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Report to the Chairman, Committee on the Judiciary, House of Representatives

January 2001

DOJ'S PUBLIC INTEGRITY SECTION

Case Management Policies Followed, but Closing Some Matters Took Too Long

GAO-01-122

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Abbreviations

ACTS	Automated Case Tracking System
CIA	Central Intelligence Agency
CRM	Criminal Division
DAAG	Deputy Assistant Attorney General
DEA	Drug Enforcement Administration
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FHWA	Federal Highway Administration
HHS	Department of Health and Human Services
NASA	National Aeronautics and Space Administration
PI	Public Integrity Section
USAO	U.S. Attorneys Office

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United States General Accounting Office
Washington, DC 20548

January 25, 2001

The Honorable F. James Sensenbrenner
Chairman
The Honorable Henry J. Hyde
Committee on the Judiciary
House of Representatives

In response to a request from your Committee, this report discusses the results of our management and operational review of the Department of Justice's (DOJ) Public Integrity Section (PI). Specifically, the report discusses (1) PI's organization, staffing, workload, and results; (2) the policies and procedures in place to govern PI's case management practices and its compliance with those policies and procedures; and (3) DOJ's management oversight of those practices. DOJ has taken action on recommendations to the Attorney General, which were contained in a draft of this report, to improve certain case management practices. Therefore, we are no longer making the recommendations.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to Representative John Conyers, Jr., the Ranking Minority Member of the Committee, the Attorney General; the Director of the Office of Management and Budget; and other interested parties. Copies will be made available to others upon request.

If you or your staff have any questions regarding this report, please contact Daniel C. Harris or me at (202) 512-8777. Key contributors to this report are listed in appendix VI.

Laurie E. Ekstrand
Director, Justice Issues

Executive Summary

Purpose

The American people expect their elected representatives and public officials to perform their duties with integrity and in the best interests of the public. The Department of Justice (DOJ), along with state and local prosecutors, is responsible for investigating and prosecuting federal, state, or local officials who criminally abuse the trust placed in them by the public. Since 1976, DOJ reported that it has convicted over 20,000 federal, state, and local officials and private citizens involved in public corruption offenses.[1]

The Chairman of the Committee on the Judiciary, House of Representatives, as part of the Committee's oversight responsibilities, asked GAO to conduct a management and operational review of DOJ's Criminal Division (CRM), focusing initially on its Public Integrity Section (PI) and the Campaign Finance Task Force. In May 2000, GAO issued a separate report on the task force.[2] Concerning PI, GAO agreed to (1) describe PI's organization, staffing, workload, and results; (2) determine whether policies and procedures are in place to govern PI's case management practices and the extent to which its attorneys have complied with those policies and procedures; and (3) determine how PI oversees its case management efforts.

To assess whether PI followed applicable policies and procedures and whether case efforts were overseen and monitored, GAO reviewed the files for (1) 21 cases prosecuted and (2) a stratified random sample of 31 matters[3] that were closed during the period October 1, 1998, through June 30, 1999. In addition, GAO reviewed all 68 matters from fiscal years 1995 through 1997 that were identified as still open as of June 30, 1999, to assess whether PI closed matters in a timely manner and complied with federal internal control standards. GAO did not attempt to determine the appropriateness of PI's prosecutive decisions for those files that were reviewed. For example, GAO did not assess whether (1) sufficient

[1]Public corruption crimes include bribery of public officials, extortion, acceptance of gratuities, election crimes, and conflicts of interest involving criminal misconduct and other public integrity related offenses.

[2]*Campaign Finance Task Force: Problems and Disagreements Initially Hampered Justice's Investigation* (GAO/GGD-00-101BR, May 31, 2000).

[3]For purposes of this report, a matter is an allegation that is being or has been investigated by PI. A case is a matter that has been filed in a court. Prosecutions included all cases tried in court or settled by plea agreement, or cases that had an out-of-court civil settlement.

information existed on which to base declination[4] and prosecution decisions, (2) the charges filed against defendants complied with DOJ policies, or (3) plea bargain agreements were appropriate. Chapter 1 provides a more detailed description of GAO's objectives, scope, and methodology.

Results in Brief

As of June 30, 2000, PI was staffed with 30 attorneys, including a chief and three deputies. Between fiscal year 1995 and June 30, 2000, PI had opened 1,013 matters for investigation and filed 163 cases with the court, although the number of matters opened has declined in recent years as PI has discouraged agencies from submitting insubstantial matters for its review. For the cases PI prosecuted during this time period, PI's conviction rate was about 94 percent.

DOJ has established written policies and procedures that set forth the authority PI attorneys have to make prosecutive decisions and to take certain actions relating to the prosecution of criminal cases, such as plea-bargaining. For the closed cases and matters GAO reviewed, PI was generally in compliance with DOJ and PI case management policies and procedures for opening, declining, or prosecuting criminal cases and related documentation requirements. PI was also in general compliance with the policies for closing matters. However, PI attorneys did not close numerous matters that were no longer active in a timely manner. As a result, some matters remained open for extended periods—sometimes years. GAO found that DOJ had not established specific time frames for completing declination memorandums. Federal internal control standards require that significant events be promptly recorded.[5] In some cases, referring agencies or others may be awaiting PI's prosecutive decision before taking administrative action or making career decisions.

Policies and processes are also in place to ensure that all prosecutive decisions relating to the matters and cases in its workload are subject to management oversight. In addition to document reviews, PI managers said that they oversee the attorneys' work by daily interactions with attorneys,

[4]A declination is a decision to close a matter without prosecution. In PI, a decision to decline prosecution is recorded by preparing and completing a declination memorandum, which sets forth the justification for such action.

[5]*Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1, Nov. 1999).

formal periodic workload reviews of all matters and cases, and peer reviews of proposed prosecutions. For the closed matters and cases GAO reviewed, PI managers were generally in compliance with DOJ and PI oversight policies and processes. PI and CRM managers use workload information generated from a CRM case management information system to aid them in overseeing PI's work. However, lengthy delays in completing some declination memorandums hamper the usefulness of such information for oversight.

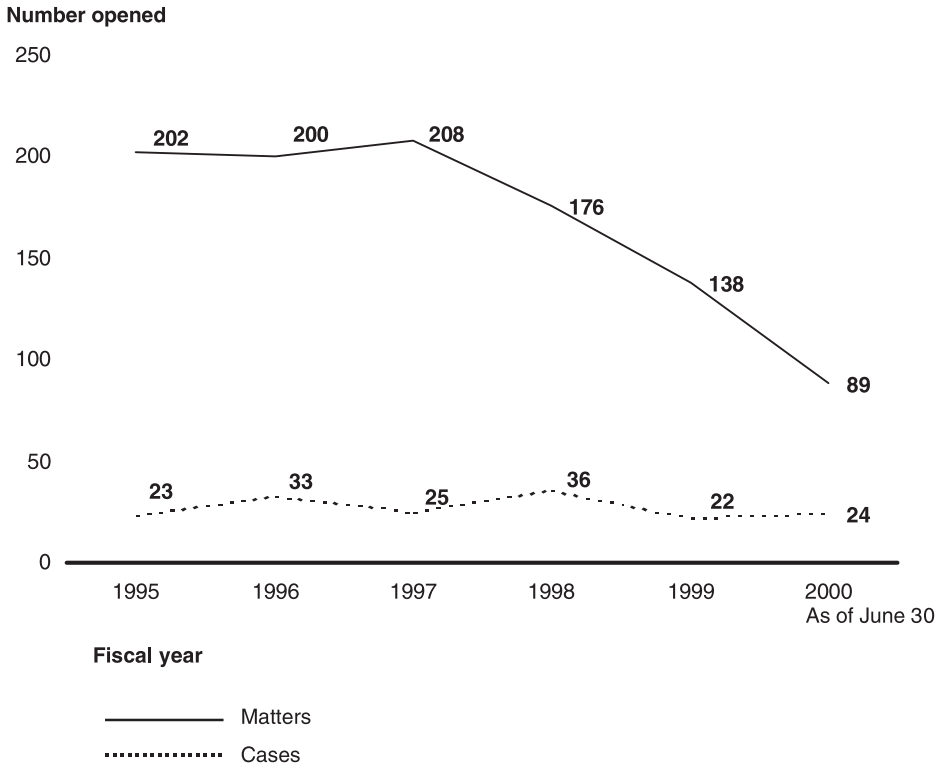
Principal Findings

PI's Organization, Staffing, Workload, and Results

A deputy assistant attorney general in CRM is responsible for overseeing PI's activities. A section chief heads PI and is assisted by three deputy section chiefs. As of June 30, 2000, PI was staffed with 30 attorneys; 27 full time (6 of whom were detailed to other Justice units) and 3 part-time trial attorneys.

Between fiscal year 1995 and June 30, 2000, PI's prosecutive workload included, in part, 1,013 investigative matters opened and 163 cases filed with the court. While the trend in the number of cases filed annually with the courts has remained relatively constant over this period, the number of matters opened has declined each fiscal year since 1997. PI officials attributed the decline in matters opened to their efforts to discourage agencies from referring to PI matters that it considers to be insubstantial. As figure 1 shows, the reduction in the number of matters referred to PI does not appear to have affected the number of cases PI had filed with the court.

Figure 1: PI Matters Opened and Cases Filed by Fiscal Year (1995–June 30, 2000)



Source: GAO analysis of caseload data provided by DOJ.

In addition to matters opened and cases filed, PI closed 1,008 investigative matters and 166 cases.[6] PI's conviction rate during this period was 94 percent. Table 1 shows the dispositions of the 204 defendants PI prosecuted over this period.

[6]The number of matters and cases closed between fiscal year 1995 and June 30, 2000, include matters and cases that were opened in prior fiscal years.

Table 1: Dispositions of Defendants in 166 Cases, Fiscal Year 1995 Through June 30, 2000

	Fiscal year						
Disposition	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**Total**
Pleaded guilty	27	35	23	35	14	23	**157**
Guilty by jury	5	5	2	1	7	2	**22**
Civil settlement[a]	1	0	2	3	3	0	**9**
Not guilty	2	5	0	1	1	0	**9**
Mistrial	0	0	0	3	0	0	**3**
Dismissal	0	0	0	0	3[b]	1[c]	**4**
Total defendant dispositions[d]	**35**	**45**	**27**	**43**	**28**	**26**	**204**

[a]In civil settlements, the government declines to prosecute but agrees to a civil settlement of the case. For example, in lieu of prosecution, a defendant agrees to pay a civil penalty. Civil settlements were not included in the calculation of conviction rates.

[b]After a second prosecution resulting in mistrial, the charges against these defendants were dismissed. As a result, in calculating the conviction rate, these dismissals were counted the same as not guilty.

[c]This case was dismissed because the defendant died. As a result, this matter was not counted in the calculation of the conviction rate.

[d]Due to multidefendant cases, the number of defendant dispositions may exceed the number of cases closed.

Source: GAO analysis of caseload and other data provided by DOJ.

For fiscal year 1999, the last full year for which data were available, PI expended just over $5.6 million to accomplish its mission.

PI Generally Complied With Case Management Policies, but Some Declination Memorandums Were Untimely

In the federal criminal justice system, a prosecutor has wide latitude in prosecuting apparent violations of federal criminal laws. Given this latitude, in the interest of fair and effective administration of justice, DOJ has established written federal prosecution policies to which PI and other DOJ attorneys are subject. These policies are set forth in the U.S. Attorneys' Manual and in related supplemental guidance.

Also, to ensure consistency in case management practices, CRM and PI have implemented additional internal processes for opening, declining, or prosecuting criminal cases and for documenting changes to the status of a matter or case. For example, PI developed a customized opening sheet to record the receipt of new matters.

For the closed files GAO reviewed, PI was in general compliance with DOJ and PI case management policies and procedures for opening, declining, or prosecuting criminal cases, as well as for documenting its work. Key

documents chronicling the prosecutive process (e.g., opening sheets, declination or prosecutive memorandums, indictments, and plea agreements) were generally maintained, and PI attorneys adhered to policies, such as the requirement that declination decisions be explained and included in the office files.

However, PI attorneys did not close numerous matters that were no longer active in a timely manner. GAO found that DOJ had not established specific time frames for completing declination memorandums. CRM and PI officials said that attorneys are expected to complete declination memorandums in a timely manner but did not define timely.

Federal internal control standards require that significant events be promptly recorded to maintain their relevance and value to management for controlling operations and making decisions. Moreover, in some cases, referring agencies and others could be awaiting PI's prosecutive decision before taking administrative or civil actions in the matter or making employee career decisions. PI officials noted that when agencies inform PI of these situations, PI makes completion of declination memorandums a high priority.

To assess the extent to which PI closed matters in a timely manner, GAO reviewed all 68 matters from fiscal years 1995 through 1997 that were identified in PI's case management system as still open as of June 30, 1999. GAO found that 46 of the 68 matters were inactive but remained open in the case management system for extended periods of time because PI had not completed declination memorandums. CRM and PI officials acknowledged that many of the matters we identified were awaiting completion of declination memorandums, but cited higher priority work as the primary reason why matters remained open. However, how long many of these matters remained inactive could not be determined because CRM and PI officials did not know and could not reasonably determine the date of last activity or investigative action for these matters. For the 10 matters in which the date of last activity could be reasonably determined, the amount of inactivity ranged from about 6 months to almost 3-½ years.

PI Generally Followed Policies for Overseeing Prosecutive Decisions, but Inaccurate Data May Have Hampered Its Efforts

DOJ requires supervisory review at each significant stage of a matter or case. Such reviews are intended to ensure that management agrees with trial attorneys' prosecutive proposals, such as whether to decline or proceed with prosecutions, and that those proposals are fair and consistent with earlier prosecutive decisions. PI managers said that their oversight is also accomplished through frequent daily interaction with

attorneys; formal, periodic workload reviews where all matters and cases are discussed; and reviews of proposed prosecutions by a peer-review committee.

For the closed matters and cases GAO reviewed, PI generally was in compliance with policies and processes for ensuring that all prosecutive decisions were subject to PI management oversight. GAO found documentation in the files indicating that PI management reviewed all proposals to decline prosecution, all cases that went to indictment, and all cases that resulted in civil settlement.

CRM's oversight of PI has been on a limited basis, focusing primarily on sensitive, high-profile, or unique cases, such as those involving high-ranking government officials. PI officials have made it a practice to keep CRM and higher level DOJ officials informed of changes in case status or of decisions made in sensitive and high-profile cases.

Because PI attorneys neglected to complete some declination memorandums in a timely manner, as discussed earlier, inactive matters remained open in CRM's case management information system. PI managers use reports generated by this system for oversight purposes, such as keeping track of trial attorneys' workloads. As a result, CRM and PI managers and others who use PI's case management information system as the basis for their oversight may be relying on misleading information.

Agency Comments and GAO's Evaluation

GAO provided a draft of this report to the Attorney General for comment. DOJ provided written comments, which are reprinted in appendix V. In his written comments, the Assistant Attorney General, CRM agreed with recommendations contained in our draft report calling for a policy to require that all declination memorandums be completed in a timely manner and that PI managers be required to ensure that trial attorneys adhere to the policy. Based on our recommendations, PI issued new procedures to ensure the timely completion of declination memorandums. These procedures generally require (1) a 90-day or earlier target date for completing declination memorandums, (2) deadlines for PI managers to review the memorandums, (3) establishment of a database to track the status of all matters awaiting declination memorandums, and (4) PI managers to oversee the status of each matter to be declined. Because the procedures PI issued address the recommendations contained in our draft report, we are no longer making the recommendations.

Chapter 1: Introduction

The American people expect elected representatives and public officials to perform their duties with honesty, integrity, and in the best interests of the public. The Department of Justice (DOJ), along with state and local prosecutors, is responsible for investigating and prosecuting federal, state, or local officials who criminally abuse the trust placed in them by the public. Examples of public corruption violations include (1) kickbacks to government officials from individuals doing business with the government, (2) illegal campaign contributions to politicians in exchange for favorable treatment on legislation, (3) theft of government property by government employees, and (4) conflicts of interest involving criminal misconduct. Since 1976, when the Public Integrity Section (PI) was created by the Criminal Division (CRM), DOJ has convicted over 20,000 federal, state, and local officials and private citizens for public corruption violations.

PI's Origin, Mission, and Responsibilities

PI was established as a component of DOJ's CRM to consolidate oversight responsibilities for public corruption matters in a single unit and to emphasize the public corruption issue as a DOJ priority. PI's mission is to oversee the federal effort to combat abuses of the public trust; investigate allegations involving public officials at all levels of government; and when warranted, prosecute them.[1] In addition to prosecuting public corruption violations, PI's primary responsibilities are to supervise the investigation and prosecution of election crimes and criminal conflicts of interest and oversee independent counsel/special counsel matters.

PI has primary jurisdiction over allegations of criminal misconduct on the part of federal judges. DOJ requires U.S. Attorneys Offices (USAO) to recuse themselves in these matters because the attorneys are likely to have to appear before the judge and have professional dealings with the court during and after the investigation. PI also is given responsibility for corruption cases when USAOs are recused due to other possible conflicts of interest. In addition, PI is a source of advice and expertise to other prosecutors and investigators on public corruption, election crime, and conflict-of-interest matters. Appendix I provides information on additional PI responsibilities.

[1]The vast majority of federal corruption prosecutions are handled by the U.S. Attorneys' Office in the districts where the offenses occur.

Election Crimes

In 1980, PI created an Election Crimes Branch responsible for the supervision and oversight of DOJ's nationwide response to election crimes. Election crimes include, among others, those that directly relate to voting (e.g., vote fraud or election fraud); campaign financing; and political shakedowns and other patronage issues (e.g., political activities in federal buildings).

DOJ policy requires all USAOs to consult with PI on election crime matters, to ensure that the nationwide response to election crime matters is uniform, impartial, and effective. According to PI, such consultation includes providing advice regarding (1) the application of federal criminal laws to election fraud and campaign financing abuses and (2) the various investigative techniques that have been the most effective for particular types of election offenses. Furthermore, among its other responsibilities, the branch supervises DOJ's use of the federal conspiracy and false statements statutes to address aggravated schemes to subvert campaign finance laws; provides procedural guidance to USAOs for election day oversight; and, upon request, helps USAOs draft election crime charges and other pleadings.

Although most election crimes are prosecuted by the cognizant USAO, on some occasions PI attorneys will prosecute selected election crimes, either by assuming the entire operational responsibility for the case or by handling the case jointly with a USAO. The branch also serves as the formal liaison between DOJ and the Federal Election Commission, which shares enforcement jurisdiction with DOJ over aggravated campaign finance violations.

Conflict-of-Interest Crimes

PI is responsible for handling conflict-of-interest matters that involve possible criminal misconduct. In addition to its prosecutive role and providing technical advice to DOJ officials, PI has several other responsibilities relating to the conflict-of-interest laws, including the preparation of testimony. According to PI, it develops and reviews legislative proposals relating to criminal conflicts of interest and also devotes resources to the review of noncriminal legislative proposals that overlap with the criminal statutes. PI is also responsible for coordinating with other government offices on conflict-of-interest matters to ensure that efforts are complementary and consistent. According to PI, it works in this effort with the Office of Government Ethics.

Independent Counsel and Special Counsel Matters

Until its expiration on June 30, 1999, PI supervised the administration of the Independent Counsel Act.[2] The act required the attorney general to decide whether a criminal allegation involving certain top officials of the executive branch, such as the president, the vice president, or cabinet heads, must be investigated by someone outside of DOJ. These matters were usually very sensitive and complex, and therefore, according to PI, the matters were handled as their highest priority. After the Independent Counsel Act expired, DOJ promulgated regulations in July 1999 governing the appointment of special counsels. PI has comparable responsibilities relative to the appointment of special counsels.

Sources of PI's Matters and Cases

According to the PI chief, the section is a reactive organization, with most of its matters or cases[3] being referred from external sources. The bulk of PI's workload comes from agency inspector generals' offices, investigative agencies, and USAOs. Other sources of referrals include congressional sources, other DOJ components, federal agencies' general counsel's offices, internal affairs units, and the public.

According to the PI chief, approximately 30 percent of its workload is the result of USAO recusals, and 60 percent is the result of referrals from investigative agencies, inspector generals' offices, and internal affairs units. The remainder of its workload is derived from USAO referrals, congressional sources, investigations initiated following allegations made by the media, and allegations received from the public. Between 1995 and 1999, the Federal Retirement Thrift Investment Board, the Central Intelligence Agency (CIA), and the Federal Bureau of Investigation (FBI) were the most frequent sources of matters referred to PI. Appendix II provides additional information on the sources of PI referrals.

[2]28 U.S.C. 591-599.

[3]For purposes of this report, a matter is an allegation that is being or has been investigated by PI. A case is a matter that has been filed in a court. Prosecutions included all cases tried in court, settled by plea agreement, or settled by out-of-court civil settlements.

Objectives, Scope, and Methodology

The Chairman of the Committee on the Judiciary, House of Representatives, as part of the Committee's oversight responsibilities, asked us to conduct a management and operational review of DOJ's CRM, focusing initially on PI and the Campaign Finance Task Force.[4] Regarding PI, the Committee raised concerns on how well PI has managed and carried out its mission to investigate and prosecute public corruption crimes. In response to this request, we agreed to (1) describe PI's organization, staffing, budget, workload, and results; (2) determine whether policies and procedures are in place to govern PI's case management practices and the extent to which its attorneys have complied with those policies and procedures; and (3) determine how PI oversees its case management efforts.

To gain a better understanding of PI's role, mission, and objectives, we interviewed CRM, PI, and USAO officials, and analyzed mission information included in PI's annual reports to Congress on prosecution of public corruption cases. We also reviewed supporting documentation, such as copies of training manuals and symposium materials developed by PI, on its efforts to train U.S. attorneys and investigators about public corruption, conflicts of interest, and election crime matters.

To address our first objective, to describe PI's organization, staffing, budget, workload, and results, we obtained organizational charts for DOJ, CRM, and PI and discussed PI's organization with PI managers. We reviewed DOJ's budget submissions and obtained information on CRM budget allocations to PI. We sent confidential questionnaires to all PI attorneys who were identified by PI as being onboard at the beginning of fiscal year 2000 to obtain information on their background and trial experience as attorneys both prior to joining DOJ and during their employment by DOJ. We also solicited information on the kinds of tasks they performed and the percentage of time spent performing them.[5] We

[4]On May 31, 2000, we issued a briefing report, entitled *Campaign Finance Task Force: Problems and Disagreements Initially Hampered Justice's Investigation, (*GAO/GGD-00-101BR*).*

[5]Because CRM does not require attorneys to track the amount of time they spend carrying out specific activities via a time and attendance system or a management information system, we had to rely on PI attorney estimates from the questionnaires on the percentage of time they spent accomplishing various tasks and activities. Due to the lack of a recordkeeping system that tracks how attorneys spend their time, we could not determine the reliability of attorney responses.

also used the questionnaire, among other things, to solicit information on their workload.

Twenty-one of the 29 PI recipients responded to our survey instrument. Appendix III provides a copy of our survey instrument and the summary results of PI attorney responses. We attempted to verify information obtained from survey responses and interviews with PI officials by examining the existence of supporting documentation in case files and databases.[6]

To determine staffing levels and the level and results of PI's efforts for fiscal year 1995 through June 30, 2000, we (1) reviewed data obtained from DOJ on its staffing levels; (2) analyzed matter and case result information obtained from CRM's Automated Case Tracking System (ACTS);[7] and (3) reviewed case summary data derived from PI's 1995 through 1998 annual reports to Congress on prosecution of public corruption cases.

To address the first part of our second objective, to determine whether policies and procedures are in place to govern PI's case management practices, we examined existing DOJ policies and procedures for opening, declining, or prosecuting criminal cases, including guidance on plea bargaining and civil settlements. We also reviewed manuals and internal DOJ guidance to identify the kinds of case-specific information required to be maintained and to verify how matters and cases were to be documented. We specifically examined written policies outlined in DOJ's U.S. Attorney's Manual and its Criminal Resource Manual, internal policy and guidance memorandums, and publications on prosecution of public corruption cases and election crimes.

To gain a better understanding of DOJ case management practices for prosecuting criminal matters, we interviewed USAO officials in the Central District of California, District of Columbia, Eastern District of Virginia, and District of Nevada responsible for managing public corruption, and the former head of the Southern District of New York's Public Corruption

[6]Access to some documentation—such as grand jury information, the identities of attorneys responsible for matters investigated, and information on sources and targets—was restricted to redacted information or withheld entirely.

[7]ACTS was designed in 1985 to provide CRM with a means by which information regarding investigations, prosecutions, and matters could be stored and retrieved using data processing technology.

Unit. These USAOs were judgmentally selected based on their geographic location and the range in the number of public corruption-related convictions they had from 1995 through 1998.[8] We also interviewed FBI, CIA, and Federal Retirement Thrift Investment Board officials[9] responsible for coordinating public corruption matters with PI to identify strengths and weaknesses in PI's case management practices.

To address the last part of our second objective, to determine the extent to which attorneys have complied with established case management policies and procedures, we reviewed selected records in PI's closed matter and case files. In addition, we reviewed information contained in declination and prosecution chronological files. However, our review did not attempt to determine the appropriateness of PI's prosecutive decisions. For example, we did not assess whether (1) PI had sufficient information on which to base its decisions to decline matters or prosecute cases, (2) the charges filed in cases complied with DOJ policies, or (3) plea bargain agreements were appropriate.

Our file review was restricted to closed matters and cases. Because recordkeeping requirements affected the availability of PI files, we limited the scope of our file review to matters and cases closed in fiscal year 1999 (as of June 30, 1999)—a total of 105 matters and 24 cases.[10] We reviewed a stratified, random sample of 31 of the 105 matters that were initially identified by ACTS data as closed during this period. We (1) selected all matters that were opened and closed in less than 2 months—a total of 11 matters, (2) randomly selected 10 of 22 matters that had been open for more than 2 years, and (3) randomly selected 10 of the remaining 72 matters that were open for more than 2 months but less than 2 years. We

[8]The District of Columbia and Eastern District of Virginia were chosen because their jurisdictions had the highest number of public corruption cases handled by PI based on data available at the time of our review. The Central District of California was chosen because it had handled the most public corruption cases that resulted in convictions between 1995 through 1998--the most recent caseload data available at the time of our review. The District of Nevada was chosen because of the small number of public corruption convictions it had handled during the same time period and because of its proximity to the Central District of California. The Southern District of New York was chosen because the former head of its Public Corruption unit had just begun working in DOJ's Criminal Division in Washington, D.C.

[9]In addition to the USAOs, these three agencies were chosen because they had referred the most public corruption matters to DOJ between fiscal year 1995 and June 30, 1999.

[10]The Criminal Division requires all closed matter and case files to be kept for a period of 1 year before being forwarded to the Federal Records Center.

selected the above matters for these periods to identify whether DOJ and PI's case management policies were followed, whether there were differences in the way matters that were closed quickly were handled versus matters that were open for an extensive period of time, and to verify the case management and recordkeeping practices described by PI officials. If our initial sample had indicated case management weaknesses, we would have reviewed additional PI case files. However, we determined that review of additional files was not necessary.

For the purposes described above and based on the data provided by ACTS, we also reviewed the case files for all 19 prosecutions that were initially identified as closed in ACTS during fiscal year 1999 (as of June 30, 1999). Subsequently, revised ACTS data identified five additional prosecutions that were closed during the period of our sample but not included in the original ACTS data we received. Thus, we sought to review these additional files. PI maintained only two case files of the five closed cases. The other three case files were maintained at a USAO. As a result, we reviewed the two case files PI maintained, thereby increasing the total number of closed prosecution cases we reviewed to 21.

Although, we were provided with full access to certain documents in the files we sought—such as indictments, sentencing results, and daily reports—our access to certain other documents, such as prosecution and declination memorandums, management's review of those documents, and investigative reports was limited. DOJ said that these documents were subject to privacy issues (i.e., the identities of individuals who were investigated but not prosecuted) and/or legal restrictions on access to grand jury information.[11]

To expedite our review, we agreed to the restrictions placed on our access to the documents in the closed files. If we had sought fuller access to all the documents in the case files, CRM indicated that it would have reviewed all the documents and redacted such information that it had determined was subject to privacy concerns or federal rules establishing grand jury restrictions—a time-consuming process. As a result, to expedite our review of the closed files, we agreed to allow a CRM official to be present during our file reviews and to screen the files' contents.

[11]Under the federal rules of criminal procedure, Justice is restricted in providing access to grand jury materials or portions of those documents where such information is discussed. In addition, Justice officials asserted privacy concerns on declined matters where criminal allegations were made against a subject, but where no charges were filed.

We also examined information in CRM's ACTS database to determine whether sufficient information on the type and status of each case was recorded. In addition, we reviewed the status of 68 matters from fiscal years 1995 through 1997 that were identified as still open in ACTS as of June 30, 1999, to assess whether PI closed matters in a timely manner and complied with federal internal control standards.

To address our third objective, to determine how PI's case management efforts are overseen, we reviewed the documentation requirements for supervisory review and management oversight of PI's casework. We also interviewed supervisory and management officials in DOJ's CRM and PI and surveyed PI line attorneys, supervisors, and managers to identify practices in place in PI to ensure timely documentation and completion of cases and to determine the level of supervisory review and oversight of PI's case management efforts.

We sought to determine whether supervision policies and practices were being followed through analyses of data collected from DOJ officials and from our review of the 31 closed PI declination and 21 prosecution case files. We also reviewed these files to assess the extent to which PI supervisors monitored and oversaw casework.

We reviewed CRM's oversight of PI's casework and the requirements in place for keeping the Attorney General or Deputy Attorney General informed of PI cases or issues. For the cases in our sample, we also reviewed copies of reports PI prepared and forwarded to CRM and DOJ senior management to keep them informed of case developments.

To determine how and the extent to which PI and DOJ managers used and relied on the ACTS database to efficiently track the progress of casework and manage caseload, we (1) reviewed ACTS data requirements; (2) determined the type of case information maintained and provided by ACTS; and (3) determined who in PI and CRM used or relied on ACTS data for management and oversight purposes.

Our description of the processes used to manage PI's caseload was based primarily on interviews and information obtained from responses to the confidential questionnaire discussed above.

We conducted our work from February 1999 to November 2000 in accordance with generally accepted government auditing standards. Our work was done primarily in Washington, D.C., at DOJ headquarters. In December 2000, we requested comments on a draft of this report from the

Attorney General. On January 8, 2001, we received written comments from the Assistant Attorney General, CRM. The comments are discussed at the end of chapter 4 and reprinted in appendix V.

Chapter 2: PI Organization, Staffing, Workload, and Results

To accomplish its mission to oversee and prosecute public corruption matters, PI, as of June 30, 2000, was comprised of 30 attorneys, including the section chief, 3 deputy chiefs, the Director of the Election Crimes Branch, and 25 trial attorneys. Since fiscal year 1995, PI's attorney staffing had increased from 27 attorneys. In response to a confidential questionnaire, 21 PI attorneys reported a wide range of experience as attorneys both in DOJ and prior to joining the department as well as a wide range of trial experience. However, according to statistical data provided by PI, attorneys' trial experience after joining the section was limited. The attorneys responding to the questionnaire reported that the largest percentage of their time was spent investigating or prosecuting criminal cases—about 64 percent.

From fiscal year 1995 through June 30, 2000, PI opened 1,013 matters for investigation and closed 1,008 matters. Also during this period, PI prosecuted 163 cases and closed 166 cases involving 204 defendants. For the 204 defendants it prosecuted, PI obtained 179 criminal convictions and 9 civil settlements.[1] Overall PI had a conviction rate of approximately 94 percent. Over 75 percent of the defendants pleaded guilty.

PI's Organization, Staffing, and Expenditures

A section chief heads PI with the assistance of three deputy chiefs. The section chief said that his primary responsibility is to ensure that incoming cases are handled properly. Figure 2 shows the organization and reporting structure for PI.

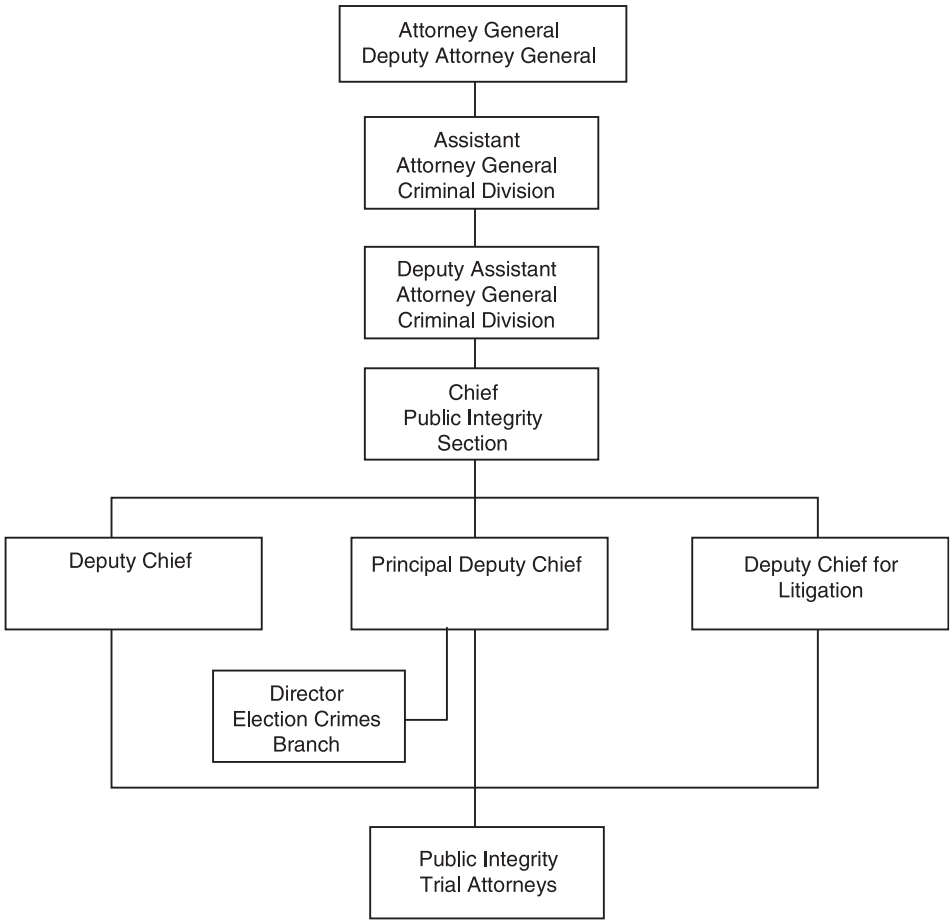
One deputy chief acts as the principal deputy, assuming the section chief's responsibilities when he is absent. Among other responsibilities, the principal deputy chief serves as counsel to the Integrity Committee of the President's Counsel on Integrity and Efficiency; supervises the prosecution of conflict of interest matters; and supervises the Election Crimes Branch, which is headed by a director. The principal deputy chief coordinates the section's international activities and legislative duties and also serves as an instructor at training courses on public corruption matters.

A second deputy chief has primary responsibility for immediate supervision of most of the matters and cases handled by PI. This deputy

[1]In civil settlements, the government negotiates a civil penalty with the defendant to settle the case in lieu of prosecution.

chief for litigation said that he has responsibility for about 80 percent of the cases filed by the section. In addition, he works with USAOs, other DOJ units, and investigative agencies, when contacted, to discuss questions regarding certain statutes, surveillance issues, or other public corruption investigation and/or prosecution issues.

Figure 2: Public Integrity Section Organization Chart and Reporting Structure



Source: GAO generated based on information provided by DOJ.

A third deputy chief formerly had responsibility for all independent counsel matters and now has responsibility for special counsel matters, supervising appellate work and generally coordinating PI's administrative activities, including budgeting, hiring, promotion, and staffing decisions.

This deputy chief also has primary oversight responsibility for managing PI's case tracking system.

PI Attorney Staffing

As shown in table 2, PI's attorney onboard staffing levels have fluctuated between 21 full-time and 3 part-time attorneys and 25 full-time and 3 part-time attorneys. In addition, PI has attorneys detailed to other units. The number of attorneys detailed has fluctuated between one and six attorneys during this period.

Table 2: PI Attorneys Onboard at the Beginning of the Fiscal Year (Fiscal Year 1995 Through 2000)

	Fiscal year					
PI attorney status	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
Full-time	21	24	25	22	22	22
Part-time	3	3	3	3	3	3
Detailed to other Justice units	3	1	2	5	5	6
Total	**27**	**28**	**30**	**30**	**30**	**31**

Source: Data provided by DOJ.

As of June 30, 2000, PI's attorney staffing was comprised of 30 attorneys; 21 full-time attorneys, 3 part-time attorneys, and 6 attorneys detailed to other Justice units.

Table 3 provides the amounts PI expended by fiscal year between fiscal year 1995 and June 30, 2000. The funds expended included salaries for attorneys detailed to other DOJ units.

Table 3: Funds Expended by PI (Fiscal Year 1995 Through June 30, 2000)

Dollars in thousands

	Fiscal year					
	1995	**1996**	**1997**	**1998**	**1999**	**2000**[a]
Funds expended[b]	**$4,784**	**$4,626**	**$5,206**	**$5,715**	**$5,617**	**$4,212**

[a]As of June 30, 2000.

[b]Amounts are rounded.

Source: Data provided by DOJ.

PI Attorneys' Prosecutive Experience and Activities

Using a structured questionnaire, in September 1999, we surveyed the 29 attorneys PI identified as being onboard at that time to determine their prosecutive experience and how they spent their time. We asked the attorneys to provide information on, among other things, their prosecutive experience within and outside PI; the types of activities they performed during fiscal year 1999; and the amount of time they spent performing these activities. Twenty-one of the 29 attorneys responded to our questionnaire. Appendix III provides a copy of our questionnaire with a summary of PI attorneys' responses.

The PI attorneys who responded to our survey reported a wide range of prosecutive experience. As table 4 shows, the 21 attorneys who responded to our survey averaged about 7.3 years experience as attorneys in PI. Eighteen of the 21 attorneys reported having prior prosecutive experience before joining PI: 10 responded that they had criminal prosecution experience as Assistant U.S. Attorneys or as attorneys in other DOJ units; 6 responded that they had experience as a prosecutor before joining DOJ; 2 responded that they had prosecutive experience prior to joining DOJ and in other DOJ units.

Table 4: Years of Experience of PI Attorneys (as of September 30, 1999)

		Years	
Experience	**Number responding**	**Range**	**Average**
Years at DOJ	20	1 to 29	9.45
Years in PI	21	1 to 23	7.33
Years of prior prosecutive experience	18	<1 to 15	2.79[a]

[a]Average based on affirmative responses.

Source: GAO survey of PI attorneys.

Between fiscal year 1995 and June 30, 2000, PI closed 26 cases by trial. As shown in table 5, the amount of trial experience for PI attorneys while working in the section ranged from one to six cases.

Table 5: PI Attorneys' Trial Experience (Fiscal Year 1995 Through June 30, 2000)

Number of trials	Number of PI attorneys
1	11
2	3
3	3
4	2
5	0
6	1

Note: More than one attorney may have worked on a case.

Source: GAO analysis of caseload data provided by DOJ.

According to PI officials, PI attorneys are not required to track the amount of time they spend on specific activities or cases. As a result, we surveyed PI attorneys to obtain such information. As shown in table 6, PI attorneys responding to our questionnaire reported spending about 80 percent of their time working on five types of activities. Of those activities, attorneys reported spending approximately 64 percent of their time investigating or prosecuting criminal cases.

Table 6: Types of Activities Performed by 21 PI Attorney Respondents

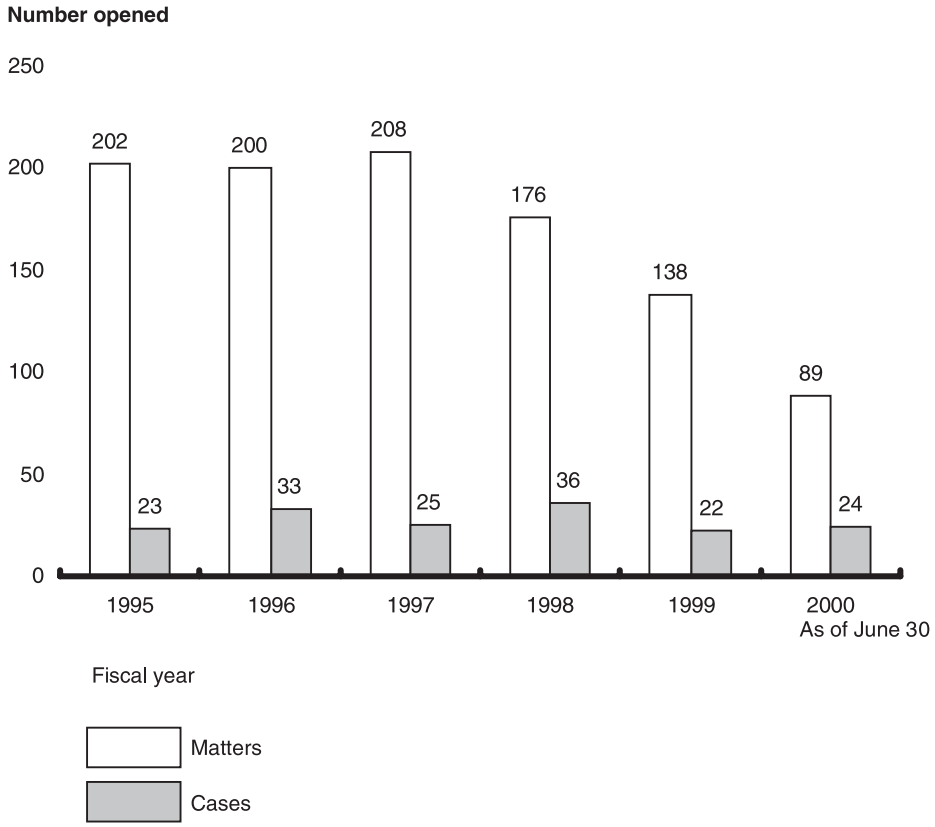
Activity	Number performing the activity	Estimated time spent
Investigating or prosecuting criminal cases	21	64
Responding to citizen and congressional correspondence	21	6
Providing expertise on public corruption, election crime, and/or conflict of interest legal issues or on case investigation or prosecution matters to other trial attorneys	17	4
Consulting with U.S. Attorneys, Inspectors General staff, or law enforcement officers on public corruption matters or cases in which you did not participate in the investigation or prosecution (includes the Southwest Border Initiative)	17	3
Independent Counsel matters	9	3

Source: GAO survey of PI attorneys.

PI Prosecutive Workload and Results

The number of matters and cases opened and closed by PI between fiscal year 1995 and June 30, 2000, varied from year to year. As figure 3 shows, while the number of matters PI opened has declined significantly since 1997, the trend in the number of cases PI has filed with the courts each year has remained relatively constant.

Figure 3: PI Matters Opened and Cases Filed by Fiscal Year, 1995-2000

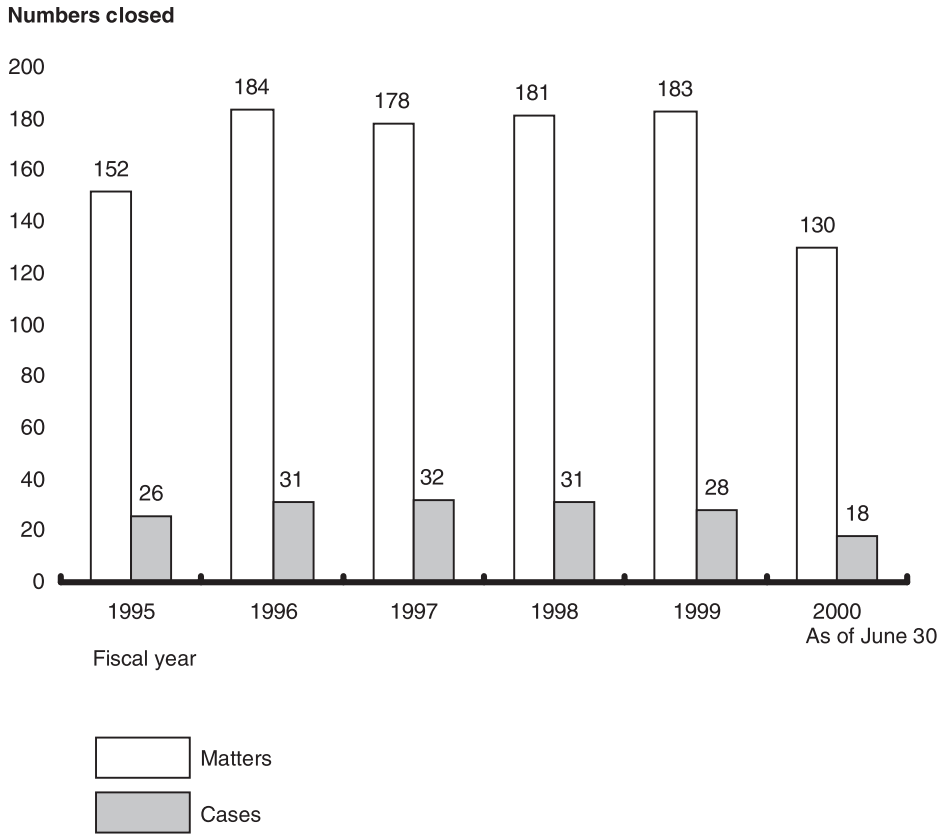


Source: ACTS data provided by DOJ.

PI officials said that the reason matters opened have declined is that PI, through its ongoing training of investigators, has sought to discourage agencies from referring matters to PI that it considers to be insubstantial by making investigators more aware of the legal elements that must be present for prosecuting cases. However, the reduction in referrals does not appear to have affected the number of cases filed.

Although the number of matters opened has declined, as figure 4 shows, the number of matters and cases PI has closed annually has remained relatively constant.

Figure 4: PI Matters and Cases Closed by Fiscal Year, 1995-2000



Source: ACTS data provided by DOJ.

As table 7 shows, for the period from fiscal year 1995 through June 30, 2000, PI opened 1,013 matters for investigation and 163 cases for prosecution. Also during this period, PI completed a total of 166 prosecutions and declined prosecution of 1,008 matters. Of the 166 cases PI prosecuted, 22 of the 204 defendants (11 percent) were convicted by trial; 157 (77 percent) pleaded guilty; 9 (4 percent) agreed to civil settlements; 9 (4 percent) were found not guilty; 3 (3 percent) received no judgment due to a mistrial; and 4 cases (<1 percent) were dismissed.

Table 7: Public Integrity Section Caseload and Results for Fiscal Year 1995 Through June 30, 2000

	Fiscal year						
Caseload data	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**Total**
Matters opened	202	200	208	176	138	89	**1,013**
Matters closed[a]	152	184	178	181	183	130	**1,008**
Cases filed in court	23	33	25	36	22	24	**163**
Cases closed[a]	26	31	32	31	28	18	**166**
Disposition of defendants in 166 cases							
Pleaded guilty	27	35	23	35	14	23	**157**
Guilty by jury	5	5	2	1	7	2	**22**
Civil settlement	1	0	2	3	3	0	**9**
Not guilty	2	5	0	1	1	0	**9**
Mistrial	0	0	0	3	0	0	**3**
Dismissal	0	0	0	0	3[b]	1[c]	**4**
Total defendant dispositions[d]	**35**	**45**	**27**	**43**	**28**	**26**	**204**
Results of 166 prosecutive cases							
Number of defendants convicted	32	40	25	36	21	25	**179**
Conviction rate[e]	94%	89%	100%	97%	84%	100%	**94%**

[a]Matters and cases closed includes ones that had been opened in prior fiscal years but closed during the period of our review.

[b]After a second prosecution resulting in mistrial, the charges against these defendants were dismissed. As a result, in calculating the conviction rate, these dismissals were counted the same as not guilty.

[c]This case was dismissed because the defendant died.

[d]Defendant dispositions may not equal the number of cases closed due to some cases having multiple defendants and the date that PI uses to administratively close cases is the sentencing date.

[e]In computing conviction rates, we did not include cases resulting in civil settlements, mistrials that were retried, or dismissals that were not the government's fault (e.g. death of the defendant).

Source: ACTS and other data provided by DOJ.

Chapter 3: PI Generally Followed Case Management Policies, but Some Declination Memorandums Were Untimely

DOJ has written policies that outline its and U.S. Attorneys' authority to decline prosecution, prosecute, and to take certain actions relating to the prosecution of criminal cases. In addition, PI has established procedures to implement DOJ's policies. For the closed prosecutive matters and cases we reviewed, PI attorneys were in compliance with policies and procedures for opening, declining, or prosecuting criminal cases. However, despite a requirement that the prosecutive files reflect the action taken and the reasons for closing criminal matters without prosecution and PI's expectation that they be documented within a reasonable period of time, numerous inactive matters had remained open for extended periods of time because PI attorneys neglected to document, in a timely manner, their decisions to decline prosecution.

CRM and PI officials acknowledged that many of the matters we identified were inactive and awaiting declination memorandums so they could be closed. However, how long many of these matters remained inactive could not be determined because CRM and PI officials did not know and could not reasonably determine the date of last activity or investigative action for these matters. For the matters in which the date of last activity could be reasonably determined, the amount of inactivity ranged from about 6 months to almost 3-½ years.

The failure to timely complete declination memorandums has an adverse impact on the accuracy and reliability of caseload and case status data in ACTS. In addition, the inconsistent compliance could delay referring agencies' or others' ability to recommend, take, or cease administrative, civil, or other criminal action against an employee or candidate over which suspicion may exist, which in turn could adversely impact personnel decisions or political appointments.

Written Case Management Policies and Procedures Exist

In the federal criminal justice system, a prosecutor has wide latitude in determining when, whom, how, and whether to prosecute apparent violations of federal criminal laws. Given this latitude and discretion, in the interest of fair and effective administration of justice, DOJ has established written policies/principles for federal prosecutions. PI's written policies and directives concerning criminal investigations of alleged public corruption, are, for the most part, set out in the U.S. Attorneys' Manual, which is supplemented by a Criminal Resource Manual. These policies set forth the authority of DOJ and U.S. Attorneys to pursue or decline prosecutions and to take certain actions relating to the prosecution of criminal cases. The guidelines most applicable to PI's work can be found in Section 9-27 of the U.S. Attorneys' Manual, Principles of

Federal Prosecution.[1] These principles, among other things, outline considerations to be weighed and desirable practices to be followed in prosecuting federal cases. In addition, legal opinions of (1) DOJ's Office of Legal Counsel and (2) variances in judicial districts' policies and guidelines may also affect PI's prosecutorial decisions.

The supplemental Criminal Resource Manual, among other things, provides attorneys with more specific guidance and examples for prosecuting public corruption violations. The guidance and examples provided are usually based on prior experience or previously prosecuted cases.

With the assistance of CRM and PI, DOJ has produced a manual on prosecution of public corruption cases that provides guidance on, among other things, identifying and prosecuting patterns of corruption, making and preparing charging decisions, and taking a case to trial.[2] Also, PI developed a manual providing guidance on prosecuting election crime offenses.[3] The manual sets out many of the applicable policies in the areas of election fraud, patronage abuses, and campaign financing offenses. Also, CRM and PI have implemented additional internal practices to ensure consistency in case management practices.

Policies and Practices for Opening, Declining, or Prosecuting Criminal Cases

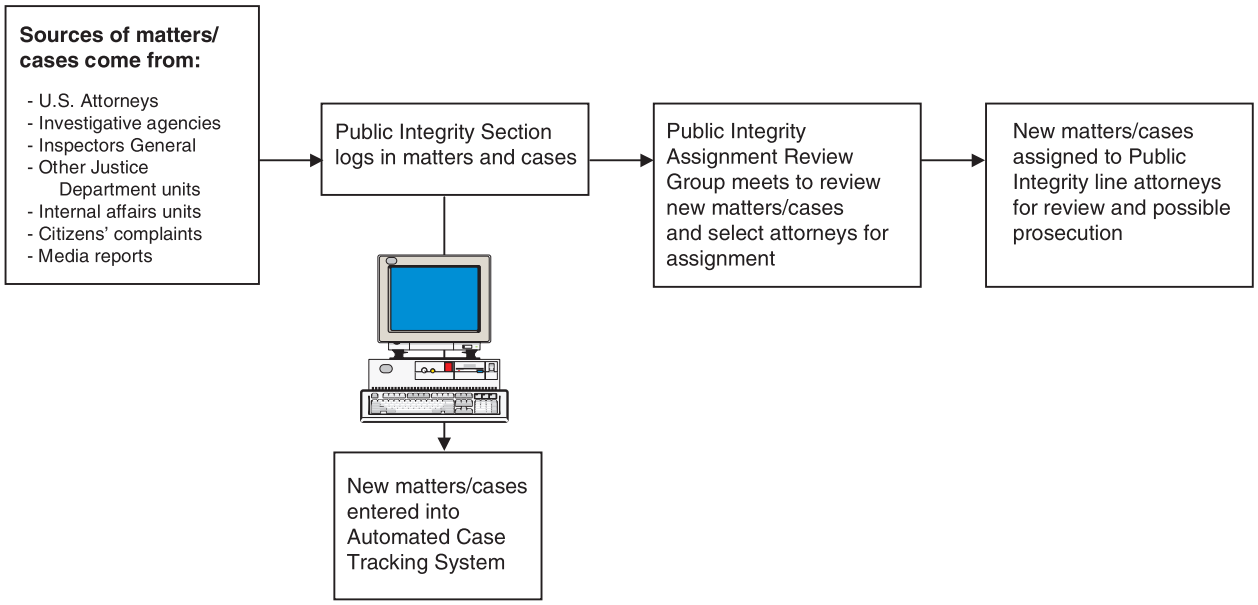
As previously discussed in chapter 1, matters or cases come to PI from a variety of sources. As shown in figure 5, upon receiving a complaint or referral of an alleged criminal violation, the matter or case is to be recorded on an opening sheet and logged into ACTS, and subsequently assigned by an assignment review group to an attorney for prosecutive consideration.

[1]Section 9-27.000, Principles of Federal Prosecution, U.S. Attorneys' Manual, DOJ, September 1997.

[2]*Prosecution of Public Corruption Cases, Criminal Division,* U.S. DOJ, February 1988.

[3]*Federal Prosecution of Election Offenses, Sixth Edition,* DOJ's Public Integrity Section, January 1995.

Figure 5: PI's Process for Assigning Matters and Cases to Line Attorneys



Source: GAO generated based on discussions with PI officials and review of closed matters and cases and DOJ policy documents.

According to the U.S. Attorneys' Manual, DOJ attorneys are authorized to dismiss criminal complaints or decline prosecutions in any case referred directly to them unless a statute provides otherwise.[4] In addition, the policy requires PI to obtain CRM approval before dismissing, in whole or in part, an indictment, information filing, or criminal complaint if prior approval was required before implementing any of these actions. However, whenever a case is closed without prosecution or a decision is made to prosecute a case, the U.S. Attorneys' Manual requires that attorneys' files reflect the action taken and the reason for it. In compliance with this

[4]In testimony before the Senate Committee on Governmental Affairs in March 1999, the Attorney General said that in prosecuting criminal cases, federal prosecutors "have limited time, limited budgets, and a great many actual and potential targets." Also, she said that prosecutors "have to make judgments about the most important allegations, and allocate [their] limited resources accordingly" and have to use "prosecutorial discretion" in deciding how to handle a case. She also said that exercising "discretion is not a formulaic science rather much like common sense, judgment, and wisdom, it comes with experience, and it comes from handling a variety of cases so that you learn to treat similar cases similarly. Deciding to prosecute isn't a simple matter of deciding that the law has been broken. It also entails a much more complicated judgment about competing priorities, prosecutorial policies, and the public interest."

policy, PI's practice, while unwritten, has been to require its attorneys to prepare formal declination or prosecution memorandums to document, respectively, their reasons for declining criminal matters or their decision to prosecute them. As discussed in chapter 4, declination and prosecution memorandums are subject to supervisory review.

Opening/Intake Sheets

PI has developed a customized opening/intake sheet to record the receipt of all matters received and to enter information into ACTS. Upon receiving an allegation, among other things, the name of the suspect or target, the alleged criminal violation, and the referring agency or source of the allegation are to be recorded on an opening sheet. In addition, a case docket sheet is to be completed for all investigations and prosecutions for which PI accepts primary or joint prosecutive responsibility. The case docket sheet is to be used to record, among other things, the date a matter was received and the prosecutive decision, which could include decisions to prosecute, decline, or refer the matter to another Justice unit for prosecution or to other agencies for administrative action.

Assignment Review Group

PI's assignment review group is made up of the section chief and the three deputy chiefs. The group meets once, sometimes twice, a week to review incoming matters and to assign matters or cases to line attorneys. According to the Section Chief, matters/cases are assigned to the best available person to handle the case at the time the case is received. In addition, the Principal Deputy Chief said that attorneys who have developed expertise on specific types of matters would be given greater consideration when cases involving that type of matter were assigned. In some instances, matters may be assigned without having an assignment meeting. For example, incoming matters that relate to an ongoing matter or case or group of related cases are usually assigned to the attorney working the initial matter or case. The Section Chief added that the more complex cases are usually given to experienced staff.

Declination Memorandums

According to PI's Section Chief, there are no blanket criteria for which cases PI will accept for prosecution. He said that each prosecution decision is made on a case-by-case basis. According to the U.S. Attorneys' Manual, whenever an attorney declines to commence or recommend federal prosecution, the attorney is required to document his or her decision and the reasons for it and include this documentation in the office files. According to PI's Principal Deputy Chief and the Deputy Chief for Litigation, declination memorandums prepared by PI line attorneys should include an explanation of the facts in the matter; analyses of those facts, including a legal analysis of the applicable statutes; and the attorney's rationale for declining prosecution. The Principal Deputy Chief

explained that a detailed declination memorandum is also useful because other evidence could come to light, which would justify reopening a case; and the initial information could prove useful in determining probable cause or indicating a pattern of misconduct.

Also, according to PI officials, PI has no preset thresholds below which matters are to be declined. According to the Deputy Chief for Litigation, PI attorneys are expected to form their own judgments on each matter. Their opinions are to be based on facts and evidence and not swayed by (1) pressures from an investigating agency or others who may want the case prosecuted, (2) an investigative agency's desire to get a quick declination decision so it can address matters it considers more significant, or (3) the authority of the referring agency to impose administrative sanctions.

The U.S. Attorneys' Manual does not address a time frame for documenting decisions to decline prosecution. However, federal internal control standards,[5] among other things, note that all transactions and significant events should be clearly documented and promptly recorded to maintain their relevance and value to management in controlling operations and making decisions. In addition, the Deputy Chief for Litigation noted it was important to prepare declination memorandums in a timely fashion to ensure that the attorney is better able to recall all relevant and important information in a case. He also said that waiting too long to prepare the memorandum could require more time for the attorney to refresh his or her memory on the issues and facts of the matter than if the memorandum was prepared sooner. Moreover, the Deputy Chief with responsibility for special counsel and appellate matters said that should an attorney leave PI, it would be very difficult for someone not familiar with the matter to prepare the memorandum.

Another requirement of the U.S. Attorneys' Manual is that the declination decision be communicated to the investigating agency involved and to any other interested agency. This would include communicating declination decisions to referring agencies. Inordinate delays in documenting declination decisions may adversely affect personnel decisions and political appointments associated with the individual or employee under investigation. This is because referring agencies or others may be awaiting a PI's prosecutive decision before deciding to recommend, take, or cease

[5] *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1, Nov. 1999).

administrative, civil, or other criminal action against an employee or make a decision on the appointment of a candidate. The Deputy Chief with responsibility for special counsel and appellate matters and a CRM official said that if an agency informs PI that it is awaiting a decision to take personnel or administrative action, PI would make the matter a priority and ensure that the declination memorandum was prepared in a timely manner.

Prosecution Memorandums

According to the Deputy Chief for Litigation, attorneys are encouraged to pursue prosecutions, whenever possible. To ensure consistency and accountability, CRM policy requires that decisions to charge individuals with specific criminal violations be made at an appropriate level of responsibility and that they be documented with an appropriate record of the factors applied. According to PI management, when PI cases are proposed for indictment before a grand jury, trial attorneys are to prepare a formal prosecution memorandum with draft indictments for submission to an Indictment Review Committee for review (see discussion in ch. 4). Generally, the prosecution memorandum should discuss the facts of the case, identify charges, set forth the evidence obtained, address the perceived strengths and weaknesses of the case, and include a prosecutive conclusion.

Once it has been determined that sufficient evidence exists to warrant a decision to prosecute and that substantial federal interest would be served, the line attorney is to determine what charges to file or recommend, according to the U.S. Attorneys' Manual. DOJ's policy is to charge the most serious, readily provable offense consistent with the defendant's conduct that is likely to result in a conviction. According to PI officials, it is expected that violators will be charged with the most substantial provable offense.[6]

With PI management approval, trial attorneys are permitted to reach agreements with defendants who choose to plead guilty prior to PI's presentation of a criminal matter to a grand jury for indictment. In such instances, the defendant may prefer to allow prosecution by an information filing and waive his or her right to a grand jury indictment. As a result, there is no need to go forward with the presentation of a

[6]We did not, however, attempt to assess whether the charges being brought by PI attorneys were the most serious, readily provable offense because we did not have complete access to the facts and evidence in the case.

prosecution before a grand jury for indictment. Like an indictment, an information filing is a written statement filed with the court that sets forth the essential facts constituting the offense charged in sufficient detail to apprise the defendant of the nature of the charges against him. According to PI officials and consistent with guidance in the U.S. Attorneys' Manual, it is not PI's practice to file charges simply to exert leverage to induce a plea or to abandon charges in an effort to arrive at a plea agreement that fails to reflect the seriousness of the defendant's conduct.

Policies Governing Plea Agreements

To ensure consistency and accountability, CRM's policy requires plea agreement decisions to be made at an appropriate level of responsibility and documented with an appropriate record of the factors applied. Specifically, the U.S. Attorneys' Manual requires PI and other DOJ prosecutive components to have a formal system for approving negotiated pleas in place and that negotiated plea agreements be in writing and filed with the court.[7]

It is PI's policy and practice to have the section chief review and approve all plea agreements. This approval process and the results of our case reviews are discussed in chapter 4.

Policies on Documenting Case Information

CRM administrative policy requires that each case or litigation matter that PI receives or initiates have a separate official case file and, depending on its status, a unique case number assigned to it. Accordingly, the official litigation case file should contain adequate and proper documentation to protect the legal and financial rights of the government and of persons directly affected by the government's activities.[8]

The administrative policy states that a case file should include all substantive records necessary to understand the nature, course, and outcome of a case and legal and administrative handling procedures. Typically, in addition to documenting the prosecutive decision, CRM's administrative policy guidance notes that a file might include investigative

[7]In addition, the U.S. Attorneys' manual also requires that before entering into a plea agreement, consultation with investigative agencies and victims is required; prior written approval is required for multidistrict (global) plea agreements; and approval is required from the Department of Health and Human Services (HHS) on any plea agreement involving HHS programs that would attempt to include a commitment to forgo or restrict administrative remedies of HHS.

[8]44 U.S.C. 3101.

or litigation reports, pleadings, correspondence, relevant discovery documents, exhibits, transcripts, orders, decisions, findings, stipulations, and forfeiture and/or related collection documents.

In addition, effective October 14, 1993,[9] PI was required to enter into ACTS information for all matters or cases over which it had sole, shared, or monitored litigation responsibility. This was done to enable all levels of management in the Criminal Division to be able to respond quickly to case or investigation-related information requests, including providing accurate departmentwide caseload statistics to the Attorney General, Congress, audit, and oversight agencies. This requirement included recording information on, among other things, the date an investigation is opened, the dates and description of changes in case status and major events, type of crime alleged, name of attorneys assigned, and the date the investigation relating to a matter or case is closed.[10]

Whenever an investigation of a matter leads to an indictment, PI's records are to be updated promptly to change the status of the record from a matter being investigated to a case. Such information is supposed to be entered in ACTS as soon as it becomes available or as soon as a departmental case number is obtained. It is the responsibility of the case attorney to submit information updating the status of a matter or case in ACTS.

Case Management Policies Generally Followed, but Some Declination Memorandums Were Untimely

Our review of closed PI case files showed that for the files we reviewed, key documents outlining the prosecutive process (i.e., opening sheets, declination or prosecutive memorandums, indictments, plea agreements) were maintained and case management policies followed. However, despite a requirement that the case file reflect the decision or action taken and the reason for such action whenever a matter is closed without prosecution, declination decisions were not always documented in a timely manner. As a result, numerous matters that were no longer active remained open in ACTS because declination memorandums had not been completed. For those matters in which the date of last activity could be reasonably determined, the amount of inactivity ranged from about 6 months to almost 3-½ years.

[9]Criminal Division Administrative Policy Memorandum No. 31, DOJ.

[10]PI is not required to record activities (e.g., legal advice, consultations, preparation of attorney manuals, training, etc.) in ACTS that are not clearly case related.

Closed Files Show General Compliance With Case Management Policies

To assess the extent to which PI attorneys followed case management policies, including requirements to document prosecutive decisions in a case, we reviewed selected documents in case files for all 21 prosecutions that were closed and maintained by PI during the period October 1, 1998, through June 30, 1999.[11] We examined PI's records and case files to determine if they contained, among other things, an opening sheet, evidence of an investigation, a prosecution memorandum, and an indictment or information filing. As shown in table 8, of the 21 selected closed cases, 7 involved indictments, 11 were information filings, and 3 were out-of-court settlements. We found evidence of prosecution memorandums and indictments prepared by line attorneys in all seven of the indictment cases that went to trial during this period.

Table 8: Results of the 21 Fiscal Year 1999 Closed Prosecution Case Files We Reviewed

Closed PI prosecutive case files	Key documents found in case file	
Trial cases reviewed—6	**Yes**	**No**
Opening sheet	5	1
Grand jury information	6	0
Investigative reports	6	0
Prosecution memorandum	6	0
Indictment	6	0
Daily or urgent reports	6	0
Plea agreement/indictment cases reviewed--1	**Yes**	**No**
Opening sheet	1	0
Investigative reports	1	0
Prosecution memorandum	1	0
Indictment	1	0
Plea agreement	1	0
Daily or urgent reports	1	0
Plea agreement/information cases reviewed--11	**Yes**	**No**
Opening sheet	10	1
Investigative reports	10	1[a]
Information filing	11	0

Continued on next page

[11]We did not review the case files for three closed cases for which PI and a USAO shared responsibility; these files were maintained by the USAO. In addition, we did not attempt to assess whether PI had complied with its policy to charge the most seriously provable offense nor did we attempt to determine the appropriateness of PI's decisions to prosecute, not prosecute, or take certain other prosecutive action.

Closed PI prosecutive case files	Key documents found in case file	
	Yes	No
Plea agreement	11	0
Daily or urgent report	11	0
Out of court civil settlements reviewed--3	**Yes**	**No**
Opening sheet	3	0
Investigative reports	3	0
Memorandum declining prosecution	3	0
Settlement document	3	0

[a]The intelligence agency that referred this case to PI preferred to retain possession of the investigative report in its files.

Source: GAO review of PI case files.

Appendix IV provides additional summary information on the 21 fiscal year 1999 prosecutions that we reviewed.

PI Attorneys Did Not Document Some Declination Decisions in a Timely Manner

To assess the extent to which PI was in compliance with requirements to document declination decisions, we took a stratified random sample and reviewed the files for 31 of the 105 matters that were initially identified by ACTS data as closed between October 1, 1998, and June 30, 1999. We also reviewed the status of all 68 matters from fiscal years 1995 to 1997 that were identified as still open in ACTS, as of June 30, 1999, to assess whether these matters were still active and, if not, whether PI attorneys had documented their decisions to decline these matters in a timely manner.

Four of the 31 closed matters we selected for review were Independent Counsel Act referrals, and one other was referred from PI to another DOJ unit for its review. Of the remaining 26 closed matters, 15 indicated that further investigation was made before PI decided to decline the matters. The other 11 matters were declined without investigation based on PI's analysis of information submitted by the referring agency and the applicable statutes. We found declination memorandums in the files for all 26 matters.

Moreover, for each matter closed, PI attorneys complied with requirements for documenting their explanation for the declination. According to a CRM official assisting in our file review, the primary reason that over two thirds (18 of 26) of the matters were declined was due to insufficient evidence or lack of evidence that a crime was committed. Reasons for the remaining declinations included lack of substantial federal

interest (e.g., "de minimis" violations) or availability of administrative remedy.

Our review of the 68 matters from fiscal years 1995 to 1997 that were identified as still open in ACTS, as of June 30, 1999, showed that 8 of the 68 matters were still active. The remaining 60 matters were inactive and remained open in ACTS for extended periods of time because PI had (1) not completed declination memorandums—46 matters; (2) erroneously categorized activities, such as administrative projects and consultations—6 matters; and (3) not updated the status of matters that had become cases—8 matters.

For 36 of the 46 matters, CRM and PI officials agreed that many of them were inactive, but they did not know, nor could they reasonably determine, the date that PI or the investigative agencies last actively worked the matter. As a result, we were unable to determine with confidence a precise time frame or reasonably estimate the lapse between last activity and subsequent closing of these matters.

For several of these matters, we found that the referring agencies had resolved the matters administratively months, sometimes years, before PI completed its declination memorandums. We also found instances where the declination memorandums had to be reassigned to other line attorneys as the attorneys responsible for those matters left PI. For one matter, a PI line attorney said that a declination memorandum she had prepared years earlier had somehow been lost. While CRM officials pointed out that some matters may have remained inactive even after referring agencies had administratively closed them, they did not provide us documentation that such was the case for these matters.

DOJ officials acknowledged that some matters, while still technically open, were not active matters at the time of our review but were awaiting completion of a declination memorandum to be closed in ACTS.

For the remaining 10 of the 46 matters, DOJ was able to provide information on the date of last action, as evidenced by documentation, indicating the month and year the investigative agencies had closed the matters or when a PI attorney had last worked on the matter. As table 9 shows, the lapse between the time the investigative agency had closed their investigation and when PI approved the declination memorandum to officially close these inactive matters in ACTS ranged from 190 days to 1,266 days—averaging over 2 years.

Table 9: Number of Days 10 Inactive Matters Remained Open in ACTS Because PI Attorneys Did Not Timely Document Declination Decisions

Matter no.	Date matter opened	Date of last action[a]	Date declination memorandum approved	Days between last action and declination approval
1	02/17/1995	01/22/97	07/11/2000	1,266
2	06/28/1995	03/31/97	07/13/2000	1,200
3	02/07/1996	12/31/96	03/10/2000	1,165
4	04/24/1996	02/28/99	09/29/1999	213
5	10/18/1996	05/24/99	11/30/1999	190
6	11/12/1996	08/20/98	08/20/2000	731
7	01/29/1997	09/30/99	07/25/2000	299
8	02/11/1997	08/31/98	07/11/2000	680
9	02/24/1997	02/24/97	07/11/2000	1,233
10	08/25/1997	11/30/99	07/11/2000	224

[a]For matters in which DOJ provided the month and year as date of last action, we used the last day of the month in computing the days between last action and declination approval.

Source: Analysis of ACTS data, information derived from declination memorandums, and discussions with DOJ officials.

DOJ officials said that most of the 60 matters that we identified as remaining open in ACTS for long periods of time were because the preparation of declination memorandums was considered to be a lower priority responsibility.

CRM and PI officials said that, although attorneys are expected to complete declination memorandums in a reasonable period of time, completing declination memorandums are a lower priority than working a "live" case. PI's chief acknowledged that, despite the urging of PI managers, there might be over 100 matters awaiting completion of a declination memorandum at any one time. The CRM Deputy Assistant Attorney General (DAAG) overseeing PI confirmed the expectation that declination memorandums be completed in a reasonable time period. However, he pointed out that if the matter was not a sensitive one, he wouldn't want other cases to lag while a declination was being written.

The Deputy Chief with responsibility for special counsel and appellate matters said that there are often no real consequences to the subject being investigated or the referring agency if a few weeks or a month goes by and an attorney has not completed a declination. However, she said that there are times when it is imperative to complete a declination memorandum, such as when an organization needs a decision so it can decide whether to apply administrative remedies against an employee; when the employee is

awaiting an appointment to a new position; or when it is in congressional or the public interest to quickly resolve the case. She added that when PI is aware of such situations, it makes completion of the declination memorandum a high priority.

DOJ Subsequently Closed Some Inactive Matters

Following our initial inquiry of the 68 matters, PI took action to close most of the 60 matters that had been identified as no longer active, not closed, or not updated in a timely manner in ACTS. DOJ said that part of its motivation for documenting decisions to close some of the matters was our inquiries but also that several attorneys were planning to leave and PI wanted them to close out their matters before they left. DOJ officials provided evidence showing that PI attorneys had completed declination memorandums or closing memorandums for 44 of the 46 matters that had been previously identified as inactive and not closed in a timely manner due to delays in completion of a declination memorandum.[12] Also, DOJ officials said that action had been taken to correct administrative errors or to update the status of 3 of the 14 other matters. In addition, subsequent to its decision to decline prosecution, PI sent closing letters for 28 of the matters to either the referring or investigative agency.

Conclusions

PI had policies and procedures in place to govern its authority to pursue or decline prosecutions and to take certain actions, such as plea agreements, that relate to the prosecution of criminal cases. For the closed matters and cases we reviewed, the closed files met DOJ's documentation requirements. However, despite DOJ's policy requiring that declination decisions be documented and PI's expectations that these decisions be documented within a reasonable time period, PI attorneys neglected to document numerous decisions to decline prosecution in a timely manner.

While our examination of this problem focused on matters opened between fiscal years 1995 and 1997, it is logical to assume that other matters were also inactive and awaiting declination that had been opened before fiscal year 1995 or after fiscal year 1997. We did not try to determine the extent of the problem outside the time frame of our review.

[12]Despite its policy that a matter can only be closed in ACTS after a declination memorandum has been prepared, several matters were subsequently closed in ACTS based on closing memorandums, and one matter was closed in ACTS without a memorandum being prepared. In addition, the remaining matter, although inactive, remained open in ACTS and was awaiting completion of a declination memorandum.

Federal internal control standards note that significant events should be promptly recorded to maintain their relevance to management in controlling operations and for decisionmaking. By extension, to meet the intent of the standard, the declination memorandums that are needed to document PI's prosecutive decisions should be completed promptly. Without establishing and enforcing a time period by which PI attorneys are to document their declination decisions, attorneys have no incentive to expeditiously complete declination memorandums and will not have a consistent understanding of what is a reasonable time period.

While we understand other priorities, at times, may dictate the need to postpone documenting declinations, inordinate delays in documenting declination decisions could affect referring agencies that are awaiting prosecutive decisions before taking administrative actions or making career decisions relative to an employee. In addition, as discussed in chapter 4, inordinate delays affect the accuracy and completeness of ACTS caseload and case status reporting and thus diminish its usefulness for management oversight purposes.

Chapter 4: PI Generally Followed Policies for Overseeing Prosecutive Decisions, but Inaccurate Data May Hamper Oversight

For the closed matters and cases we reviewed, PI managers generally followed policies and processes for ensuring that all prosecutive decisions were subject to PI management oversight. To keep managers in CRM and the attorney general's office informed of progress in matters and cases, PI reports significant prosecutive events such as indictments and convictions. Moreover, CRM keeps the attorney general informed of significant cases and issues through weekly reports and meetings. DOJ and CRM management oversee PI matters and cases considered high profile, sensitive, or unique or those of particular interest.

However, due to delays in completing some declination memorandums, PI caseload information provided by ACTS and used by PI managers to oversee attorney workload may be misleading. This could affect oversight efforts.

Supervisory Review Occurs at Many Stages and Levels Within PI

After the initial assignment of a matter to an attorney, oversight can occur in several different ways and at specific decision points in the development of a matter or case. At each significant stage of a matter or case, PI requires supervisory review before providing section approval to move to the next stage or to conclude an investigation. Such reviews are intended to ensure that management agrees with trial attorneys' prosecutive proposals and that those proposals are fair and consistent with prior prosecutive decisions.

For the closed matters and cases we selected and reviewed, the files contained evidence that PI management reviewed all proposals to decline prosecutions, all independent counsel referral recommendations, all proposed indictments, and all civil settlement cases.

According to PI's Section Chief and deputy chiefs, oversight of matters and cases is an ongoing and active process. For some attorneys, oversight begins from the moment a matter is assigned. For example, the Deputy Chief for Litigation said that, while he does not want to influence an attorney's judgment on a matter's merits, he provides attorneys direction by explaining his initial views of the matter, including its strengths and weaknesses. In addition, he establishes the level of aggressiveness he expects an attorney to take in addressing the matter. Furthermore, less experienced attorneys are often paired with more experienced attorneys to provide the former with direction and on-the-job training.

Informal Daily Interaction and Formal Supervisory Reviews Occur

After a matter has been assigned to a PI line attorney, both informal and formal management oversight of the matter occurs. According to section officials, informal interaction between PI supervisors, managers, and line attorneys occurs on a daily basis. According to these officials, contacts between managers and trial attorneys occur frequently and with relative ease because all of the section's offices are located within the same area and the number of trial attorneys in the section is small. The Deputy Chief for Litigation said that he gets informal updates on the status of matters and cases through daily interaction with attorneys. The Principal Deputy Chief noted that when significant events occur on a matter or case, the trial attorneys bring them to the deputies' attention.

In addition to daily informal interaction, the Principal Deputy Chief and the Deputy Chief for Litigation said that they hold periodic formal reviews, approximately quarterly, on those matters and cases for which they are responsible. According to the Principal Deputy Chief, periodic formal reviews are held with each attorney to discuss progress on each matter and case. For those matters for which he is responsible, the deputy chief for litigation informally documents those reviews and any agreements that are reached. This is done to facilitate follow-up on the trial attorneys' implementation of agreed-upon courses of action.

Review of Declination, Prosecution, and Plea Bargain Proposals

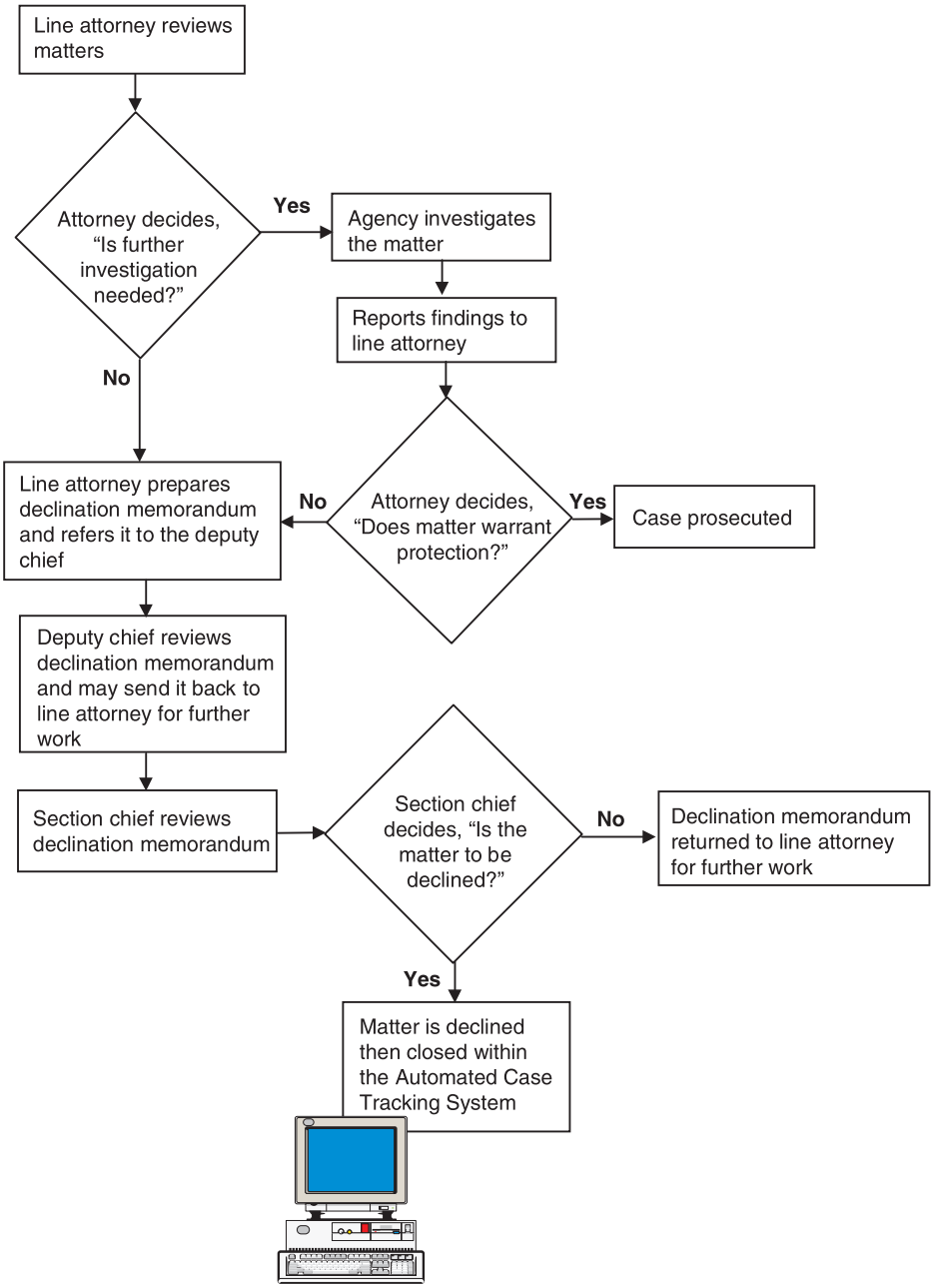
In addition to informal and formal reviews, PI managers are to oversee each significant step in the prosecutive process, including reviews of declination memorandums, prosecution memorandums and indictments, and plea-bargain agreements.

Declination Review Policy and Procedures

According to PI managers, declination memorandums are to be submitted to their cognizant deputy chief for review and concurrence. Upon review, the deputy chief could concur with the declination, or the deputy could conclude that additional investigative efforts were needed, and/or that certain legal standards had not been adequately addressed, and/or that the argument for declination needed to be better justified. When the deputy chief concurs with the recommendation, the deputy is to forward the memorandum to the chief for his review. If the chief agrees with the decision, he or she is to indicate approval by signing the memorandum.

Figure 6 summarizes the oversight processes PI generally follows for two declination scenarios—one where the declination is based entirely on the information initially provided by the referring investigative agency, and thus not investigated further, and one where further investigation was needed to enable PI to fully assess the allegations.

Figure 6: How PI Oversees Decisions to Decline Prosecutions



Source: Information provided by DOJ officials.

File Reviews Showed That PI Managers Reviewed Declination Decisions

To verify officials' statements about management oversight of declination decisions, we selected and reviewed the files of 31 closed matters. Four of the 31 closed matters we selected were independent counsel referrals (discussed below) and 1 was a PI referral to another DOJ unit for review.

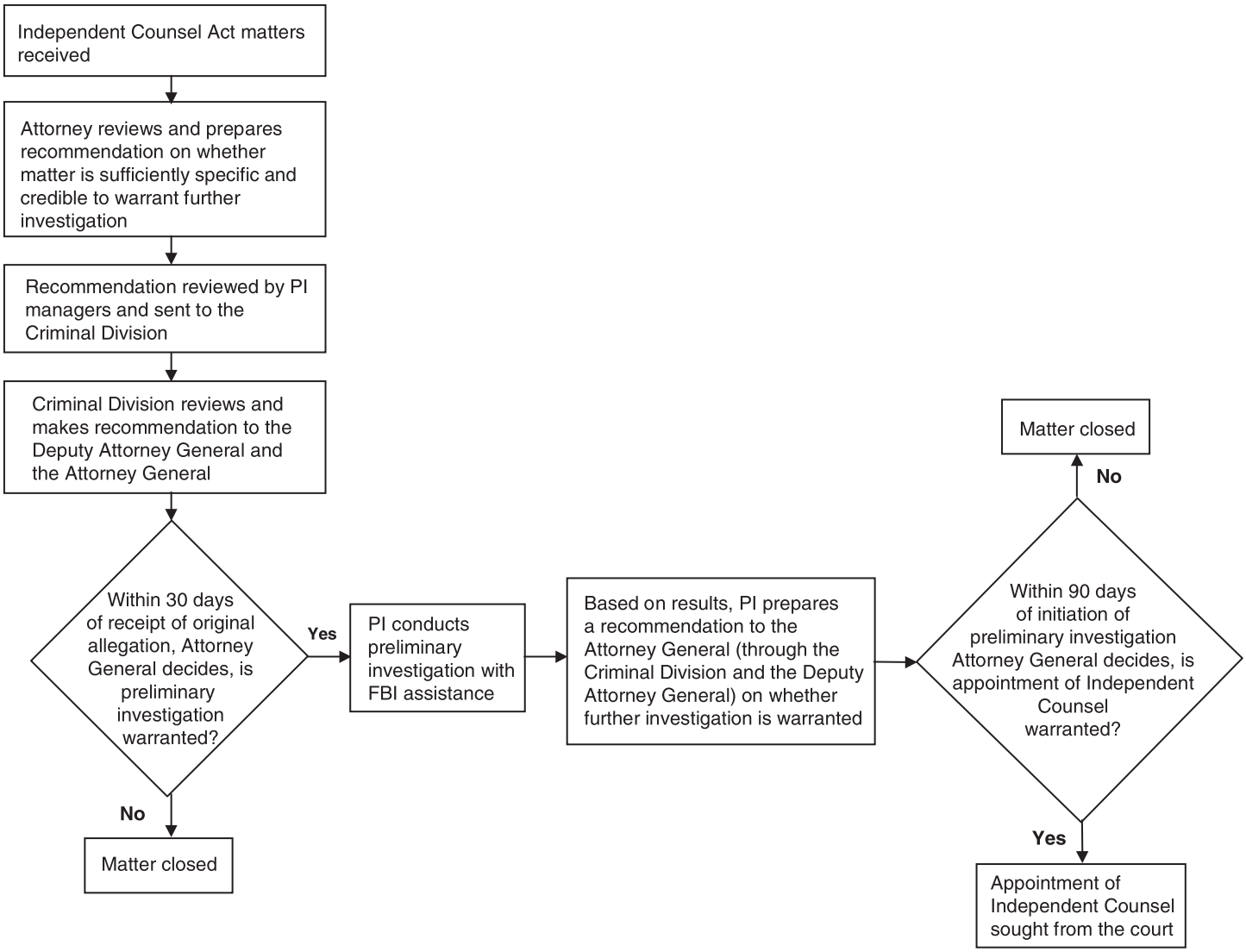
We found declination memorandums in all 26 matters reviewed. The declination memorandums contained the initials of the cognizant deputy chief and the section chief, evidencing their supervisory review of the declination decision.

Concerning the four independent counsel matters, the independent counsel statute governed how those matters were overseen. As figure 7 shows, due to the requirements of the Independent Counsel Act,[1] the process PI followed for assessing the validity of independent counsel allegations was different from the processes it followed for other public corruption cases.

In general, the act allowed the attorney general 30 days from the receipt of an allegation to determine if the information was specific and from a credible source. If warranted, a 90-day preliminary investigation was initiated. In conducting the investigation, the act prohibited the Attorney General from using his or her authority to convene a grand jury, plea bargain, issue subpoenas, and grant immunity. Following the preliminary investigation, the Attorney General was to decide whether to seek the appointment of an Independent Counsel from a special panel of federal judges.

[1]The act, 28 U.S.C. 591-599, which expired on June 30, 1999, required the attorney general to decide whether a criminal allegation involving a top official of the executive branch of the federal government, such as the president, vice president, cabinet officers, or the chairman or treasurer of the national campaign committee seeking the reelection of the president, was to be investigated by someone outside of the Department of Justice. During the initial inquiry, the attorney general was to consider only the specificity of the information received and the credibility of its source. In July 1999, following the expiration of the Independent Counsel Act, the Justice Department promulgated regulations that allow the attorney general to appoint special counsels. For the time period of our case selection, no special counsel cases had been completed.

Figure 7: How PI Oversaw Independent Counsel Matters



Source: GAO generated based on the requirements of the Independent Counsel Act and information provided by DOJ officials.

For the four independent counsel referrals we reviewed, PI prepared recommendations to the attorney general on whether or not sufficient basis existed to continue the independent counsel process. The files for three of the four recommendations contained evidence of deputy chief reviews of the recommendation[2] and in all four, evidence of the PI chief's approval. In addition, all four recommendations showed concurrence by Criminal Division and/or higher level Justice Department officials.

Prosecution Memorandums and Indictment Review Policy and Procedures

PI management also oversee the selection of cases for prosecution. When cases are proposed for indictment, line attorneys are required to prepare prosecution memorandums and draft indictments for submission to their cognizant deputy chief for review and approval. After review and approval by the cognizant deputy chief, an Indictment Review Committee[3] is convened to review the prosecution memorandum and draft indictment.

During the Indictment Review Committee meeting, the attorneys assigned to the matter are to present the government's case. The committee then is to, among other things, discuss the relevant facts of the case and the applicable statutes and charges; review the legal sufficiency of the arguments and the appropriateness of the proposed counts; make tactical suggestions on trial presentation; and raise issues of concern, such as possible counters to anticipated defenses. Lastly, a vote is to be taken on whether to go forward with each charge.

After the committee meeting, the deputy chief for litigation is to draft a cover memorandum to the section chief summarizing the results of the committee's vote, noting the key issues and significant comments made by the committee members. The cover memorandum, the prosecution memorandum, and a draft indictment, which has been revised to reflect the committee's input, are then to be forwarded to the chief for his review. Under the existing process, the chief is to note any concerns he or she may have with the prosecutive approach or decision and return the indictment package to the appropriate deputy chief. If the chief agrees with the

[2]The absence of evidence in a file of supervisory review does not necessarily mean that supervisory review of a key document did not occur.

[3]According to PI officials, the committee generally is comprised of between six and nine attorneys, including the three PI deputy chiefs and senior attorneys with experience in the legal issues to be discussed. On occasion, newer attorneys who have not yet experienced the Indictment Review Committee process attend as observers.

proposed prosecution, he or she is to initial the prosecution memorandum. The trial attorney then is to take the proposed indictment to a grand jury to obtain its approval.

"Prosecution by Information"–Policy and Process

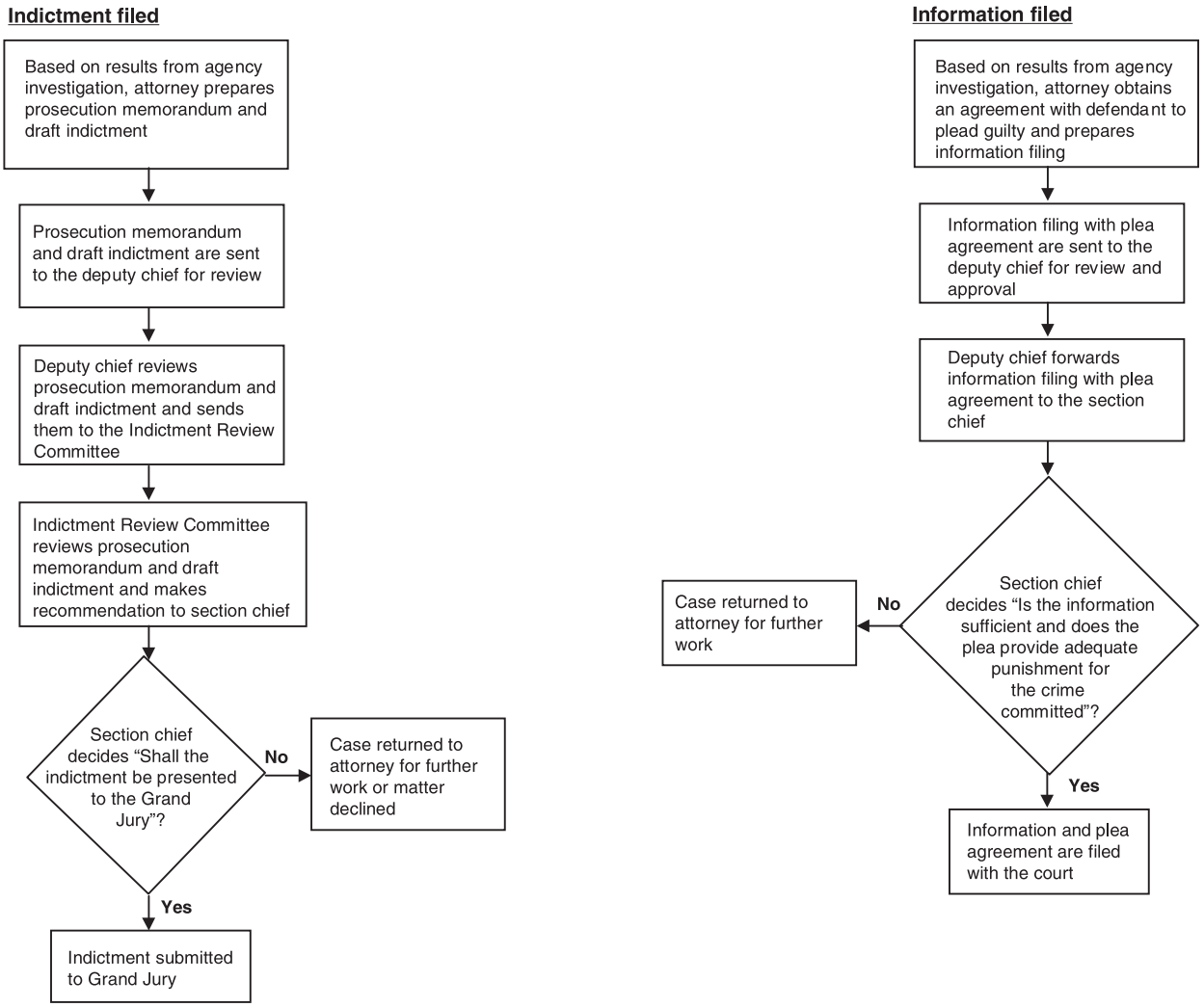
As previously discussed in chapter 3, in some cases, trial attorneys reach agreements with defendants and their attorneys who want to plead guilty before PI presents the matter to a grand jury or before an indictment is handed down. In these instances, the defendant may prefer to allow prosecution by an information filing and waive their rights to a grand jury indictment.[4] In these cases, there is no need to prepare prosecution memorandums or to convene the Indictment Review Committee.

Figure 8 summarizes the processes PI managers generally are to use to oversee attorneys' proposals to prosecute cases when they are seeking an indictment and when an information filing is obtained. It illustrates, among other things, the process for overseeing a case where an indictment is to be sought and a grand jury has been convened to consider the evidence and approve the indictment. As shown, in such cases, the Indictment Review Committee meets to review the prosecution memorandum and the proposed indictment.

Figure 8 also illustrates the process where a defendant had agreed to plead guilty, and thus, the Indictment Review Committee was not convened. As explained to us by PI officials, for both indictments and information filings resulting from a plea agreement, there are informal interactions over the course of a case; back-and-forth revisions that occur during the review process; and formal periodic case reviews that deputy chiefs conduct.

[4]Like an indictment, an information is a written statement filed with the court, which sets forth the essential facts constituting the offense charged in sufficient detail to apprise the defendant of the nature of the charges against him. Regardless of the defendant's preference, the prosecutor retains the discretion to proceed by indictment.

Figure 8: How PI Oversees Decisions to Prosecute Cases



Source: GAO generated based on discussions with DOJ officials and GAO's case file review.

File Reviews Showed That Management Oversight Occurred on Most Prosecutions

To determine whether the files provided evidence that the required oversight process for indictments or information filings had taken place, we further examined the 21 cases that were closed by PI from October 1, 1998, through June 30, 1999. Appendix IV summarizes each of the cases we reviewed.

In the seven cases that went to indictment, we observed deputies' initials or signatures evidencing supervisory review for six cases and the chief's approval for all cases. For the three cases where prosecution was declined in favor of a civil settlement, the files also showed evidence of the deputies' supervisory review and the chief's approval in all cases. However, for the 11 cases where defendants pleaded guilty and informations were filed, we found evidence of supervisory review and the chief's approval of the plea agreement in 3 of the 11 cases and a deputy's and/or chief's review of daily reports communicating the plea agreements in all 11 cases.

Asked why 8 of the 11 plea agreement cases reviewed did not show evidence of supervisory review of the agreement and the chief's approval, a CRM official noted that such lack of documentation was not unusual. He said that some plea agreements are reached in other judicial locations. In these situations, telephonic and/or facsimile consultation between the case attorney and a deputy chief is the most reasonable method for obtaining supervisory approval of the plea. As a result, written documentation evidencing the supervisor's review might not occur, or if it does, it might not be placed in the case file. He added that no attorney would proceed with a plea agreement without concurrence from his or her supervisors.

CRM and Justice Management Oversee and Monitor PI's Prosecutive Efforts

As shown previously in figure 2, the work of PI is overseen by CRM and specifically by a DAAG. The current DAAG has had oversight responsibility for PI for over 20 years and during this time has worked closely with the section chief. Except for a 2-year period, the section chief has been in PI since 1976 and has served as the chief since 1994. The DAAG said that he has confidence in the section chief and the deputies, and thus, he does not get involved in routine matters/cases other than to review press releases on the routine cases before they are released to the media. He also reviews the substance of incoming matters referred to CRM before they are sent to PI. In reviewing significant matters or cases, the DAAG said he may suggest the assignment of a specific PI trial attorney to handle them.

CRM Management Oversight of PI Focuses on Significant Cases

According to the DAAG, his oversight of PI has been limited for the most part to (1) the review of significant matters and cases—those that are considered sensitive, high profile, or unique—that are brought to his attention by the section chief and (2) the review of reports of significant changes in PI's prosecutive efforts. He also noted that he reviewed PI

workload reports generated by ACTS to keep abreast of the progress of cases and matters.

Having worked with the section chief for a long time, the DAAG said he was confident that the section chief knows which cases were significant and needed to be brought to his attention. He identified, as an example, cases involving Members of Congress and all former independent counsel matters, now any future special counsel matters. The DAAG said that he does not participate in the Indictment Review Committee, but for those cases that are brought to his attention, he would review declination decisions, prosecution memorandums, and plea bargains. He also said that the section chief occasionally contacts him for advice on borderline prosecutive decisions or to discuss cases that are highly sensitive or unusual.

Of the 31 closed matters and 21 prosecutions we reviewed, 5 matters and 4 cases showed evidence where either the DAAG or the CRM assistant attorney general or both had reviewed PI's decisions.

DOJ Management Is Informed of Prosecutive Efforts Through Several Means

Several different information reporting requirements keep CRM and DOJ management informed of PI's activities, including event-generated reports, weekly reports to the attorney general, and weekly attorney general meetings.

"Daily" and "Urgent" reports are required to communicate major developments or significant case events to DOJ management. Daily reports are to be used to keep DOJ management apprised of the progress of cases in the event that a media or congressional inquiry about their status is received. Although called daily reports, these communications are to be prepared whenever a significant event in a case takes place. Events that are to trigger a daily report would include, among others, an indictment or information filing; a dismissal, conviction, or guilty plea; or a sentencing result. Trial attorneys are to prepare the daily reports and forward them up the PI and CRM chains-of-command and, depending on the sensitivity or type of case, to the attorney general.

Urgent reports are required by the U.S. Attorneys' Manual and are applicable to DOJ attorneys in headquarters units as well as to attorneys in USAOs. For PI trial attorneys, Urgent reports are to be used to communicate major developments in important cases to PI section management, senior CRM managers, and when appropriate, the deputy attorney general and the attorney general. These reports involve sensitive

matters the attorney general and deputy attorney general must know about to carry out their responsibilities and respond to inquiries. According to the U.S. Attorneys' Manual, an urgent report would be required if a matter being investigated had a high likelihood of being covered in the news media or being of congressional interest. In addition, trial attorneys are expected to prepare and forward urgent reports to their supervisors in advance of their intentions to interview, or call before a grand jury, a Member of Congress, a federal judge, or a high executive branch official.

PI also reports weekly to CRM management on significant events that occur during the week and on events that it anticipates will occur over the following 2 weeks. CRM consolidates information provided by each of its sections and prepares a weekly report, which is provided to the attorney general. Information contained in the report may include, among other things, information on key cases and issues, such as major indictments, convictions, and upcoming trials and congressional items, such as upcoming hearings and testimonies.

Furthermore, the CRM assistant attorney general meets weekly with the attorney general to discuss emerging issues needing the attorney general's attention, obtain guidance on various issues, and review matters that need to be brought to the attorney general's attention. Matters or cases being handled by PI that catch the interest of the Attorney General are placed on the her "get back list." Developments that occur on the matters and cases that are on the get back list are to be provided to the Attorney General. At the time of our review, the Principal Deputy Chief estimated that there were 12 PI cases and matters on the get back list.

For 20 of the 21 prosecution case files we reviewed, we found daily or urgent reports. In the other case file, we found a copy of a Justice press release. According to a CRM official, Justice press releases are prepared from daily reports that have been submitted; and thus, he believed a daily report was prepared but did not get placed in the case file.

Managers Use ACTS Reports for Oversight, but Reliability of Some Data Is Questionable

PI and CRM managers use information generated from ACTS as aids to help them oversee the work of the section and the workload of its attorneys. Depending on the manager and his or her responsibilities, the use of ACTS reports varies. Within PI, managers primarily used ACTS-generated reports for oversight purposes to keep abreast of attorney caseload and the progress of cases. However, attorneys' failure to complete declination memorandums in a timely manner creates

misleading information in the ACTS database, which affects the usefulness and reliability of some ACTS data for oversight purposes.

Within PI, the Section Chief said that he reviews ACTS reports on a monthly basis as one means to keep abreast of case progress. The Principal Deputy Chief said that he also reviews ACTS reports to keep abreast of case progress. Moreover, he found ACTS reports showing attorney workload to be useful for formal quarterly matter and case reviews. The Deputy Chief for Litigation said that he used ACTS reports showing attorney workload and the pertinent referring agencies to keep track of cases during his quarterly supervisory reviews. The Deputy Chief with responsibility for special counsel and appellate matters said that ACTS provides recurring and special reports that PI managers use to keep track of attorneys' workload, identify which attorneys are responsible for particular matters, and identify if there are cases on particular individuals. She said that she frequently reviews ACTS reports.

Within CRM, ACTS reports are used infrequently for oversight. As previously noted, the DAAG said that he uses such reports on a limited basis to determine the progress that is being made on matters and cases. He particularly noted older matters and cases where little progress had been made and flagged them to query the section chief on their status. According to CRM officials, monthly case management reports that had been used to provide information to upper management, including the attorney general, were discontinued in 1998.

PI managers were aware that there were inactive cases awaiting declination memorandums and that attorneys were encouraged to complete them, although they agreed that active cases took precedence over matters that were not going to be prosecuted.

Conclusions

Through both informal and formal review processes, PI managers generally followed policies for ensuring that prosecutive decisions—declinations, indictments, and plea agreements were subject to management oversight. Moreover, DOJ and CRM management oversaw PI's work through event-generated daily and urgent reports, the attorney general's weekly report, weekly CRM meetings with the attorney general, the attorney general's get back list, and the DAAG's interest in unique, sensitive, or high-profile cases.

While PI managers believe they are aware of the status of matters under their responsibility, failure to complete some declination memorandums in

a timely manner causes information in the ACTS database to be misleading, which affects the usefulness and reliability of ACTS caseload information for management oversight purposes. As a result, CRM and PI managers, and others, such as Congress, who oversee and monitor PI's activities may not always have reliable information on which to base their oversight of PI's workload and case progress.

Agency Comments and Our Evaluation

In his written comments on a draft of this report, the Assistant Attorney General, CRM agreed with recommendations contained in our draft report calling for a policy to require that all declination memorandums be completed in a timely manner and that PI managers be required to ensure that trial attorneys adhere to the policy. The Assistant Attorney General noted that among DOJ units, PI was unique in its policy requiring a written memorandum to document every declination decision, and therefore, our recommendations did not justify a departmentwide policy to address the problems we identified. While our recommendations would not preclude DOJ from considering their applicability to other departmental units, the intent of our recommendations was to address the timeliness of declination memorandums in PI, which was the focus of our review.

Based on our recommendations, PI issued new procedures to ensure the timely completion of declination memorandums.[5] These procedures generally require (1) a 90-day or earlier target date for completing declination memorandums, (2) deadlines for PI managers to review the memorandums, (3) establishment of a database to track the status of all matters awaiting declination memorandums, and (4) PI managers to oversee the status of each matter to be declined. The procedures PI issued address the recommendations contained in our draft report and, if properly implemented, should improve the timeliness with which PI attorneys prepare declination memorandums and improve the quality of the data in ACTS. Since these policies address the problems we identified, we are no longer making the recommendations.

[5]Memorandum from PI Chief (New Procedures Concerning Matters Awaiting Formal Declination) to PI attorneys and deputies, dated December 1, 2000.

Appendix I: Other Public Integrity Section Responsibilities

In addition to carrying out its primary mission described in chapter 1, PI performs several other responsibilities that are related to its mission. The following summarizes these responsibilities.

Southwest Border Initiative

According to PI, it has an active role in the DOJ's Southwest Border Initiative, which is an ongoing multiagency effort to increase the federal government's success in combating a variety of offenses occurring along the border with Mexico, including the prosecution of border corruption cases. PI's involvement in the initiative is to address one of the immediate goals, which is to improve coordination and cooperation among federal law enforcement agencies concerning corruption offenses along the Southwest border.

President's Council on Integrity and Efficiency

PI serves as the legal advisor to the Integrity Committee of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency. The council is comprised of the Inspectors General of the various agencies of the executive branch of the federal government. The Council's Integrity Committee is charged with handling allegations against Inspectors General and senior members of their staff. PI initially reviews, for potential criminal prosecution, allegations of wrongdoing by IGs and their senior staff.

International Cooperation

According to PI, responsibilities in the international law enforcement area have been increasing over the past few years. In this regard, PI has provided briefings of foreign delegations on U.S. anticorruption statutes. In addition, it has become increasingly involved in supporting U.S. efforts to assist the international community in efforts to combat public corruption. Furthermore, PI works with the State Department to develop the U.S. position on a United Nations code of conduct and in reviewing anticorruption proposals of the Organization for Economic Cooperation and Development. PI also has provided assistance and training to other nations, including official exchanges with foreign election officials and lawmakers to share expertise on the investigation and prosecution of election crimes.

Case Supervision and General Assistance

Due to the sensitivity or complexity of some cases, PI will provide supervision and review for other federal prosecutors handling sensitive cases. According to PI, on occasion PI attorneys have been called upon to conduct a careful review of a sensitive public corruption case, evaluating

the quality of the investigative work and the adequacy of any proposed indictments. Based on its experience, PI attempts to identify tactical or evidentiary problems early on and provide needed assistance, and if necessary, it assumes operational responsibility for the prosecution.

PI also has expertise in the supervision of undercover operations in serious corruption cases. The chief serves as a permanent member of the FBI's Undercover Review Committee.

Finally, according to PI, it has provided numerous other miscellaneous support services to U.S. Attorneys in connection with corruption cases. Much of the support has come in the form of serving as a liaison with other components of DOJ in order to expedite approval of such procedures as immunity requests, wiretapping orders, and applications for witness protection.

Education and Training

PI's attorneys have participated in a wide range of formal training events for federal prosecutors and investigators and foreign officials. PI helps design and staff public corruption seminars sponsored by the Attorney General's Advocacy Institute. These seminars provide training in statutes most commonly used in corruption cases, guidance in the use of the complex and difficult investigative techniques necessary to investigate government corruption, and advice from experienced prosecutors on conducting corruption trials.

PI also has participated in training events sponsored by other federal departments or agencies. PI designed and teaches a course at the Federal Law Enforcement Training Center for investigators in Offices of Inspectors General on conflict-of-interest crimes, provides instructors for the annual ethics training programs of the U.S. Office of Government Ethics, and makes periodic presentations to other federal agencies.

PI identified 46 separate occasions in fiscal year 1999 where its attorneys provided briefings to government officials from 20 countries, training for IGs, investigative agencies, ethics personnel, and other U.S. Government officials. Lastly, PI representatives provided training or consultation to nine groups or associations, including training at the United Nations Crime Prevention and Criminal Justice Commission Experts Group.

Appendix II: Sources of Public Corruption Matters in the Public Integrity Section

Sources of PI Matters

Matters are forwarded to PI for a number of different reasons and from several different sources. These reasons include the following:

- First, PI will be assigned matters when a USAO recuses itself because of an actual or perceived conflict of interest. Such conflicts occur when a USAO determines that it, or an official of the office, has had a significant business, social, political, or other relationship with any subject or principal witness in an investigation. Such relationships frequently occur when the subject of an investigation is a current or former federal prosecutor or a federal enforcement agent who has worked closely with USAO.
- Second, generally as a matter of DOJ policy, PI has been given jurisdiction for all matters or cases involving federal judges or judicial officers. For USAOs, such cases could be quite sensitive, as the office may have had and continue to have professional dealings with the court during and after an investigation.
- Third, PI receives requests for prosecutive assistance from USAOs whose attorney resources are insufficient to handle a case or that lack expertise in a prosecutive area. According to PI documents, these cases also serve as a valuable training experience for prosecutors in the USAO who assist on the case.
- Fourth, PI can assume cases considered highly sensitive (e.g., cases involving high-ranking government officials, cases that are politically controversial on a local level, or where national intelligence issues may be present).
- Fifth, PI may be assigned responsibility for matters involving multiple judicial districts where two or more USAOs would be involved. In these cases, PI may be asked to coordinate the investigation among the various USAOs or can assume operational responsibility for the entire investigation.

According to PI's Section Chief, the section has also, on occasion, initiated inquiries based on stories reported in the media that indicated possible public corruption violations.

Appendix III: GAO Survey of Public Integrity Section Attorneys and Managers

GAO

Questionnaire
For
Public Integrity Section Attorneys

At the request of the House of Representatives' Committee on the Judiciary, the United States General Accounting Office is reviewing the activities of the Public Integrity Section. As part of this work, we are surveying Public Integrity Section attorneys about their backgrounds, recent work experience, and supervisory oversight. We would appreciate your completing the following questionnaire. The questionnaire should take about 20 - 30 minutes to complete. Please read each question completely. If you need clarification on any question, please contact Charles Johnson (512-7331). When you have completed your response, please return the questionnaire in the enclosed envelope by October 20, 1999.

While we may report summarized results to Justice officials and in our final product, specific respondents will not be identified in these instances.

Thank you for your participation.

The completed questionnaire should be returned to:
U.S. General Accounting Office
441 G Street NW , Room 2A38
Washington, DC 20548
Attn: Charles M. Johnson

N=21

1. How many years have you been in the Department of Justice (including any Justice component)? N=20 Range: 1-29 Mean: 9.45 Median: 5.00
2. How many years have you been in the Public Integrity Section? N=21 Range:1-23 years Mean: 7.33 Median: 5.0
3. Prior to joining the Department of Justice, did you have criminal prosecution experience? *(Check one.)* N=21

   1) ☐ Yes → *(Please continue with question #4.)* n=8 2) ☐ No → *(Please go to question #5.)* n=13

4. How many years' experience did you have as a prosecutor? N=8 Range: 1-5 years Mean: 2.88 Median: 3.5
5. Since joining the Department of Justice, other than your work in Public Integrity, have you had criminal prosecution experience as an Assistant U.S. Attorney or in another Justice Headquarters unit? *(Check one.)* N=21

   1) ☐ Yes → *(Please continue with question #6.)* n=12 2) ☐ No → *(Please go to question #7.)* n=9

6. How many years' experience did you have? N=12 Range: .33-15 years Mean: 2.27 Median: .5

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7. During fiscal year 1999 (**October 1, 1998 – September 30, 1999**), in which of the following functions or activities were you involved? For each function or activity checked "Yes", what is your best estimate of the percentage of your total work time for the year that you spent performing the function or activity? *(Percentages should add to 100%.)*

Functions	Yes (1)	No (2)	Percent of time (3)	No Response
A. Investigating or prosecuting criminal cases	n: 21	n: 0	Mean: 64	0
B. Independent Counsel matters	9	12	3	0
C. Responding to citizen and congressional correspondence	21	0	6	0
D. Attending legal training or seminars	10	10	1	1
E. Training other Justice Department attorneys on Public Integrity Section issues	6	14	1	1
F. Training Inspector General staff (e.g. at FLETC) or other investigators (e.g. at the FBI Training Academy) on Public Corruption issues	3	14	<1	4
G. Developing legislative proposals or commenting on legislative matters	5	15	1	1
H. Consulting with U.S. Attorneys, Inspectors General staffs, or Law Enforcement officers on public corruption matters or cases in which you did not participate in the investigation or prosecution (includes SW Border Initiative)	17	4	3	0
I. Consulting with U.S. Attorneys, Inspectors General staff, Campaign Finance Task Force, or Law Enforcement officers on election crime matters or cases in which you did not participate in the investigation or prosecution	6	14	3	1
J. Consulting with U.S. Attorneys, Inspectors General staff, or Law Enforcement officers on conflict-of-interest matters or cases that you did not participate in the investigation or prosecution	8	12	1	1
K. Providing expertise on public corruption, election crime, and/or conflict-of-interest legal issues, or on case investigation or prosecution matters to other Section trial attorneys	17	4	4	0
L. Reviewing trial attorneys' prosecution memoranda (the memoranda of others)	12	9	1	0
M. Reviewing trial attorneys' declination memoranda (the memoranda of others)	3	16	<1	2
N. Supervisory reviews of plea bargain agreements	3	16	<1	2
O. Supervisory reviews of legal pleadings and filings	4	16	<1	1
P. Approving prosecution memoranda, declination memoranda, and/or plea bargain agreements on behalf of the Public Integrity Section	3	15	1	3
Q. Advising the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency	2	16	1	3
R. Participating in international conferences as a Justice Department representative	6	14	1	1
S. Preparing Public Integrity Section's annual budget submission	2	17	1	2
T. Overseeing administrative staff	4	16	<1	1
U. Other *(Please identify.)* _____	4	2	2	15
V. Other *(Please identify.)* _____	2	2	1	17
Total work time for the year				

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8. Over the past fiscal year (**October 1, 1998 through September 30, 1999**), for how many matters or cases did you have lead or co-lead responsibility?

N=21 Range: 0-40 Mean: 13.9 Median: 10.0

_____ → *(If you did not have lead responsibility for any matters or cases, go to question #11, otherwise continue with question #9.)*

9. For the matters or cases you identified in question #8 in which you had lead or co-lead responsibility, what was their status as of October 1, 1999?

N=19 Range:

Status of cases	Number of matters	Number of cases	Skipped out
A. Criminal trials completed, cases on appeal		0-2	2
B. Criminal trials completed, cases closed		0-5	2
C. Defendant pled guilty, cases closed or awaiting sentencing		0-6	2
D. Out-of-court civil settlements reached		0-1	2
E. Currently in trial		0	2
F. Indictments obtained or informations filed pending trial matters		0-8	2
G. Matters under investigation, not yet charged	0-18		2
H. Matters declined for prosecution	0-17		2
I. Other *(Please identify.)* _____ _____	0-7	0-2	2/2

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10. For the criminal trials that you reported as being completed in response 9B above, please indicate in the following table the results of those trials. *(For trials in which there was more than one defendant, count each defendant separately (see example Case A below). If you need additional space, please add a page to the end of this questionnaire and indicate the question number.)*

N=19

Case	No. of defendants	Results		
Example: **Case A**	**3**	**Convicted by jury: 2** **Acquitted by jury: 1** **Mistrial: 0** **Dismissed by judge: 0** **Other *(Please describe.)***	Range:	
Case 1	0-6	Convicted by jury: Acquitted by jury: Mistrial: Dismissed by judge: Other *(Please describe.)*	0-2 0-1 0-3 0-1 0-1	Skipped out - 2
Case 2	0-3	Convicted by jury: Acquitted by jury: Mistrial: Dismissed by judge: Other *(Please describe.)*	0-1 0-1 0-3 0 0-1	Skipped out - 2
Case 3	0-2	Convicted by jury: Acquitted by jury: Mistrial: Dismissed by judge: Other *(Please describe.)*	0 0 0 0 0-1	Skipped out - 2
Case4	0-2	Convicted by jury: Acquitted by jury: Mistrial: Dismissed by judge: Other *(Please describe.)*	0 0 0 0 0-1	Skipped out - 2
Case5	0-2	Convicted by jury: Acquitted by jury: Mistrial: Dismissed by judge: Other *(Please describe.)*	0 0 0 0 0 -1	Skipped out - 2

11. Over the past 3 fiscal years (**October 1, 1996 through September 30, 1999**), have you prosecuted any criminal cases (i.e., filed criminal charges)?

N=21

1) ❒ Yes → *(Please continue with question #12.)* n=17
2) ❒ No → *(Please go to question #13.)* n=4

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12. Over the past 3 fiscal years, which of the following case types best describe the primary violations in the cases you have prosecuted (i.e. filed criminal charges)? For each that you answer "Yes," indicate how many cases you have prosecuted? *(If you have not been in the Public Integrity Section since October 1, 1996, answer only for the period that you have been in the Section.)*

Case type (primary violation)	Yes (1)	No (2)	Number of cases (3)	Skipped out	Missing
A. Election crimes	n: 3	n: 10	Range: 0-10	4	4
B. Conflict of interest	5	7	0-5	4	5
C. Other corruption violation	13	1	0-18	4	3
D. Other *(Please identify.)* _____	4	0	0-10	3	14
E. Other *(Please identify.)* _____	0	0	0-1	4	17

13. Currently, how many matters (i.e., allegations or violations not yet charged) and criminal cases for which you have lead, co-lead, or assist responsibilities comprise your workload? N=21

Workload	Number	
	Lead or Co-lead (1)	Assist (2)
A. Matters (not yet charged)	Range: 0-18	0-100
B. Cases (i.e. filed criminal charges)	0-9	0-15

14. For the cases identified in question 13, indicate the number for which the following case types best describe the primary violations in the cases. *(Use only one case type per case.)* N=21

1) Election crimes _____ Range: 0-15
2) Conflict of interest _____ 0-3
3) Other corruption violation _____ 0-15
4) Other _____ 0-2 → *(Please specify.)* _____

Questions 15 and 16 are to be answered only by line attorneys. If you are not a line attorney, go to question 17.

15. Overall, how would you characterize the amount of supervision you receive on the matters/cases to which you are assigned? *(Check one.)*

N=17

1) ❒ Little or none 0
2) ❒ Generally too little 0
3) ❒ About right 16
4) ❒ Generally too much 1
5) ❒ Far too much 0

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16. Overall about how often do you usually meet or have substantial consultation with a supervisor on the matters/cases to which you are assigned? *(Check one.)* N=17

1) ❒ Daily	n=0
2) ❒ More than once per week, but not daily	6
3) ❒ Once per week	6
4) ❒ More than once per month, but not weekly	2
5) ❒ Once per month	2
6) ❒ Other *(Please specify.)*	1

17. Do you receive reports from the Automated Case Management System (ACTS)? N=21

1) ❒ Yes	n=9
2) ❒ No → *(Go to question #22.)*	12

18. How frequently do you receive these reports? N=9

1) ❒ Weekly	n=0
2) ❒ Bi-weekly	0
3) ❒ Monthly	0
4) ❒ Other *(Please identify.)* _____	9

19. Describe the purposes for which you use the ACTS reports? 8 written entries

20. Are the reports you receive timely? N=9

1) ❒ Yes	n=9
2) ❒ No	0

21. Overall, how useful do you find the ACTS reports you receive? N=9

1) ❒ Not useful at all	n=2
2) ❒ Of little use	0
3) ❒ Of some use	4
4) ❒ Moderately useful	3
5) ❒ Very Useful	0

22. What, if anything, do you believe you need to do your job better or more efficiently? 8 written entries

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23. If there is anything else about any of your responses above you would like to clarify (please show question number) or are there any comments you have on this questionnaire, please provide in the space below.

3 written entries

THANK YOU FOR YOUR COOPERATION

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Appendix IV: Summaries of Fiscal Year 1999, Public Integrity Section Prosecutions Reviewed by GAO

We gathered information on the 21 cases PI closed between October 1, 1998, through June 30, 1999. The following are our summaries of each of the closed cases.

Case 1

On October 8, 1998, a federal jury in the Northern District of New York acquitted a Drug Enforcement Administration (DEA) group supervisor on four counts of submitting false claims and one count of theft of government property arising out of an alleged travel voucher fraud.

Case 2

On October 16, 1998, a special police officer with the Cuyahoga Metropolitan Housing Authority Police Department was sentenced to 2 years' probation and ordered to pay a $500 fine. Previously, the officer had pleaded guilty to a one-count information charging him with violating the Hobbs Act, 18 U.S.C. 1951. The officer had been assigned to a Cleveland Police Department strike force investigating violations of laws against possession and sale of illegal narcotics and illegal sale and purchase of food stamps. The officer told a grocery store owner that he was under investigation for the illegal sale and purchase of food stamps and that he could make the owner's problems and the paperwork of the investigation "go away" for a payment of $500 (see related case 12).

Case 3

On October 16, 1998, a federal prison inmate on supervisory release was sentenced to 5 years' probation, including 6 months of home confinement and 400 hours of community service, for pleading guilty to giving illegal gratuities to a U.S. probation officer. The former inmate gave numerous expensive items, which had been stolen from local stores, to the probation officer, who in exchange, agreed to submit another person's urine samples for court-ordered drug testing. This allowed the defendant to continue to smoke marijuana without revocation of her supervised release (see related case 21).

Case 4

On October 19, 1998, a former U.S. Postal Inspection Service inspector was sentenced to 4 months in prison, 4 months of home confinement, and 2 years' probation after pleading guilty to a one-count felony information charging him with misappropriation of postal funds. The postal inspector confessed to embezzling $18,213 in seized cash from an evidence room. The inspector made restitution to the U.S. Postal Inspection Service and resigned from his job.

Case 5

On October 28, 1998, a DEA group supervisor was sentenced to 37 months in prison and 3 years' supervised release and ordered to pay restitution of $176,925 on six counts of mail fraud, one count of theft of government property, and six counts of false statements. The group supervisor used his position to steal $178,425 from an imprest fund intended for the purchase of narcotics and payments to informants by forging the signatures of agents under his supervision to conceal and cover up his scheme.

Case 6

On November 12, 1998, a former Federal Highway Administration (FHWA) contracting official was sentenced to 37 months in prison, 3 years' supervised release, and fined $5,000. The official pleaded guilty in August 1998 to a three-count information charging him with (1) conspiracy to commit bribery and money laundering and to defraud the United States, (2) bribery, and (3) money laundering. As part of the plea agreement, the official resigned from FHWA and agreed to forfeit more than $65,000 in retirement funds to the government, along with the proceeds from the sale of a vehicle. The vehicle had been purchased with proceeds from cash bribes (see related case 7).

Case 7

On December 22, 1998, the president and majority shareholder in a traffic engineering firm contracting with FHWA was sentenced to 24 months in prison, 2 years' supervised release, and fined $5,000. The contractor had pleaded guilty to engaging in a conspiracy to (1) pay more than $150,000 in unlawful gratuities to a FHWA contracting official overseeing his contracts, (2) commit money laundering, and (3) defraud the U.S. government of more than $200,000 by submitting fraudulent invoices to recoup the illegal payments.

Case 8

On January 15, 1999, a Central Intelligence Agency (CIA) official was sentenced to 12 months and 1 day in prison and ordered to pay $67,487 in restitution to a federal credit union for defrauding it out of $80,639 after pleading guilty to bank fraud. The official borrowed the money to acquire two luxury automobiles that he did not purchase. As part of the plea agreement, the official agreed to resign his position and reimburse CIA $31,713 for conduct unrelated to the credit union fraud.

Case 9

On January 22, 1999, a Kentucky Commonwealth's attorney was sentenced to 27 months imprisonment and 2 years' supervised release and ordered to

pay a $100 special assessment for attempted extortion. The attorney attempted to extort between $50,000 and $100,000 for his reelection campaign from the owner of a pawnshop and operator of an illegal bookmaking operation by offering to reduce the charges filed against him.

Case 10

On February 4, 1999, pursuant to a civil settlement agreement, a Senior Intelligence Service officer of the CIA agreed to disgorge to the government $48,700—his family's entire profit from the exercise of an aerospace company's stock options. In his position, the officer oversaw contracts with the aerospace company. During that period, the company employed the CIA officer's wife as a program management engineer on contracts unrelated to those her husband supervised. At the time, the settlement was the largest civil settlement of a conflict-of-interest violation ever obtained by the Criminal Division.

Case 11

On February 9, 1999, a former assistant secretary of state agreed to pay a civil penalty of $5,000 to settle allegations that he unlawfully sought official action by the State Department on behalf of his new employer within 1 year of leaving his post. A stipulation of facts, filed with the agreement, indicated that the investigation did not find that the former official willfully violated the law or that his communications resulted in any direct financial gain for himself or his employer. The parties agreed to resolve the matter in the interest of avoiding the expense, delay, and uncertainty of potentially lengthy litigation.

Case 12

On February 9, 1999, an Ohio state senator was sentenced to 15 months in prison, followed by 1 year of supervised release and 250 hours of community service on three counts of extortion. The jury acquitted on a fourth extortion count. The charges resulted from an FBI investigation that made use of a cooperating witness–a grocery store owner who recorded conversations with the state senator. The state senator had demanded personal "loans" and campaign contributions in exchange for assistance in obtaining various state and county licenses. The state senator was paid a total of $7,000 in purported loans and $10,000 in campaign contributions. The loans were never repaid.

Case 13

On February 19, 1999, an executive producer for the National Aeronautics and Space Administration, NASA TV, was sentenced to 2 years' probation and 100 hours of community service and fined $2,500. The producer

pleaded guilty to a one-count misdemeanor information that charged him with theft for submitting false transportation receipts totaling less than $1,000.

Case 14

On February 24, 1999, a Houston, TX, city councilman and a lobbyist were sentenced to prison for their participation in a corruption scheme involving the Houston City Council. The city councilman received 108 months in prison and was fined $51,000. The lobbyist was sentenced to 51 months in jail. The charges stemmed from a 1995 FBI undercover investigation that was based upon an allegation that the councilman regularly demanded payoffs from city contractors. Shortly after the investigation began, the city councilman directed a fictional company, established by the FBI, to seek ownership interest in a $150 million convention center hotel to be developed under city contract. To ensure the award of that contract to the favored developer, the councilman orchestrated a conspiracy in which he solicited and received a $50,000 cash payment from the fictional company created by the FBI and made cash payments to other council members. The lobbyist assisted the councilman in carrying out the conspiracy (see related case 18).

Case 15

On March 1, 1999, a senior special agent of the U.S. Customs Service was sentenced to 3 years' probation and 100 hours of community service and fined $4,100 for a misdemeanor charge of illegal supplementation of salary. The agent pleaded guilty to receiving money from an informant's award. The informant, whom the agent had nominated for the award, was given $110,875. On the day the agent gave the informant the award, he suggested that the informant "accidentally" lose an envelope containing $4,000 in the back of the agent's government car. The agent later confirmed that he had found and kept the money.

Case 16

On March 11, 1999, a former deputy sheriff for Lake County, IN was sentenced to 64 months in prison and 2 years of supervised release and fined $10,000. The deputy sheriff pleaded guilty to a one-count information charging him with extortion. The deputy sheriff had been involved in the arrest of a subject, who was charged with attempted dealing in cocaine, conspiracy to deal in cocaine, and resisting arrest. The deputy sheriff subsequently solicited and agreed to accept $30,000 from the subject in exchange for convincing the prosecutor to drop the charges. The subject informed the FBI and agreed to cooperate in an investigation. The deputy sheriff was caught on tape accepting $10,000 in cash.

Case 17

On April 13, 1999, a federal civilian employee was sentenced to 1 year of supervised probation after pleading guilty to a one-count information charging him with misdemeanor conversion of government funds. This employee had received travel funds to relocate his wife and two children from Virginia to California, pursuant to a transfer of duty stations. He claimed to have spent $10,087 for relocation of his family when in fact the family did not move and he made personal use of the money. Pursuant to the plea agreement, he resigned his government employment and made full restitution.

Case 18

On May 12, 1999, after a 6-week trial, the judge declared a mistrial after the jury deadlocked on all counts of an indictment charging two Houston, TX city councilmen and one former councilman, with conspiracy and bribery. The defendants were previously tried on the same charges, but the jury in that case was unable to render a unanimous verdict.

Case 19

On June 8, 1999, a former Department of Defense deputy inspector general agreed to a civil settlement. The settlement was to resolve the claim that the official violated the 2-year restriction on postemployment contacts involving matters pending under his official responsibility within the year preceding his departure from government service. The official agreed to pay $12,125, which represented the amount he charged a private client for the representation alleged to be unlawful. The settlement was coordinated with DOJ's Civil Division and the U.S. Attorney's Office.

Case 20

On June 11, 1999, a CIA administrative supervisor was sentenced to 6 months of home detention and 3 years of supervised probation and ordered to pay $21,575 in restitution after pleading guilty to a one-count felony information charging credit-card fraud. The supervisor had repeatedly intercepted and made unauthorized use of agency credit cards issued to other employees. The total loss to the agency from the supervisor's conduct was $31,453. The supervisor resigned her position pursuant to the plea agreement.

Case 21

On August 16, 1999, U.S. Court of Appeals for the Eighth Circuit upheld the 12-month prison sentence imposed on a U.S. probation officer who had previously pleaded guilty to engaging in an honest services mail-fraud scheme. For 3 years, the probation officer provided preferential treatment to a convicted drug felon under her supervision and accepted numerous

gifts and gratuities in return for sending someone else's urine samples for analysis to a laboratory to avoid court-ordered drug testing. The probation officer then falsely certified in official court records that the samples had been properly obtained from the felon. The probation officer voluntarily resigned her position.

Appendix V: Comments From the Department of Justice

U.S. Department of Justice

Criminal Division

Assistant Attorney General *Washington, D.C. 20530*

January 8, 2001

Ms. Laurie E. Ekstrand
Director
Administration of Justice Issues
United States General Accounting Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Ekstrand:

In response to your letter of December 20, 2000, the Department of Justice has reviewed the General Accounting Office (GAO) Draft Report "DOJ's Public Integrity Section." We are pleased to note that following its in-depth review of the operations of the Public Integrity Section, the GAO has found that the Section has in place policies and practices to ensure that all prosecution decisions are subject to management review and that the Section is in compliance with those policies and practices. GAO did find one weakness in Section operations: in some instances, the drafting of the declination memoranda that the Section requires to close matters without prosecution takes too long. In making that finding, GAO did note, however, that the Department has no specified time limit for completing such memoranda, and recommended that such time periods be imposed by the Attorney General Department-wide.

With respect to this issue, the Section has implemented new management procedures to expedite the drafting of declination memoranda. In most cases, we anticipate that these procedures will help to ensure that the memoranda are completed within 90 days of the trial attorney's determination, in consultation with his or her supervisors, that no further investigation is warranted. We appreciate the opportunity provided by the audit to focus attention on this issue, and believe that the new procedures should resolve it.

We have a few comments to help place this issue in perspective. Unlike some prosecutorial offices, the Public Integrity Section requires its attorneys to draft a declination memorandum setting out the legal and factual bases supporting the decision to decline each matter, large or small. This requirement, in some cases, extends the time a matter is open in

the Section. As was discussed with the auditors in the course of their review, this is most often because of the need for Section attorneys to focus their attention on other active and higher-priority investigations. The Public Integrity Section is small, has been short-staffed during the period of the GAO review, and many of its responsibilities require the staff's immediate and focused attention. Therefore, the preparation of routine declination memoranda in matters in which there is no adverse impact from delay has from time-to-time been given lower priority.

In contrast, in situations in which there is a potential adverse impact from delay, prompt preparation of declination memoranda remains a priority, enforced by Section management. Upon request from an agency or department, the Section routinely expedites declinations or, so long as it will not harm the investigation, approves the agency's taking of administrative action against the subject while the matter is pending. Thus, while the draft Report speculates that there may be some adverse consequences to delay, Section managers and attorneys are well aware of that possibility and effective procedures are in place to address it.

The GAO report suggests that delays in preparing some declinations may hamper management of the Section because it results in misleading information in the Section's computerized case management system. This conclusion appears to give insufficient weight to the fact that matters are not closed in the Section until the Section Chief reviews a recommendation from the trial attorney and makes a decision to decline the matter.[1] It is important that matters continue to be reflected in Section records as open until a declination memorandum is prepared and approved by the Section Chief in order to ensure that those records accurately reflect the pending Section workload. Section management is familiar with the status of each of the matters open in the Section, and is not misled in any way by the fact that an attorney's computerized list of open matters reflects both matters under active investigation and matters that await final declination.

Despite these few comments on the report's findings, we agree that the Section should take additional steps to encourage

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[1] Because the Chief's decision, not the trial attorney's recommendation, is the significant event, we also disagree with the draft Report's suggestion that a delay in preparing a declination memoranda implicates federal internal control standards requiring significant events to be promptly recorded.

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the prompt drafting of declination memorandum. As pointed out above, new management controls have been implemented within the Section which we believe will achieve this objective. We do not believe, however, that a Department-wide Attorney General directive of the sort recommended by the GAO would be appropriate. The Department is a diverse and decentralized organization, and a single mandatory rule of the type GAO proposes is unnecessary. The Public Integrity Section is unique because of the high visibility of many of its cases. The Section's present policy of writing declination memoranda in all matters was implemented over 20 years ago in reaction to criticism by Congress about the closing of a number of largely low visibility cases. Unlike the Public Integrity Section, some prosecutorial offices do not find it necessary to require that formal declination memoranda be drafted in all cases. We believe that the internal procedures adopted by the Section will address the concerns identified in the draft Report, without the necessity for a Department-wide rule.

We appreciate the opportunity to review and comment on the GAO draft Report. If you should have any questions concerning our response, please do not hesitate to contact me.

Sincerely,

James K. Robinson
Assistant Attorney General

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Appendix VI: GAO Contacts and Staff Acknowledgments

GAO Contacts

Laurie E. Ekstrand, (202) 512-8777
Daniel C. Harris, (202) 512-8720

Acknowledgments

In addition to the persons named above, Robert P. Glick, Chas. Michael Johnson, Carolyn S. Ikeda, Delois N. Richardson, David P. Alexander, Stuart M. Kaufman, Jan B. Montgomery, Katherine M. Raheb, and Jena Y. Sinkfield, made key contributions to this report.

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