonably timely access to relevant documents and officials within the Department.

The fact is, however, that we have not enjoyed consistently good access to the information necessary over the full range of our work. As we look less at administrative and support functions and more at investigation and prosecutorial activities of the Department, we have encountered increasing resistance to our requests for information. The problems are generally most prevalent at the Federal Bureau of Investigation (FBI) and in connection with our work related to financial institution fraud.

Reflecting widespread public concern about the extent of fraud in failed banks and thrifts, Congress has expanded both the authority and the resources of the Department toward prosecuting this fraud. Understandably, Congress has intense interest in tracking what the Justice Department is achieving and has enlisted our assistance. Our work has been impeded by a continuing dispute with the Department regarding our right of access to numerous documents and data.

In addition, the FBI routinely resists cooperating with our Office of Special Investigations (OSI). As you, Mr. Chairman, are well aware, OSI was established precisely to assist Congress in investigating allegations of fraud, waste, and abuse in federal government programs.

FBI Investigations of Terrorist Activities

In carrying out its responsibilities for investigating possible terrorist activities, the FBI must balance its investigative needs against the need to respect individuals' First Amendment rights, such as freedom of speech and the right to peaceably assemble. In February 1988 after documents released under the Freedom of Information Act raised questions about FBI investigations of American citizens exercising their First Amendment rights, we were asked by the Chairman of the Subcommittee on Civil and Constitutional Rights to review the FBI's international terrorism program. In September 1990, we issued our report, but because of data access problems we were unable to draw conclusions on whether the First Amendment rights of Americans had been violated.⁶

The FBI refused to provide us access to information regarding open investigations and insisted that information it considered sensitive be removed or "redacted" from the closed investigative case files they made available.

JUSTICE RESISTANCE TO GAO'S INVESTIGATIVE AND FINANCIAL INSTITUTION FRAUD WORK

As we have turned our focus toward a critical Justice law enforcement and prosecutorial priority of the 1990s--white collar crime--we have encountered similar access problems.

The investigation and prosecution of white collar crime is a top national priority of Congress and the Department of Justice. This priority reflects a \$500 billion cost to taxpayers of savings and loan failures, a significant number of which it is believed were due to fraud. There are similar concerns with regard to a number of bank failures.

In response, the federal government has significantly intensified its efforts to investigate and prosecute bank and thrift fraud. Four hundred additional prosecutors, FBI agents, and other personnel have been deployed. Justice's fiscal year 1991 appropriation provided over \$112 million for bank and thrift fraud investigations and prosecutions--more than double the previous year's appropriation. This will translate into more agents and prosecutors. In addition, a "Special Counsel for Financial Institutions" has been established within the Department. The Special Counsel is responsible for coordinating all matters concerning the investigation and prosecution of financial institution fraud and ensuring proper allocation of resources to the most significant cases.

⁶International Terrorism: FBI Investigates Domestic Activities to Identify Terrorists (GAO/GGD-90-112 Sept. 7, 1990).

As the additional resources have been appropriated, Congress has voiced concerns regarding whether the resources are adequate, how well they are being used, and the results being achieved. In seeking to respond to these questions we have encountered access problems.

GAO Access and Investigative Authority

Congress has provided the Comptroller General with access to the records of federal agencies to support our oversight of federal programs and activities. GAO's basic access statute, 31 U.S.C. Section 716(a), requires that agencies give the Comptroller General requested information about the duties, powers, activities, organization, and financial transactions of the agency. This section applies to the Department, including the FBI, and does not exempt information related to investigative or prosecutorial functions. Additionally, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 gives GAO a broad right of access to the records of certain agencies including the Department of Justice.

In carrying out its investigative work, GAO operates as an agent of Congress. The Supreme Court has repeatedly recognized the broad scope of congressional investigative powers, stating that they are "as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution".⁷ The Court has stated that Congress' investigative power extends to any matter subject to existing law or possible future laws and that the power "comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste."⁸

Our problems at the Department generally fall into four broad categories

- (1) resistance to work done through our Office of Special Investigations (OSI),
- (2) delays in obtaining routine management information,
- (3) deletion of data from files, and
- (4) denial of any information related to ongoing investigations.

⁷Barrenblatt v. United States, 360 U.S. 109 (1959).

⁸Watkins v. United States, 354 U.S. 178 (1957).

GAO's Authority to Investigate Questioned

OSI was established in 1986 to investigate fraud, waste, and abuse in government programs. Investigative functions previously spread throughout GAO were centralized in OSI. OSI investigates allegations of fraud and abuse received from Congress, other sources, or arising from GAO's own work. OSI assesses the merit of the allegations, which may be criminal in nature; reports relevant facts to Congress; and refers possible criminal law violations to the appropriate executive branch investigative or prosecutorial offices for further action.

Almost from its inception, OSI has encountered resistance at the FBI. The lack of cooperation from the FBI has had significant adverse effects on our ability to investigate congressional concerns. For example, in our review of the USS Iowa explosion for the Senate Committee on Armed Services, agents of the Naval Investigative Service (NIS) told us that they had verbally communicated additional information to FBI analysts who had also investigated the incident. The FBI refused to allow us to interview the analysts, thus we were unable to determine if the NIS information conflicted with documentary evidence. It is worthy to note that the FBI denied us access even though the FBI analysts had already testified before the Senate Armed Services Committee about the investigation.

It is the official Department of Justice position not to provide assistance to OSI. Reasons cited by the Deputy Attorney General include

- the executive branch's "exclusive constitutional obligation . . . to conduct criminal investigations" and
- concerns that OSI's requests for information were unrelated to any review of FBI programs and procedures, but were related instead to "independent criminal investigations."

While the prosecution of criminal cases is, of course, reserved to the executive branch, both Congress and GAO clearly have authority to investigate matters that may involve potential criminality. For example, 31 U.S.C. 712 expressly authorizes the Comptroller General to "investigate all matters related to the receipt, disbursement, and use of public money." This authority extends by its plain terms to investigations of fraud, waste, and abuse in federal programs. We conduct investigations in support of Congress' legislative and oversight functions. Notwithstanding the broad statutory language, however, Justice argues that our authority under section 712 is "limited to financial audits." Indeed, as noted previously, we refer possible criminal violations to appropriate executive branch officials.

GAO's ability to meet its responsibilities to Congress in this work depends upon the willingness of the executive branch to acknowledge our statutory investigative and access rights and to cooperate affirmatively with us. In the final analysis, I believe that an approach of cooperation instead of resistance would better serve the interests of the executive branch and the public as well.

Delays in Obtaining Management Information

The second category of access problems involves delays in receiving routine management information--in some cases, information that we have been provided in the past. For example, to support our review of the adequacy of the Department's response to financial institution fraud, we requested from the FBI basic management information on

- workload by type of investigation,
- accomplishments that describe convictions, restitutions, etc., and
- investigation progress.

Our request was made in December 1990. The FBI had routinely supplied GAO with this data in the past. In this instance, the FBI ultimately provided the data but only after 6 months of negotiations. The FBI has not yet provided a promised briefing on its management information systems--a briefing designed in part to help us more explicitly frame our requests for data. The data in question is stored electronically; the FBI will not provide us data in electronic format.

Deletion of Data From Files

In some instances, Justice and FBI insist that information be deleted or redacted from requested files. The redaction process is time consuming and can delay the issuance of our reports. It also prevents us from knowing if all of the relevant or requested information has been provided.

This situation currently exists at the Executive Office of the U.S. Attorneys, where we have requested access to reports evaluating the performance of specific U.S. Attorney offices. Even though we have received these reports in the past, they are now being denied unless we agree to accept redacted versions of the reports and agree in writing to various other restrictions on our access to and disclosure of the information. Obviously, this is not acceptable. As a result, after several months we still do not have the requested reports.

Denial of Access to Open Cases

Under most circumstances, the objectives of our work can be met through a review of closed case files. However, in reviewing Department actions to pursue financial institution fraud, recent changes in the law coupled with the length of time it takes to prosecute a case, make data in closed cases obsolete. Thus, information regarding open cases is necessary for us to credibly evaluate the effectiveness of Department efforts to identify and prosecute these cases.

All requests we make for data related to open cases are categorically denied. The Department appears to be concerned that providing GAO with open case information might prejudice important prosecutions. We understand the Department's concern. We are confident that it can be accommodated through appropriate safeguards. GAO staff routinely handle some of the most sensitive government information and have an unblemished record in protecting it from inadvertent or otherwise inappropriate disclosure.

FUTURE OVERSIGHT WORK

Working with congressional committees, we have identified several areas that warrant oversight priority. The Department's continued resistance to our access will adversely affect our ability to do the needed work.

First, is the adequacy of the Department's efforts to counter white collar crime. Second, is how federal law enforcement agencies set their investigative priorities and measure their effectiveness. Third, is how well Justice has responded to the recommendations resulting from our 1986 general management review. Fourth, is a review of the effectiveness of the Drug Enforcement Administration in the war on drugs. And fifth, is a look at the overall management of the FBI.

In addition, another area that we believe warrants the Committee's attention is the interrelationships between the components of the criminal justice system. We believe this perspective is lacking at times in the administration's funding proposals. Recently, in response to a requirement in the Anti-Drug Abuse Act of 1988, we developed a model designed to provide Congress and federal agencies with estimates of the potential effect that budgetary changes for part of the federal criminal justice system would have on the system as a whole.⁹

At the request of Senator Bob Graham, we recently used the model

⁹Federal Criminal Justice System: A Model to Estimate System Workload (GAO/GGD-91-75, Apr. 11, 1991).

to estimate the national workload impact on the federal criminal justice system of enacting the budgetary increase provided by title X of S.1241, The Violent Crime Control Act of 1991. We found that a probable impact would be to increase substantially an already growing backlog of criminal justice defendants in the federal courts. The future value of the model will depend upon our ability to update the assumptions it contains, including those on the effectiveness of investigative and prosecutorial resources.

In closing, Mr. Chairman, I want to make clear that we understand the Justice Department's investigation and prosecution of criminal activity as being without question, a critical executive branch responsibility. By its nature, this responsibility carries with it a set of imperatives that limits the Department's discretion in disseminating certain types of information, to protect both the rights of the accused and the integrity of the investigative process.

In our view, however, these imperatives do not exempt the Department from congressional oversight. Nor do they prevent the Department from providing a much wider range of information about its activities to Congress and to GAO than is now the case. The current situation is counterproductive, with both GAO and the Department wasting valuable resources in dealing with these access issues.

In short, Mr. Chairman, it is important that the Justice Department reach a greater accommodation with GAO in connection with providing information and documentation in specific cases.

As we recognize the importance of its role, we would in turn invite the Justice Department to recognize that congressional oversight of executive branch activity is fundamental to the Constitutional powers vested in the legislature. A self-evident, but nonetheless critical prerequisite of effective congressional oversight is that Congress be fully informed. A partially informed Congress cannot balance interests fairly, resolve issues effectively, or deliberate soundly.

That concludes my prepared statement. My colleagues and I would be pleased to answer any questions.

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